



APPENDIX A

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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 *DRC*
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

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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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). 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

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

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:

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

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

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

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 FRPs, 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

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

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:

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

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

- o 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:

- o Document Number;
- o Document Date - date on the document;
- o 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);

- o Author - Name and affiliation;
- o Recipient - Name and affiliation; and
- o 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." 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).⁵

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

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. 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

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. 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 Data⁹

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 Forms¹⁰

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.

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 Documents¹¹

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 Documents¹²

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 Literature¹³

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.

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

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. 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).¹⁵ In addition, the notice of availability should be sent to persons on the community relations mailing list, including all known FRPs.

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

- o 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;
- o 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;
- o 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;
- o Mail the notice or copy of the notice to all FRPs on the community relations mailing list;
- o Provide a formal comment period of not less than 30 calendar days for submission of comments on the proposed plan. Upon

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." [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.];

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

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

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 FRPs 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 their 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 FRPs if they are not already on the community relations mailing list. As FRPs 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 FRPs. 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.

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:

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

²³ 40 C.F.R. §300.415(m)(4)(ii).

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:

- o Date of visit;
- o Name;
- o Affiliation;
- o Address;
- o Phone number;
- o Site documents viewed; and
- o 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 FRP-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.

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

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 admissible 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:

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

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

- o Preliminary Assessment (PA) report;
- o Site Investigation (SI) report;
- o Remedial Investigation/Feasibility Study (RI/FS) work plan;
- o Amendments to the final work plan;
- o Sampling and Analysis Plan (SAP): consisting of a quality assurance project plan (QAPP) and a field sampling plan;
- o 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);
- o Chain of custody forms;
- o Inspection reports;
- o Data summary sheets;
- o Technical studies performed for the site (e.g., a groundwater study);
- o Risk evaluation/endangerment assessment and underlying documentation (see section III.C. at page 29);
- o 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);
- o RI/FS (as available for public comment and as final, if different); and

- o Data submitted by the public, including PRPs.

Policy and Guidance

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

- o Community relations plan;
- o Newspaper articles showing general community awareness;
- o Proposed plan;
- o Documents sent to persons on the community relations mailing list and associated date when such document was sent;
- o 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;
- o The community relations mailing list (including all known PRPs);²⁸
- o Documentation of informal public meetings: information generated or received during meetings with the public and

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;

- o Public comments: complete text of all written comments submitted (see also section III.D. at page 30);
- o 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;
- o Responses to significant comments: responses to significant comments received from the public concerning the selection of a remedial action; and
- o 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)

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

Other Information

- o Index (see section II.D. at page 7);
- o 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);

- o 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
- o 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

- o Record of decision (ROD): remedial action decision document (including responsiveness summary);
- o Explanations of significant differences (under Section 117(c)) and underlying information; and
- o 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:

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

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

Factual Information/Data

- o Preliminary assessment (PA) report;
- o Site evaluation (SI) report;
- o EE/CA (for a non-time-critical removal action);
- o Sampling plan;
- o 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);
- o Chain of custody forms;
- o Inspection reports;
- o Technical studies performed for the site (e.g., a ground water study);
- o Risk evaluation/endangerment assessment and underlying documentation; and
- o Data submitted by the public, including PRPs.

Policy and Guidance

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

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

- o 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;
- o The community relations mailing list (including all known PRPs);³⁰
- o 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;
- o Public comments: complete text of all written comments submitted (see section III.D. at page 30);
- o Responses to significant comments: responses to significant comments received from the public concerning the selection of a removal action; and
- o 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)

- o Administrative orders;
- o Consent decrees;
- o Affidavits containing relevant factual information not contained elsewhere in the record file;
- o Notice letters to PRPs;

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.

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

Other Information

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

Decision Documents

- o EE/CA Approval Memorandum;
- o Action Memorandum;
- o Amended Action Memorandum; and
- o 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

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

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.

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

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

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.²⁴ 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 personal, 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

²⁴ 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

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.¹⁴ 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

¹⁴ 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 FRA 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:

- o 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;
- o 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

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;

- o 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

- o 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

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

- o 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

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

⁴¹ 40 C.F.R. §300.825(c).

⁴² 40 C.F.R. §300.825(b).

⁴³ See also Section 121(f) of CERCLA

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

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 #) and CERCLA requirements in compiling and maintaining the record, including the minimum public participation requirements in Sections 113 and 117 of CERCLA.⁴⁵

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.

