OSWER Directive No. 9833.3A-1

FINAL GUIDANCE ON ADMINISTRATIVE RECORDS FOR SELECTING CERCLA RESPONSE ACTIONS

U.S. Environmental Protection Agency
Office of Solid Waste and Emergency Response
Washington, D.C. 20460

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

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OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE
OSWER Directive # 9833.3A-1

MEMORANDUM

SUBJECT: Final Guidance on Administrative Records for Selecting CERCLA Response Actions

FROM: Don R. Clay
Assistant Administrator

TO: Regional Administrators, Regions I-X

This memorandum transmits to you our "Final Guidance on Administrative Records for Selecting CERCLA Response Actions." This document replaces the "Interim Guidance on Administrative Records for Selection of CERCLA Response Actions," previously issued on March 1, 1989.

The guidance sets forth the policy and procedures governing the compilation and establishment of administrative records for selecting response actions under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). This guidance is also consistent with and expands on Subpart I of the National Oil and Hazardous Substances Pollution Contingency Plan, 55 Fed. Reg. 8859 (March 8, 1990).

This guidance reflects input received from the Regions, Headquarters and the Department of Justice. There have been several drafts of this guidance and comments have been incorporated. I thank you for your assistance.

Attachment

cc: Director, Waste Management Division,
Regions I, IV, V, and VII
Director, Emergency and Remedial Response Division,
Region II
Director, Hazardous Waste Management Division,
Regions III, VI, VIII, and IX
Director, Hazardous Waste Division, Region X
Director, Environmental Services Division,
Regions I, VI, and VII
Regional Counsel, Regions I-X
Administrative Record Coordinators, Regions I-X

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in selecting a response action. This guidance document discusses procedures developed to ensure that the lead agency's administrative records meet these twin purposes.

The administrative record is the body of documents that "forms the basis" for the selection of a particular response at a site. This does not mean that documents which only support a response decision are placed in the administrative record. Documents which are included are relevant documents that were relied upon in selecting the response action, as well as relevant documents that were considered but ultimately rejected (e.g., documents "considered or relied on").

This document uses the phrase "considered or relied on" in discussing which documents should be included in the administrative record to indicate that it is EPA's general policy to be inclusive for placing documents in the administrative record. However, this term does not mean that drafts or internal documents are normally included in the administrative record. Lead or support agency draft or internal memoranda are generally not included in the administrative record, except in specific circumstances (see section III.G. at page 33). Thus, the record will include final documents generated by the lead and support agency, as well as technical and site-specific information. Information or comments submitted by the public or potentially responsible parties (PRPs) during a public comment period (even if the lead agency does not agree with the information or comments) are also included in the administrative record (see section III.D. at page 30).

The following principles should be applied in establishing administrative records:

- The record should be compiled as documents relating to the selection of the response action are generated or received by the lead agency;
- The record should include documents that form the basis for the decision, whether or not they support the response selection; and
- The record should be a contemporaneous explanation of the basis for the selection of a response action.

The effort to establish adequate administrative records encompasses a vast array of people including: Administraive Record Coordinators, Remedial Project Managers (RPMs), On-Scene Coordinators (OSCs), enforcement staff, records management staff, Regional Counsel staff, Community Relations Coordinators (CRCs), other federal agencies, states, CERCLA contractors, and the

I. INTRODUCTION

A. Purpose and Scope of the Administrative Record

This guidance addresses the establishment of administrative records under Section 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA).[1] Section 113(k)(1) of CERCLA requires the establishment of administrative records upon which the President shall base the selection of a response action (see Appendix A for the complete statutory language).

Chapter I of this guidance introduces the purpose and scope of the administrative record. Chapter II reviews procedures for compiling and maintaining the administrative record. Chapter III examines the various types of documents which should be included in the administrative record. Chapter IV discusses how agencies outside EPA are involved in establishing the record. Finally, this guidance includes a glossary of frequently used terms and acronyms as well as several appendices.

Although this guidance is written for use by the United States Environmental Protection Agency (EPA), it can be adapted for use by state and federal agencies required to establish administrative records for the selection of CERCLA response actions. As used in this guidance the term "lead agency" means either EPA, a state or other federal agency, which is responsible for compiling and maintaining the administrative record. As used in this guidance, the term "support agency" means the agency or agencies which furnish necessary data to the lead agency, reviews response data and documents and provides other assistance as requested by the OSC or RPM. This guidance reflects the revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) published on March 8, 1990, 55 Fed. Reg. 8859 (see Appendices L and M).

The administrative record established under Section 113(k) of CERCLA serves two primary purposes. First, the record contains those documents which form the basis for selection of a response action and under Section 113(j), judicial review of any issue concerning the adequacy of any response action is limited to the record. Second, Section 113(k) requires that the administrative record act as a vehicle for public participation

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[1] 42 U.S.C. §9613. References made to CERCLA throughout this memorandum should be interpreted as meaning "CERCLA, as amended by SARA."

administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with the law. However, the extent to which EPA benefits from having judicial review limited to the record depends on the quality and completeness of each record.

C. Public Participation

Section 113(k)(2) of CERCLA requires that the public have the opportunity to participate in developing the administrative record for response selection. Section 117 of CERCLA also includes provisions for public participation in the remedial action selection process.[3] Both sections reflect a statutory emphasis on public participation. Participation by interested persons will ensure that the lead agency has considered the concerns of the public, including PRPs, during the response selection process. In addition, for purposes of administrative and judicial review, the record will contain documents that reflect the participation of the public and the lead agency's consideration of the public's concerns.

If the lead agency does not provide an opportunity for involvement of interested parties in the development of the administrative record, persons challenging a response action may argue that judicial review should not be limited to the record. The lead agency must, therefore, make the information considered or relied on in selecting a response action available to the public, provide an appropriate opportunity for public comment on this information, place comments and information received from the public in the record, and reflect in the record the lead agency's consideration of this information.

II. PROCEDURES FOR ESTABLISHING THE ADMINISTRATIVE RECORD

A. Administrative Record Coordinator

Each region should have an Administrative Record Coordinator. The Record Coordinator generally has the duty of ensuring that the administrative record files are compiled and maintained according to Subpart I of the NCP and this guidance.[4]

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[3] 42 U.S.C. §9617.

[4] The "administrative record file" should be distinguished from the "administrative record." The administrative record file refers to the documents as they are being compiled. Until a response action decision has been selected, there is no complete administrative record for that decision. Thus, to avoid creating the impression that the record is complete at any time prior to

public.[2] This guidance will discuss the roles and responsibilities of these people and how they interact with one another.

B. Judicial Review

Section 113(j)(1) of CERCLA provides that judicial review of any issues concerning the adequacy of any response action shall be limited to the administrative record.

Judicial review based on an administrative record provides numerous benefits. Under Section 113(j) of CERCLA and general principles of administrative law, when the trial court reviews the response action selected, the court is limited to reviewing the documents in the administrative record. As a result, facts or arguments related to the response action that challenging parties present for the first time in court will not be considered.

Record review saves time by limiting the scope of trials, thereby saving the lead agency's resources for cleanup rather than litigation. Courts will not allow a party challenging a decision to use discovery, hearings, or additional fact finding to look beyond the lead agency's administrative record, except in very limited circumstances. In particular, courts generally will not permit persons challenging a response decision to depose, examine, or cross-examine EPA, state or other federal agency decisionmakers, staff, or contractors concerning the selection of the response action.

Furthermore, the administrative record may be cited long after officials responsible for the response decisions have moved into different positions or have left the lead or support agency. Judicial review limited to the record saves time involved in locating former employees who may not remember the facts and circumstances underlying decisions made at a much earlier time.

Moreover, in ruling on challenges to the response action decision, the court will apply the highly deferential "arbitrary and capricious" standard of review set forth in Section 113(j)(2) of CERCLA. Under this standard, a court does not substitute its judgment for that of the decisionmaker. The reviewing court does not act as an independent decisionmaker, but rather acts as a reviewing body whose limited task is to check for arbitrary and capricious action. Thus, the court will only overturn the response selection decision if it can be shown on the

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[2] As used hereinafter in this guidance the term "public" includes potentially responsible parties (PRPs).

The Record Coordinator will not be responsible for deciding which documents are included in a record file. Those decisions should be made by the OSC or RPM, with appropriate consultation of ORC staff. The Record Coordinator's duties ordinarily include:

- Developing procedures for creating record files;
- Ensuring that the public is notified that the record files are available for inspection;
- Ensuring that the records are available at or near the site;
- Ensuring that the records are available at the regional office or other central location;
- Coordinating efforts to obtain the necessary documents;
- Indexing the record files;
- Updating the record files and indices on a regular basis (e.g., quarterly);
- Ensuring availability of the record file for copying;
- Ensuring that sampling and testing data, quality control and quality assurance documentation, and chain of custody forms are available for public inspection, possibly at a location other than that of the record files;
- Coordinating with ORC staff on questions of relevance and confidentiality of documents submitted for the record files;
- Arranging for production and presentation of the record to court when necessary for judicial review;
- Maintaining the confidential portion of the record files, if necessary;
- Maintaining the "Compendium of CERCLA Response Selection Guidance Documents";
- Coordinating with states and federal agencies on record files compiled by them; and

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the final selection decision, the set of documents is referred to as the administrative record file rather than the administrative record.

- Notifying appropriate personnel of the timing for review of state and federal record files.

Appendix D contains a model position description for an Administrative Record Coordinator.

The Record Coordinator must work closely with RPMs, OSCs, enforcement staff, records management staff, Regional Counsel staff, community relations staff, and the Department of Justice (DOJ) (for cases in litigation).

If the way the record was compiled and maintained is questioned in litigation, the Record Coordinator may be called upon to prepare an affidavit or testify about those procedures. Therefore, the Record Coordinator should be familiar with the procedures associated with the record, and be qualified to fulfill the responsibilities outlined above.

B. Multiple Response Actions

In general, every decision document (e.g., Record of Decision (ROD) or Action Memorandum) must be supported by an administrative record. Under CERCLA, cleanups are often broken up into distinct response actions. At a given site this may include several removal actions, and/or remedial actions known as operable units. For every removal action or operable unit, a separate administrative record must be compiled.

Information relevant to more than one response decision, such as a site inspection report or a preliminary assessment report may be placed in the record file for an initial response action and incorporated by reference in the indexes of subsequent record files for that site.

C. Compilation

The administrative record file should be compiled as relevant documents on the response action are generated or received. Thus, all documents which are clearly relevant and non-privileged should be placed in the record file, entered into the index, and made available to the public as soon as possible. For example, the remedial investigation/feasibility study (RI/FS) work plan, summaries of quality assured data, the RI/FS released for public comment, the proposed plan, and any public comments received on the RI/FS and proposed plan should be placed in the record file as soon as they are generated or received.

When there are questions whether particular documents should be included in the record file, such documents can be segregated and reviewed at regular intervals (e.g., quarterly). For

example, draft documents or documents subject to claims of privilege should be set aside for review by ORC and other appropriate staff. At critical times, such as prior to the public comment period, the issues regarding these documents should be completely resolved and the documents included in the record file, if appropriate.

The record file should be updated while it is available for public inspection. The additional documents should be placed in the record file and entered in the index. Any updates to the record file should be made to all copies of the record file.

All documents considered or relied on in selecting the response action should be in the record file when a decision document (e.g., a record of decision) is signed. Documents relevant to the response selection but generated or received after the decision document is signed should be placed in a post-decision document file and may be added to the administrative record file in certain circumstances (see section III.N. at page 40).

D. Index

Each administrative record file must be indexed. The index plays a key role in enabling both lead agency staff and members of the public to help locate and retrieve documents included in the record file. In addition, the index can be used for public information purposes or identifying documents located elsewhere, such as those included in the compendium of guidance documents (see Appendix E). The index also serves as an overview of the history of the response action at the site.

The index also provides the lead agency with a degree of control over documents located at or near the site. The creation of an index will prevent persons from altering the record simply by physically adding or removing documents from the record file.

The index should include the following information for each document:

- Document Number;
- Document Date - date on the document;
- Document Title - one or two line identification. Identify the actual document, not a transmittal memo or other less relevant document. Include sufficient information so the document cannot be confused with another (e.g., the title "report" may be insufficient);

- Author - Name and affiliation;
- Recipient - Name and affiliation; and
- Document Location.

The index can be organized either by subject or in chronological order. If documents are customarily grouped together, as with sampling data and chain of custody documents, they may be listed as a group in the index to the administrative record file. Appendix C contains a model index organized by subject. Computer databases have been helpful in generating and updating the index.

The index should be updated when the record file is updated. It is preferable to update the record file when documents are received, or at least quarterly. Such updates should coincide with the periodic updating of the record file and review of material for which there are questions about relevance or privilege (see section II.C. at page 6). The index should also be updated before any public comment period commences. The index should be labeled "draft index" until all relevant documents are placed in the record file. When the decision document is signed, the draft index should be updated and labeled "index."

E. Location

E.1. General

Section 113(k)(1) of CERCLA requires that the administrative record be available to the public "at or near the facility at issue."[5] Duplicates of the record file may be kept at any other location. A copy of the record file must be located at the regional office or other central location. Both copies of the record file should be available for public inspection at reasonable times (e.g., 9-4, Monday-Friday). In the case of an emergency removal, unless requested, the record file needs to be available for public inspection only at the central location (see section II.F.3. at page 14).[6]

The record file located at or near the site should be placed in one of the information repositories which may already exist for community relations purposes. These are typically located in a library, town hall, or other publicly accessible place. If there is no existing information repository, or if the repository

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[5] See 40 C.F.R. §300.805.

[6] 40 C.F.R. §§300.805(a)(5) and (b).

does not have sufficient space for the record file, any other publicly accessible place may be chosen to house the record file.[7] When a Superfund site is located at or near an Indian reservation, the centrally located copy of the record file may be located at the Indian tribal headquarters. The Community Relations Coordinator (CRC) should be consulted on the location of the information repository and record file.

The record file should be transmitted to the local repository in coordination with the CRC. The CRC should make the initial contact to establish the local repository and request housing for the record file. The Record Coordinator should make arrangements for delivering the record file to the local repository.

The record file should include an introductory cover letter addressed to the librarian or repository manager (see Appendix F). In addition, a transmittal acknowledgement form should be included to ensure receipt of the record file (see Appendix G). Finally, an administrative record fact sheet should accompany the record to answer questions from the public (see Appendix H). Updates to the record file should be handled in a similar fashion (see section II.C. at page 6).

In addition to the publicly available record file, if feasible, a master copy of the record file should be kept at the regional office or other central location of the lead agency. To preserve the integrity of the master copy of the record file, it should not be accessible to the public. If not feasible to establish a master copy, the lead agency will need to establish an effective security system for the publicly available record file. The master copy of the record file may be maintained in microform to conserve storage space (see section II.J. at page 21).

E.2. Special Documents

Certain documents which are included in the record file do not have to be maintained at or near the site or, in some cases, at the regional office or other central location, because of the nature of the documents and the burden associated with maintaining such documents in multiple locations. These documents, however, must be incorporated in the record file by reference (e.g., in the index but not physically in the record

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[7] If the site is located at a federal facility which requires security clearance, the administrative record file for that site must be located where security clearance is not required. The public must have free access to the record file.

file), and the index must indicate where the documents are publicly accessible. Where a document is listed in the index but not located at or near the site, the lead agency must, upon request, include the document in the record file at or near the site.[8] This applies to verified sampling data, chain of custody forms, and guidance and policy documents. It does not apply to documents in the confidential file.

Unless requested, the following types of documents do not have to be located in multiple locations:

Verified Sampling Data[9]

Verified sampling data do not have to be located in either administrative record file. The sampling data may be left in its original storage location (e.g., Environmental Services Division (ESD) or contract laboratory). Data summary sheets, however, must be located in the record file. The index must list the data summary sheets, reference the underlying verified sampling data, and indicate where the sampling data can be found.

Chain of Custody Forms[10]

As with verified sampling data, chain of custody forms do not have to be located in either administrative record file. The chain of custody forms may be left in the original storage location. The index must reference the chain of custody forms and indicate their location.

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[8] 40 C.F.R. §300.805(b).

[9] 40 C.F.R. §300.805(a)(1). "Verified sampling data" are data that have undergone the quality assurance and quality control process. "Invalidated sampling data" have been incorrectly gathered or analyzed and will not be part of the record file. "Unvalidated sampling data" are data which has not yet undergone the quality assurance and quality control process. Because it is superseded by verified data, the unvalidated data are not generally part of the record files. However, such data may in some cases be relied on in selecting a response action, such as an emergency removal where there is no time for verification. Unvalidated sampling data which are relied on in selecting a response action should be included in the record file.

[10] 40 C.F.R. §300.805(a)(1).

Confidential and Privileged Documents[11]

When a confidential or privileged document is included in the record file, it should be kept in a confidential portion of the record file. The confidential file should be kept in a locked cabinet at the regional office or other central location. It should not be located at or near the site. The index should identify the title and location of the document, and describe why the lead agency considers it confidential or privileged. Furthermore, the lead agency should summarize or redact the document to make available, to the extent feasible, factual information (especially if such information is not found elsewhere in the record file and is not otherwise available to the public). This summary or redaction should be performed as soon as possible after the determination that a document is privileged or confidential, and inserted in the portion of the record file available to the public and included in the index. See also section III.H. at page 34.

Guidance and Policy Documents[12]

Guidance and policy documents that are not site specific are available in a compendium located in the regional office. ("Compendium of CERCLA Response Selection Guidance Documents," Office of Waste Programs Enforcement, May 1989.) This eliminates the need for reproducing copies of frequently used documents for each site record file. The documents in the compendium need not be physically included in the record file, but the guidance and policy documents considered or relied on in selecting the response action must be listed in the record file index along with their location and availability. See also section III.I. at page 37 and Appendix E.

Technical Literature[13]

Publicly available technical literature that was not generated for the site at issue (e.g., an engineering textbook), does not have to be located in the regional office or other central location or at or near the site. The document must be clearly referenced in the index. However, technical literature not publicly available must be physically included in the record file at the regional office or other central location and at or near the site. See also section III.J. at page 38.

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[11] 40 C.F.R. §300.805(a)(4).

[12] 40 C.F.R. §300.805(a)(2).

[13] 40 C.F.R. §300.805(a)(3).

F. Public Availability

F.1. General

Section 113(k) of CERCLA specifies that the administrative record "shall be available to the public." In satisfying this provision, the lead agency must comply with all relevant public participation procedures outlined in Sections 113(k) and 117 of CERCLA. The NCP (see Appendices L and M) contains additional requirements on public availability (see also "Community Relations in Superfund: A Handbook," October 1988 - OSWER Directive No. 9230.0-3A; "Community Relations During Enforcement Activities," November 3, 1988 - OSWER Directive No. 9836.0-1A).

The availability of the record file will vary depending upon the nature of the response action. Different procedures are outlined below for remedial and removal response actions.

In all cases, the lead agency should publish a notice of availability of the record file when the record file is first made available for public inspection in the vicinity of the site at issue.[14] The notice should explain the purpose of the record file, its location and availability, and how the public may participate in its development.

The notice should be published in a major local newspaper of general circulation. The newspaper notices should be distributed to persons on the community relations mailing list. These notices should also be sent to all known PRPs if they are not already included on the community relations mailing list. As PRPs are discovered, the lead agency should add their names to the community relations mailing list and mail them all the notices sent to the other PRPs. Publication of the notice should be coordinated with the community relations staff. A copy of the notice of availability and list of recipients should be included in the record file. Appendix I contains a model notice of availability.

This public notice may be combined with other notices for the same site, such as a notice of availability of the community relations information repository, if they occur at the same time. In addition to the required newspaper notice, the public can be informed of the availability of the record file through existing mechanisms (e.g., general and special notice letters, Section 104(e) information requests, and the community relations mailing list). In addition, Headquarters will publish notices in the

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[14] See 40 C.F.R. §300.815(a) and §§300.820(a)(1) and (b).

Federal Register. They will be published quarterly and will list sites where remedial activity is planned.

F.2. Remedial Actions

The administrative record file for a remedial action must be available for public inspection when the remedial investigation begins.[15] For example, when the remedial investigation/ feasibility study (RI/FS) work plan is approved, the lead agency must place documents relevant to the selection of the remedy generated up to that point in the record file. Documents generally available at that time include the preliminary assessment (PA), the site investigation (SI), the RI work plan, inspection reports, sampling data, and the community relations plan. The lead agency must continue to add documents to the record file periodically after they are generated or received during the RI/FS process.

The record file must be publicly available both at a regional office or other central location and at or near the site (see section II.E. at page 8).[16] In addition, the notice of availability should be sent to persons on the community relations mailing list, including all known PRPs.

With the completion of the RI/FS, the lead agency should undertake the following public participation procedures:

- Prepare a proposed plan which briefly analyzes the remedial alternatives evaluated in the detailed analysis of the RI/FS and proposes a preferred remedial action alternative;

- Make the RI/FS report and proposed plan available in the record files both at a regional office or other central location and at or near the site;

- Publish in a major local newspaper of general circulation a notice of availability and brief analysis of the RI/FS report and proposed plan. The notice should include the dates for submission of public comments;

- Mail the notice or copy of the notice to all PRPs on the community relations mailing list;

- Provide a formal comment period of not less than 30 calendar days for submission of comments on the proposed plan. Upon

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[15] 40 C.F.R. §300.815(a).

[16] 40 C.F.R. §300.805(a).

timely request the lead agency will extend the public comment period by a minimum of 30 additional days.[17] [Note: The lead agency is encouraged to consider and respond to significant comments that were submitted before the public comment period. Considering early comments provides practical benefits both substantively and procedurally. Early comments may provide important information for the selection decision, and early consideration provides the public (and, particularly, PRPs) with additional informal opportunities for participating in the decisionmaking process.];

- Provide the opportunity for a public meeting(s) in the affected area during the public comment period on the RI/FS and proposed plan;

- Keep a transcript of the public meeting(s) on the RI/FS and proposed plan held during the comment period and include a copy of the transcript in the record file;

- Prepare a discussion (to accompany or be part of the decision document) of any significant changes to the proposed plan which occurred after the proposed plan was made available for public comment which are reflected in the ROD;

- Prepare a response to each of the significant comments submitted during the public comment period to accompany the ROD (see section III.D. at page 30); and

- Publish in a major local newspaper of general circulation a notice of the availability of the ROD and make the ROD available to the public before beginning any remedial action, as required under Section 117(b) of CERCLA.

Comments received after signing the ROD should be placed in a post-decision document file and may be added to the record file in certain situations (see section III.N. at page 40).

F.3. Removal Actions

Section 113(k)(2)(A) of CERCLA requires that the EPA establish procedures for the appropriate participation of interested persons in the development of the administrative record for the selection of a removal action. "Appropriate" participation depends on the nature of the removal, as outlined below.

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[17] 40 C.F.R. §300.430(f)(3)(i)(c).

Time-critical Removal Actions

A time-critical removal action is a removal action for which, based on the site evaluation, the lead agency determines that a period of less than six months exists before on-site removal activities must be initiated. This category includes emergency removal actions which are described in greater detail below.

The administrative record file for these actions must be available for public inspection no later than 60 days after the initiation of on-site removal activity. Where possible, the record file should be made available earlier. The record file must be available both at the regional office or other central location and at or near the site at issue.

If, however, on-site cleanup activity is initiated within hours of the verification of a release or threat of a release and on-site cleanup activities cease within 30 days (emergency actions), the record file need only be available at the regional office or other central location, unless it is requested that a copy of the record file be placed at or near the site.[18]

For all time-critical removals, a notice of the availability of the record file must be published in a major local newspaper and a copy of the notice included in the record file. This notice should be published no later than 60 days after initiation of on-site removal activity.[19]

A public comment period of not less than 30 days should be held in appropriate situations.[20] In general, a public comment period will be considered appropriate if cleanup activity has not been completed at the time the record file is made available to the public and if public comments might have an impact on future action at the site. If a public comment period is considered appropriate, it should begin at the time the record file is made available for public inspection. Note, however, that even if an action is completed before the record file is available, the record file should be made available to the public. The notice for the public comment period may be combined with the notice of availability of the record file if they occur at the same time. The notice should be mailed to all PRPs on the community

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[18] 40 C.F.R. §300.805(b).

[19] 40 C.F.R. §300.415(m)(2)(i).

[20] 40 C.F.R. §300.415(m)(2)(ii).

relations mailing list. The notice should also be sent to all known PRPs if they are not already on the community relations mailing list.