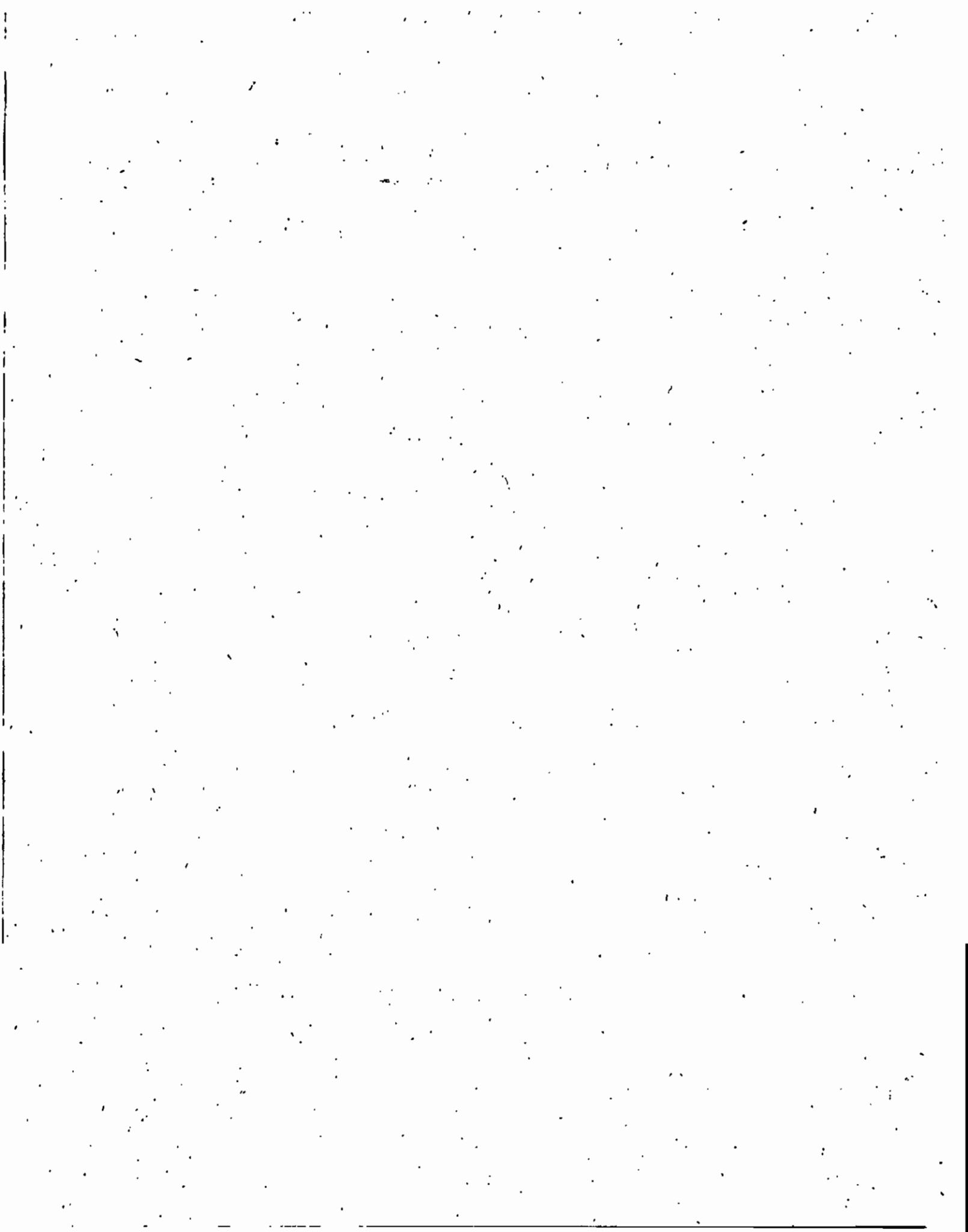
SARA: Superfund Amendments and Reauthorization Act of 1986 (see CERCLA above).

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.

SECTION 117 (K) OF CERCLA

(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) EXISTING 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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- 1.4 Site Investigation (SI) Report
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- 2.3 EE/CA Approval Memorandum (for non-time-critical removals)
- 2.4 EE/CA
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- 11.1 EPA Headquarters Guidance
- 11.2 EPA Regional Guidance
- 11.3 State Guidance

11.4 Technical Sources

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial reporting.

2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It highlights the need for a systematic approach to data collection and the importance of using reliable sources of information.

3. The third part of the document focuses on the analysis and interpretation of the collected data. It discusses the various statistical and analytical tools that can be used to identify trends, patterns, and relationships within the data.

4. The fourth part of the document discusses the importance of communicating the results of the analysis to the relevant stakeholders. It emphasizes the need for clear and concise reporting that provides a comprehensive overview of the findings and their implications.

5. The fifth part of the document discusses the various challenges and limitations associated with data collection and analysis. It highlights the need for a thorough understanding of the data and the importance of using appropriate methods and techniques to overcome these challenges.

6. The sixth part of the document discusses the various applications and uses of the collected data. It highlights the importance of using the data to inform decision-making and to identify areas for improvement and optimization.

7. The seventh part of the document discusses the various ethical considerations and privacy concerns associated with data collection and analysis. It emphasizes the need for a strong ethical framework and the importance of protecting the privacy and confidentiality of the data.

8. The eighth part of the document discusses the various legal and regulatory requirements that apply to data collection and analysis. It highlights the importance of staying up-to-date on the latest regulations and ensuring that all data collection and analysis activities are conducted in compliance with the law.

9. The ninth part of the document discusses the various best practices and recommendations for data collection and analysis. It highlights the importance of using a systematic and consistent approach to data collection and analysis and the importance of using reliable and valid data sources.

10. The tenth part of the document discusses the various future trends and developments in data collection and analysis. It highlights the importance of staying up-to-date on the latest technologies and techniques and the importance of using data to drive innovation and growth.

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.

09/09/67

Administrative Record - Category Number Order
LOVE CANAL

Page: 185

Document Number: LDV-001-1075 To 1089

Date: 02/07/66

Title: Additional Sampling of the Black, Bergholtz & Cayuga Creeks and Extended Sewer Inspection
Project - Summary

Type: PLAN
Category: 11.4.0 Public Meeting Transcripts
Author: none: NY Dept of Environmental Conservation
Recipient: Garbarini, Douglas: US EPA

Document Number: LDV-001-1069 To 1075

Date: 11/13/65

Title: (Status report of Love Canal Remedial Program for public meeting held on 11/13/65)

Type: GRAPHIC
Category: 11.4.0 Public Meeting Transcripts
Author: Bobersky, Guy T: NY Dept of Environmental Conservation
Recipient: none: none

Document Number: LDV-001-0010 To 0016

Date: 06/12/67

Title: (Love Canal Feasibility Study workshop, schedule of days e-meets and attendance sheets)

Type: CORRESPONDENCE
Category: 11.4.2 Public Meeting Transcripts
Conditions: INCOMPLETE
Author: none: none
none: none

Document Number: LDV-001-0010 To 0000

Date: 06/25/67

Title: (Presentation of Proposed Plan for Love Canal)

Type: GRAPHIC
Category: 11.4.0 Public Meeting Transcripts
Conditions: INCOMPLETE
Author: none: none
Recipient: none: none

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 by 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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- (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 also at 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
ARARs¹	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.

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.

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

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<u>Category - Subcategory</u>	<u>Number Series</u>	<u>Page</u>
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	2
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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Doc No	Vol	Title, ID Number	Date	Authors	Super No.	Pages
0000	1	INDEX TO COMPENDIUM OF CERCLA RESPONSE SELECTION GUIDANCE DOCUMENTS	05/01/89	OMPE PRC-ENVIRONMENTAL MANAGEMENT, INC.	8	
**** Pre-Remedial						
0001	1	EXPANDED SITE INSPECTION (ESI) TRANSITIONAL GUIDANCE FOR FY-88; OSWER #9345.1-02	10/01/87	OERR	74	
0002	1	PRELIMINARY ASSESSMENT (PA) GUIDANCE FISCAL YEAR 1988; OSWER #9345.0-01	01/01/88	OERR/HSCD	83	
**** Removal Action						
1000	1	CERCLA REMOVAL ACTIONS AT METHANE RELEASE SITES; OSWER #9360.0-8	01/23/86	LONGEST, M.L./OERR	2	
1001	1	COSTS OF REMEDIAL RESPONSE ACTIONS AT UNCONTROLLED HAZARDOUS WASTE SITES	01/01/81	RISHEL, M.L., ET.AL./SCS ENGINEERS ALBRECHT, O.W./NERL	164	
1002	1	EMERGENCY RESPONSE PROCEDURES FOR CONTROL OF HAZARDOUS SUBSTANCE RELEASES; EPA-600/D-84-023	01/01/83	MELVOLD, R.W./ROCKWELL INTERNATIONAL MCCARTHY,	23	
1003	1	ENVIRONMENTAL REVIEW REQUIREMENTS FOR REMOVAL ACTIONS; OSWER #9318.0-05	04/13/87	OERR/ERD	6	
1004	1	GUIDANCE ON IMPLEMENTATION OF THE "CONTRIBUTE TO EFFICIENT REMEDIAL PERFORMANCE" PROVISION; OSWER #9360.0-13	04/06/87	OSLER	6	
1005	1	INFORMATION ON DRINKING WATER ACTION LEVELS	04/19/88	FIELDS, JR., T./OSWER/ERD	17	