The lead agency must respond to all significant comments received during the public comment period and place the comments and the responses to them in the record file (see section III.D. at page 30).[21] Whether or not the lead agency holds a public comment period, comments received by the lead agency before the decision document is signed and related to the selection of the removal action must be placed in the record file. For information, including comments, generated or received after the decision document is signed, see section III.N. at page 40.

Non-Time-Critical Removal Actions

A non-time-critical removal action is a removal action for which, based on the site evaluation, the lead agency determines that a planning period of at least six months exists before on-site removal activities must be initiated.

The administrative record file for a non-time-critical removal action must be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment.[22] The record file must be available at the regional office or other central location and at or near the site. A notice of the availability of the record file must be published in a major local newspaper and a copy of the notice included in the record file. The notice should be published in a major local newspaper of general circulation. In addition, Headquarters will publish these notices in the Federal Register. They will be published quarterly and will list sites where non-time critical removal activity is planned. The newspaper notice should be distributed to persons on the community relations mailing list and placed in the record file. These notices should also be sent to all known PRPs if they are not already on the community relations mailing list. As PRPs are discovered, the lead agency should add their names to the community relations mailing list and mail them all the notices sent to the other PRPs. Publication of the notice should be coordinated with the community relations staff. A copy of the notice of availability should be included in the record file. Appendix I contains a model notice of availability.

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[21] 40 C.F.R. §300.415(m)(2)(iii).

[22] 40 C.F.R. §300.415(m)(4).

A public comment period on the EE/CA of not less than 30 days must be held so that interested persons may submit comments on the response selection for the record file. Upon timely notice, the lead agency will extend the public comment period by a minimum of 15 days.[23] A notice of the public comment period may be combined with the notice of availability of the record file if they occur at the same time. The lead agency must respond to all significant comments received during the public comment period and place the comments and the responses to them in the record file (see section III.D. at page 30).[24]

The lead agency is encouraged to consider and respond to significant comments that were submitted before the public comment period. Considering early comments provides practical benefits both substantively and procedurally. Early comments may provide important information for the selection decision, and early consideration provides the public (and, particularly, PRPs) with additional informal opportunities for participating in the decision making process.

Comments generated or received after the decision document is signed should be kept in a post-decision document file. They may be added to the record file in certain situations (see section III.N. at page 40).

G. Maintaining the Record

Document room procedures should be established to ensure orderly public access to the record files. In establishing public access procedures, the security and integrity of the record files must be maintained at all times.

Each regional office or other central location should have a reading area where visitors are able to review the record files. The record file must be available during reasonable hours (e.g., 9-4, Monday-Friday). The public reading area should include, wherever feasible:

- Administrative record files;
- Guidance Compendium (see section III.I. at page 37);
- Access to a copier; and
- Sign-in book.

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[23] 40 C.F.R. §300.415(m)(4)(iii).

[24] 40 C.F.R. §300.415(m)(4)(iv).

Controlled access to the files is accomplished by use of a visitor sign-in book. Sign-in books help minimize instances in which documents are lost or damaged. They also provide documentation of the lead agency's efforts to provide public access to the record files. Pertinent information recorded in the book should include:

- Date of visit;
- Name;
- Affiliation;
- Address;
- Phone number;
- Site documents viewed; and
- Cost of copied materials (if applicable).

The lead agency may choose not to use sign-in books if the books deter the public from reviewing the record files.

Since documents in the record file should be complete, properly organized and legible, the integrity of the record file must be maintained. If possible, storage and reading areas should be supervised to maintain proper security. Documents should not leave the document room or be left unattended. To the extent feasible, the Administrative Record Coordinator should check the order of the documents after being viewed by the public to be certain all documents have been returned intact. The documents in the record file should be kept secure, either in a locked room or in locked cabinets.

The record file located at or near the site should be handled with similar care. If possible, the record file should be treated as a non-circulating reference; it should not leave the local repository except under supervision. The phone number of a record file contact should be provided to record file users and to the manager of the local repository so that problems can be identified and resolved. This information can be included in an informational fact sheet accompanying the record file (see Appendix H). In addition, the Record Coordinator should plan periodic reviews of the local record files.

Where the site is a fund-lead or PRP-lead, EPA should retain (in addition to the publicly available record file) a master copy of the record file at the regional office or other central

location, if feasible. Where a state or other federal agency is the lead agency at a site, EPA should assure that the state or other federal agency maintains (in addition to the publicly available record file) a master copy of the record file. The record files are permanent records that must be retained.

As to the local repository, the statute and regulations are silent concerning the duration of public availability of the record file. The lead agency's primary concern is public participation in development of the administrative record. Following initiation of the response action, public interest in background information other than the Record of Decision or RI/FS may wane. In any event, the statutory provisions for judicial review and deadlines for filing cost recovery actions provide useful references for keeping the record file publicly available. See Sections 113(g) and (h) of CERCLA.

Where there is ongoing (or possible) litigation, the record file in the regional or other central location should be available at least until the litigation is over.

The record file continues to serve as a historical record of the response selection, even after the statute of limitations for cost recovery action has passed. Where there is considerable public interest, the local repository may wish to keep the record file available for public viewing.

H. Confidential File

In certain situations, documents in the record file may be subject to an applicable privilege (see section III.H. at page 34). To the extent feasible, information relevant to the response selection which is contained in a privileged document should be summarized or redacted as to make the document disclosable and then included in the publicly accessible portion of the record file. The privileged document should be included in a confidential portion of the record file.[25]

The Administrative Record Coordinator should maintain a confidential portion of the record file for privileged documents. These documents should be listed in the index to the entire record file and identified as "privileged." The index should identify the title and location of the privileged document, and describe the basis for the asserted privilege.

The confidential portion of the record file should be stored in locked files at the regional office or other central location

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[25] See 40 C.F.R. §300.810(d).

and should not be located at or near the site. The confidential portion of the record file should be separate from the publicly available record file to protect against inadvertent disclosure. Each privileged document should be stamped "confidential" at the bottom of each page of the document. Where the material is not a written document (such as a computer disk or cassette tape) the jacket should be stamped "confidential." A complete list of all materials contained in the confidential portion of the record file should be maintained by the Record Coordinator. The Record Coordinator should also maintain a log which will include the time, date, document name, and will identify persons checking out and returning materials to the confidential file.

As soon as a new record file is established, a routine access list for the confidential file should be prepared for each record file. When EPA is the lead agency, this routine access list must be approved by the Waste Management Division Director or the Environmental Services Division Director, and ORC. Once approval is given, persons on the list will be able to access the confidential files through the Record Coordinator. No one should have access to the confidential files other than those identified on the routine access list. For state or other federal agency-lead sites, the Regions should take steps to insure that state or other federal agencies develop routine confidential file access list procedures.

This policy and procedure for privileged materials does not supersede any policy and procedures established under the Freedom of Information Act (FOIA), 5 U.S.C. §552, and EPA regulations implementing FOIA at 40 C.F.R. Part 2. Upon receipt of requests for the administrative record file pursuant to FOIA, if the requester is in close proximity to the record file, the lead agency may respond to FOIA requests by telling a requester the location and availability of the record file. Decisions regarding disclosures of materials under FOIA should be coordinated among the various lead agency officials with access to such materials.

I. Copying

Section 117(d) of CERCLA requires that each document developed, received, published, or made available to the public under Section 117 be made available for public inspection and copying at or near the site. Under Section 113(k)(2)(B) of CERCLA, these documents must also be included in the administrative record file. Under these provisions of CERCLA, the lead agency must ensure that documents in the record file are available for copying, but does not bear responsibility for copying the documents themselves. Therefore, it is preferable

that the record file should be located in a facility which contains a copying machine (e.g., a public library).

When the administrative record file is available at a facility at or near the site and copying facilities are available there, the lead agency may encourage the requester to make use of the copying facilities at that location. If copying of the record file located at or near the site is difficult for a requesting party, the lead agency may arrange for copying on behalf of a requester at the regional or other central location. The lead agency may ask that requesters arrange for copying by contractors or commercial copy centers who then bill the requester directly.

The lead agency should follow the FOIA regulations at 40 C.F.R. Part 2, in determining the appropriate charge for copying. Copying fees should be waived for other federal agencies, EPA contractors or grantees, and members of Congress. The EPA currently charges $.20 a page for paper copies as provided in 40 C.F.R. Part 2. Reproduction of photographs, microfilms or magnetic tapes, and computer printouts should be charged at the actual cost to the lead agency.

J. Micrographics

The lead agency may make the administrative record file available to the public in microform.[26] Use of micrographics can significantly reduce the space required to store administrative record files. In addition, micrographics can simplify the tasks of reproducing copies of the record file and transmission of the record files to the local repositories. Any use of micrographics should be conducted in an orderly manner consistent with records management procedures. If using micrographics to maintain the record files, the lead agency must provide a micrographic reader at the regional office or other central location to ensure public access to the record file. If a record file is located at or near the site and micrographics are used, the lead agency must ensure that a micrographic reader at that location is available.

Microform copies of original documents are admissable in court if created in an organized fashion. The Business Records as Evidence Act (28 U.S.C. §1732) specifies that copies of records, which are made "in the regular course of business" and copied by any process which accurately reproduces the original, are "as admissible in evidence as the original itself." See also Federal Rules of Evidence 1003. Since the NCP provides for use of microform, microform copies of administrative record documents

[26] See 40 C.F.R. §300.805(c).

that are produced in the regular course of business are likely to be admissible in court.

The Office of Information Resources Management (OIRM) has granted approval for the use of micrographics in establishing administrative records (see Appendix J). Any use of micrographics should still comply with the remaining provisions of Chapter 6 of the EPA Records Management Manual (7/13/84).

K. Certification

A certification as to the completeness of the administrative record must be performed when the record is filed in court. Appendix K contains a model court certification.

When EPA is the lead agency such certification should be signed by the Regional Administrator's designee, after consultation with ORC. Any certification of the record should be made by program staff and not legal staff. The region may also choose to have the Administrative Record Coordinator certify that the record was compiled and maintained in accordance with applicable agency regulations and guidance. Such certification would attest that the record was compiled in accordance with current agency procedures and would not address the completeness of the record file.

If a state or other federal agency is the lead agency that agency must certify that the record was compiled and maintained in accordance with applicable EPA regulations and guidance. After the state or federal agency provides this certification, the Regional Administrator's designee should certify as to the completeness of the record, as provided in Appendix K.

III. CONTENTS OF THE ADMINISTRATIVE RECORD

A. Remedial Actions

The administrative record for selection of a remedial action should consist of:

- documents which were considered or relied on to select the remedial action; and
- documents which demonstrate the public's opportunity to participate in and comment on the selection of the remedial action.[27]

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[27] See 40 C.F.R. §§300.810 and 300.815.

Below is a list of documents that are usually generated when a remedial response action is selected. These documents should be included in the administrative record file if they are generated and considered or relied on in selecting the remedial response action. Documents that demonstrate the public's opportunity to participate in and comment on selecting the remedial response action should also be included in the record file. Documents not listed below, but meeting the above criteria, should be included.

Factual Information/Data

- Preliminary Assessment (PA) report;
- Site Investigation (SI) report;
- Remedial Investigation/Feasibility Study (RI/FS) work plan;
- Amendments to the final work plan;
- Sampling and Analysis Plan (SAP): consisting of a quality assurance project plan (QAPP) and a field sampling plan;
- Sampling data: verified data during the RI/FS, or any data collected for previous actions such as RCRA or removal actions which are considered or relied on in selecting the remedial action. Unvalidated data should be included only if relied on in the absence of validated data (see note 9 at page 10);
- Chain of custody forms;
- Inspection reports;
- Data summary sheets;
- Technical studies performed for the site (e.g., a ground-water study);
- Risk evaluation/endangerment assessment and underlying documentation (see section III.C. at page 29);
- Fact sheet or summary information regarding remedial action alternatives generated if special notice letters are issued to PRPs at an early stage of the RI/FS (see "Interim Guidance on Notice Letters, Negotiations, and Information Exchange," October 19, 1987 - OSWER Directive No. 9834.1);
- RI/FS (as available for public comment and as final, if different); and

- Data submitted by the public, including PRPs.

Policy and Guidance

- Memoranda on site-specific or issue-specific policy decisions. Examples include memoranda on off-site disposal availability, special coordination needs (e.g., dioxin), applicable or relevant and appropriate requirements (ARARs) (to the extent not in the RI/FS), cost effectiveness and utilization of permanent solutions and alternative treatment technologies;

- Guidance documents (see section III.I. at page 37); and

- Technical literature (see section III.J. at page 38).

Public Participation (Include the documents that show the public was notified of site activity and had an opportunity to participate in and comment on the selection of response action)

- Community relations plan;

- Newspaper articles showing general community awareness;

- Proposed plan;

- Documents sent to persons on the community relations mailing list and associated date when such document was sent;

- Public notices: any public notices concerning response action selection such as notices of availability of information, notices of meetings and notices of opportunities to comment;

- The community relations mailing list (including all known PRPs);[28]

- Documentation of informal public meetings: information generated or received during meetings with the public and

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[28] Individual names and addresses of members of the general public which are on the community relations mailing list should not be included in the public record file. Disclosure of such information may result in a Privacy Act violation (see also section III.H. at page 34) or inhibit the general public from requesting information about the site. The lead agency should then place individual names and addresses in the confidential portion of the record file.

memoranda or notes summarizing significant information submitted during such meetings;

- Public comments: complete text of all written comments submitted (see also section III.D. at page 30);
- Transcripts of formal public meetings: including meetings held during the public comment period on the RI/FS, proposed plan, and any waiver of ARARs under Section 121(d)(4) of CERCLA;
- Responses to significant comments: responses to significant comments received from the public concerning the selection of a remedial action; and
- Responses to comments from the state and other federal agencies.

Enforcement Documents (Include if the document contains information that was considered or relied on in selecting the response selection or shows that the public had an opportunity to participate in and comment on the selection of response action. Do not include enforcement documents solely pertaining to liability)

- Administrative orders;
- Consent decrees;
- Affidavits containing relevant factual information not contained elsewhere in the record file;
- Notice letters to PRPs;
- Responses to notice letters;
- Section 104(e) information request letters and Section 122(e) subpoenas; and
- Responses to Section 104(e) information request letters and Section 122(e) subpoenas.

Other Information

- Index (see section II.D. at page 7);
- Documentation of state involvement: documentation of the request and response on ARARs, Section 121(f)(1)(G) notices and responses, a statement of the state's position on the proposed plan (concurrence, nonconcurrence, or no comment at

the time of publication), opportunity to concur in the selected remedy and be a party to a settlement (see section IV.A. at page 42);

- health assessments, health studies, and public health advisories issued by the Agency for Toxic Substances and Disease Registry (ATSDR)(see section IV.C. at page 45); and

- Natural Resource Trustee notices and responses, findings of fact, final reports and natural resource damage assessments (see section IV.D. at page 45)

Decision Documents

- Record of decision (ROD): remedial action decision document (including responsiveness summary);

- Explanations of significant differences (under Section 117(c)) and underlying information; and

- Amended ROD and underlying information.

The administrative record serves as an overview of the history of the site and should be understandable to the reader. Appendix B provides a model file structure for organizing the record file. Appendix C contains a model index.

B. Removal Actions

The administrative record for selection of a removal action should consist of:

- documents which were considered or relied on to select the removal action; and

- documents which demonstrate the public's opportunity to participate in and comment on the selection of the removal action, when appropriate.[29]

Below is a list of documents that are usually generated when a removal response action is selected. These documents should be included in the administrative record file if they are generated and considered or relied on when selecting the removal action. Documents that demonstrate the public's opportunity to participate in and comment on the removal response action should also be included in the record file. Documents not listed below, but meeting the above criteria, should be included.

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[29] See 40 C.F.R. §§300.810 and 300.820.

- Public notices: any public notices concerning response action selection such as notices of availability of information, notices of meetings, and notices of opportunities to comment;

- The community relations mailing list (including all known PRPs);[30]

- Documentation of public meetings: information generated or submitted during meetings with the public (including PRPs) and memoranda or notes summarizing significant information submitted during such meetings;

- Public comments: complete text of all written comments submitted (see section III.D. at page 30);

- Responses to significant comments: responses to significant comments received from the public concerning the selection of a removal action; and

- Responses to comments from states and other federal agencies.

Enforcement Documents (Include if the document contains information that was considered or relied on in selecting the response selection or shows that the public had an opportunity to participate in and comment on the selection of response action. Do not include enforcement documents solely pertaining to liability)

- Administrative orders;

- Consent decrees;

- Affidavits containing relevant factual information not contained elsewhere in the record file;

- Notice letters to PRPs;

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[30] Individual names and addresses of members of the general public which are on the community relations mailing list should not be included in the public record file. Disclosure of such information may result in a Privacy Act violation (see also section III.H. at page 34) or inhibit the general public from requesting information about the site. The lead agency should then place individual names and addresses in the confidential portion of the record file.

Factual Information/Data

- Preliminary assessment (PA) report;
- Site evaluation (SI) report;
- EE/CA (for a non-time-critical removal action);
- Sampling plan;
- Sampling data: verified data obtained for the removal action, or any data collected for previous actions such as RCRA or other response actions which are considered or relied on in selecting the removal action. Unvalidated data should be included only if relied on in the absence of validated data (see note 9 at page 10);
- Chain of custody forms;
- Inspection reports;
- Technical studies performed for the site (e.g., a ground water study);
- Risk evaluation/endangerment assessment and underlying documentation; and
- Data submitted by the public, including PRPs.

Policy and Guidance

- Memoranda on site-specific or issue-specific policy decisions. Examples include memoranda on off-site disposal availability, compliance with other environmental statutes, special coordination needs (e.g., dioxin);
- Guidance documents (see section III.I. at page 37); and
- Technical literature (see section III.J. at page 38).

Public Participation (Include the documents that show the public was notified of site activity and had an opportunity to participate in the response selection.)

- Community relations plan;
- Newspaper articles showing general community awareness;
- Documents sent to persons on the community relations mailing list and associated date when such documents was sent;

record file.[31] If there is proper documentation of the determination of an imminent and substantial endangerment in the record file, judicial review of that determination in an action under Section 106 of CERCLA should be limited to the administrative record.

D. Public Comments

The administrative record file should document the public's opportunity to be involved in selecting a response action. This can be accomplished by including in the record file all documents related to the opportunity to participate (e.g., notices and fact sheets), and relevant written comments and information submitted by the public (e.g., reports and data).

Public requests for information (e.g., Freedom of Information Act (FOIA) requests for copies of reports), need not be included in the record file.

The lead agency should request that substantive oral comments (either in person or over the phone) be put in writing by the commenter and submitted to the record file. The commenter should be advised that the obligation to reduce the comment to writing rests with the commenter. The lead agency, however, may reduce it to writing where the lead agency will want to rely on the comment.

The lead agency may respond to comments received prior to a public comment period in various ways, depending on the nature and relevance of a particular comment. The lead agency's consideration of such a comment may be in the form of a written response, or reflected by documented actions taken after receiving the comment, or even by changes in subsequent versions of documents. If the lead agency prepares a written response to a comment, the comment and response should be included in the record file.

The lead agency may notify commenters that comments submitted prior to a formal public comment period must be resubmitted or specifically identified during the public comment period in order to receive formal response by the lead agency. Alternatively, the lead agency may notify a commenter that the lead agency will respond to the comment in a responsiveness summary prepared at a later date. The lead agency, however, has

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[31] See "Guidance on Preparing Superfund Decision Documents: The Proposed Plan, The Record of Decision, Explanation of Significant Differences, ROD Amendment," OSWER Directive No. 9355.3-02, June 1989.

- Responses to notice letters;
- Section 104(e) information request letters and Section 122(e) subpoenas; and
- Responses to Section 104(e) information request letters and Section 122(e) subpoenas.

Other Information

- Index (see section II.D. at page 7);
- Documentation of state involvement (see section IV.A. at page 42);
- ATSDR health assessments, health studies, and public health advisories (see section IV.C. at page 45); and
- Natural Resource Trustee notices and responses, findings of fact, final reports and natural resource damage assessments (see IV.D. at page 45).

Decision Documents

- EE/CA Approval Memorandum;
- Action Memorandum;
- Amended Action Memorandum; and
- Other documents which embody the decision for selection of a removal action.

The administrative record serves as an overview of the history of the site and should be understandable to the reader. Appendix B provides a model file structure for organizing the record file. Appendix C contains a model index.

C. Imminent and Substantial Endangerment

Under Section 106 of CERCLA, the EPA may find the existence of an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance.

Determining the existence of an imminent and substantial endangerment is an important component in selecting the response action. Therefore, all documents considered or relied on in making that determination, including any risk assessment, and its supporting documentation, must be included in the administrative

no duty to respond to any comments received before the formal public comment period, or to respond to comments during the public comment period until the close of the public comment period.

The lead agency, however, is encouraged to consider, respond to and include in the record file significant comments that were submitted before the public comment period. Considering early comments provides practical benefits both substantively and procedurally. Early comments may provide important information for the selection decision, and early consideration provides the public (and, particularly, PRP's) with additional informal opportunities for participating in the decision making process.[32]

All comments received by the lead agency during the formal public comment period are to be included in the record file in their original form, or if not feasible, an explanation should be placed in the record file explaining why such comments were not included. Comments received during the formal public comment period must be addressed in the responsiveness summary (included with the ROD in remedial response actions). The responses may be combined by subject or other category in the record file.

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." Such comments should be handled as post-decision information (see section III.N. at page 40).

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 in limited circumstances (see section III.N. at page 40).

E. Enforcement Actions

The same procedures should be used for establishing an administrative record whether or not a response action is selected in the context of an enforcement action. The following additional information, however, may assist the lead agency where there is enforcement activity.

E.1. Negotiation Documents

During negotiations with the lead agency, a potentially responsible party (PRP) may produce documents and claim that they

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[32] See 40 C.F.R. §§300.815(b), 300.825(a)(2) and (b)(2).

constitute confidential business information (CBI) or offers of settlement subject to Rule 408 of the Federal Rules of Evidence.

Generally, those documents are not part of the administrative record for response selection unless they are submitted by PRPs for consideration in selecting a response action and are considered or relied on in selecting the response action. A privileged document which was considered or relied on in selecting the response action should be placed in the confidential portion of the record file. Such a document should be summarized and the summary included in the publicly accessible portion of the record file (see section II.H. at page 19). If the information cannot be summarized in a disclosable manner, the information should be placed in the confidential portion of the record file only and listed in the index to the file.

E.2. PRP-Lead RI/FS

Where a PRP is conducting the RI/FS, the PRP must submit all technical information on selection of the remedial action generated during the RI/FS to the lead agency. Technical information includes work plans, sampling data, reports, and memoranda. The lead agency, and not the PRP, will establish and maintain the administrative record file (see "Interim Guidance on Potentially Responsible Party Participation in Remedial Investigations and Feasibility Studies," May 16, 1988, OSWER Directive No. 9835.1a and "Model Administrative Order on Consent for Remedial Investigation and Feasibility Study," January 30, 1990, OSWER Directive No. 9835.10.)

PRPs may be delegated responsibility for some record file maintenance activities, such as housing the files at or near the site. PRPs cannot, however, be responsible for decisions on what documents comprise the record file, because of, among other things, the potential for a conflict of interest.

E.3. Administrative Orders and Consent Decrees

Final administrative orders and consent decrees issued prior to selection of the response action (e.g., ordering a PRP to conduct the RI/FS), should be included in the administrative record file. Administrative orders or consent decrees issued after the signing of the ROD or the action memorandum should not be included in the record file, unless the consent decree or administrative order meets the criteria for the inclusion of post-decision documents in the record file (see section III.N. at page 40). Drafts of administrative orders and consent decrees should not be included in the record file, unless the drafts contain factual information that was considered or relied on and is not found elsewhere in the record file.

The issues relating to administrative records for administrative orders and de minimis settlements are not addressed by this guidance.

F. Excluded Documents

Certain documents should not be included in the administrative record file because they are irrelevant to the selection of the response action. Documents should be excluded from the record file if they were not considered or relied on in selecting the response action.

Material beyond the scope of the record file should be kept in separate files maintained at the regional office or other central location. These files need not be made publicly available, although many of the documents in the files may be available to the public if requested under FOIA.