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Doc No	Vol	Title/IS Number	Date	Authors	Super No.	Pages
1006	1	SUPERFUND REMOVAL PROCEDURES, REVISION #3; OSWER #9360.0-03b	02/01/88	OSWER/OERR		365
1007	1	THE ROLE OF EXPEDITED RESPONSE ACTIONS (EPA) UNDER SARA; OSWER #9360.0-15	04/21/87	LONGEST, N.L./OERR		3
1008	2	GUIDANCE ON NON-NPL REMOVAL ACTIONS INVOLVING NATIONALLY SIGNIFICANT OR PRECEDENT SETTING ISSUES; OSWER #9360.0-19	04/03/89	LONGEST, N.L./OERR		9
*** Secondary References ***						
4007	26	INTERIM FINAL GUIDANCE ON REMOVAL ACTION LEVELS AT CONTAMINATED DRINKING WATER SITES; OSWER #9360.1-01	10/06/87	OSWER/OERR		9
6001	32	REMOVAL COST MANAGEMENT MANUAL; OSWER #9360.0-02b	04/01/88	OSWER/OERR		170
*** RI/FS - General						
2000	2	CASE STUDIES 1-23: REMEDIAL RESPONSE AT HAZARDOUS WASTE SITES; EPA 540/2-84/002b	03/01/84	ORD/OEET/NERL OSWER/OERR		830
2001	3	EPA GUIDE FOR MINIMIZING ADVERSE ENVIRONMENTAL EFFECTS OF CLEANUP OF UNCONTROLLED HAZARDOUS-WASTE SITES; EPA/600/8-85/008	06/01/85	ENVIRONMENTAL RESEARCH LABORATORY		250
2002	3	GUIDANCE FOR CONDUCTING REMEDIAL INVESTIGATIONS AND FEASIBILITY STUDIES UNDER CERCLA; OSWER #9355.3-01	10/01/88	OSWER/OERR		390

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2003	3	JOINT CORPS/EPA GUIDANCE; OSWER #9295.2-02	06/24/83	OSRR/PAS		42
2004	4	MODELING REMEDIAL ACTIONS AT UNCONTROLLED HAZARDOUS WASTE SITES (VOL. 1-1V); OSWER #9355.0-08	04/01/85	BOJTWELL, S.H., ET AL./ANDERSON-NICHOLS AND CO. OSWER/OERR ANNOV, D.C. AND BOJTWELL, JR., T.O./MWERL		350
2005	4	POLICY ON FLOOD PLAINS AND WETLAND ASSESSMENTS FOR CERCLA ACTIONS; OSWER #9280.0-02	06/01/85	MEDERMAN, JR., V.N./OERR LUCERO, G./OWPE		9
2006	4	REMEDIATION RESPONSE AT HAZARDOUS WASTE SITES: SUPPLEMENT REPORT; EPA 540/2-84/002A	03/01/84	ORO/MWERL		95
2007	4	REVISED PROCEDURES FOR IMPLEMENTING OFF-SITE RESPONSE ACTIONS; OSWER #9034.11	11/13/87	PORTER, J.M./OSWER		20
2008	4	RI/FS IMPROVEMENTS; OSWER #9355.0-20	07/23/87	LONGEST, H.L./OERR		11
2009	4	RI/FS IMPROVEMENTS FOLLOW-UP; OSWER #9355.3-05	04/25/88	LONGEST, H.L./OERR		16
2010	4	SUPERFUND FEDERAL-LEAD REMEDIAL PROJECT MANAGEMENT HANDBOOK (DRAFT); OSWER #9355.1-1	12/01/86	OERR		179
2011	5	SUPERFUND REMEDIAL DESIGN AND REMEDIAL ACTION GUIDANCE; OSWER #9355.0-4A	06/01/86	OERR		100
2012	5	SUPERFUND STATE-LEAD REMEDIAL PROJECT MANAGEMENT HANDBOOK; OSWER #9355.2-1	12/01/86	OERR		120
2013	33	GETTING READY - SCOPING THE RI/FS (QUICK REFERENCE FACT SHEET); OSWER #9355.3-01FS1	11/01/89	OSWER		6