Examples of documents that are irrelevant to the decision on selecting a response action may include Hazard Ranking System (HRS) scoring packages, contractor work assignments, cost documentation (as opposed to cost effectiveness information), and National Priorities List (NPL) deletion information. If, however, these documents contain information that is considered or relied on in the response action selection and is not contained elsewhere in the record file, then the documents should be included in the record file.

Information regarding PRP liability is generally not included in the record file for selection of the response action except to the extent such information (typically substance specific) is considered or relied on in selecting the response action. Documents relating to PRP liability, however, should be compiled and maintained in the regional office or other central location so that they are available at the time of notice to PRPs or referral of any litigation.

G. Draft Documents and Internal Memoranda

In general, only final documents should be included in the administrative record file. The record file should not include preliminary documents such as drafts and internal memoranda. Such documents are excluded from the record file because drafts and internal memoranda are often revised or superseded by subsequent drafts and memoranda prior to the selection of the response action. The preliminary documents are, therefore, not considered or relied on in making the response action decision.

Drafts (or portions of them) and internal memoranda should be included, however, in three instances. First, if a draft

document or internal memorandum is the basis for a response decision the draft document or internal memorandum should be placed in the record file. This may occur if the draft contains factual information which was relied on but is not included in a final document, a final document does not exist, or a final document did not exist when the response decision was made.

Second, if a draft document or internal memorandum is circulated by the lead agency to other persons (e.g., the support agency, PRPs or the general public) who then submit comments which the decisionmaker considers or relies on when making a response action decision, relevant portions of the draft document or the memorandum and comments on that document should be included in the record file.

Third, if a draft document or internal memorandum explains or conveys decisions on the procedures for selecting the remedy or the substantive aspects of a proposed or selected remedy (e.g., the scope of a site investigation or the identification of potential ARARs), the document should be placed in the record file, even though the document was signed by a person other than the Regional Administrator and generated long before the decision document was signed.

Examples of internal memoranda and staff notes which should not be included in the record file are documents that express tentative opinions or internal documents that evaluate alternative viewpoints. Recommendations of staff to other staff or management should also not be included in the record file, except for those staff recommendations which ultimately embody a final decision relevant to response selection. Drafts and internal memoranda may also be subject to claims of privilege (see section III.H., below).

H. Privileged Documents

Some documents in the administrative record file may be protected from public disclosure on the basis of an applicable privilege.[33] Any documents which are considered or relied on in a response action selection, but withheld from the public portion of the record file based on privilege, must be placed in a confidential portion of the record file (see section II.H. at page 19).

If a document is excluded from the public portion of the record file based on privilege, the relevant information should, to the extent feasible, be extracted and included in the public

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[33] See 40 C.F.R. §300.810(c).

record file. This can often be accomplished by deleting or redacting the privileged information from the document.

The privileges discussed below may be asserted with respect to documents that are considered or relied on in the selection of a response action. The head of the office responsible for developing the document in question should assert the privilege. In all cases, the official asserting a privilege should consult with ORC.

Public disclosure of a privileged document may result in waiver of the privilege, although the nature and extent of the waiver will depend on the privilege asserted and the circumstances of the disclosure. If the privilege is waived and the document becomes a public document, it must be disclosed to any requester. In light of the potential for waiver, it is important that personnel not release potentially privileged documents to any party without consulting with ORC.

Deliberative Process

The deliberative process privilege applies to pre-decisional, deliberative communications that express opinions, advice, and recommendations of staff to other staff or management. The privilege functions to encourage the honest and free expression of opinion, suggestions and ideas among those formulating policy for government agencies (see "Guidance for Assertion of Deliberative Process Privilege," 10/3/84).

In general, if a document contains factual information forming the basis for the selection of the response action, the factual portion should be included in the record file.

Use of the deliberative process privilege should be balanced with the statutory mandate of including the public in the response action selection process. The privilege should be asserted if disclosure of the document will have an inhibiting effect on frank and open discussion among government staff and decisionmakers. Documents should not be withheld solely because they would reveal flaws in the case or information embarrassing to the government. Specific procedures exist for assertion of the deliberative process privilege, which include consulting with ORC.

Confidential Business Information (CBI)

The EPA must withhold from the public record trade secrets and commercial and financial information that is subject to protection under 40 C.F.R. Part 2. However, Section 104(e)(7) of CERCLA greatly restricts the assertions of confidentiality claims

by PRPs at CERCLA sites. The decisionmaker should attempt to avoid using CBI in making response action decisions and can do so in most cases by using other information instead.[34] Where the decisionmaker must use CBI in making its decision, 40 C.F.R. Part 2 and Section 104(e)(7) of CERCLA will apply and such information should be placed in the confidential portion of the administrative record file.

Attorney Work Product

This exclusion applies to documents prepared in anticipation of possible litigation. The work product privilege covers all documents prepared by an attorney or under an attorney's supervision, including reports prepared by a consultant or program employee. Litigation need not have commenced but it must be reasonably contemplated. These documents generally relate to enforcement or defensibility of a decision and are not considered or relied on in selecting a response action. These documents should not, therefore, be in the administrative record file.

Attorney-Client Communication

The attorney-client privilege applies to confidential communications made in connection with securing or rendering legal advice. The privilege is limited to communications where there was an intention to keep the information confidential.

Personal Privacy

This exemption covers information about individuals in personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The records must pertain to an individual, and not a business, to be excluded from the public portion of the administrative record file under this exemption. Often, information subject to the protection under the personal privacy privilege can be redacted from the document and the redacted version can be placed in the public portion of the record file.

State Secrets

The lead agency is authorized to exclude from public scrutiny information which, if released, would harm national security or interfere with the government's ability to conduct foreign relations. This privilege could be particularly important where the PRP is a federal agency or a contractor for a federal agency. In the case of a federal facility cleanup, an

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[34] See 40 C.F.R. §300.810(d).

Inter-Agency Agreement should spell out procedures for asserting this privilege.

Confidential Informant

Statements obtained from witnesses who have been granted confidentiality may be privileged.

Information Exempted by Other Statutes

Information specifically exempted from disclosure by a federal statute need not be part of the public record. The statute in question must leave no discretion as to the requirement that matters be withheld from the public, or it must establish particular criteria for withholding or refer to particular types of matters to be withheld.

I. Guidance Documents

Guidance documents, or portions of guidance documents, that are considered or relied on in selecting a response action should be included in the administrative record file for that response action. Any guidance documents generated to address issues that specifically arise at the site for which the record file is being compiled should be physically included in the record file. Certain guidance documents, however, do not have to be kept in the record file. Guidance documents not generated for the particular site for which the record is being compiled may be kept in a compendium of guidance documents maintained at the regional office or other central location.[35]

Each Region should maintain a compendium of guidance documents which are frequently used in selecting response actions. As with an administrative record file, the compendium of guidance documents must be available to the public, but only at the regional office or other central location. The record file located at or near the site should contain an index to the compendium of guidance documents. The Administrative Record Coordinator should maintain and update the compendium of guidance documents. If a guidance document maintained in the compendium is considered or relied on when making a response action decision, the index to the record file must list the document and indicate its location and availability. See also Appendix E.

If a guidance document is listed in a bibliography to a document included in the record file (e.g., listed in the bibliography to the RI/FS), it need not be listed again in the

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[35] See 40 C.F.R. §300.805(a)(2).

index to the record file. In this case, however, the index must state that documents listed as bibliographic sources might not be listed separately in the index.

If a guidance document which is not included in the guidance compendium is considered or relied on in selecting the response action, the document should be physically included in the record file.

J. Technical Literature

Technical literature generated for the site at issue should be physically included in the administrative record file for that site, whether or not it is publicly available.

Similarly, technical literature not specifically generated for the site which is not publicly available should also be included in the site-specific record file. Such documents include technical journals and unpublished documents that are not available through the Library of Congress or not circulated to technical libraries.

Publicly available technical literature not generated for the site, however, need not be located at or near the site or at the regional office or other central location if the documents are referenced in the index to the record file.[36] These documents do not have to be physically included in the record file, unless requested, because they are already available to the public. Copying such documents creates a significant burden to the lead agency and copyright laws may pose additional barriers to such copying. Examples of publicly available technical literature include engineering manuals, groundwater monitoring or hydrogeology textbooks, ATSDR toxicological profiles, and articles from technical journals.

If technical literature is listed in a bibliography to a document included in the record file (e.g., listed in the bibliography to the RI/FS), it need not be listed again in the index to the record file. In this case, however, the index must state that documents listed as bibliographic sources might not be listed separately in the index.

Computer models and technical databases need not be physically included in the record file but should be referenced in the index to the record file and made available upon request. Printouts or other documents produced from the models and databases should be physically included in the record file if

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[36] See 40 C.F.R. §300.805(b)(3).

such documents contain information which was considered or relied on in selecting the response action.

K. Legal Sources

Copies of statutes and regulations cited in documents included in the record file need not be included in the record file if they are readily available to the public. For example, the NCP and other regulations are easily accessible since they are published in the Federal Register and the Code of Federal Regulations (C.F.R.).

Copies of the actual standards (statutes or regulations) comprising federal and state ARARs should be physically included in the record file if they are not easily accessible. Also, other federal and state criteria, advisories, and guidance documents pertinent to the site (e.g., what the EPA refers to as "TBCs," or standards "to be considered"), may not be easily accessible. If such documents are cited in an RI/FS, appendix to the RI/FS, EE/CA, or ROD, those advisories which are not readily available should be included in the record file.

L. NPL Rulemaking Docket Information

Generally, information included in the National Priorities List (NPL) rulemaking docket, such as the Hazard Ranking System (HRS) scoring package and comments received on the listing, need not be included in the record file for selection of a response action. The NPL docket contains information relevant to the decision to list a site, which may be irrelevant to the decision on response action selection.

Documents in the NPL docket which contain sampling data or other factual information which was considered or relied on in selecting a response action should be included in the record file if the information is not available already in the record file. Such information may include early sampling data taken by parties other than the lead agency or its contractors (e.g., a State).

M. RCRA Documents

If an action is taken under CERCLA at a site with a history of Resource Conservation and Recovery Act (RCRA) activity, much of the information relating to those RCRA activities may be considered or relied on in making the CERCLA response action selection. Any relevant RCRA information, particularly information on waste management and RCRA corrective action at the site, should be included in the administrative record file (e.g., RCRA permit applications, inspection reports, RCRA Facility Assessment (RFA), RCRA Facility Investigation (RFI), Corrective

Measures Studies (CMS), or responses to RCRA information requests).

Not all pre-existing RCRA information will be considered or relied on in selecting a CERCLA response action, but information on types of wastes, quantity of wastes, and observations of potential threats gathered during RCRA investigations generally will be considered and thus should be included in the record file.

N. Post-Decision Information

In all cases, documents generated or received after signing the decision document should be kept in a post-decision document file. This file is not part of the administrative record file and should be maintained only at the regional office or other central location.

In general, post-decision documents should not be added to the administrative record file. Since the record file contains the information which was considered or relied on in selecting the response action, documents generated or received after selecting the response action are not relevant to that response decision and should not be included in the record file. Such documents may, however, be relevant to later response selection decisions and, if so, should be included in the record file pursuant to Section 300.825 of the NCP.

Documents kept in the post-decision document file may be added to the record file in the situations described below:

- Where a decision document does not address or reserves a portion of the decision to be made at a later date.[37] For example, a decision document that does not resolve the type of treatment technology. In such cases, the lead agency should continue to add documents to the record file which form the basis for the unaddressed or reserved portion of the decision;

- Where there is a significant change in the selected response action.[38] Changes that result in a significant difference to a basic feature of the selected remedial action (e.g., timing, ARARs), with respect to scope, performance, or cost

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[37] 40 C.F.R. §300.825(a)(1).

[38] 40 C.F.R. §300.825(a)(2). See 40 C.F.R. §300.435(c)(2)(i).

may be addressed in an explanation of significant differences. Section 117(c) of CERCLA states:

> [a]fter adoption of a final remedial action plan - (1) if any remedial action is taken, (2) if any enforcement action under section 106 is taken, or (3) if any settlement or consent decree under section 106 or section 122 is entered into, and if such action, settlement, or decree differs in any significant respects from the final plan, the President or the State shall publish an explanation of the significant differences and the reasons such changes were made.

The record file should include the explanation of significant differences, underlying documentation for the response action changes, any significant comments from the public, and the lead agency responses to any significant comments. A formal public comment period is not required for an explanation of significant differences;

- Where the changes are so significant that they fundamentally alter the very nature or basis of the overall response action. Such changes will require an amended decision document.[39] The Region will decide whether a change to a response action is considered a significant or a fundamental change for purposes of addressing the change (see Chapter 8 of "Interim Final Guidance on Preparing Superfund Decision Documents: The Proposed Plan and Record of Decision," June 1989, OSWER Directive No. 9355.3-02).

  When the decision document is amended, the amended decision document, the underlying documentation, any significant comments from the public, and the lead agency's responses to any significant comments, should be included in the record file. ROD amendments will require a formal public comment period;[40]

- Where comments containing significant information are submitted by interested persons after the close of the public comment period. The lead agency must consider such comments only to the extent that the comments contain significant information not contained elsewhere in the record file which could not have been submitted during the public comment period and which substantially support the

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[39] 40 C.F.R. §300.825(a)(2).

[40] 40 C.F.R. §300.435(c)(2)(ii).

need to significantly alter the response action.[41] Documents meeting this test should be included in the record file, along with the lead agency's responses to the significant comments, whether or not such information results in a change to the selected decision. In this case, the comments and the lead agency responses to such comments, including any supporting documents, should be included in the record file; and

- Where the lead agency holds public comment periods after the selection of the response action.[42] The lead agency may hold additional public comment periods or extend the time for submission of public comment on any issue concerning response selection. Such comment should be limited to the issues for which the lead agency requested additional comment. All comments responsive to the request submitted during such comment periods, along with any public notices of the comment period, transcripts of public meetings, and lead agency responses to the comments, should be placed in the record file.

IV. INVOLVEMENT OF OTHER PARTIES

A. States

A.1. State Involvement in Federal-Lead Sites

The administrative record for a federal-lead site must reflect the state's opportunity to be involved in selecting the response action. The record for a remedial action should include documents that reflect at least the following state participation or the opportunity for state participation:[43]

- Letter to state requesting identification of ARARs and the final response from state identifying ARARs (and certification from the state);

- Comments, or the opportunity to comment, on a proposed finding or decision to select a response action not attaining a level or standard of control at least equivalent to a state ARAR;

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[41] 40 C.F.R. §300.825(c).

[42] 40 C.F.R. §300.825(b).

[43] See also Section 121(f) of CERCLA

- Comments, or the opportunity to comment, on the final draft RI/FS, the proposed plan and EPA responses to the comments;

- Significant post-decision comments by the state and EPA responses to the comments (place in the post-decision document file for possible inclusion in the record file - see section III.N. at page 40).

The administrative record for a removal action should reflect any state participation, especially any state comments and EPA responses to the comments.

The record file should only include final state comments, unless the comments explain or convey decisions on substantive aspects of a proposed or selected remedy (e.g., the scope of a proposed action or the identification of potential ARARs). Any preliminary deliberations between the state and EPA relevant to the response selection need not be part of the record file if superseded by documentation of the state's final position.

The governing body of an Indian tribe should be afforded the same treatment as a state in accordance with Section 126 of CERCLA.

A.2. Federal Involvement in State-Lead Sites

Where a state has been officially designated the lead agency for a CERCLA site, the state must compile and maintain the administrative record for that site in accordance with Section 113(k) of CERCLA and Section 300.800 of the NCP. Since EPA has ultimate responsibility for both the selection of a response action (e.g., EPA signs the ROD) and the record on which that response action is based, EPA must participate in compiling and maintaining the record. In such cases, EPA must assure that the record file forms a complete basis for the selection of the response action.

The state as lead agency must maintain the record file at a state office (e.g., the state's central environmental agency office) and at or near the site. At a minimum, the state as lead agency also must transmit a copy of the index, the RI/FS work plan, the RI/FS released for public comment, the proposed plan, and any public comments received on the RI/FS and the proposed plan to the appropriate EPA Regional office.[44] These documents should be transmitted to EPA as they are generated or received. Transmittal of the index will not suffice. In addition, other documents may be requested by EPA on a case-by-case basis.

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[44] See 40 C.F.R. §300.800(c).

The Superfund Memorandum of Agreement (SMOA), or Cooperative Agreement (CA), must address the administrative record requirements. The following language should be included in the SMOA or CA where the state has been officially designated the lead agency for a CERCLA site:

> The state must compile and maintain the administrative record upon which the selection of the [remedial, removal] action is based. The compilation and maintenance of the record must follow 40 C.F.R. Part 300, Subpart I and EPA guidance on the administrative record. The administrative record must be located at the state [environmental agency] office, and at or near the site. In addition, the state must submit copies of the index, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, and any public comments received on the RI/FS and proposed plan to the EPA Regional office, as they are added to the administrative record file. In addition, the state must submit other documents that are requested by EPA. The state shall comply with Section 113 of CERCLA and any applicable regulations. EPA may require the retention of other documents for cost recovery purposes.

The record file compiled by the state should reflect EPA's participation, comments, concurrence, and disagreements at the same stages as are required for state involvement in a federal-lead site. The state must place in the record file any documents submitted by EPA for inclusion in the record file.

B. Federal Facilities

Federal agencies have the responsibility, pursuant to Executive Order 12580, to establish the administrative record for federal facilities under their jurisdiction, custody, or control where using CERCLA authority for a response action. The record file for a federal facility must include all documents considered or relied on in selecting a response action, including documents submitted by EPA on the selection of the response action. The federal agency must comply with all NCP (see Appendix M) and CERCLA requirements in compiling and maintaining the record, including the minimum public participation requirements in Sections 113 and 117 of CERCLA.[45]

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[45] See 40 C.F.R. §300.800(b).

The federal agency must maintain the record file at or near the site and ensure easy public access to the record file. If, for example, a site is a Department of Defense facility, the record file should be housed in a location which does not require military clearance for access. The federal agency should keep a complete copy of the record file at a location within the federal agency office comparable to an EPA Regional office.

At NPL sites and any other site where EPA is involved in selecting a response action at a federal facility, EPA must participate in compiling and maintaining the record. In such cases, EPA must assure that the record file forms a complete basis for the selection of the response action. At a minimum, the federal agency must transmit a copy of the index, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, and any public comments received on the RI/FS and proposed plan to the appropriate EPA Regional office. These documents should be transmitted to EPA as they are generated. Transmittal of the index will not suffice. In addition, other documents may be requested by EPA on a case-by-case basis. Inter-Agency Agreements (IAGs) should spell out procedures for compiling and maintaining the record.

C. ATSDR

Participation in the selection of a response action by the Agency for Toxic Substance and Disease Registry (ATSDR) should be reflected in the administrative record. The record file must include the initial and subsequent health assessments and any other information EPA solicits and obtains from ATSDR which EPA considers or relies on in its selection of a response action.

Draft versions of the health assessment and other draft documents upon which ATSDR comments should not be included in the record file. If, however, EPA solicits comments from ATSDR on a draft document such as a draft work plan or RI report, and receives formal comments from ATSDR which EPA considers or relies on in selecting a response action, then the document and comments should be included in the record file.

In the event that the ATSDR health assessment and EPA's risk assessment appear inconsistent, a document explaining the difference should be generated and placed in the record file.

D. Natural Resources Trustees

Section 122(j)(1) of CERCLA requires that the EPA give notice to the Natural Resources Trustee of a release or threatened release of any hazardous substance which may have resulted in damages to natural resources. The administrative

record file must include the notice to the Natural Resources Trustee, and any subsequent final communications (e.g., a release or final report). In addition, any factual information provided by the Natural Resources Trustee which is considered or relied on in selecting a response action should be included in the record file.

In the event that the Natural Resources Trustee's damage assessment and EPA's risk assessment appear inconsistent, a document explaining the difference should be generated and placed in the record file.

V. DISCLAIMER

The policies and procedures established in this document are intended solely for the guidance of employees of the U.S. Environmental Protection Agency. They are not intended and cannot be relied upon to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. EPA reserves the right to act at variance with these policies and procedures and to change them at any time without public notice.

VI. FURTHER INFORMATION

For further information concerning this memorandum, please contact Gary Worthman in the Office of Waste Programs Enforcement at FTS (202) 382-5646.

GLOSSARY

Administrative Record: as used in this guidance, the body of documents that were considered or relied on which form the basis for the selection of a response action.

Administrative Record File: as used in this guidance, the ongoing collection of documents which are anticipated to constitute the administrative record when the selection of response action is made.

ARAR: applicable or relevant and appropriate requirements (see Section 121(d) of CERCLA).

ATSDR: Agency for Toxic Substance and Disease Registry.

CA: cooperative agreement (entered into with a state or local government to transfer funds to conduct response activities).

CBI: confidential business information.

CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (also known as Superfund).

C.F.R.: Code of Federal Regulations.

CMS: corrective measure study (RCRA corrective action document, equivalent to an FS).

CRC: Community Relations Coordinator.

CRP: community relations plan.

Document: as used in this guidance, includes writings, drawings, graphs, charts, photographs, and data compilation from which information can be obtained. It does not, however, include physical samples.

DOJ: Department of Justice.

EE/CA: engineering evaluation/cost analysis (removal document).

EPA: United States Environmental Protection Agency.

ESD: Environmental Services Division.

Explanation of Significant Differences: post-ROD document described in Section 117(c) of CERCLA.

FOIA: Freedom of Information Act.

FSP: field sampling plan.

HRS: Hazard Ranking System.

IAG: inter-agency agreement (made with a federal agency).

Lead Agency: the agency that provides the OSC or RPM to plan and implement a response action under the NCP.

NCP: National Oil and Hazardous Substances Pollution Contingency Plan, as revised on March 8, 1990 (55 FR 8859).

NPL: National Priorities List.

OE: EPA Office of Enforcement.

OERR: EPA Office of Emergency and Remedial Response.

OIRM: EPA Office of Information Resources Management.

Operable Unit: a discrete action that comprises an incremental step toward comprehensively addressing site problems (see section 300.5 of the NCP).

ORC: EPA Office of Regional Counsel.

OSC: On-Scene Coordinator (project manager for a removal action)

OSWER: EPA Office of Solid Waste and Emergency Response.

OWPE: EPA Office of Waste Programs Enforcement.

PA: preliminary assessment.

PRP: potentially responsible party.

QAPP: quality assurance project plan.

RA: remedial action.

RCRA: the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

RD: remedial design.

RI/FS: remedial investigation/feasibility study.

RFA: RCRA facility assessment (RCRA document, equivalent to a PA/SI).

RFI: RCRA facility investigation (RCRA corrective action document, equivalent to an RI).

ROD: Record of Decision (documents the selection of a remedial action).

RPM: remedial project manager (project manager for a remedial action).

SAP: sampling and analysis plan.

SARA: Superfund Amendments and Reauthorization Act of 1986 (see CERCLA above).

Site File: the file containing all site documentation.

SI: site investigation.

SMOA: Superfund memorandum of agreement (made with a state).

Support Agency: the agency that provides the support agency coordinator to furnish necessary data to the lead agency, review response data and documents, and provide other assistance as requested by the lead agency. The support agency may also concur on decision documents.

APPENDIX A

SECTION 113 (J) OF CERCLA

(j) JUDICIAL REVIEW.—

(1) LIMITATION.—In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record. Otherwise applicable principles of administrative law shall govern whether any supplemental materials may be considered by the court.

(2) STANDARD.—In considering objections raised in any judicial action under this Act, the court shall uphold the President's decision in selecting the response action unless the objecting party can demonstrate, on the administrative record, that the decision was arbitrary and capricious or otherwise not in accordance with law.

(3) REMEDY.—If the court finds that the selection of the response action was arbitrary and capricious or otherwise not in accordance with law, the court shall award (A) only the response costs or damages that are not inconsistent with the national contingency plan, and (B) such other relief as is consistent with the National Contingency Plan.

(4) PROCEDURAL ERRORS.—In reviewing alleged procedural errors, the court may disallow costs or damages only if the errors were so serious and related to matters of such central relevance to the action that the action would have been significantly changed had such errors not been made.

(k) ADMINISTRATIVE RECORD AND PARTICIPATION PROCEDURES.—

(1) ADMINISTRATIVE RECORD.—The President shall establish an administrative record upon which the President shall base the selection of a response action. The administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location.

(2) PARTICIPATION PROCEDURES.—

(A) REMOVAL ACTION.—The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code establishing procedures for the appropriate participation of interested persons in the development of the administrative record on which the President will base the selection of removal actions and on which judicial review of removal actions will be based.

(B) REMEDIAL ACTION.—The President shall provide for the participation of interested persons, including potentially responsible parties, in the development of the administrative record on which the President will base the selection of remedial actions and on which judicial review of remedial actions will be based. The procedures developed under this subparagraph shall include, at a minimum, each of the following:

(i) Notice to potentially affected persons and the public, which shall be accompanied by a brief analysis of the plan and alternative plans that were considered.

(ii) A reasonable opportunity to comment and provide information regarding the plan.

(iii) An opportunity for a public meeting in the affected area, in accordance with section 117(a)(2) (relating to public participation).

(iv) A response to each of the significant comments, criticisms, and new data submitted in written or oral presentations.

(v) A statement of the basis and purpose of the selected action.

For purposes of this subparagraph, the administrative record shall include all items developed and received under this subparagraph and all items described in the second sentence of section 117(d). The President shall promulgate regulations in accordance with chapter 5 of title 5 of the United States Code to carry out the requirements of this subparagraph.

(C) INTERIM RECORD.—Until such regulations under subparagraphs (A) and (B) are promulgated, the administrative record shall consist of all items developed and received pursuant to current procedures for selection of the response action, including procedures for the participation of interested parties and the public. The development of an administrative record and the selection of response action under this Act shall not include an adjudicatory hearing.

(D) POTENTIALLY RESPONSIBLE PARTIES.—The President shall make reasonable efforts to identify and notify potentially responsible parties as early as possible before selection of a response action. Nothing in this paragraph shall be construed to be a defense to liability.

APPENDIX B

MODEL FILE STRUCTURE

This model file structure may be used to compile an administrative record file for a remedial action, a removal action, or a combination of both remedial and removal actions. If the record documents a remedial action decision, section 2 of the file will contain only those removal action documents which (a) predate the remedial record of decision and (b) are relevant to the selection of the remedial action. If the record documents a removal action decision, sections 3, 4, and 5 of the file will contain only those remedial action documents which (a) predate the removal action memorandum and (b) are relevant to the selection of the removal action.

Justification is unnecessary for file categories without any documents. Those categories should be left out of the index.

A document should be filed in only one category, even if it falls into more than one category. It may be referenced in another category. If necessary, additional subcategories may be developed to accommodate documents not falling in any of the defined subcategories. Avoid adding categories of miscellaneous documents.

The correspondence subcategory can include comments and responses specific to the category. If the comments and responses are general in nature or address more than one category, they may be included in the public participation category.

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1.0 SITE IDENTIFICATION

- 1.1 Background - RCRA and other information
- 1.2 Notification/Site Inspection Reports
- 1.3 Preliminary Assessment (PA) Report
- 1.4 Site Investigation (SI) Report
- 1.5 Previous Operable Unit Information

2.0 REMOVAL RESPONSE

- 2.1 Sampling and Analysis Plans
- 2.2 Sampling and Analysis Data/Chain of Custody Forms
- 2.3 EE/CA Approval Memorandum (for non-time-critical removals)
- 2.4 EE/CA
- 2.5 Action Memorandum
- 2.6 Amendments to Action Memorandum

3.0 REMEDIAL INVESTIGATION (RI)

- 3.1 Sampling and Analysis Plan (SAP)
- 3.2 Sampling and Analysis Data/Chain of Custody Forms
- 3.3 Work Plan
- 3.4 RI Reports

4.0 FEASIBILITY STUDY (FS)

- 4.1 ARAR Determinations
- 4.2 FS Reports
- 4.3 Proposed Plan
- 4.4 Supplements and Revisions to the Proposed Plan

5.0 RECORD OF DECISION (ROD)

- 5.1 ROD
- 5.2 Amendments to ROD
- 5.3 Explanations of Significant Differences

6.0 STATE COORDINATION

- 6.1 Cooperative Agreements/SMOAs

6.3 State Certification of ARARs

7.0 ENFORCEMENT

- 7.1 Enforcement History
- 7.2 Endangerment Assessments
- 7.3 Administrative Orders
- 7.4 Consent Decrees
- 7.5 Affidavits
- 7.6 Documentation of Technical Discussions with PRPs on Response Actions
- 7.7 Notice Letters and Responses

8.0 HEALTH ASSESSMENTS

- 8.1 ATSDR Health Assessments
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9.0 NATURAL RESOURCE TRUSTEES

- 9.1 Notices Issued
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10.0 PUBLIC PARTICIPATION

- 10.1 Comments and Responses
- 10.2 Community Relations Plan
- 10.3 Public Notice(s) (Availability of the Administrative Record File, Availability the Proposed Plan, Public Meetings)
- 10.4 Public Meeting Transcripts
- 10.5 Documentation of Other Public Meetings
- 10.6 Fact Sheets and Press Releases
- 10.7 Responsiveness Summary
- 10.8 Late Comments

11.0 TECHNICAL SOURCES AND GUIDANCE DOCUMENTS

- 11.1 EPA Headquarters Guidance
- 11.2 EPA Regional Guidance
- 11.3 State Guidance

11.4 Technical Sources

APPENDIX C

MODEL INDEX

Attached is an excerpt of the Index of documents included in the Administrative Record for the Love Canal site. The Index lists the documents according to the EPA file structure (category number). The Index includes the following information fields:

DOCUMENT NUMBER....	indicates the first and last page numbers of the document. Both page numbers will be the same for one-page documents. In this particular index, the document number consists of a three letter site code followed by microfilm reel and frame numbers.
TITLE.....	indicates the title or an enhanced description of the document in parentheses.
AUTHOR.....	indicates the author or primary originator and the author's corporate affiliation.
RECIPIENT.....	indicates the addressee or primary recipient and the addressee's corporate affiliation.
DATE.....	indicates document date by month/day/year. / / means no date was available.
TYPE.....	indicates the document type.
CATEGORY.....	indicates the EPA file structure number.

APPENDIX D

MODEL POSITION DESCRIPTION FOR ADMINISTRATIVE RECORD COORDINATOR

INTRODUCTION

The incumbent serves as an Administrative Record Coordinator in one of the Regional offices of the Environmental Protection Agency (EPA). [Each Region may want to add an introduction to Superfund and the Regional office here.] The incumbent is responsible for compiling and maintaining administrative record files for CERCLA (Superfund) response action decisions.

Section 113(k) of CERCLA requires the establishment of an administrative record upon which the selection of a response action is based. Such a record is a compilation of all documents which the Agency considered or relied on in making its response action decision. Judicial review of any issues concerning the adequacy of any response action decision is limited to the administrative record. Public participation in the development of the record is required by law.

Establishment of thorough and complete administrative records is essential to EPA's Superfund program. Administrative records which include public participation and withstand judicial scrutiny allow EPA to meet its goals and objectives.

The incumbent will be responsible for compiling and maintaining administrative records for large numbers of Superfund sites. Each record requires coordination with many people including: Federal staff, state and local officials, private contractors, the general public and potentially responsible parties. Further responsibilities include deliberations over which materials to include in each record and requirements for dealing with privileged materials.

MAJOR DUTIES AND RESPONSIBILITIES

1. The incumbent is responsible for compiling and maintaining all of the administrative records for selection of CERCLA response actions for a Regional office of the EPA. The incumbent must have complete knowledge of all rules and procedures governing development of the administrative record files.

2. Receives and reviews all documents submitted by the Remedial Project Manager (RPM), On-Scene Coordinator (OSC), Office of Regional Counsel (ORC) and other appropriate staff for inclusion in the administrative record files. The incumbent will coordinate with staff responsible for deciding what documents are included in the record and will arrange for adding documents to the record file.

3. Compiles the administrative record file for each CERCLA response action. This includes logging the receipt of each document, maintaining a central master file of documents, redacting information from privileged documents as directed by ORC, maintaining any privileged portions of each record using Agency security measures, arranging for copying of documents in each record and transmitting the documents to appropriate repositories.

4. Coordinates the compilation of the administrative record files with state and federal agencies. This includes receiving records maintained by state and federal agencies and notifying appropriate personnel of these records for their review.

5. Maintains and updates (monthly) an index of each administrative record file in conformance with Agency guidelines.

6. Ensures public access to administrative record files. This includes notifying the public of the availability of the record, making the record available for public inspection, coordinating with personnel at the facility where the record is located, maintaining an adequate copying facility and maintaining a log of persons reviewing documents. The incumbent will have to respond to phone calls and visitors wanting information on and from the record. These functions will be coordinated with the Office of Public Affairs and Superfund Community Relations Coordinators.

7. Maintains the Regional Superfund Central Library of guidance documents and technical references.

CONTROLS OVER WORK

The incumbent works under the general supervision of the [Hazardous Waste Branch Chief]. An administrative record is reviewed and certified for litigation by a person designated by the Regional Administrator.

APPENDIX E

COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS

USERS MANUAL

U. S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF WASTE PROGRAMS ENFORCEMENT

MAY 1989

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Appendix

(A) REGIONAL COMPENDIUM LOCATIONS AND ADMINISTRATIVE RECORD COORDINATORS

(B) COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS INDEX

1.0 INTRODUCTION

This manual describes how to use the "Compendium of CERCLA Response Selection Guidance Documents" (Compendium). Each U.S. Environmental Protection Agency (EPA) Regional Office maintains a compendium of guidance documents frequently used during development and selection of response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA Headquarters used several sources to develop the initial Compendium. These sources included a pamphlet titled "Selected Technical Guidance for Superfund Projects" (OSWER Directive 9200.7-01); the OSWER Directive System; the Superfund, Resource Conservation and Recovery Act (RCRA), and Enforcement dockets; the Hazardous Waste Collection Database; and any existing regional compendiums. The documents in the Compendium are referenced in administrative records for decisions on selection of response actions.

The administrative record described here is the body of documents that form the basis for selection of a CERCLA response action. Establishment of the administrative record is required by §113(k) of CERCLA. An administrative record is the compilation of documents considered or relied on by EPA in making a decision. Documents that EPA anticipates will be included in the administrative record when the decision on a response action selection is made, are referred to as the "administrative record file." Guidance documents, or portions of guidance documents, that are considered or relied on in selecting a CERCLA response action should be part of an administrative record file.

Certain frequently used guidance documents may be referenced in the index to an administrative record but not physically included in the administrative record file. The reference should indicate the title and location of any documents included in the administrative record but maintained in the Compendium, which is kept at a central regional location. If a guidance document that is not listed in the Compendium is considered or relied on in selecting the response action, the document must be physically included in the administrative record file. The Compendium helps reduce the burden of copying and storing multiple copies of frequently used guidance documents.

Section 2.0 of this manual briefly discusses use of the Compendium by EPA personnel and the public. Section 3.0 discusses the Compendium's file and index structure. Documents in the Compendium are filed in three-ring binders and listed on an index which is generated by and

maintained on a computer database. Procedures for updating the Compendium are presented in Section 4.0.

2.0 OVERVIEW OF COMPENDIUM USE

The Compendium is intended for use by two groups: EPA personnel, during the process of response action selection and administrative record development, and the public, for review of documents referenced in the index to an administrative record.

The user should note that although the term "guidance" is often used in discussing the Compendium, it does not imply that only guidance documents are included. The documents may also be policies, memoranda, clarifications, case studies, manuals, handbooks, reports, and other documents used in the selection of CERCLA response actions.

2.1 USE BY EPA PERSONNEL

EPA personnel use the Compendium primarily to reference frequently used guidance documents that may be maintained in the Compendium rather than physically included in each administrative record file. The index must indicate which documents are physically located in the Compendium and must specify the location and accessibility of the Compendium. The index should also reference only the specific documents in the Compendium that were considered or relied on for the site for which the record is being compiled. The index should not reference the entire Compendium.

2.2 USE BY THE PUBLIC

As with any unrestricted document included in a record, the Compendium documents are accessible for public review. When EPA publishes a notice of availability of an administrative record file, that notice will include the location of the Compendium. The Compendium will be available for public viewing at a central regional establishment (for example, the EPA Regional Office), and [redacted] or near the site for which the record is being compiled. (See Appendix A for a list of the location of each regional copy of the Compendium and the names of the Regional Administrative Record Coordinators.)

3.0 STRUCTURE OF THE COMPENDIUM

Currently, the Compendium is organized into 10 categories. An overview of the file structure is presented below, as well as a discussion of the index that identifies the documents included in the Compendium. This section also discusses the data elements identified in the index. The data elements provide vital information on the documents included in the Compendium and are contained in a database used to compile the Compendium and generate the index.

3.1 FILE STRUCTURE

The Compendium is structured according to 10 major categories that generally reflect the various components of a response action selection under CERCLA. Table 3-1 lists the current Compendium categories. The documents are further grouped into subcategories that indicate their more specific nature, when applicable. For example, the remedial investigation/feasibility study (RI/FS) section of the Compendium is broken down into more specific subcategories to identify the wide range of RI/FS documents available. When the documents apply to multiple categories, secondary references are provided in the Compendium index.

Each document has been assigned a unique four-digit document number. The bound documents contained in each category are arranged numerically. When a user wants to access a document, he or she will find the document filed according to the assigned number. The four-digit number series assigned to each category are also listed in Table 3-1.

3.2 INDEX STRUCTURE

When an administrative record index refers to a document contained in the Compendium, that document is also identified in the Compendium index. The index, contained as the first document in the Compendium, provides the information necessary to identify and locate the desired documents. (For a copy of the current Compendium index, see Appendix B.)

Because in most cases the user will know the title of the document rather than the number assigned, the index lists the documents under each category in alphabetical order. An alphabetical listing of secondary references follows the primary documents listed under each category.

TABLE 3-1

COMPENDIUM CATEGORIES AND NUMBER SERIES

CATEGORIES	NUMBER SERIES
Index	0000
Pre-Remedial	0001-0999
Removal Action	1000-1999
Remedial Investigation/ Feasibility Study	2000-2999
General	2000-2099
RI Data Quality/Site & Waste Assessment	2100-2199
Land Disposal Facility Technology	2200-2299
Other Technologies	2300-2399
Groundwater Monitoring & Protection	2400-2499
ARARs[1]	3000-3999
Water Quality	4000-4999
Risk Assessment	5000-5999
Cost Analysis	6000-6999
Community Relations	7000-7999
Enforcement	8000-8999
Selection of Remedy/Decision Documents	9000-9999

[1] Applicable or Relevant and Appropriate Requirements

The Compendium index is maintained on a database using dBASE III Plus software. This database contains numerous data elements that store the information distinguishing and grouping each document into the appropriate categories. The database is currently maintained at EPA Headquarters.

Maintaining the index in a database allows the information to be organized in different ways. For example, should the Region need an index that is sorted entirely in alphabetical order by title, chronologically by document date, numerically by the number assigned each document, etc., EPA Headquarters can generate and forward such an index. The data elements of the Compendium database, as identified on the index, are included in Appendix B.

4.0 UPDATING THE COMPENDIUM

The Compendium is designed to allow for the periodic addition of newly developed policy or guidance documents. Updates to the Compendium are necessary in the following cases: (1) EPA releases relevant new guidance, policy, reports, etc.; (2) regional staff find additional documents that should be included in the Compendium; and (3) existing documents are revised or superseded. EPA Headquarters will continue to monitor the information sources used to develop the initial Compendium for new or revised documents that may qualify for inclusion in the Compendium.

Guidance documents identified for addition to the Compendium will be reviewed and relevant information will be entered into the existing database. After the database is updated, a new index will be generated and sent to each Regional Office. This new index will replace any previous indices. Hard copies of the additional documents will be sent to each region for inclusion in the Compendium. The revised index will indicate the category for each new document.

4.1 REGIONAL INPUT

Parties involved in the response action selection process, as well as Administrative Record Coordinators, may find documents that are frequently included in administrative records but are not referenced in the Compendium. In such cases it may be desirable to include the documents in the Compendium as part of the updating process. However, since the Compendium is designed to be nationally applicable, only documents used frequently in different regions will be included. Any region-specific document should be maintained in separate regional files and not in the Compendium.

4.2 KEEPING THE COMPENDIUM CURRENT

Once a document is included in the Compendium, it will remain in the Compendium to maintain the integrity of any record that refers to it. However, documents contained in the Compendium may be revised in the future to reflect changes, for example, changes in policy, technology, or law. The most current version of these documents will be added to the Compendium, as appropriate, so that they will be available for the administrative record process.

Although no document included in the Compendium will ever be replaced or removed once an administrative record index refers to it, those documents that are superseded will be flagged and identified on a separate index (superseded index) attached to the Compendium's main index. The superseded index will also identify the corresponding revised version added to the Compendium to indicate the new document that should be used.

Response action selections frequently rely on technical data generated at Superfund sites across the country. Such data is often maintained on national databases. Depending on their use and availability, certain of these databases may be included in the Compendium. For example, the Public Health Risk Evaluation Database (PHRED) is part of the Compendium. PHRED is stored on two floppy diskettes that are regularly updated as additional information becomes available. Whenever updated PHRED diskettes are generated, they will be added to the Compendium. Those diskettes that were previously included will also remain in the Compendium and will be identified on the superseded index.

(APPENDIX A)

REGIONAL COMPENDIUM LOCATIONS AND ADMINISTRATIVE RECORD COORDINATORS

Region	Address	Coordinator/PH # 1. Remedial 2. Removal
I	90 Canal Street Boston, MA 02203	1. Brenda Haslett (617)573-1759 FTS 833-1759
	60 Westview Street * Lexington, MA 02173	2. Pam Bruno (617)860-4309
II	26 Federal Plaza New York, NY 10278	1. Jenny Delcimento (212)264-8676 FTS 264-8676
	Woodbridge Avenue * Raritan Depot - Bldg 10 Edison, NJ 08837	2. Norman Vogelsang (201)321-6657 FTS 340-6657
III	841 Chestnut Street Philadelphia, PA 19107	1. Margaret Leva (215)597-3037 FTS 597-3037
		2. Joan Henry (215)597-2711 FTS 597-2711
IV	345 Courtland Street, N.E. Atlanta, GA 30365	1. Debbie Jourdan (404)347-2930 FTS 257-2930
		2. Same
V	230 South Dearborn Street Chicago, IL 60604	1. Jamie Bell FTS 353-7446
		2. Jan Pfundheller FTS 353-7626
VI	1445 Ross Avenue 12th Floor, Suite 1200 Dallas, TX 75270	1. Karen Witten (214)655-6720 FTS 255-6720
		2. Joann Woods (214)655-2270 FTS 255-2270

* The Compendium was initially distributed to remedial Administrative Record Coordinators only. Copies may be located at this address.

Region	Address	Coordinator/PH # 1. Remedial 2. Removal
VII	726 Minnesota Avenue Kansas City, KS 66101	1. Barry Thierer FTS 276-7052
	25 Funston Road * Kansas City, KS 66115	2. Helen Bennett (913)236-3881 FTS 757-3881
VIII	999 18th Street Suite 500 Denver, CO 80202	1. Carole Macy FTS 330-1281
		2. Tina Ardemus FTS 330-7039
IX	215 Fremont Street San Francisco, CA 94105	1. Tom Mix FTS 484-1960 Don Briggs FTS 556-6637
		2. Holly Hadlock (415)768-1354
X	1200 Sixth Avenue Seattle , WA 98101	1. Lynn Williams (206)442-2121 FTS 399-2121
		2. Same

* The Compendium was initially distributed to remedial Administrative Record Coordinators only. Copies may not be located at this address.

(APPENDIX B)

COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS

INDEX

TABLE OF CONTENTS

Category - Subcategory	Number Series*	Page
Pre-Remedial	0001-0002	1
Removal Action	1000-1008	1
RI/FS - General	2000-2012	2
RI/FS - RI Data Quality/Site & Waste Assessment	2100-2119	3
RI/FS - Land Disposal Facility Technology	2200-2212	4
RI/FS - Other Technologies	2300-2320	5
RI/FS - Ground-Water Monitoring & Protection	2400-2408	7
ARARs	3000-3005	8
Water Quality	4000-4003	9
Risk Assessment	5000-5015	9
Cost Analysis	6000-6001	11
Community Relations	7000-7000	11
Enforcement	8000-8001	12
Selection of Remedy/Decision Documents	9000-9001	12

Data Element Definitions

List of Organizational Abbreviations and Acronyms Identified in the Index

*The range for each number series identified represents the numbers assigned to those documents currently in the Compendium.

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COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS

Doc No	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA Code
0000	1	INDEX TO COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS	05/01/89	- OMPE - PRC-ENVIRONMENTAL MANAGEMENT, INC	Final	8		1) DATA ELEMENT DEFINITIONS 2) ORGANIZATIONAL ABBREVIATIONS AND ACRONYMS IDENTIFIED IN INDEX	
**		Pre-Remedial							
0001	1	EXPANDED SITE INSPECTION TRANSITIONAL GUIDANCE FOR FY-88	10/01/87	- OERR	Final	74	2		OSWER #9345.1
0002	1	PRELIMINARY ASSESSMENT GUIDANCE FISCAL YEAR 1988	01/01/88	- OERR/HSCD	Final	83	2		OSWER #9345.1
**		Removal Action							
1000	1	CERCLA REMOVAL ACTIONS AT METHANE RELEASE SITES	01/23/86	- LONGEST, H.L./OERR	Final	2	2		OSWER #9360.0
1001	1	COSTS OF REMEDIAL RESPONSE ACTIONS AT UNCONTROLLED HAZARDOUS WASTE SITES	01/01/81	- RISHEL, H.L., ET AL./SCS ENGINEERS - ALBRECHT, O.W./MERL	Final	164	1		
1002	1	EMERGENCY RESPONSE PROCEDURES FOR CONTROL OF HAZARDOUS SUBSTANCE RELEASES	01/01/83	- MELVOLD, R.W./ROCKWELL INTERNATIONAL - MCCARTHY, L.T./MERL	Final	23	1		EPA [illegible]
1003	1	ENVIRONMENTAL REVIEW REQUIREMENTS FOR REMOVAL ACTIONS	04/13/87	- OERR/ERD	Final	6	2		OSWER #9360.0
1004	1	GUIDANCE ON IMPLEMENTATION OF THE "CONTRIBUTE TO REMEDIAL PERFORMANCE" PROVISION	04/06/87	- OSWER	Final	6	2		OSWER #9360.0
1008	2	GUIDANCE ON NON-NPL REMOVAL ACTIONS INVOLVING NATIONALLY SIGNIFICANT OR PRECEDENT SETTING ISSUES	04/03/89	- LONGEST, H.L./OERR	Final	9	2	1) REQUEST FOR CONCURRENCE	OSWER #9360.0
1005	1	INFORMATION ON DRINKING WATER ACTION LEVELS	04/19/88	- FIELDS, JR., T./OSWER/ERD	Final	17	2	1) MEMO: RELEASES FROM LAWFULLY APPLIED PESTICIDES 2) MEMO/DDC CONTAMINATION 3) GUIDANCE FOR LIFELINE DIBROMIDE IN DRINKING H2O	
1006	1	SUPERFUND REMOVAL PROCEDURES, REVISION #3	02/01/88	- OSWER/OERR	Final	165	1		OSWER #9360.0
1007	1	THE ROLE OF EXPEDITED RESPONSE ACTIONS UNDER SARA	04/21/87	- LONGEST, H.L./OERR	Final	3	2		OSWER #9360.0
4002	26	INTERIM FINAL GUIDANCE ON REMOVAL ACTION LEVELS AT CONTAMINATED DRINKING WATER SITES (Secondary Reference)	10/06/87	- OSWER/OERR	Final	9	2		OSWER #9360.0
6001	32	REMOVAL COST MANAGEMENT MANUAL (Secondary Reference)	04/01/88	- OSWER/OERR	Final	170	1		OSWER #9360.0

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COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS