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	**** RI/FS	General				
2014	33	GUIDANCE ON REMEDIAL ACTIONS FOR SUPERFUND SITES WITH PCB CONTAMINATION; OSWER #9355.4-01	08/01/90	OERR		150
2015	33	GUIDE FOR CONDUCTING TREATABILITY STUDIES UNDER CERCLA; INTERIM FINAL;; EPA/540/2-89/058	12/01/89	ORD/OERR		118
2016	33	MODEL STATEMENT OF WORK FOR A REMEDIAL INVESTIGATION AND FEASIBILITY STUDY CONDUCTED BY POTENTIALLY RESPONSIBLE PARTIES; OSWER #9835.8	06/02/89	OMPE		31
2017	33	RI/FS IMPROVEMENTS PHASE II, STREAMLINING RECOMMENDATIONS; OSWER #9355.3-06	01/01/89	OERR/OMPE		50
2018	33	THE FEASIBILITY STUDY - DEVELOPMENT AND SCREENING OF REMEDIAL ACTION ALTERNATIVES (QUICK REFERENCE FACT SHEET); OSWER #9355.3-01F53	11/01/89	OSMER		4
2019	33	THE FEASIBILITY STUDY: DETAILED ANALYSIS OF REMEDIAL ACTION ALTERNATIVES (QUICK REFERENCE FACT SHEET); OSWER #9355.3-01F54	03/01/90	OSMER		4
2020	33	TREATABILITY STUDIES UNDER CERCLA: AN OVERVIEW (QUICK REFERENCE FACT SHEET); OSWER #9380.3-02F5	12/01/89	OSMER		6
*** Secondary References ***						
8001	32	INTERIM GUIDANCE ON POTENTIALLY RESPONSIBLE PARTY PARTICIPATION IN REMEDIAL INVESTIGATIONS AND FEASIBILITY STUDIES; OSWER #9835.1a	05/16/88	PORTER, J.W./OSMER		37
**** RI/FS - RI Data Quality/Site & Waste Assessment						
5. A COMPENDIUM OF SUPERFUND FIELD OPERATIONS PROCEDURES; OSWER #9355.0 14.						
			12/01/87	OERR/ OMPE		550

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2400	23	CRITERIA FOR IDENTIFYING AREAS OF VULNERABLE HYDROGEOLOGY UNDER RCRA: STATUTORY INTERPRETIVE GUIDANCE; OSWER #9472.00-2A	07/01/86	OSWER/OSW		950
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2405	24	OPERATION AND MAINTENANCE INSPECTION GUIDE (RCRA GROUND-WATER MONITORING SYSTEMS); OSWER #9950-3	03/30/88	OSWER/OMPE/RCRA ENFORCEMENT DIVISION		50
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4001	26	GUIDANCE DOCUMENT FOR PROVIDING ALTERNATE WATER SUPPLIES; OSWER #9355.3-03	02/01/88	OERR		64
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1005	1	INFORMATION ON DRINKING WATER ACTION LEVELS	04/19/88	FIELDS, JR., T./OSMER/ERD		17
2301	16	CARBON ABSORPTION ISOTHERMS FOR TOXIC ORGANICS; EPA/600/8-80-023	04/01/80	DOBBS, R.A./MERL COHEN, J.M./MERL		321
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5020	37 EXPOSURE FACTORS HANDBOOK; EPA/600/8-89/043	07/01/89	OWEA		285
5021	37 GUIDANCE FOR SOIL INGESTION RATES; OSWER #9850.4	01/27/89	OSWER		3
5022	37 OPTIONS FOR INTERIM POLICY FOR SOIL INGESTION ASSUMPTIONS	10/04/88	EPA		5
5023	37 RISK ASSESSMENT GUIDANCE FOR SUPERFUND, VOLUME I, HUMAN HEALTH EVALUATION MANUAL, OSWER #9285.7-01a	09/29/89	OERR		290
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5026	37 TOXICOLOGICAL PROFILE FOR 1, 4 - DICHLOROBENZENE	01/01/89	ATSDR		95
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5039	39	TOXICOLOGICAL PROFILE FOR SELECTED PCBs (AROCLOL-1260, -1254, -1248, -1242, -1232, -1221, AND -1016)	06/01/89	ATSDR		135
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2015	33	GUIDE FOR CONDUCTING TREATABILITY STUDIES UNDER CERCLA: INTERIM FINAL; EPA/540/2-89/058	12/01/89	ORD/OERR		118

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2020 33 TREATABILITY STUDIES UNDER CERCLA: AN OVERVIEW
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8000 32 ENDANGERMENT ASSESSMENT GUIDANCE; OSWER #9850.0-1 11/22/85 PORTER, J.V./OSWER 11

**** Cost Analysis

6000 32 REMEDIAL ACTION COSTING PROCEDURES MANUAL 10/01/87 JRB ASSOCIATES/CH2M HILL 56
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6001 32 REMOVAL COST MANAGEMENT MANUAL; OSWER #9360.0-02B 04/01/88 OSWER/OERR 170

*** Secondary References ***

1001 1 COSTS OF REMEDIAL RESPONSE ACTIONS AT UNCONTROLLED HAZARDOUS WASTE SITES 01/01/81 RISHEL, H.L., ET.AL./SCS 164
ENGINEERS ALBRECHT, O.V./NEEL