DOC NO	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA [illegible]
**		RI/FS - General							
2000	2	CASE STUDIES 1-23 REMEDIAL RESPONSE AT HAZARDOUS WASTE SITES	03/01/84	- ORD/OLET/MERL - OSWER/OERR	Final	830	1		EPA 540-2 [illegible]
2001	3	EPA GUIDE FOR MINIMIZING THE ADVERSE ENVIRONMENTAL EFFECTS OF CLEANUP OF UNCONTROLLED HAZARDOUS-WASTE SITES	06/01/85	- ENVIRONMENTAL RESEARCH LABORATORY	Final	250	2		EPA/[illegible]
2002	3	GUIDANCE FOR CONDUCTING REMEDIAL INVESTIGATIONS AND FEASIBILITY STUDIES UNDER CERCLA	10/01/88	- OSWER/OERR	Final	390	1		OSWER [illegible]
2003	3	JOINT CORPS/EPA GUIDANCE	06/24/83	- OERR/PAS	Final	42	2		OSWER [illegible]
2004	4	MODELING REMEDIAL ACTIONS AT UNCONTROLLED HAZARDOUS WASTE SITES (VOL I-IV)	04/01/85	- BOUWELL, S.H., ET AL /ANDERSON-NICHOLS AND CO - OSWER/OERR - AMMON, D.C. AND BORNWELL, JR., T.O. /MERL	Final	350	1		OSWER [illegible]
2005	4	POLICY ON FLOOD PLAINS AND WETLAND ASSESSMENTS FOR CERCLA ACTIONS	08/01/85	- HEDEMAN, JR., W.N. /OERR - LUCERO, G. /OMPE	Final	9	2		OSWER [illegible]
2006	4	REMEDIAL RESPONSE AT HAZARDOUS WASTE SITES: SUMMARY REPORT	03/01/84	- ORD/MERL	Final	95	1		EPA 540/2 [illegible]
2007	4	REVISED PROCEDURES FOR IMPLEMENTING OFF-SITE RESPONSE ACTIONS	11/13/87	- PORTER, J.W. /OSWER	Final	20	2		OSWER [illegible]
2008	4	RI/FS IMPROVEMENTS	07/23/87	- LONGEST, H.L. /OERR	Final	11	2	1) RI/FS IMPROVEMENTS	OSWER [illegible]
2009	4	RI/FS IMPROVEMENTS FOLLOW-UP	04/25/88	- LONGEST, H.L. /OERR	Final	16	2	1) RI/FS IMPROVEMENTS FOLLOW-UP 2) REMEDIAL INFORMATION TRANSFER ACTIVITIES	OSWER [illegible]
2010	4	SUPERFUND FEDERAL-LEAD REMEDIAL PROJECT MANAGEMENT HANDBOOK	12/01/86	- OERR	Draft	179	1		OSWER [illegible]
2011	5	SUPERFUND REMEDIAL DESIGN AND REMEDIAL ACTION GUIDANCE	06/01/86	- OERR	Final	100	1		OSWER [illegible]
2012	5	SUPERFUND STATE-LEAD REMEDIAL PROJECT MANAGEMENT HANDBOOK	12/01/86	- OERR	Final	120	1		OSWER [illegible]
**		RI/FS - RI Data Quality/Site & Waste Assessment							
2100	5	A COMPENDIUM OF SUPERFUND FIELD OPERATIONS METHODS	12/01/87	- OERR - OMPE	Final	550	1		OSWER [illegible]
2101	6	DATA QUALITY OBJECTIVES FOR REMEDIAL RESPONSE ACTIVITIES DEVELOPMENT PROCESS	03/01/87	- CDM FEDERAL PROGRAMS CORP - OERR/OMPE	Final	150	1		OSWER [illegible]

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COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS

Doc NO	vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA number
2102	6	DATA QUALITY OBJECTIVES FOR REMEDIAL [illegible] ACTIVITIES: EXAMPLE SCENARIO: RI/FS ACTIVITIES AT A SITE [illegible] CONTAMINATED SOILS AND GROUNDWATER	03/01/87	- CDM FEDERAL PROGRAMS CORP - OSWER/OWPE	final	120	1		OSWER 9355.0-7B
2101	6	DESIGN AND DEVELOPMENT OF HAZARDOUS WASTE REACTIVITY TESTING METHODS	02/01/84	- KORBADI, C.D., ET AL /ACUREX CORP - BARKLEY, N /MERL	final	150	1		EPA 600/2-84-[illegible]
2104	6	FIELD SCREENING FOR ORGANIC CONTAMINANTS IN SAMPLES FROM HAZARDOUS WASTE SITES	04/02/86	- ROFFMAN, H.K., ET AL ANL& CORP - CARTER, A /MICHIGAN DEPT OF NATURAL RESOURCES - THOMAS, T /EPA	final	11	2	1) MEMO: FIELD SCREENING FOR ORGANIC CONTAMINANTS	
2105	6	FIELD SCREENING METHODS CATALOG: USER'S GUIDE	09/01/88	- OERR/ASBD	final	90	1		EPA/540/2-88-[illegible]
2106	6	FIELD STANDARD OPERATING PROCEDURES MANUAL 04-SITE ENTRY	01/01/85	- OERR/ARSD	final	29	2		OSWER 9285.2-01
2107	7	FIELD STANDARD OPERATING PROCEDURES MANUAL 06-WORK ZONES	04/01/85	- OERR/ARSD	final	19	2		OSWER 9285.2-03
2108	7	FIELD STANDARD OPERATING PROCEDURES MANUAL 08 AIR SURVEILLANCE	01/01/85	- OERR/ASBD	final	24	2		OSWER 9285.2-04
2109	7	FIELD STANDARD OPERATING PROCEDURES MANUAL 09-SITE SAFETY PLAN	04/01/85	- OERR/ARSD	final	26	2	1) SAMPLE SITE SAFETY PLAN NARRATIVE SAFETY PLAN 2) EMERGENCY OPERATION CENTER REAL TIME MONITOR 3) RESPONSE SAFETY CHECK OFF SHEET	OSWER 9285.2-05
2110	7	GEOPHYSICAL METHODS FOR LOCATING ABANDONED WELLS	07/01/84	- FRISCHKNECT, F.M., ET AL /US GEOLOGICAL SURVEY - VANEE, J.J./EMSL	final	211	1		EPA 600/4-84-[illegible]
2111	7	GEOPHYSICAL TECHNIQUES FOR SENSING BURIED WASTES AND WASTE MIGRATION	06/01/84	- BENSON, R.C., ET AL /TECHNOS, INC - VANEE, J.J./EMSL	final	236	1		EPA 600/7-84-064
2112	8	GUIDELINES AND SPECIFICATIONS FOR PREPARING QUALITY ASSURANCE PROGRAM DOCUMENTATION	06/01/87	- OSW/QUALITY ASSURANCE MANAGEMENT STAFF	final	31	2	1) MEMO: CLEARANCE CONSIDERATION DATED 6/10/87	
2113	8	LABORATORY DATA VALIDATION FUNCTIONAL GUIDELINES FOR EVALUATING INORGANICS ANALYSES	07/01/88	- EPA DATA REVIEW WORK GROUP - BREVER, R /VIAR AND CO /SAMPLE MGMT OFFICE - HQ	draft	20	1		
2114	8	LABORATORY DATA VALIDATION FUNCTIONAL GUIDELINES FOR EVALUATING ORGANICS ANALYSES	03/01/88	- BREVER, R /VIAR AND CO /SAMPLE MGMT OFFICE - EPA DATA REVIEW WORKGROUP - HQ	draft	45	1		

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COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS

Doc No	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA [illegible]
2115	8	PRACTICAL GUIDE FOR GROUND-WATER SAMPLING	09/01/85	- BARCELONA, M J , ET AL /ILLINOIS ST WATER SURVEY - SCALF, M R /ORD/ERL	Final	175	1		EPA/600/[illegible]
2116	8	SEDIMENT SAMPLING QUALITY ASSURANCE USER'S GUIDE	07/01/85	- BARTH, D S & STARKS, T S /UNIV OF NEV, LAS VEGAS - BROWN, K W /EARD	Final	120	1		EPA/600/4 [illegible]
2117	8	SOIL SAMPLING QUALITY ASSURANCE USER'S GUIDE	05/01/84	- BARTH, D S & MASON, B J /U OF NEVADA, LAS VEGAS - BROWN, K /ORD/EARD	Final	104	1		EPA 600/4 [illegible]
2118	9+	TEST METHODS FOR EVALUATING SOLID WASTE, LABORATORY MANUAL PHYSICAL/CHEMICAL METHODS, THIRD EDITION (VOLUMES IA, IB, IC, AND II)	11/01/86	- OSWER	Final	3000	1		
2119	11	USER'S GUIDE TO THE CONTRACT LABORATORY PROGRAM	12/01/88	- OERR/CLP SAMPLE MANAGEMENT OFFICE	Final	220	2		OSWER [illegible]
**		RI/FS - Land Disposal Facility Technology							
2200	12	COVERS FOR UNCONTROLLED HAZARDOUS WASTE SITES	09/01/85	- MCANENY, C C , ET AL /U S COE/WES - HOUTHOOFD, J M /HWERL	Final	475	2		EPA/540/2 [illegible]
2201	13	DESIGN, CONSTRUCTION, AND EVALUATION OF CLAY LINERS FOR WASTE MANAGEMENT FACILITIES	11/01/88	- COLEMAN, J L , ET AL /NUS - ROULIER, M H /WREL	Final	500	2		EPA/530/[illegible]
2202	13	EVALUATING COVER SYSTEMS FOR SOLID AND HAZARDOUS WASTE	09/01/82	- LUTTON, R J /U S A COE/WES - LANDRETH, R E /MERL	Final	58	2		OSWER [illegible]
2203	13	GUIDANCE MANUAL FOR MINIMIZING POLLUTION FROM WASTE DISPOSAL SITES	08/01/78	- TOLMAN, A L , ET AL /A W MARTIN ASSOCIATES, INC - SANNING, D E /MERL	Final	83	1		EPA 600/2 78 [illegible]
2204	13	LAND DISPOSAL RESTRICTIONS	08/11/87	- LONGEST, H L /OERR - LUCERO, G /OWPE	Final	23	2	1) SUMMARY OF MAJOR TCR PROVISIONS AND CALIFORNIA LIST PROHIBITIONS 2) OTHER ATTACHS CITED ARE AVAILABLE IN	

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COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS

DOC NO	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA
2205	14	LINING OF WASTE CONTAINMENT AND OTHER IMPOUNDMENT FACILITIES	09/01/88	- MAIRECON, INC - LANDRETH, R./ORD/RISK REDUCTION ENGINEERING LAB	Final	950	2	FED REG	
2206	15	LINING OF WASTE IMPOUNDMENT AND DISPOSAL FACILITIES	03/01/83	- LANDRETH, R./MERL	Final	480	2		
2207	15	PROCEDURES FOR MODELING FLOW THROUGH CLAY LINERS TO DETERMINE REQUIRED LINER THICKNESS	01/01/84	- OSW	Draft	145	2		OSWER #9480
2208	15	RCRA GUIDANCE DOCUMENT: LANDFILL DESIGN LINER SYSTEMS AND FINAL COVER	07/01/82	- EPA	Draft	30	2		OSWER #9480
2209	15	SETTLEMENT AND COVER SUBSIDENCE OF HAZARDOUS WASTE LANDFILLS: PROJECT SUMMARY	05/01/85	- MURPHY, W.L. - GILBERT, P.A.	Final	4	2		EPA [illegible]
2210	15	SUPPLEMENTARY GUIDANCE ON DETERMINING LINER/LEACHATE COLLECTION SYSTEM COMPATIBILITY	08/07/86	- WEDDLE, B.R./PERMITS AND STATE PROGRAMS DIV	Final	60	2	1) ANALYSIS AND [illegible] OF UNEXPOSED & EXPOSED POLYMERIC MEMBRANE LINERS, MAIRECON, INC 2) SEC. 3019 EXPOSURE INFO. AND [illegible] ASSESSMENTS	OSWER #9480
2211	15	TECHNICAL GUIDANCE DOCUMENT: CONSTRUCTION QUALITY ASSURANCE FOR HAZARDOUS WASTE LAND DISPOSAL FACILITIES	10/01/86	- HERRMANN, J.G./MERL/LAND POLLUTION CONTROL DIV - OSWER	Final	88	2		OSWER #9472
2212	15	TREATMENT OF REACTIVE WASTES AT HAZARDOUS WASTE LANDFILLS PROJECT SUMMARY	01/01/84	- SHOOTER, D. ET AL./ARTHUR D. LITTLE, INC - LANDRETH, R./MERL	Final	4	2		EPA [illegible]
3000	25	APPLICABILITY OF THE HSWA MINIMUM TECHNICAL REQUIREMENTS RESPECTING LINERS AND LEACHATE COLLECTION SYSTEMS (Secondary Reference)	04/01/85	- SKINNER, J./OSW	Final	3	2		OSWER #9480

** RI/FS - Other Technologies

DOC NO	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA
2300	16	A COMPENDIUM OF TECHNOLOGIES USED IN THE TREATMENT OF HAZARDOUS WASTES	09/01/87	- ORD/CERI	Final	49	2		EPA/[illegible]

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Doc No	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA Publication
2301	16	CARBON ADSORPTION ISOTHERMS FOR [illegible]	04/01/80	- DOBBS, R A /MERL - COHEN, J M./MERL	Final	321	2		EPA/600/8 [illegible]
2302	17	ENGINEERING HANDBOOK FOR HAZARDOUS WASTE INCINERATION	09/01/81	- BONNER, T.A., ET. AL /MONSANTO RESEARCH CORP. - OBERACKER, D A /OLET	Final	445	2		OSWER #9400 [illegible]
2303	17	EPA GUIDE FOR IDENTIFYING CLEANUP ALTERNATIVES AT HAZARDOUS WASTE SITES AND SPILLS: BIOLOGICAL TREATMENT		- PACIFIC NORTHWEST LABORATORY - RANIERE, L.C./CORVALLIS ENVIRONMENTAL RESEARCH LAB	Final	120	2		EPA 600/3-83 [illegible]
2304	17	EPA GUIDE FOR INFECTIOUS WASTE MANAGEMENT	05/01/86	- OSWER/OSW	Final	75	2		OSWER #9410 [illegible]
2305	17	GUIDANCE DOCUMENT FOR CLEANUP OF SURFACE IMPOUNDMENT SITES	06/01/86	- COM/WOODWARD-CLYDE/ROY F WESTON - BARTH, E./OERR	Final	19	1		OSWER #9380 [illegible]
2306	17	GUIDANCE DOCUMENT FOR CLEANUP OF SURFACE TANK AND DRUM SITES	05/28/85	- COM/WOODWARD-CLYDE/ROY F WESTON/C C JOHNSON - BARTH, E. AND BIXLER, B /OERR	Final	135	1		OSWER #9380 [illegible]
2307	18	HANDBOOK FOR EVALUATING REMEDIAL ACTION TECHNOLOGY PLANS	08/01/83	- EHRENFELD, J. AND BASS, J /ARTHUR D LITTLE INC - PAHREN, H R /MERL	Final	439	1		EPA 600/2 [illegible]
2308	18	HANDBOOK FOR STABILIZATION/SOLIDIFICATION OF HAZARDOUS WASTE	06/01/86	- CULLINANE JR., M J ET AL /U S COE/WES - HOUTHOOFD, J M /ORD/HWERL	Final	125	1		EPA/540/2 [illegible]
2309	19	HANDBOOK REMEDIAL ACTION AT WASTE DISPOSAL SITES (REVISED)	10/01/85	- ORD/HWERL - OSWER/OERR	Final	560	1		EPA/625/6 [illegible]
2310	20	LEACHATE PLUME MANAGEMENT	11/01/85	- REPO, E AND KUES, C /JRB ASSOCIATES - BARKLEY, N./EPA	Final	590	1		EPA/540/2 [illegible]
2311	20	MOBILE TREATMENT TECHNOLOGIES FOR SUPERFUND WASTES	09/01/86	- CAMP, DRESSER, AND MCKEE INC - GALER, L D /HRSD	Final	130	1		EPA/540/2 [illegible]
2312	21	PRACTICAL GUIDE-TRIAL BURNS FOR HAZARDOUS WASTE INCINERATORS	04/01/86	- GORMAN, P., ET AL /MIDWEST RESEARCH INSTITUTE - OBERACKER, D A /HWERL	Final	63	2		EPA/600/2 [illegible]
2313	21	PRACTICAL GUIDE-TRIAL BURNS FOR HAZARDOUS WASTE INCINERATORS, PROJECT SUMMARY	07/01/86	- GORMAN, P., ET AL /MIDWEST RESEARCH INSTITUTE - OBERACKER, D A /HWERL	Final	2	1		EPA/600/52 [illegible]

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DOC NO	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	CERCLA/EPA Publication
2314	21	PROHIBITION ON THE PLACEMENT OF BULK LIQUID HAZARDOUS WASTE IN LANDFILLS-STATUTORY INTERPRETIVE GUIDANCE	06/11/86 - OSWER/OGC	Final	35	1	1) MEMO RE SAME SUBJECT FROM WILLIAMS M E /OSW	OSWER #9487.00
2315	21	REVIEW OF IN-PLACE TREATMENT TECHNIQUES FOR CONTAMINATED SURFACE SOILS-VOL 2 BACKGROUND INFORMATION FOR IN-SITU TREATMENT	11/01/84 - SIMS, R C , ET AL /JRW ASSOCIATES - BARKLEY, N /HERL	Final	350	1		EPA 540/2-84-...
2316	21	REVIEW OF IN-PLACE TREATMENT TECHNIQUES FOR CONTAMINATED SURFACE SOILS-VOL 1 TECHNICAL EVALUATION	09/19/84 - OSWER/OERR - ORD/HERL	Final	165	1		EPA/540/2-84-...
2317	22	SLURRY WALL CONSTRUCTION FOR POLLUTION MIGRATION CONTROL	02/01/84 - OSWER - ORD/HERL	Final	220	1		EPA/540/2-84-...
2318	22	SYSTEMS TO ACCELERATE IN SITU STABILIZATION OF WASTE DEPOSITS	09/01/86 - MALLER, M , ET AL /ENVIRONSPHERE CO - CRUSE, W /HERL	Final	285	1		EPA 540/2-86-...
2319	22	TECHNOLOGY SCREENING GUIDE FOR TREATMENT OF CERCLA SOILS AND SLUDGES	09/01/88 - OSWER/OERR	Final	130	1		EPA 540/2-88-...
2320	22	TREATMENT TECHNOLOGY BRIEFS. ALTERNATIVES TO HAZARDOUS WASTE LANDFILLS	07/01/86 - HERL	Final	35	2		EPA/600/8-86/...
**		RI/FS - Ground-water Monitoring & Protection						
2400	23	CRITERIA FOR IDENTIFYING AREAS OF VULNERABLE HYDROGEOLOGY UNDER RCRA STATUTORY INTERPRETIVE GUIDANCE	07/01/86 - OSWER/OGC	Final	950	2		OSWER #9472....
2401	24	FINAL RCRA COMPREHENSIVE GROUND-WATER MONITORING EVALUATION (CME) GUIDANCE DOCUMENT	12/19/86 - LUCERO, C A /OWPE	Final	55	2	1) MEMORANDUM RE TECHNICAL INADEQUACIES TO GROUND WATER PERFORMANCE STANDARDS	OSWER #9950.2
2402	24	GROUND-WATER MONITORING AT CLEAN-CLOSING SURFACE IMPOUNDMENT AND WASTE PILE UNITS	03/31/88 - FUERST, J W /OSWER	Final	3	2		OSWER #9476.00-1
2403	24	GROUND-WATER PROTECTION STRATEGY	08/01/84 - OFFICE OF GROUND-WATER PROTECTION	Final	65	2		
2404	24	GUIDELINES FOR GROUND-WATER CLASSIFICATION UNDER THE EPA GROUND-WATER PROTECTION STRATEGY	12/01/86 - OFFICE OF GROUND-WATER PROTECTION	Draft	600	2		EPA/440/6-84-...
2405	24	OPERATION AND MAINTENANCE INSPECTION GUIDE (RCRA GROUND-WATER MONITORING SYSTEMS)	03/30/88 - OSWER/OWPE/RCRA ENFORCEMENT DIVISION	Final	50	2	1) TRANSMITTAL MEMO RE SAME SUBJECT	OSWER #9950.1

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DOC NO	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA Number
2406	24	PROTOCOL FOR GROUND-WATER EVALUATION@	09/01/86	- HAZARDOUS WASTE GROUND WATER TASK FORCE	Final	300	2		OSWER [illegible]
2407	25	RCRA GROUND-WATER MONITORING TECHNICAL ENFORCEMENT GUIDANCE DOCUMENT(TEGD)	09/01/86	- EPA	Final	270	2		OSWER [illegible]
2408	25	RCRA GROUND-WATER MONITORING TECHNICAL ENFORCEMENT GUIDANCE DOCUMENT, TEGD: EXECUTIVE SUMMARY	07/01/87	- LUCERO, G.A./OMPE	Final	8	1		OSWER [illegible]
**		ARARs							
3000	25	APPLICABILITY OF THE RCRA MINIMUM TECHNICAL REQUIREMENTS RESPECTING LINERS AND LEACHATE COLLECTION SYSTEMS	04/01/85	- SKINNER, J./OSW	Final	3	2		OSWER [illegible]
3001	25	CERCLA COMPLIANCE WITH OTHER ENVIRONMENTAL STATUTES	10/02/85	- PORTER, J.W./OSWER	Final	19	1	1) POTENTIALLY APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS	OSWER [illegible]
3002	25	CERCLA COMPLIANCE WITH OTHER LAWS MANUAL	08/08/88	- OERR	Draft	245	2		OSWER [illegible]
3003	25	EPA'S IMPLEMENTATION OF THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT OF 1986	05/21/87	- THOMAS, L.M./EPA	Final	4	2		OSWER [illegible]
3004	25	GUIDANCE MANUAL ON THE RCRA REGULATION OF RECYCLED HAZARDOUS WASTES	03/01/86	- INDUSTRIAL ECONOMICS, INC - OSW	Final	350	2		OSWER [illegible]
3005	25	INTERIM RCRA/CERCLA GUIDANCE ON NON-CONTIGUOUS SITES AND ON-SITE MANAGEMENT OF WASTE AND TREATMENT RESIDUE	03/27/86	- PORTER, J.W./OSWER	Final	8	2	1) COMBINING HAZARDOUS WASTE SITES FOR REM ACTION	OSWER [illegible]
2400	23	CRITERIA FOR IDENTIFYING AREAS OF VULNERABLE HYDROGEOLOGY UNDER RCRA: STATUTORY INTERPRETIVE GUIDANCE (Secondary Reference)	07/01/86	- OSWER/OSW	Final	950	2		OSWER [illegible]
2401	24	FINAL RCRA COMPREHENSIVE GROUND-WATER MONITORING EVALUATION (CME) GUIDANCE DOCUMENT (Secondary Reference)	12/19/86	- LUCERO, G.A./OMPE	Final	55	2	1) RELATIONSHIP OF TECHNICAL INADEQUACIES TO GROUND WATER PERFORMANCE STANDARDS	OSWER [illegible]
2405	24	OPERATION AND MAINTENANCE INSPECTION GUIDE (RCRA GROUND-WATER MONITORING SYSTEMS) (Secondary Reference)	03/30/88	- OSWER/OWPE/RCRA ENFORCEMENT DIVISION	Final	50	2	1) TRANSMITTAL MEMO RE SAME SUBJECT	OSWER [illegible]
2407	25	RCRA GROUND-WATER MONITORING TECHNICAL ENFORCEMENT GUIDANCE DOCUMENT(TEGD) (Secondary Reference)	09/01/86	- EPA	Final	270	2		OSWER [illegible]
2408	25	RCRA GROUND-WATER MONITORING TECHNICAL ENFORCEMENT GUIDANCE DOCUMENT, TEGD: EXECUTIVE SUMMARY (Secondary Reference)	07/01/87	- LUCERO, G.A./OMPE	Final	8	1		OSWER [illegible]

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Doc No	Vol	Title	Date	Authors	Status	Pages	Tier	Attachments	OSWER/EPA [illegible]
2308	15	RCRA GUIDANCE DOCUMENT: LANDFILL DESIGN LINER SYSTEMS AND FINAL COVER [Secondary Reference]	07/01/82	- EPA	Draft	30	2		
9001	33	RCRA/CERCLA DECISIONS MADE ON REMEDY SELECTION [Secondary Reference]	06/24/85	- KILPATRICK, M /COMPLIANCE BRANCH, OWPE	Final	3	2		
**		Water Quality							
4000	36	ALTERNATE CONCENTRATION LIMIT GUIDANCE PART 1, ACL POLICY AND INFORMATION REQUIREMENTS	07/01/87	- OSW/WMD	Final	124	2		OSWER [illegible]
4001	36	GUIDANCE DOCUMENT FOR PROVIDING ALTERNATE WATER SUPPLIES	02/01/88	- OERR	Final	64	2		OSWER [illegible]
4002	36	INTERIM FINAL GUIDANCE ON REMOVAL ACTION LEVELS AT CONTAMINATED DRINKING WATER SITES	10/06/87	- OSWER/OERR	Final	9	2		OSWER [illegible]
4003	36	QUALITY CRITERIA FOR WATER 1986	05/01/87	- OFFICE OF WATER REGULATIONS AND STANDARDS	Final	325	2		EPA/[illegible]
2301	16	CARBON ADSORPTION ISOTHERMS FOR TOXIC ORGANICS [Secondary Reference]	04/01/80	- DOBBS, R A /MERL - COHEN, J M /MERL	Final	321	2		EPA/[illegible]
1005	1	INFORMATION ON DRINKING WATER ACTION LEVELS [Secondary Reference]	04/19/88	- FIELDS, JR., T /OSWER/ERD	Final	17	2	1) MEMO RELEASES FROM LAWFULLY APPLIED PESTICIDES 2) MEMO LOOP CONTAMINATION 3) GUIDANCE FOR FIBRILINE DIBROMIDE IN DRINKING H2O	
**		Risk Assessment							
5000	27	ATSDR HEALTH ASSESSMENTS ON NPL SITES	06/16/86	- DEPT OF HEALTH AND HUMAN SERVICES/ATSDR	Draft	14	2		
5001	27	CHEMICAL, PHYSICAL & BIOLOGICAL PROPERTIES OF COMPOUNDS PRESENT AT HAZARDOUS WASTE SITES	09/27/85	- CLEMENT ASSOCIATES, INC	Final	320	2		OSWER [illegible]
5002	27	FINAL GUIDANCE FOR THE COORDINATION OF ATSDR HEALTH ASSESSMENT ACTIVITIES WITH THE SUPERFUND REMEDIAL PROCESS	05/14/87	- PORTER, J W /OSWER/OERR - ATSDR	Final	22	2	1) SAME TITLE DATED 4/22/87	OSWER [illegible]
5003	27	GUIDELINES FOR CARCINOGEN RISK ASSESSMENT (FEDERAL REGISTER, SEPTEMBER 24, 1986, p 33992)	09/24/86	- EPA	Final	13	2		

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5004	27	GUIDELINES FOR EXPOSURE ASSESSMENT [illegible] (FEDERAL REGISTER, SEPTEMBER 24, 1986, p. 34042)	09/24/86 - EPA		Final	14	2		
5005	27	GUIDELINES FOR HEALTH ASSESSMENT OF SUBJECT DEVELOPMENTAL TOXICANTS (FEDERAL REGISTER, SEPTEMBER 24, 1986, p. 34028)	09/24/86 - EPA		Final	14	2		
5006	27	GUIDELINES FOR MUTAGENICITY RISK ASSESSMENT (FEDERAL REGISTER, SEPTEMBER, 24, p 34006)	09/24/86 - EPA		Final	8	2		
5007	27	GUIDELINES FOR THE HEALTH RISK ASSESSMENT OF CHEMICAL MIXTURES (FEDERAL REGISTER, SEPTEMBER 24, 1986, p. 34014)	09/24/86 - EPA		Final	13	2		
5008	28+	HEALTH EFFECTS ASSESSMENT DOCUMENTS (58 CHEMICAL PROFILES) VOL 28: ACETONE, ARSENIC, ASBESTOS, BARIUM, BENZO(A)PYRENE, CADMIUM, CARBON TETRACHLORIDE, CHLOROBENZENE, CHLORDANE, CHLOROFORM, COAL TARS, COPPER, CRESOLS, CYANIDE, DDT, 1,1-DICHLOROETHANE, 1,2-DICHLOROETHANE; VOL 29: 1,1-DICHLOROETHYLENE, 1,2-DICHLOROETHYLENE, CIS-1,2-DICHLOROETHYLENE, ETHYLBENZENE, GLYCOL ETHERS, HEXACHLOROBENZENE, HEXACHLOROBUTADIENE, HEXACHLOROCYCLOPENTADIENE, HEXAVALENT CHROMIUM, IRON (AND COMPOUNDS), LEAD, LINDANE, MANGANESE (AND COMPOUNDS), MERCURY, METHYL ETHYL KETONE, METHYLENE CHLORIDE, NAPHTHALENE, NICKEL, PENTACHLOROPHENOL, PHENOL, PHENANTHRENE; VOL 30: POLYCHLORINATED BIPHENYLS (PCBS), POLYCYCLIC AROMATIC HYDROCARBONS (PAHS), PYRENE, SELENIUM (AND COMPOUNDS), SODIUM CYANIDE, SULFURIC ACID, 2,3,7,8-TETRACHLORODIBENZO-p-DIOXIN, 1,1,2,2-TETRACHLOROETHANE, TETRACHLOROETHYLENE, TOLUENE, 1,1,2-TRICHLOROETHANE, 1,1,1-TRICHLOROETHANE, TRICHLOROETHYLENE, 2,4,5-TRICHLOROPHENOL, 2,4,6-TRICHLOROPHENOL, TRIVALENT CHROMIUM, VINYL CHLORIDE, XYLENE, ZINC (AND COMPOUNDS)	09/01/84 - ORD/OHEA/ECAO - OSWER/OERR		Final	1750	2		EPA/540/1-86/xxx [illegible]
5009	31	INTEGRATED RISK INFORMATION SYSTEM (IRIS) [A COMPUTER-BASED HEALTH RISK INFORMATION SYSTEM AVAILABLE THROUGH E-MAIL--BROCHURE ON ACCESS IS INCLUDED]	- - OHEA		Final	-	2		

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Doc NO	Vol	Title	Date	Authors	Status	Pages	Rel	Attachments	
5010	31	INTERIM POLICY FOR ASSESSING RISKS OF "BOILING" OVER RMM 2.3.7.8-TCDD	01/07/87	- BOMAS, I M /EPA	Final	50	2	1) INTERIM INCIDENCE FOR ESTIMATING RISKS ASSOCIATED WITH EXPOSURES TO MIXTURES 10/86	
5011	31	PUBLIC HEALTH RISK EVALUATION DATABASE (PHRED) [USER'S MANUAL AND TWO DISKETTES CONTAINING THE CHASE III PLUS SYSTEM ARE INCLUDED]	09/16/88	- OERR/TOXICS INTEGRATION BRANCH	Final	-	2		
5012	31	ROLE OF ACUTE TOXICITY BIOASSAYS IN THE REMEDIAL ACTION PROCESS AT HAZARDOUS WASTE SITES	08/01/87	- ABBEY, L A , ET AL /PACIFIC NORTHWEST LABORATORY - MILLER, W E /CORVALLIS ENVIRONMENTAL RESEARCH LAB	Final	106	2		EPA/600/8-87/
5013	31	SUPERFUND EXPOSURE ASSESSMENT MANUAL	04/01/88	- OERR	Final	160	1		
5014	31	SUPERFUND PUBLIC HEALTH EVALUATION MANUAL	10/01/86	- OERR - OERR	Final	500	1		OSWER 9285.5
5015	31	TOXICOLOGY HANDBOOK	08/01/85	- LIFE SYSTEMS, INC - TWBAKUI, T E /DOE	Draft	136	2		OSWER 9285.4
8000	32	ENVIRONMENTAL ASSESSMENT GUIDANCE [Secondary Reference]	11/22/85	- PORTER, J W /OTHER	Final	11	2		OSWER 9285.5-1
**		Cost Analysis							
6000	32	REMEDIAL ACTION COSTING PROCEDURES MANUAL	10/01/87	- JRB ASSOCIATES/GCM HILL - DELIVERY - OERR/OERR	Final	56	1		
6001	32	REMOVAL COST MANAGEMENT MANUAL	04/01/88	- OERR/OERR	Final	170	1		OSWER 9360.0-02
1003	1	ENVIRONMENTAL REVIEW REQUIREMENTS FOR REMOVAL ACTIONS [Secondary Reference]	04/13/87	- OERR/OEP	Final	6	2		OSWER 9360.0-03
**		Community Relations							
7000	32	COMMUNITY RELATIONS IN SUPERFUND: A HANDBOOK (INTERIM VERSION)	06/01/86	- OERR	Final	188	2	1) CHANGE 1 TO THE CERCLA RELEASE REPORTING REGULATIONS 11/01/88	OSWER 9230.0-09

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**		Enforcement							
8000	33	ENDANGERMENT ASSESSMENT GUIDANCE	11/22/85	- PORTER, J W /OSWER	Final	11	2		
8001	33	INTERIM GUIDANCE ON POTENTIALLY RESPONSIBLE PARTY PARTICIPATION IN REMEDIAL INVESTIGATIONS AND FEASIBILITY STUDIES	05/16/88	- PORTER, J W /OSWER	Final	37	2		CERCLIS 8V850 0 1 CERCLIS 8V815 14
**		Selection of Remedy/Decision Documents							
9000	33	INTERIM GUIDANCE ON SUPERFUND SELECTION OF REMEDY	12/24/86	- PORTER, J W /OSWER	Final	10	2		
9001	33	RD&R/CERCLA DECISIONS MADE ON REMEDY SELECTION	06/24/85	- KILPATRICK, M /COMPLIANCE BRANCH, OWE	Final	3	2		CERCLIS 8V[illegible] 12

DATA ELEMENT DEFINITIONS

The data elements of the Compendium database, as identified on the index, are shown below:

DATA ELEMENT	DEFINITION
Doc No	Unique four-digit number assigned to a document included in the Compendium according to category.
Vol	Volume number of the binder in which the hard copy of the document is contained.
Title	Title of the document. Secondary Reference is identified following the title when a document relates to more than one category. The document itself is filed under the number series assigned to its primary category.
Date	The date the document was published by or released from the issuing office or entity.
Authors	Author(s) and affiliation(s). Also includes identification of the EPA Project Officer and issuing office, where applicable.
Status	Indicates the status of a document, either draft or final version.
Pages	Total number of printed pages of the document, including any attachments.
Tier	Tier 1 or Tier 2. Tier 1 documents are the core documents of the Compendium as listed in the pamphlet titled "Selected Technical Guidance for Superfund Projects," compiled by OERR. Tier 2 documents are all other documents included in the Compendium.
Attachments	Attachments to a document by complete or abbreviated title.
OSWER/EP[redacted]	EPA report or OSWER Directive System numbers, where applicable.

LIST OF ORGANIZATIONAL ABBREVIATIONS AND ACRONYMS IDENTIFIED IN THE INDEX

Organization	Acronym
Agency for Toxic Substances and Disease Registry	ATSDR
Center for Environmental Research Information	CERI
Contract Laboratory Program	CLP
U.S. Corps of Engineers	COE
Exposure Assessment Research Division	EARD
Environmental Criteria and Assessment Office	ECAO
Environmental Monitoring Systems Laboratory	EMSL
Emergency Response Division	ERD
Environmental Research Laboratory	ERL
Hazardous Response Support Division	HRSD
Hazardous Site Control Division	HSCD
Hazardous Site Evaluation Division	HSED
Hazardous Waste Engineering Research Laboratory	HWERL
Municipal Environmental Research Laboratory	MERL
Office of Environmental Engineering and Technology	OEET
Office of Emergency and Remedial Response	OERR
Office of Health Effects Assessment	OHEA
Office of Research and Development	ORD
Office of Solid Waste	OSW
Office of Solid Waste and Emergency Response	OSWER
Office of Waste Programs Enforcement	OWPE
Policy Analysis Staff	PAS
Waterways Experiment Station	WES
Waste Management Division	WMD

APPENDIX F

MODEL TRANSMITTAL COVER LETTER

[Name of Contact]
[Address]

Dear [Name of Contact]:

The U.S. Environmental Protection Agency is required by law to establish administrative records "at or near a facility at issue." This administrative record consists of information upon which the Agency bases its selection of response action for a particular Superfund site.

By providing the public with greater access to these records, it is our hope that they will be better equipped to comment constructively on site activities and to understand the issues relating to the selection of the response action at the site.

We appreciate having the [Name of local repository] as the designated administrative record facility for the [Name of site] Superfund site. The enclosed record files, along with any future documents relating to technical activities at the site should be placed in the [Name of local repository] and be available for public review. The record files should be treated as a non-circulating reference - it should not be removed from your facility.

Also enclosed is a fact sheet to assist you and your staff in answering questions posed by the public concerning administrative records for selection of response actions at Superfund sites. Please feel free to distribute this guide to the public.

To ensure the receipt of the administrative record file, I would appreciate your completion of the attached Document Transmittal Acknowledgment form. Please return this form in the enclosed self-addressed, stamped envelope.

Again, I would like to thank you for your cooperation with the U.S. EPA in serving as a Field Repository. If you have any questions or comments, please contact [Name of EPA contact] at [Phone No.].

Sincerely,

[Name]
Administrative Record Coordinator

APPENDIX G

MODEL DOCUMENT TRANSMITTAL ACKNOWLEDGMENT

From: [Regional Office Address]

To: [Field Repository Address]

I acknowledge that I have received the following documents from the U.S. EPA Region ____ Office, pertaining to [Site Name] Superfund site.

Administrative Record Name - [Site Name]

Administrative Record Document Numbers - _____

Signed _____

Date _____

Please return this form to: [Regional Office Address]

APPENDIX H

FACT SHEET

Administrative Records in Local Repositories

The "administrative record" is the collection of documents which form the basis for the selection of a response action at a Superfund site. Under section 113(k) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (CERCLA), EPA is required to establish an administrative record for every Superfund response action and to make a copy of the administrative record available at or near the site.

The administrative record file must be reasonably available for public review during normal business hours. The record file should be treated as a non-circulating reference document. This will allow the public greater access to the volumes and also minimize the risk of loss or damage. Individuals may photocopy any documents contained in the record file, according to the photocopying procedures at the local repository.

The documents in the administrative record file may become damaged or lost during use. If this occurs, the local repository manager should contact the EPA Regional Office for replacements. Documents may be added to the record file as the site work progresses. Periodically, EPA may send supplemental volumes and indexes directly to the local repository. These supplements should be placed with the initial record file.

The administrative record file will be maintained at the local repository until further notice. Questions regarding the maintenance of the record file should be directed to the EPA Regional Office.

The Agency welcomes comments at any time on documents contained in the administrative record file. Please send any such comments to [name and address]. The Agency may hold formal public comment periods at certain stages of response process. The public is urged to use these formal review periods to submit their comments.

For further information on the administrative record file, contact [name and phone no. of Administrative Record Coordinator].

APPENDIX I

MODEL NOTICE OF PUBLIC AVAILABILITY

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ANNOUNCES THE AVAILABILITY OF THE
ADMINISTRATIVE RECORD
XYZ SITE, [Locality, State]

The U.S. Environmental Protection Agency (EPA) announces the availability for public review of files comprising the administrative record for the selection of the [remedial, removal] action at the XYZ site, [Locality, State]. EPA seeks to inform the public of the availability of the record file at this repository and to encourage the public to comment on documents as they are placed in the record file.

The administrative record file includes documents which form the basis for the selection of a [remedial, removal] action at this site. Documents now in the record files include [preliminary assessment and site investigation reports, validated sampling data, RI/FS work plan, and the community relations plan]. Other documents will be added to the record files as site work progresses. These additional documents may include, but are not limited to, the RI/FS report, other technical reports, additional validated sampling data, comments and new data submitted by interested persons, and EPA responses to significant comments.

The administrative record file is available for review during normal business hours at:

[Repository Name] [Address and Phone #]	and	U.S.EPA - Region Z [Address and Phone #]

Additional information is available at the following locations:

Verified sampling data and documentation	-	Contract laboratory, [Address and Phone #]
Guidance documents and technical literature	-	EPA-Region Z [Address and Phone #]

Written comments on the administrative record should be sent to:

[Name], Office of Public Affairs
U.S. EPA - Region Z
[Address and Phone #]

APPENDIX J

MICROFORM APPROVAL MEMORANDUM

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

OCT 21 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Microfilming the Administrative Record

FROM: Edward J. Hanley, Director
Office of Information Resources Management

TO: Asa R. Frost, Jr., Director
OSWER Information Management Staff

In accordance with EPA Records Management Manual, Chapter 6, dated 7/13/84, I approve OSWER's request for an administrative record micrographic system for regional hazardous waste management programs.

The feasibility study prepared for OWPE, entitled "Assessment of the Suitability and Costs of Alternatives for the Administrative Record" (June 30, 1988), satisfactorily documents and justifies the need for converting the administrative record to microform. In particular, the requirement under SARA to make the administrative record publicly available at or near each hazardous waste site makes microform a cost-effective storage medium.

Please inform each regional hazardous waste program of my approval of OSWER's request and of the need to comply with the remaining provisions of Chapter 6 of the EPA Records Manual should the region proceed with implementing an administrative record micrographic system.

cc: SIRMOs, Region 1 - X

APPENDIX K

MODEL CERTIFICATION

IN THE [NAME OF COURT]

UNITED STATES OF AMERICA, Plaintiff, v. [NAMES OF DEFENDANTS] Defendants, [number] v. [NAMES OF THIRD PARTY DEFENDANTS] Third Party Defendants	:	CIVIL ACTION NO.

CERTIFICATION OF DOCUMENTS
COMPRISING THE ADMINISTRATIVE RECORD

The United States Environmental Protection Agency (EPA) hereby certifies that the attached documents constitute the administrative record for selection of response actions under the Comprehensive Environmental Response Compensation and Liability Act or 1980, as amended, for the [name of site] site in [City or County], [State].

By the United States Environmental Protection Agency:

In witness whereof I have subscribed my name this ____ day of _____, 19___ in _____[city]_____.

_____[signature]_____

_____[typed name]_____

APPENDIX L

PREAMBLE TO SUBPART I OF NCP

Subpart I—Administrative Record for Selection of Response Action

Subpart I of the NCP is entirely new. It implements CERCLA requirements concerning the establishment of an administrative record for selection of a response action. Section 113(k)(1) of CERCLA requires the establishment of "an administrative record upon which the President shall base the selection of a response action." Thus, today's rule requires the establishment of an administrative record that contains documents that form the basis for the selection of a CERCLA response action. In addition, section 113(k)(2) requires the promulgation of regulations establishing procedures for the participation of interested persons in the development of the administrative record.

These regulations regarding the administrative record include procedures for public participation. Because one purpose of the administrative record is to facilitate public involvement, procedures for

establishing and maintaining the record are closely related to the procedures governing public participation. General community relations provisions found in other parts of the proposed NCP are addressed elsewhere in this preamble.

The following sections discuss the major comments received on the proposed subpart I and EPA's responses.

Name: General comments.

Proposed rule: Subpart I details how the administrative record is assembled, maintained and made available to the public.

Response to comments: Comments on the administrative record regulations included the suggestion that the preamble provide a general statement differentiating between the administrative record and the information repository.

EPA agrees that while subpart I includes ample information on the requirements of the administrative record, a brief clarification would help to differentiate the record from the information repository.

The information repository includes a diverse group of documents that relate to a Superfund site and to the Superfund program in general, including documents on site activities, information about the site location, and background program and policy guides. EPA requires an information repository at all remedial action sites and any site where a removal action is likely to extend beyond 120 days. The purpose of the information repository is to allow open and convenient public access to documents explaining the actions taking place at a site.

The administrative record discussed in this subpart, by contrast, is the body of documents that forms the basis of the agency's selection of a particular response at a site, i.e., documents relevant to a response selection that the lead agency relies on, as well as relevant comments and information that the lead agency considers but may reject in the ultimate response selection decision. Thus, the record will include documents the lead and support agency generate, PRP and public comments, and technical and site-specific information. These documents occasionally overlap with those included in the information repository. The administrative record includes such information as site-specific data and comments, guidance documents and technical references used in the selection of the response action. The information repository may include guides to the Superfund process, background information, fact sheets press releases, maps, and other information to aid public understanding of a site response, regardless of whether the information has bearing on the eventual response selection at that site.

One commenter felt that there was no mechanism for PRPs to participate in the development of the administrative record. In response, PRPs are given a chance to participate in the development of the administrative record throughout its compilation. EPA will make available information considered in selecting the response action to PRPs and others through the administrative record file. Interested persons may peruse the record file, submit information to be included in the administrative record file, or may comment on its contents during the ensuing public comment period.

Name: Section 300.800(a). Establishment of an administrative record. Section 300.810(a). Contents of the administrative record.

Proposed rule: Section 113(k)(1) of CERCLA states that the "President shall establish an administrative record upon which the President shall base the selection of a response action." EPA used similar language in § 300.800(a) of the proposed rule: "The lead agency shall establish an administrative record that contains the documents that *form the basis* for the selection of a response action." (Emphasis added.) Section 300.810(a) states that the "administrative record file for selection of a response action typically, but not in all cases, will contain the following types of documents * * *," followed by an enumeration of those documents.

Response to comments: EPA's choice of the phrase "form the basis" in § 300.800(a) drew many comments. The comments expressed concern that the lead agency would have the discretion to include in the administrative record only those documents that support EPA's selected remedy.

These comments appear to be based on a misunderstanding of what the phrase "forms the basis of" means as it was used in the proposed rule. The statute defines the administrative record as the "record upon which the President shall base the selection of a response action." EPA's intent in defining the record as the file that "contains the documents that form the basis for the selection of a response action" was simply to reflect the statutory language. For example, an administrative record will contain the public comments submitted on the proposed action, even if the lead agency rejects the comments, because the lead agency is required to consider these comments and respond to significant comments in making a final decision. Thus, these comments also "form the basis of" the final response selection decision. EPA intends that the regulatory language defining the administrative record file embody general principles of administrative law concerning what documents are included in an "administrative record" for an agency decision. As a result, contrary to the suggestion of the commenters, the proposed definition of the administrative record does not mean that the record will contain only those documents supporting the selected response action.

A commenter asked that the phrase "but not in all cases" be deleted from § 300.810(a), or specify the cases where documents are excluded from the administrative record. EPA believes it is better not to attempt to list excluded documents in the NCP since EPA cannot possibly anticipate all the types of documents that will be generated for a site or for future sites, and which of these documents should be excluded except as generally described in § 300.810(b). It should be noted, for example, that although a health assessment done by ATSDR would normally be included in the administrative record, it would not be if the assessment was generated by ATSDR after the response is selected.

Others commented that certain documents should always be included in the administrative record. EPA believes that only a small group of documents will always be generated for every type of CERCLA site, since each site is unique. Other documents may or may not be generated or relevant to the selection of a particular response action at a site. EPA understands that a definitive list of required documents would assist parties in trying to assess the completeness of the administrative record, but such a list would not be practical. Different sites require different documents.

A related group of comments asked that the administrative record always include certain documents, including, specifically, "verified sampling data," draft and "predecisional" documents, and technical studies. One comment stated that "invalidated" sampling data and drafts must be part of the administrative record in some situations. Verified sampling data, i.e., data that have gone through the quality assurance and quality control process, will be included in the record when they have been used in the selection of a response action. "Invalidated" data, i.e., data which have been found to be incorrectly gathered, are not used by EPA in selecting the response action and should therefore not be included in the

records. These should be distinguished from unvalidated data—data that have not been through the quality control process—which may in limited circumstances be considered by the agency in selecting the response action. It is EPA's policy to avoid using unvalidated data whenever possible. Nonetheless, there are times when the need for action and the lack of validated data requires the consideration of such data in selecting an emergency removal action. If such data are used, they will be included in the record.

In general, only final documents are included in the administrative record files. Draft documents are not part of the record for a decision because they generally are revised or superseded by subsequent drafts and thus are not the actual documents upon which the decision-maker relies. However, drafts (or portions of them) generally will be included in the administrative record for response selection if there is no final document generated at the time the response is selected and the draft is the document relied on. In addition, a draft which has been released to the public for the purpose of receiving comments is also part of the record, along with any comments received.

Similarly, predecisional and deliberative documents, such as staff notes or staff policy recommendations or options papers, do not generally belong in the administrative record because they merely reflect internal deliberations rather than final decisions or factual information upon which the response selection is based. However, pertinent factual information or documents stating final decisions on response selection issues for a site generally would be included in the record.

Technical studies are also part of the record, again, if considered by the lead agency in selecting the response action. The commenter seems to have misinterpreted EPA's intent by assuming that only factual portions of a technical study are part of the record. The entire study, or relevant part of the study, should be part of the record.