1003 1 ENVIRONMENTAL REVIEW REQUIREMENTS FOR REMOVAL ACTIONS; OSWER #9318.0-05 04/13/87 OERR/ERD 6

**** Community Relations

7000 32 COMMUNITY RELATIONS IN SUPERFUND: A HANDBOOK (INTERIM VERSION); OSWER #9230.0-039 06/01/88 OERR 188

**** Enforcement

8000 32 ENDANGERMENT ASSESSMENT GUIDANCE; OSWER #9850.0-1 11/22/85 PORTER, J.V./OSWER 11

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2016	33	MODEL STATEMENT OF WORK FOR A REMEDIAL INVESTIGATION AND FEASIBILITY STUDY CONDUCTED BY POTENTIALLY RESPONSIBLE PARTIES; OSWER #9035.8	06/02/89	OSPE		31
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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 entry.
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/EPA Number	EPA report or OSWER Directive System numbers, where applicable.

LIST OF ORGANIZATIONAL ABBREVIATIONS AND ACRONYMS IDENTIFIED I

<u>Organization</u>	<u>Acronym</u>
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

**List of Documents Known to Have Been Improperly Omitted
from the Administrative Record for
the Tri-County Public Airport**

- 1 • KDHE's 1989 Buried Tank Leak Assessment of the Latimer AgriServices grain elevator that reported TCE in the groundwater near the Site.
- 2 • EPA's 1997 Removal Evaluation reporting results from sampling of private groundwater wells near the Site.
- 3 • RAC's October 14, 1999 Supplemental Response to EPA's October 15, 1997 CERCLA § 104(e) Information Request to RAC.
- 4 • Letter dated March 1, 2000, from David Hoefer, EPA Regional Counsel, to Ann Wright, counsel for USACE, requesting information regarding USACE's investigation of the Army's use of TCE during WWII.
- 5 • EPA's Second CERCLA § 104(e) Information Request to USACE dated March 20, 2004.
- 6 • USACE's June 8, 2000 response to EPA's Second CERCLA § 104(e) Information Request.
- 7 • Letter dated August 2, 2000, from Cheryle Micinski, EPA's Deputy Regional Counsel, to Mary Edgar, Assistant Chief Environmental Defense Section, U.S. Department of Justice which details USACE's failure to adequately respond to EPA's CERCLA § 104(e) Information Requests.
- 8 • ATSDR's draft Public Health Assessment for Tri-County Public Airport, Delvan, Morris County, Kansas, EPA Facility ID: KS0001402320, March 12, 2002.
- 9 • Comments regarding the draft Public Health Assessment for the TCPA submitted by Dave Way, RAC's Consultant, on April 29, 2002.
- 10 • Letter dated June 10, 2002 from Erika Bessy, counsel for KDHE, to Steve Persons, RAC forwarding a draft Consent Order for removal actions at the Site.
- 11 • Letter dated July 19, 2002 from RAC counsel to Erika Bessy, counsel for KDHE, confirming discussions between RAC and KDHE regarding Draft Removal Administrative Order on Consent.
- 12 • Letter dated September 17, 2002 from Donna Porter, KDHE, to Steve Persons, RAC, declining RAC's proposed treatment of the contamination near Hangar 1 and stating that a complete excavation and disposal of contaminated soils is KDHE's and EPA's preferred response action.
- 13 • Letter dated October 10, 2002, from Donna Porter, KDHE, to Steve Persons, RAC, tentatively approving RAC's plan to conduct oxidation pilot test study and directing RAC to investigate the source of perched water in the area of contamination.
- 14 • ATSDR's response to RAC's comments on the draft Public Health Assessment, dated October 31, 2002.
- 15 • ATSDR's Final Public Health Assessment for Tri-County Public Airport, Delvan, Morris County, Kansas, EPA Facility ID: KS0001402320, November 25, 2002.
- 16 • Letter dated December 12, 2002 from William Bunn, EPA's project manager for the TCPA, to Max M. Howie, Chief of the Program Evaluation, Records, and Information Services Branch, ATSDR, directing the ATSDR to remove language regarding from the