Another comment stated that the administrative record should include any studies on cost, cost-effectiveness, permanence, and treatment that underlie the record of decision. These studies are already part of the remedial investigation and feasibility study, which is always included in the record. Another party stated that sampling protocols should be in the administrative record. Sampling protocols are part of the RI/FS work plan, which is also part of the administrative record. And because sampling protocols, like chain of custody documents, are generally grouped together, EPA has provided in this rulemaking that such grouped or serial documents may be listed as a group in the index to the administrative record file.

A related comment requested that all documents generated by contractors should be included in the record. In response, *any* document that forms the basis of a response selection decision will be included in the administrative record. It is immaterial who develops the document—it can be a contractor, the public (including a PRP), a state or EPA.

One commenter asked that ARAR disputes involving a disagreement over whether a requirement is substantive or administrative be documented in the record. Other comments stated that EPA must ensure that complete ARAR documentation and documentation of all remedial options, not just the selected remedy, be placed in the record. Where ARAR issues are relevant to response selection, lead and support agency-generated documents and public information submitted to the lead agency on this issue would be part of the record. The record will include documentation of each alternative remedy and ARAR studied during the RI/FS process, and the criteria used to select the preferred remedy during the remedy selection process.

EPA also received several comments stating that every document contributing to decision-making should be part of the administrative record. EPA cannot concur in this formulation of the administrative record since it is unclear what "contributing to" means and that phrase may be overly broad. For instance, the term "contributing to" could be interpreted to include all draft documents leading up to a final product. These draft documents do not generally form the basis of the response selection. However, because the administrative record includes documents which form the basis for the decision to select the response action, EPA believes that most "contributing" documents will be included.

One comment stated that the hazard ranking system (HRS) information should be included in the administrative record for selection of the response action. Specifically, they suggested that internal memoranda, daily notes, and the original HRS score should be made available. The National Priorities List (NPL) docket is a public docket, and already contains the relevant ranking information. The information generally relevant to the listing of a site on the NPL is preliminary and not necessarily relevant to the selection of the response action. If, however, there is information in the NPL docket that is relied on in selecting the response action, it will be included in the administrative record.

Another commenter stated that all materials developed and received during the remedy selection process should be made a part of the record, and stated that the NCP currently omits inclusion of transcripts. As noted above, certain documents simply will not be relevant to the selection of response actions. EPA will, as required by the statute, include in the record all those materials, including transcripts, that form the basis for the selection of a response action, whether or not the materials support the decision.

Several commenters asked that the lead agency be required to mail them individual copies of documents kept in the administrative record. These requests included copies of sampling data, a copy of any preliminary assessment petitions, potential remedies, the risk assessment, a list of ARARs, and notification of all future work to be done. Commenters also asked to be notified by mail when a lead agency begins sampling at a site and when a contractor is chosen for a response action. In addition, many asked for the opportunity to comment on the documents mentioned above. A related comment suggested that EPA maintain a mailing list for each site and mail copies of key documents in the record to every party on the list.

EPA believes that maintaining an administrative record file in two places, in addition to a more general information repository, with provisions for copying facilities reflects EPA's strong commitment to keeping the affected public, including PRPs, informed and providing the opportunity for public involvement in response decision-making. Requiring EPA to mail individual copies of documents available in the record file is beyond any statutory requirements, unnecessary due to the ready availability of the documents in the file, and a severe burden on Agency staff and resources. Most of the documents requested above will generally be available in the administrative record for public review and copying. Additionally, the lead agency should maintain a mailing list of interested persons to whom key site information and notice of site activities can be mailed as part of their community relations plan for a site.

One commenter asked that all PRP comments and comments by other interested parties be included in the record, regardless of their

significance." EPA will include all comments received during the comment period in the administrative record, regardless of their significance. When the lead agency considers comments submitted after the decision document has been signed, the "significance" of a comment has a bearing on whether it will be included in the administrative record, as specified in § 300.825(c). In addition, while EPA is under no legal obligation to place in the record or consider comments submitted prior to the comment period, EPA will generally, as a matter of policy, consider significant comments submitted prior to the comment period, place them into the record, and respond to them at an appropriate time. However, persons who wish to ensure that the comments they submitted prior to the comment period are included in the record must resubmit such comments during the comment period.

Final rule: Section 300.800(a) is promulgated as proposed.

Name: Section 300.800(b). Administrative record for federal facilities.

Proposed rule: Section 300.800(b) states that the lead agency for a federal facility, whether EPA, the U.S. Coast Guard, or any other federal agency, shall compile and maintain an administrative record for that facility. When federal agencies other than EPA are the lead at a federal facility site, they must furnish EPA with copies of the record index, in addition to other specified documents included in the record. The preamble to the proposed NCP discussion of § 300.800(b) (53 FR 51484) states that EPA will establish procedures for interested parties to participate in the administrative record development, and that EPA may furnish documents which the federal agency is required to place in the record.

Response to comments: One comment stated that EPA should be the custodian for administrative records for federal facilities, especially where the federal facility is a PRP, to avoid any conflict of interest in questions of liability or litigation. Another comment stated that the requirements in § 300.800(b) of the proposed rule would be burdensome to federal agencies in compiling and maintaining the record.

Executive Order 12580 grants federal agencies the authority to "establish the administrative record for selection of response actions for federal facilities under their jurisdiction, custody or control." To avoid the potential for conflicts of interest by federal agencies who are PRPs and in charge of compiling and maintaining the record, EPA retains control over the development of the record by specifying what goes into the record, by supplementing the record and by requiring an accounting of what is in the record through a report of the indexed contents. EPA believes that these requirements represent sufficient Agency oversight to avoid potential conflicts of interest at federal facilities while ensuring that federal lead agencies remain responsible for compiling and maintaining their own administrative record.

EPA is making a minor editorial change in § 300.800(b)(1) to reflect that the federal agency compiles and maintains an administrative record *for* a facility, and not *at* a facility, since § 300.800(a) already provides that the record will be located at or near that facility.

Final rule: EPA is promulgating the rule as proposed, except for the following minor editorial change in the first sentence of § 300.800(b)(1): "If a federal agency other than EPA is the lead agency for a federal facility, the federal agency shall compile and maintain the administrative record for the selection of the response action for that facility in accordance with this subpart."

Name: Section 300.800(c). Administrative record for state-lead sites.

Proposed rule: Section 113(k) of CERCLA states that the President "shall establish an administrative record upon which the President shall base the selection of a response action." Section 300.800(c), entitled "Administrative record for state-lead sites," requires that states compile administrative records for state-lead sites in accordance with the NCP.

Response to comments: Several commenters believe that the new administrative record procedures place an onerous burden on the state, and request that state requirements such as Open Records Acts should be allowed as a substitute for compliance with subpart I. Another commenter recommended that states be allowed to determine whether a complete administrative record is needed at or near the site when a site is state-lead. Where a response is taken under CERCLA at a state-lead site, EPA is ultimately responsible for the selection of a response action. Therefore, under section 113(k), EPA must establish an administrative record for the CERCLA response action at the site, and must, at a minimum, comply with subpart I. There may be many different ways of compiling administrative records and involving the public in the development of the record. Subpart I states the minimum requirements for section 113(k). Lead agencies, including states, may provide additional public involvement opportunities at a site. In response to whether or not states should maintain a complete administrative record at or near the site, EPA believes that states must have such a record in order to meet CERCLA section 113(k) requirements.

EPA has included a minor editorial change in § 300.800(c) to reflect that a state compiles and maintains an administrative record for rather than at a given site.

Final rule: EPA is promulgating § 300.800(c) as proposed, except for a minor editorial change in the first sentence as follows: "If a state is the lead agency for a site, the state shall compile and maintain the administrative record for the selection of the response action *for* that site in accordance with this subpart."

Name: Sections 300.800(d) and 300.800(e). Applicability.

Proposed rule: Section 300.800(d) states that the provisions of subpart I apply to all remedial actions where the remedial investigation began after the promulgation of these rules, and for all removals where the action memorandum is signed after the promulgation of these rules. Section 300.800(d) also proposes that "[T]his subpart applies to all response actions taken under section 104 of CERCLA or sought, secured, or ordered administratively or judicially under section 106 of CERCLA." Section 300.800(e) states that the lead agency will apply subpart I to all response actions not included in § 300.800(d) "to the extent practicable."

Response to comments: One commenter argued that the applicable provisions of subpart I should be amended to require agencies to comply with the subpart for all sites where the remedy selection decision was made more than 90 days after proposal of the revised NCP for comment. Another comment stated that § 300.800(e) be revised to state that lead agencies must comply with subpart I in any future actions they take, and that all lead agency actions must comply with subpart I "to the maximum extent practicable."

In response, EPA will adhere as closely as possible to subpart I for sites where the remedial investigation began before these regulations are promulgated. EPA will not, however, require that these sites comply with requirements which, because of the

the promulgation of these rules, cannot be adhered to. For example, under the final rule the administrative record file must be available at the beginning of the remedial investigation phase. If these regulations are promulgated when a site is in the middle of the remedial investigation process, and the administrative record is not yet available, the lead agency cannot at this point comply with these regulations. Additionally, EPA believes that adding language to proposed NCP § 300.800(e) to state that lead agencies will comply with provisions of subpart I in any future action after promulgation of the new rule is unnecessary and redundant: compliance will be legally required, and applicability to all future response actions is implicit in the rule. Likewise, insertion of the word "maximum" before the phrase "extent practicable" is unnecessary since it would give additional emphasis but would not substantively change the requirement or the meaning of the rule.

One comment agreed with EPA's interpretation that subpart I applies to all response actions "sought, secured or ordered administratively or judicially," but others disagreed. Several stated that the term "judicially" should be deleted from § 300.800(d) because they argue that response actions ordered judicially would receive *de novo* adjudication, instead of administrative record review. CERCLA section 113(j)(1) states: "In any judicial action under this Act, judicial review of any issues concerning the adequacy of any response action taken or ordered by the President shall be limited to the administrative record." Commenters contend that this section does not apply to injunctive actions under CERCLA section 106 because these are not actions "taken or ordered by the President." To the contrary, the selection of a response action is a "response action taken * * * by the President." Accordingly, section 113(j)(1) requires that judicial review of the response action selected by the agency is "limited to the administrative record." Further, section 113(j)(2) stipulates that, "in any judicial action under this chapter"—whether for injunctive relief, enforcement of an administrative order or recovery of response costs or damages—a party objecting to "the President's decision in selecting the response action" must demonstrate, "on the administrative record, that the decision was arbitrary or capricious or otherwise not in accordance with law."

EPA received several comments objecting to EPA's determination that judicial review of an endangerment assessment be limited to the administrative record. They stated that as a matter of administrative and constitutional law, a finding of imminent and substantial endangerment is not an issue concerning "the adequacy of the response action," as stated in CERCLA section 113(j), and therefore must receive *de novo* review by a court. A second comment requested that EPA state in the regulation that review of EPA's expenditures in the implementation of a remedy is *de novo*.

An assessment of endangerment at a site is a factor highly relevant to the selection of a response action, and is in fact part of the remedial investigation (RI) process central to the decision to select a response action. Therefore, the determination of endangerment (which will generally be included in the decision document) will be included in the administrative record for selection of a response action and should be reviewed as part of that record. (EPA notes that the term "endangerment assessment" document has been superseded by the term "risk assessment" document, and while assessments of endangerment at a site are still conducted during the RI, it is the "risk assessment" document that becomes part of the record.) In response to the comment that Agency expenditures on a response action should receive *de novo* review, EPA notes that this issue was not raised in the proposed NCP, and is therefore not addressed in the final rule.

Final rule: EPA is promulgating the rule as proposed.

Name: Section 300.805. Location of the administrative record file.

Proposed rule: Section 113(k)(1) of CERCLA states that "the administrative record shall be available to the public at or near the facility at issue. The President also may place duplicates of the administrative record at any other location." Section 300.805 of the proposed NCP provides five exemptions for information which need not be placed at or near the facility at issue: Sampling and testing data, guidance documents, publicly available technical literature, documents in the confidential portion of the file, and emergency removal actions lasting less than 30 days.

Response to comments: One commenter supported limiting the amount of information which must be located at or near the site, but many commenters stated that every document contributing to decision-making, including confidential documents which are part of the record, should be located at or near the site and agency convenience is not a sufficient reason to exclude documents from the site. They asserted that such exclusions undermine active public involvement at the site and are contrary to statutory intent. Another comment stated that requiring the administrative record to be kept in two places, at a central location and at or near the site, runs counter to the statutory requirement of keeping a record only "at or near the facility at issue." One commenter asked that EPA acknowledge that Indian tribal headquarters may be a logical place to keep the administrative record when a Superfund site is located on or near an Indian reservation. A final comment requested that EPA endorse through regulatory language that administrative records can be kept on microfiche or other record management technologies, and have the equivalent legal validity to paper records.

Requiring sampling data and guidance documents to be placed at the site is both unnecessary and, in many cases, very costly. Administrative records are often kept at public libraries where space is limited and cannot accommodate voluminous sampling data for large, complex sites. Summaries of the data are included in the RI/FS, which is located at or near the site. In addition, requiring publicly available technical literature at the site will require copying copyrighted material, an additional expenditure of limited Superfund dollars. Moreover, Agency experience is that, as yet, relatively few people view the administrative record file at or near the site or request review of the sampling data or general guidance documents listed in the index to the site file.

However, EPA has revised the rule to specify that, if an individual wishes to review a document listed in the index but not available in the file located at or near the site, such document, if not confidential, will be provided for inclusion in the file *upon request*. The individual will not need to submit a Freedom of Information Act Request in order to have the information made available for review in the file near the site. EPA believes that provision of such documents in the file near the site upon request meets the requirement of CERCLA section 113(k) that the record be "available" at or near the site. In addition, this rule does not bar lead agencies from deciding to place this information in the site file without waiting for a request. Lead agencies are encouraged to place as much of this information at or near the site as practical, and to automatically place information at sites where there is a

is an probability that the information will be in demand or the information is central to the response selection decision.

The confidential portion of the file need not be located at or near the site, and will not be available upon request either at the site or at the central location, since the information is not available for public review.

EPA believes that requiring that the record be located in two places is necessary to ensure both adequate public access to the record files and better lead-agency control over the record documents. The statutory requirement in CERCLA section 113(k)(1) states that the President may also place duplicates of the administrative record at any other location. This section clearly provides authority to maintain a second administrative record at a central location. Section 300.805 of the proposed NCP (53 FR 51515) reflects EPA's decision to make this statutory option a regulatory requirement. A centrally located record may offer easier access to interested parties located far from the response site.

EPA agrees with the commenter that housing the centrally located copy of the record at Indian tribal headquarters may be appropriate when a Superfund site is located at or near an Indian reservation. In the 1986 amendments to CERCLA, Indian tribes are accorded status equivalent to states, and can be designated lead agencies for response actions, in which case they would also be required to compile and maintain the administrative record at or near the site.

Finally, as EPA stated in the preamble to the proposed NCP, maintaining the administrative record on microfiche is already recognized as a legally valid and effective practice: "EPA may make the administrative record available to the public in microform. EPA may microform-copy documents that form the basis for the selection of a CERCLA response action in the regular course of business" (53 FR 51465). EPA agrees that this should be specified in the rule and has added § 300.805(c) accordingly, providing that the lead agency may make the record available in microform.

Final rule: Section 300.805 is modified as follows:

1. Section 300.805(b) is added to the rule as follows: "Where documents are placed in the central location but not in the file located at or near the site, such documents shall be added to the file located at or near the site upon request, except for documents included in paragraph (a)(4) of this section."

2. Section 300.805(c) is added to the rule as follows: "The lead agency may make the administrative record file available to the public in microform."

3. The section has been renumbered accordingly.

Name: Sections 300.810(a)–(d). Documents not included in the administrative record file.

Proposed rule: Section 300.810(b) discusses which documents may be excluded from the administrative record. Section (c) discusses privileged information that is not included in the administrative record. Section 300.810(d) discusses confidential information that is placed in the confidential portion of the administrative record.

Response to comments: One commenter argued that § 300.810 should specifically include an exemption for classified documents related to national security. While the NCP currently does not address the potential conflict between national security concerns and the requirement to establish a publicly accessible administrative record, it is not clear that such an exemption could be adequately specified by rule or that an exemption would appropriately resolve this conflict. Section 121(j) provides a national security waiver by Presidential order of any requirements under CERCLA, which can be invoked in certain circumstances. Under this provision, protection of national security interests requires case-by-case review under section 121(j) and not a blanket exemption in the NCP. Nothing in the NCP limits the availability of this waiver.

Another comment received by EPA stated that the treatment of privileged and confidential documents in the records is unfair, because it denies access to documents that may be critical to the selection of a remedy. EPA has provided for a confidential portion of the administrative record where documents containing, for example, trade secrets of companies that have developed patented cleanup technologies being considered as a response selection alternative can be kept confidential. To maintain a fair balance between the need for confidentiality and the public's right of review of the record, the lead agency must summarize or redact a document containing confidential information to make available to the greatest extent possible critical, factual information relevant to the selection of a response action in the nonconfidential portion of the record.

A final comment proposed that an index to the privileged documents should be included in the nonconfidential portion of the administrative record. EPA agrees, believing that an index will let interested parties know in general terms what documents are included in the record without compromising the confidential nature of the information contained in those documents.

Finally, EPA is adding a sentence to § 300.810(a)(6) to clarify that the index can include a reference to a group of documents, if documents are customarily grouped. This will simplify EPA's task without compromising the integrity of the record.

Final rule: 1. EPA is promulgating §§ 300.810(b), (c) and (d) as proposed with a minor editorial change to clarify the first sentence of § 300.810(d).

2. The following language is added to § 300.810(a)(6) to provide for listing grouped documents in the administrative record file index: "If documents are customarily grouped together, as with sampling data chain of custody documents, they may be listed as a group in the index to the administrative record file."

Name: Section 300.815. Administrative record file for a remedial action.

Proposed rule: The term "administrative record file" is used throughout the proposed NCP. Section 300.815(a) proposes that the administrative record file be made available for public inspection at the beginning of the remedial investigation phase.

Response to comments: EPA received several comments objecting to the concept of an administrative record file. They objected because there is no statutory authority for establishing a file, and because they were concerned that the lead agency could edit the file, specifically by deleting public and PRP comments and information that do not support the response action ultimately chosen by EPA, and that these comments and information would not remain a part of the final administrative record.

The statute requires the President to establish an administrative record. Under subpart I of the NCP, the administrative record file is the mechanism for compiling, and will contain, the administrative record required by section 113(k). One reason EPA adopted the concept of an administrative record file is that EPA felt that it may be confusing or misleading to refer to an ongoing compilation of documents as an "administrative record" until the compilation is complete. Until the response action has been selected, there

is no complete administrative record for that decision. Thus, to avoid creating the impression that the record is complete at any time prior to the final selection decision, the set of documents is referred to as the administrative record file rather than the administrative record.

However, this does not mean, as the comments appear to suggest, that the lead agency may "edit" the administrative record file in a manner that removes comments and technical data simply because they are not supportive of the final selection decision. Any comments and technical information placed in the record file for a proposed response action and relevant to the selection of that response action, whether in support of, or in opposition to, the selected response action, become part of the administrative record for the final response selection decision. Such materials will remain in the administrative record file, and will become part of the final administrative record. However, EPA believes that as a matter of law documents that are erroneously placed in the administrative record file (e.g., documents that have no relevance to the response selection or that pertain to an entirely different site) would not necessarily become part of the final administrative record.

EPA received additional comments stating that the administrative record file should be available before the beginning of the remedial investigation phase. These comments suggested that the file be available: When a site is entered into the CERCLIS data base; when the HRS score is calculated; when proposed for inclusion on the NPL; after the preliminary assessment report; and after the remedial site investigation.

EPA believes that the point at which a site is entered into the CERCLIS data base is too early to put any information which would be relevant to a selection of a response action into a record file because at this point there has been no site evaluation and therefore little factual information about the site upon which to base a response decision. Interested parties can already find any information on a site that would be included at the point of the HRS scoring and placement on the NPL in the NPL docket, which is publicly available. The preliminary assessment and remedial investigation stages of a response are premature for making the administrative record available; at these points there is little information relevant to response selection on which to comment or to review. Once the RI/FS work plan is approved, and the RI/FS study begins—including such activities as project scoping, data collection, risk assessment and analysis of alternatives—there is a coherent body of site-specific information with relevance to the response selection upon which to comment. EPA believes that the beginning of the RI/FS phase is the point in the process when it makes sense to start a publicly available record of information relevant to the response selection.

One comment suggested that interested persons would have no chance to comment on the formation of the RI/FS work plan. The comment suggested that the record file should be available before the RI/FS work plan is approved, e.g., with a draft work plan or statement of work. EPA disagrees. Approved work plans are often amended. An interested person may comment on the scope or formation of the work plan, and such comments can be taken into account by the lead agency and incorporated into a final or amended work plan. Such comments must be considered if submitted during the comment period on the proposed action.

Final rule: EPA is promulgating § 300.815(a) as proposed.

Name: Section 300.815, Administrative record file for a remedial action. Section 300.820(a), Administrative record file for a removal action.

Proposed rule: Subpart I requires that the administrative record for a remedial action be available for public review when the remedial investigation begins. Thereafter, relevant documents are placed in the record as generated or received. The proposed regulations also require that the lead agency publish a newspaper notice announcing the availability of the record files, and a second notice announcing that the proposed plan has been issued. A public comment period of at least 30 days is required on the proposed plan. Section 300.820(a) outlines the steps for the availability of the record and public comment for a non-time-critical removal action. EPA solicited comments on a proposal currently under consideration to require quarterly or semi-annual notification of record availability and the initiation of public comment in the Federal Register.

Response to comments: Some commenters suggested that the use of the Federal Register to announce the availability of the administrative record is too costly or of little or no benefit. Several commenters requested clarification on how and when the lead agency should respond to comments. Another stated that lead agencies should be encouraged—though not required—to respond to early comments before the formal comment period begins.

EPA chose not to require a notice of availability of the administrative record in the Federal Register in this rulemaking because it is still unclear whether the benefits of this additional notice outweigh its costs. EPA may decide in the future to require this additional notice if it determines that such notice would improve notification.

EPA agrees with commenters that clarification is needed as to when the lead agency should respond to comments. We also agree that the lead agency should be encouraged to respond to comments submitted before the public comment period. EPA generally will consider any timely comments containing significant information, even if they are not received during the formal comment period, and encourages other lead agencies to do so. EPA will strive to respond to comments it receives as early as possible, and to encourage other lead agencies to follow suit. However, any lead agency is required to consider and respond to only those comments submitted during a formal comment period. Any other comments are considered at the lead agency's discretion. EPA has revised the language of these sections to reflect the policy on consideration of public comments submitted prior to public comment periods.

One comment recommended that the regulations should provide how long the administrative record must be available and suggested EPA coordinate efforts with the National Archives about retaining the record as a historical record. Another felt that materials were not always placed into the record in a timely manner, and that the record was not always available to the working public during evenings and weekends or accompanied by a copying machine. Similarly, one commenter felt that documents should be placed in the record when they are generated or in a prescribed timeframe of two weeks. Another asked that free copies of key documents be included in the record.

EPA believes that the length of time a record must be available at or near the site will be dependent on site-specific considerations such as ongoing activity, pending litigation and community interest. EPA also believes that difficulties sometimes encountered by the working public require resolution on a site-by-site basis and do not merit a change in the proposed NCP language. Special provisions may have to be made by the records coordinator, with the aid of other site team members, including

the community relations coordinator or regional site manager, to ensure that the record location chosen is convenient to the public and that copying facilities are made available. Using public libraries to house the record should promote better availability of the record during non-working hours and on weekends. In response to mandating deadlines for lead agencies to place documents into the administrative record file, Agency guidance already directs record compilers to place documents into the record file as soon as they are received. Agency policy additionally prescribes a suggested timeframe for placing documents in the record file. EPA believes that mandatory deadlines in the NCP would do little to increase the rate at which records are already compiled. The decision to place free copies of key documents in the record at or near the site will be a site-specific decision based on the level of community interest in these documents. Those who wish to make copies of key documents or any document contained in the administrative record file should already have access to copying facilities.

EPA received a comment requesting that it publish a joint notice of availability of the administrative record with a notice of availability of Technical Assistance Grants. Another comment stated that the removal site evaluation and engineering evaluation/cost analysis (EE/CA) must be included in the record for a non-time-critical removal action.

Publishing notice of the availability of the record in tandem with announcements of the availability of Technical Assistance Grants (TAGs) is a good idea where TAGs are available for a removal action. The TAGs, however, are generally designed to support citizen involvement in technical issues for sites undergoing remedial actions. The one-year, $2 million limitations on removals and the limited number of alternatives usually reviewed make further expense on a technical advisor less beneficial than it might be for a long-term remedial action. As for placing the removal site evaluation and EE/CA in the administrative record, EPA agrees that generally such documents would be part of the administrative record for the removal action.

Finally, EPA is making a minor change to the language of § 300.820(a)(4). EPA is substituting the term "decision document" in place of action memorandum to allow for situations where the agency's decision document for a removal action is not named an action memorandum.

Final rule: 1. The second sentences of §§ 300.815(b), 300.820(a)(2) and 300.820(b)(2) are revised to reflect the new language on responding to comments as follows: "The lead agency is encouraged to consider and respond, as appropriate, to significant comments that were submitted prior to the public comment period."

2. In § 300.820(a)(4), the term "decision document" is substituted for "action memorandum."

3. The remainder of § 300.820(a) is promulgated as proposed.

Name: Section 300.820(b), Administrative record file for a removal action—time-critical and emergency.

Proposed rule: Section 300.820(b) outlines steps for public participation and administrative record availability for time-critical and emergency removal responses (53 FR 51516): "Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity," at which point notification of the availability of the record must be published. The lead agency then, as appropriate, will provide a public comment period of not less than 30 days on the selection of the response action.

Response to comments: Several comments suggested that public comment requirements under § 300.820(b) were unnecessary and burdensome, especially the requirement to publish a notice of the availability of the record. One comment argued that requiring public notification of both record availability and of a site's inclusion on the NPL was unnecessary and duplicative. Another comment stated that the requirements for public notification and public comment are not appropriate for all time-critical removal actions, and recommended that the administrative record be available for review only for those time-critical removal actions that do require public notice and comment. A related comment stated that the requirement to publish a notice of availability of the administrative record for all time-critical removal actions be eliminated in favor of making the record available but not requiring an advertisement or comment period, since some time-critical removal actions are completed before a public comment period could be held. Others asked that the public comment period become mandatory, or at least mandatory for removal activities not already completed at the time the record is made available. Another comment requested that the record become available sooner—at least 30 days after initiation of on-site removal activity—because the current 60-day period prevented the consideration of any pre-work comments. A second comment supported the 60-day period. Finally, a commenter argued that it made little sense to make the record available after 60 days for an emergency response because the on-scene coordinator (OSC) report containing most of the response information isn't required to be completed until one year following the response action.

In general, the public participation requirements under § 300.820(b) are designed to preserve both the flexibility and discretion required by the lead agency in time-critical removal action situations as well as EPA's commitment to encouraging public participation and to keeping an affected community well-informed. EPA believes the notification and comment periods required in § 300.820(b) provide for both Agency flexibility and meaningful public involvement. The regulatory language stating that "The lead agency shall, as appropriate, provide a public comment period of not less than 30 days" provides the lead agency needed flexibility when the emergency nature of circumstances makes holding a comment period infeasible.

While EPA believes that it is necessary to announce the availability of the administrative record for time-critical and emergency removal actions as well as non-time-critical actions, EPA believes that requiring establishment of the administrative record and publishing a notice of its availability 30 days after initiating a removal action in all cases, instead of "no later than 60 days after initiating a removal action," as proposed, would be somewhat premature. It has been EPA's experience that it often takes 60 days to stabilize a site (i.e., those activities that help to reduce, retard or prevent the spread of a hazardous substance release and help to eliminate an immediate threat). EPA believes that the overriding task of emergency response teams during this critical period must be the undertaking of necessary stabilization, rather than administrative duties. Compiling and advertising the record before a site has become stabilized would divert emergency response teams from devoting their full attention to a response. EPA believes that such administrative procedures are better left for after site stabilization.

Public notice requirements for announcing the availability of the administrative record and for a site's inclusion on the NPL are not duplicative,

but notify the public of two very different decisions. Removal actions do not always take place at sites on the NPL, therefore, the notice requirements are obviously not duplicative for these removal actions. For remedial sites that are on the NPL, the administrative record need not be established for some time after listing on the NPL, so publishing a notice of the availability of the record would be essential to make the affected public cognizant of site progress and their opportunity for review of documents included in the record.

Lastly, the procedures specified in § 300.820(b) are applicable to an emergency removal that starts and finishes within 60 days. However, as provided in § 300.820(b)(2), a comment period is held only where the lead agency deems it appropriate. But because the administrative record is an avenue for public information as well as for public comment, EPA also believes that even if the action is completed before the record file is made available, it is still appropriate to make the record available to the public. There is also no inherent contradiction in the OSC report being available one year after completion of the response action while the administrative record becomes available 60 days after initiation of on-site activities. Since the OSC report is a summary of the site events and is not a document which is considered in the selection of response action, it is not generally included in the administrative record.

Final rule: EPA is promulgating § 300.820(b) as proposed, except that:

1. The second sentence of § 300.820(b)(2) is revised on responding to public comments as described above.

2. Section 300.820(b)(3) is revised consistent with § 300.820(a)(4); the term "action memorandum" is changed to "decision document."

Name: Section 300.825, Record requirements after decision document is signed.

Proposed rule: Section 300.825 describes situations where documents may be added to the administrative record after the decision document is signed. Documents may be added to a record in the following circumstances: When the document addresses a portion of the decision which the decision document does not address or reserves for later; when the response action changes and an explanation of significant differences or an amended decision document is issued; when the agency holds additional public comment periods after the decision is signed; and when the agency receives comments containing "significant information not contained elsewhere in the record which could not have been submitted during the public comment period which substantially support the need to significantly alter the response action" (53 FR 51518). In addition, subpart E of the proposed NCP discusses ROD amendments and Explanations of Significant Differences. Explanations of Significant Differences may be used for significant changes which do not fundamentally change the remedy, and do not require public comment. ROD amendments must be used for fundamental changes, and require a public comment period.

Response to comments: One commenter asked that subpart I reflect the factors consistently applied by courts when determining whether the record should be supplemented, including such criteria as Agency reliance on factors not included in the record, an incomplete record, and strong evidence that EPA engaged in improper behavior or acted in bad faith. A related comment stated that since general principles of administrative law apply to administrative record restrictions and supplementing the record, language limiting supplementing the record should be deleted from the NCP. EPA believes that including specific tenets of administrative law governing supplementing of the record in the NCP itself is unnecessary. These tenets apply to record review of response actions whether or not they are included in the NCP. The requirements of § 300.825(c) do not supplant principles on supplementing administrative records.

Another comment recommended that EPA permit the record to be supplemented with any issue contested by a PRP, while granting an objective third party the ability to accept or reject record supplements. EPA already requires that any documents concerning remedy selection submitted by PRPs within the public comment period be included in the record. All significant evidence submitted after the decision document is complete is already included in the record, so long as it meets the requirements of § 300.825(c), is not included elsewhere in the record, could not have been submitted during the public comment period, and supports the need to significantly alter the response action. EPA believes these criteria are reasonable and do not require the use of a third-party arbitrator.

One comment stated that all PRP submissions must be placed in the record in order to protect a party's due-process right to be heard. EPA disagrees that all PRP submissions to the lead agency must be placed in the record in order to protect the party's due process rights. The process provided in the rules—including the notice of availability of the proposed plan and the administrative record for review, the availability of all documents underlying the response selection decision for review throughout the decision-making process, the opportunity to comment on the proposed plan and all documents in the administrative record file, the requirement that the lead agency consider and respond to all significant PRP comments raised during the comment period, the notice of significant changes to the response selection, and the opportunity to submit, and requirement that the lead agency consider, any new significant information that may substantially support the need to significantly alter the response selection even after the selection decision—is sufficient to satisfy due process. Moreover, the opportunity provided for PRP and public involvement in response selection exceeds the minimum public participation requirements set forth by the statute. Placing a reasonable limit on the length of time in which comments must be submitted, and providing for case-by-case acceptance of late comments through § 300.825(c), does not infringe upon procedural rights of PRPs.

One commenter asked that the permissive "may" in § 300.825(a) be changed so there is no lead-agency discretion over whether to add to the administrative record documents submitted after the remedy selection, and stated that additional public comment periods as outlined in § 300.825(b) should not be only at EPA's option. A related comment stated that the multiple qualifiers in § 300.825(c), including the phrases "substantially support the need" and "significantly alter the response action" (53 FR 51518), grant EPA overly broad discretionary powers over what documents may be added to the record. The commenter suggests deleting the word "substantially," as well as stating that all comments, even those disregarded by EPA, should be included in the record for the purpose of judicial review. EPA disagrees that the word "may" in either § 300.825(a) or § 300.825(b) is too permissive. Section 300.825(b) of the proposal was simply intended to clarify the lead agency's implicit authority to hold additional public comment periods, in addition to those required under subpart E for ROD amendments, whenever the lead agency decides it would be appropriate. Because these additional comment periods are not

required by statute or regulation, the "permissive" language simply reflects the lead agency's discretion with respect to these additional public involvement opportunities. Similarly, lead-agency discretion to add to the administrative record documents submitted after a decision document has been signed provides the lead agency the option to go beyond the minimum requirements for public participation outlined in the statute. In response to requests to delete the qualifiers in § 300.825(c), this language is intentionally designed to define carefully the circumstances in which EPA must consider comments submitted after the response action has been selected. This standard recognizes CERCLA's mandate to proceed expeditiously to implement selected response actions, but also recognizes that there will be certain instances in which significant new information warrants reconsideration of the selected response action. Section 300.825(c) is intended to provide a reasonable limit on what comments EPA must review or consider after a decision has been made.

Several commenters requested that PRPs not identified until after the close of the public comment period should be allowed an opportunity to comment on the record within 60 days of EPA's notification of potential liability. EPA makes significant efforts to involve PRPs as early in the process as possible. When PRPs are identified late in the process, they may provide EPA with comments at that time. EPA will consider comments which are submitted after the decision document is signed in accordance with the criteria of § 300.825(c). This is true no matter when the PRP is identified in the process. EPA believes that the current rule is sufficient for granting these late-identified PRPs the opportunity for submitting late comments for the record.

One commenter stated that new information that confirms or substantiates prior public comment should be made part of the record, even after a ROD is signed. EPA is not required by statute or regulation to consider these comments, although a lead agency may, and frequently does, consider post-ROD comments it considers to be significant—in which case both the comment and the lead agency's response are part of the record.

Finally, EPA is making a minor change to § 300.825(b) on additional public comment periods to clarify that, in addition to comments and responses to comments, documents supporting the request for an additional comment period, and any decision documents would be placed in the administrative record file. Although this is what EPA intended in the proposal, a clarification is necessary to ensure consistency.

Final rule: EPA is promulgating § 300.825 as proposed except for an addition to the last sentence of section (b) as follows: "All additional comments submitted during such comment periods that are responsive to the request, and any response to these comments, along with documents supporting the request and any final decision with respect to the issue, shall be placed in the administrative record file."

Subpart J—Use of Dispersants and Other Chemicals

The following sections discuss comments received on subpart J and EPA's responses.

Name: Sections 300.900–300.920. General.

Existing rule: Section 300.81 described the purpose and applicability of existing subpart H (now subpart J), and § 300.82 defines the key terms used in the regulation. Section 300.83 provides that EPA shall maintain a schedule of dispersants and other chemical or biological products that may be authorized for use on oil discharges called the "NCP Product Schedule."

Section 300.84 sets forth the procedures by which an OSC may authorize the use of products listed on the NCP Product Schedule. The section provides that an OSC, with concurrence of the EPA representative to the RRT and the concurrence of the state(s) with jurisdiction over the navigable waters (as defined by the CWA) polluted by the oil discharge, may authorize the use of dispersants, surface collecting agents, and biological additives listed on the NCP Product Schedule.

This section also provides that if the OSC determines that the use of a dispersant, surface collecting agent, or biological additive is necessary to prevent or substantially reduce a hazard to human life, and there is insufficient time to obtain the needed concurrences, the OSC may unilaterally authorize the use of any product, including a product not on the NCP Product Schedule. In such instances, the OSC must inform the EPA RRT representative and the affected states of the use of a product as soon as possible and must obtain their concurrence for the continued use of the product once the threat to human life has subsided. This provision eliminates delays in potentially life-threatening situations, such as spills of highly flammable petroleum products in harbors or near inhabited areas. Although they will not be listed on the Schedule, this section also provides for authorization of the use of burning agents on a case-by-case basis. The use of sinking agents is prohibited.

Section 300.84 explicitly encourages advance planning for the use of dispersants and other chemicals. The OSC is authorized to approve the use of dispersants and other chemicals without the concurrence of the EPA representative to the RRT and the affected states if these parties have previously approved a plan identifying the products that may be used and the particular circumstances under which their use is preauthorized.

Section 300.85 details the data that must be submitted before a dispersant, surface collecting agent, or biological additive may be placed on the NCP Product Schedule. Section 300.86 describes the procedures for placing a product on the Product Schedule and also sets forth requirements designed to avoid possible misrepresentation or misinterpretation of the meaning of the placement of a product on the Schedule, including the wording of a disclaimer to be used in product advertisements or technical literature referring to placement on the Product Schedule.

Appendix C details the methods and types of apparatus to be used in carrying out the revised standard dispersant effectiveness and aquatic toxicity tests. Appendix C also sets forth the format required for summary presentation of product test data.

Proposed rule: Proposed subpart J is very similar to subpart H and contains only minor revisions. Section numbers and references to other sections and subparts have been changed where appropriate. Technical changes and minor wording changes to improve clarity have also been made.

Definitions formerly presented in subpart H have been moved to subpart A, and a new definition has been added for miscellaneous oil spill control agents. Accordingly, a list of data requirements for miscellaneous spill control agents is proposed to be added to § 300.915. The definition for navigable waters is as defined in 40 CFR 110.1.

Section 300.910, which addressed "Authorization of use," was modified slightly in the proposed regulation to emphasize the importance of obtaining concurrence for the use of dispersants and other chemicals from the appropriate state representatives to the Regional Response Team (RRT) and the DOC/DOI natural resource trustees "as appropriate."

Response to comments:—1. *Involvement of DOC/DOI trustees.* Many commenters opposed the inclusion of the DOC/DOI trustees in

Subpart I—Administrative Record for Selection of Response Action

§ 300.800 Establishment of an administrative record.

(a) *General requirement.* The lead agency shall establish an administrative record that contains the documents that form the basis for the selection of a response action. The lead agency shall compile and maintain the administrative record in accordance with this subpart.

(b) *Administrative records for federal facilities.* (1) If a federal agency other than EPA is the lead agency for a federal facility, the federal agency shall compile and maintain the administrative record for the selection of the response action for that facility in accordance with this subpart. EPA may furnish documents which the federal agency shall place in the administrative record file to ensure that the administrative record includes all documents that form the basis for the selection of the response action.

(2) EPA or the U.S. Coast Guard shall compile and maintain the administrative record when it is the lead agency for a federal facility.

(3) If EPA is involved in the selection of the response action at a federal facility on the NPL, the federal agency acting as the lead agency shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(c) *Administrative record for state-lead sites.* If a state is the lead agency for a site, the state shall compile and maintain the administrative record for the selection of the response action for that site in accordance with this subpart. EPA may require the state to place additional documents in the administrative record file to ensure that the administrative record includes all documents which form the basis for the selection of the response action. The state shall provide EPA with a copy of the index of documents included in the administrative record file, the RI/FS workplan, the RI/FS released for public comment, the proposed plan, any public comments received on the RI/FS and proposed plan, and any other documents EPA may request on a case-by-case basis.

(d) *Applicability.* This subpart applies to all response actions taken under section 104 of CERCLA or sought, secured, or ordered administratively or judicially under section 106 of CERCLA, as follows:

(1) Remedial actions where the remedial investigation commenced after the promulgation of these regulations; and

(2) Removal actions where the action memorandum is signed after the promulgation of these regulations.

(e) For those response actions not included in paragraph (d) of this section, the lead agency shall comply with this subpart to the extent practicable.

§ 300.805 Location of the administrative record file.

(a) The lead agency shall establish a docket at an office of the lead agency or other central location at which documents included in the administrative record file shall be located and a copy of the documents included in the administrative record file shall also be made available for public inspection at or near the site at issue, except as provided below:

(1) Sampling and testing data, quality control and quality assurance documentation, and chain of custody forms, need not be located at or near the site at issue or at the central location, provided that the index to the administrative record file indicates the location and availability of this information.

(2) Guidance documents not generated specifically for the site at issue need not be located at or near the site at issue, provided that they are maintained at the central location and the index to the administrative record file indicates the location and availability of these guidance documents.

(3) Publicly available technical literature not generated for the site at issue, such as engineering textbooks, articles from technical journals, and toxicological profiles, need not be located at or near the site at issue or at the central location, provided that the literature is listed in the index to the administrative record file or the literature is cited in a document in the record.

(4) Documents included in the confidential portion of the administrative record file shall be located only in the central location.

(5) The administrative record for a removal action where the release or threat of release requires that on-site removal activities be initiated within hours of the lead agency's determination that a removal is appropriate and on-site removal activities cease within 30 days of initiation, need be available for public inspection only at the central location.

(b) Where documents are placed in the central location but not in the file located at or near the site, such documents shall be added to the file located at or near the site upon request, except for documents included in paragraph (a)(4) of this section.

(c) The lead agency may make the administrative record file available to the public in microform.

§ 300.810 Contents of the administrative record file.

(a) *Contents.* The administrative record file for selection of a response action typically, but not in all cases, will contain the following types of documents:

(1) Documents containing factual information, data and analysis of the factual information, and data that may form a basis for the selection of a response action. Such documents may include verified sampling data, quality control and quality assurance documentation, chain of custody forms, site inspection reports, preliminary assessment and site evaluation reports, ATSDR health assessments, documents supporting the lead agency's determination of imminent and substantial endangerment, public health evaluations, and technical and engineering evaluations. In addition, for remedial actions, such documents may include approved workplans for the remedial investigation/feasibility study, state documentation of applicable or relevant and appropriate requirements, and the RI/FS;

(2) Guidance documents, technical literature, and site-specific policy memoranda that may form a basis for the selection of the response action. Such documents may include guidance on conducting remedial investigations and feasibility studies, guidance on determining applicable or relevant and appropriate requirements, guidance on risk/exposure assessments, engineering handbooks, articles from technical journals, memoranda on the application of a specific regulation to a site, and memoranda on off-site disposal capacity;

(3) Documents received, published, or made available to the public under § 300.815 for remedial actions, or § 300.820 for removal actions. Such documents may include notice of availability of the administrative record file, community relations plan, proposed plan for remedial action, notices of public comment periods, public comments and information received by the lead agency, and responses to significant comments;

(4) Decision documents. Such documents may include action memoranda and records of decision;

(5) Enforcement orders. Such documents may include administrative orders and consent decrees; and

(6) An index of the documents included in the administrative record file. If documents are customarily grouped together, as with sampling data chain of custody documents, they may be listed as a group in the index to the administrative record file.

(b) *Documents not included in the administrative record file.* The lead agency is not required to include documents in the administrative record file which do not form a basis for the selection of the response action. Such documents include but are not limited to draft documents, internal memoranda, and day-to-day notes of staff unless such documents contain information that forms the basis of selection of the response action and the information is not included in any other document in the administrative record file.

(c) *Privileged documents.* Privileged documents shall not be included in the record file except as provided in paragraph (d) of this section or where such privilege is waived. Privileged documents include but are not limited to documents subject to the attorney-client, attorney work product, deliberative process, or other applicable privilege.

(d) *Confidential file.* If information which forms the basis for the selection of a response action is included only in a document containing confidential or privileged information and is not otherwise available to the public, the information, to the extent feasible, shall be summarized in such a way as to make it disclosable and the summary shall be placed in the publicly available portion of the administrative record file. The confidential or privileged document itself shall be placed in the confidential portion of the administrative record file. If information, such as confidential business information, cannot be summarized in a disclosable manner, the information shall be placed only in the confidential portion of the administrative record file. All documents contained in the confidential portion of the administrative record file shall be listed in the index to the file.

§ 300.815 Administrative record file for a remedial action.

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the administrative record file.

(b) The lead agency shall provide a public comment period as specified in § 300.430(f)(3) so that interested persons may submit comments on the selection of the remedial action for inclusion in the administrative record file. The lead agency is encouraged to consider and respond as appropriate to significant comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(c) The lead agency shall comply with the public participation procedures required in § 300.430(f)(3) and shall document such compliance in the administrative record.

(d) Documents generated or received after the record of decision is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.820 Administrative record file for a removal action.

(a) If, based on the site evaluation, the lead agency determines that a removal action is appropriate and that a planning period of at least six months exists before on-site removal activities must be initiated:

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost

analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of the availability of the administrative record file.

(2) The lead agency shall provide a public comment period as specified in § 300.415 so that interested persons may submit comments on the selection of the removal action for inclusion in the administrative record file. The lead agency is encouraged to consider and respond, as appropriate, to significant comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) The lead agency shall comply with the public participation procedures of § 300.415(m) and shall document compliance with § 300.415(m)(3)(i) through (iii) in the administrative record file.

(4) Documents generated or received after the decision document is signed shall be added to the administrative record file only as provided in § 300.825.

(b) For all removal actions not included in paragraph (a) of this section:

(1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice of availability of the administrative record file.

(2) The lead agency shall, as appropriate, provide a public comment period of not less than 30 days beginning at the time the administrative record file is made available to the public. The lead agency is encouraged to consider and respond, as appropriate, to significant comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.

(3) Documents generated or received after the decision document is signed shall be added to the administrative record file only as provided in § 300.825.

§ 300.825 Record requirements after the decision document is signed.

(a) The lead agency may add documents to the administrative record file after the decision document selecting the response action has been signed if:

(1) The documents concern a portion of a response action decision that the decision document does not address or reserves to be decided at a later date; or

(2) An explanation of significant differences required by § 300.435(c), or an amended decision document is issued, in which case, the explanation of significant differences or amended decision document and all documents that form the basis for the decision to modify the response action shall be added to the administrative record file.

(b) The lead agency may hold additional public comment periods or extend the time for the submission of public comment after a decision document has been signed on any issues concerning selection of the response action. Such comment shall be limited to the issues for which the lead agency has requested additional comment. All additional comments submitted during such comment periods that are responsive to the request, and any response to these comments, along with documents supporting the request and any final decision with respect to the issue, shall be placed in the administrative record file.

(c) The lead agency is required to consider comments submitted by interested persons after the close of the public comment period only to the extent that the comments contain significant information not contained elsewhere in the administrative record file which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action. All such comments and any responses thereto shall be placed in the administrative record file.

Subpart J—Use of Dispersants and Other Chemicals

§ 300.900 General.

(a) Section 311(c)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants and other chemicals, if any, that may be used in carrying out the NCP. This subpart makes provisions for such a schedule.

(b) This subpart applies to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976.

(c) This subpart applies to the use of any chemical agents or other additives as defined in subpart A of this part that may be used to remove or control oil discharges.

§ 300.905 NCP Product Schedule.

(a) *Oil Discharges.* (1) EPA shall maintain a schedule of dispersants and other chemical or biological products that may be authorized for use on oil discharges in accordance with the procedures set forth in § 300.910. This schedule, called the NCP Product Schedule, may be obtained from the Emergency Response Division (OS-210), U.S. Environmental Protection Agency, Washington, DC 20460. The telephone number is 1-202-382-2190.

(2) Products may be added to the NCP Product Schedule by the process specified in § 300.920.

(b) *Hazardous Substance Releases* [Reserved].

§ 300.910 Authorization of use.

(a) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents on the oil discharge, provided that the dispersants, surface collecting agents, biological additives, or miscellaneous oil spill control agents are listed on the NCP Product Schedule.

(b) The OSC, with the concurrence of the EPA representative to the RRT and, as appropriate, the concurrence of the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, and in consultation with the DOC and DOI natural resource trustees, when practicable, may authorize the use of burning agents on a case-by-case basis.

(c) The OSC may authorize the use of any dispersant, surface collecting agent, other chemical agent, burning agent, biological additive, or miscellaneous oil spill control agent, including products not listed on the NCP Product Schedule, without obtaining the concurrence of the EPA representative to the RRT, the RRT representatives from the states with jurisdiction over the navigable waters threatened by the release or discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. The OSC is to inform the