- Final Public Health Assessment regarding the Army's use of TCE and other solvents to clean spark-plugs and degrease aircraft parts at the Site.
- 17 • Letter dated December 19, 2002 from Robert B. Knowles, Environmental Health Scientist, ATSDR to William Bun, EPA's Project Manager for the TCPA, stating ATSDR's willingness to remove the language objected to by EPA. (Despite ATSDR acquiescence, the final print and internet versions of the report still contain the language EPA insisted be removed.)
 - 18 • Letter dated February 10, 2003 from Rick Bean, KDHE, to Doug Oliver, RAC, declining any further review of Draft Work Plan for Dual-Phase Extraction Pilot Test designed to investigate possible response actions to address contamination near Hangar 1.
 - 19 • Letter dated May 6, 2003 from Steve Persons, RAC, to Donna Porter, KDHE, requesting KDHE review a Hangar 1 Feasibility Study Work Plan to investigate possible response actions to address contamination near Hangar 1.
 - 20 • Letter dated May 9, 2003 from Donna Porter, KDHE, to Steve Person, RAC, declining any review of the Hangar 1 Feasibility Study Work Plan to investigate possible response actions to address contamination near Hangar 1.
 - 21 • Letter dated May 13, 2003 from RAC counsel to Scott Pemberton, counsel for EPA and Erika Bessy, counsel for KDHE proposing that RAC conduct chemical oxidation and bioremediation studies to investigate possible response actions to address contamination near Hangar 1.
 - 22 • Letter dated May 28, 2003 from Scott Pemberton, counsel for EPA, to Beverlee Roper, counsel for RAC, denying RAC's request to conduct chemical oxidation and bioremediation studies to investigate possible response actions to address contamination near Hangar 1.
 - 23 • Letter dated August 22, 2003 from Dave Way, RAC's consultant, to Donna Porter, KDHE regarding RAC's proposed work plan to investigate remedial actions to address contamination at Hangar 1.
 - 24 • Letter dated August 28, 2003 from RAC counsel to Erika Bessy, counsel for KDHE, responding to EPA's comment that assertions regarding the Army's use of TCE and other solvents must be supported by documentation or reference and forwarding video excerpts from the deposition of former airmen stationed at the Site during WWII.
 - 25 • Letter dated September 30, 2003 from David Walsh, KDHE, to Steve Persons, RAC, noting that KDHE has not provided comments to RAC's work plans because "EPA [is] moving forward with the Removal Action."
 - 26 • RAC's March 5, 2004 Supplemental Response to EPA's October 15, 1997 CERCLA § 104(e) Information Request to RAC.
 - 27 • Letter dated April 2, 2004, from RAC counsel to Scott Pemberton, counsel for EPA, thanking Mr. Pemberton for the opportunity to meet with EPA and present evidence regarding the Army's use of TCE at the Site during WWII and asking Mr. Pemberton to follow through with his promises to arrange a meeting between EPA, USACE, and RAC.
 - 28 • EPA's Third CERCLA § 104(e) Information Request to USACE dated April 24, 2004.
 - 29 • Letter dated May 28, 2004, from David Walsh, KDHE, to Steve Persons, RAC, providing comments to RAC's draft Remedial Investigation report and requesting that RAC conduct Interim Remedial Measures at the Site.
 - 30 • Letter dated July 1, 2004, from RAC counsel to Erika Bessy, counsel for KDHE, responding to KDHE's request that RAC conduct Interim Remedial Measures at the Site.

- 31 • USACE's response to EPA's Second CERCLA § 104(e) Information Request, dated July 30, 2004.
- 32 • Letter dated August 13, 2004, from Erika Bessy, counsel for KDHE, to Beverlee Roper, counsel for RAC, regarding allegations that KDHE has attempted "to side track the RI/FS process once again."
- 33 • Letter dated August 26, 2004, from RAC counsel to Erika Bessy, counsel for KDHE, addressing issues raised in Ms. Bessy's letter dated August 13, 2004 and requesting KDHE's assistance in involving DOD in the remediation of TCE contamination at the Site.
- 34 • Letter dated October 19, 2004 from RAC counsel to Scott Pemberton, counsel for EPA, forwarding a 19-page summary of evidence gathered to that date regarding the Army's use of TCE at the Site during WWII. Ms. Roper specifically requested the Mr. Pemberton "*ensure that this letter as submitted with attachments is included in the Administrative Record.*"
- 35 • Letter dated October 21, 2004 from RAC counsel to Scott Pemberton, counsel for EPA, addressing technical issues raised during the October 19, 2004 meeting between RAC and EPA.
- 36 • Letter dated October 25, 2004 from Scott Pemberton, counsel for EPA, to Beverlee Roper, counsel for RAC, responding to technical issues addressed by Ms. Roper's letter dated October 19, 2004.
- 37 • Letter dated November 1, 2004 from RAC counsel to Scott Pemberton, counsel for EPA, express dismay that EPA did not thoroughly reading USACE's response to EPA's third CERCLA § 104(e) Information Request before issuing the UAO and acknowledging that the egregious penalties for noncompliance compel RAC to comply with the UAO despite the site's troubling history. *This letter also requests that RAC's October 19, 2004 letter be included in the AR.*

ATTACHMENT 4

TRI-COUNTY PUBLIC AIRPORT SITE

REMOVAL ACTION MEMORANDUM



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101
30 SEP 2004

ENFORCEMENT ACTION MEMORANDUM

SUBJECT: Request for Potentially Responsible Party (PRP)-Lead Non-Time-Critical Removal Action at the Tri-County Public Airport Site, Morris County, Kansas

FROM: Don Lininger, On-Scene Coordinator
Enforcement/Fund-Lead Removal Branch

THRU: Kenneth S. Buchholz, Chief
Enforcement/Fund-Lead Removal Branch

TO: Cecilia Tapia, Director
Superfund Division

CERCLIS ID: KS0001402320
SITE ID: O7XS
CATEGORY OF REMOVAL: Non-Time-Critical
NATIONALLY SIGNIFICANT: No

I. PURPOSE

The purpose of this Action Memorandum is to request approval for a non-time-critical removal action at the Hangar 1 area portion of the Tri-County Public Airport (TCPA) site located in rural Morris County, Kansas. The removal action will consist of excavation and off-site disposal of contaminated soils within an engineered disposal cell. Property adjacent to the Hangar 1 area where the soil contains trichloroethylene (TCE), dichloroethylene (DCE), or vinyl chloride concentrations that are equal to, or greater than, preliminary remediation goals will be included in the removal action. It is anticipated that excavated soils will not be treated prior to disposal. Soils would be excavated and transported directly off-site with minimal on-site staging and storage. The excavated soil may be used as daily cover material at the disposal facility, providing for beneficial use of the soil. Areas subject to excavation would be backfilled with clean fill material which would be properly compacted and placed at an elevation suitable for use as a sub-base for the replaced surface. Original surfaces (concrete, gravel, etc.) would be replaced and suitable grading would be maintained or improved, if appropriate, to facilitate surface runoff.

II. SITE CONDITIONS AND BACKGROUND

A. Site Description

1. Nature and Extent of Contamination

Investigations conducted by the United States Army Corps of Engineers (USACE), the U.S. Environmental Protection Agency (EPA), and the Kansas Department of Health and Environment (KDHE) have detected TCE in groundwater at concentrations above the federal maximum contaminant level (MCL) of 5 micrograms per liter ($\mu\text{g/L}$) in drinking water supplies. The TCE plume extends about 5 miles to the northwest of the airport and has contaminated 23 private drinking water wells. The TCE contamination in the drinking water supplies is currently being removed by whole house filtration units using carbon. The highest concentrations of TCE and its degradation products (cis-1,2-dichloroethene and vinyl chloride) were detected in soil in the vicinity of Hangar 1 at levels above the Kansas Tier 2 risk-based numbers (RSK).

In 1998 the EPA initiated an Expanded Site Investigation/Remedial Investigation (ESI/RI) at the site with fieldwork conducted in two phases. Phase 1 included a spring/seep survey, off-site sampling, and a geophysical survey of two areas on-site. Phase 2 included source and pathway characterization on and off the site. The primary objectives of Phase 2 were to verify that a release of TCE had occurred, determine the source areas, and characterize the vertical and areal extent of contamination. The characterization of potential source areas involved the collection of 312 field analytical soil samples, as well as the collection of 67 soil samples which were submitted for laboratory analysis. The characterization of groundwater included the installation and sampling of 30 monitoring wells on and off the site in three aquifers, the sampling of 10 USACE wells, and the sampling of 43 water supply wells in the surrounding area. The characterization of surface water included the collection and analysis of 17 surface water samples and 9 spring and seep samples from the Clarks Creek drainage basin.

The highest surface soil concentration of TCE detected during the ESI/RI was 88 micrograms per kilogram ($\mu\text{g/kg}$) from the northwest side of Hangar 1. The highest soil contamination at Hangar 1 was detected at a depth of 1-2 feet beneath the concrete adjacent to the northwest corner of the hangar with TCE detected at a concentration of 2,300,000 $\mu\text{g/kg}$. In the Hangar 1 area, cis-1,2-DCE concentrations ranged from 34 $\mu\text{g/kg}$ to 140,000 $\mu\text{g/kg}$ and vinyl chloride concentrations ranged from 48 $\mu\text{g/kg}$ to 12,000 $\mu\text{g/kg}$.

The ESI/RI analytical results verify that off-site water supply wells to the north and northwest of the site have been impacted by volatile organic contaminants (VOCs), primarily TCE. In water supply wells, TCE was detected in concentrations ranging from 1.8 to 280 $\mu\text{g/L}$. The highest TCE concentration detected in a water supply well used for human consumption was 56 $\mu\text{g/L}$ located north of the site. The EPA believes the soil contamination in the area of Hangar 1 was, and continues to be, a source of the groundwater contamination.

Monitoring wells installed during the ESI/RI verified that the site is underlain by a succession of shale and limestone aquifers. Four separate ground water aquifers lie beneath the site. These aquifers are used for private drinking water and agricultural purposes. Analytical results from the off-site monitoring well samples indicate that the TCE is migrating northwest in the Cresswell, Stovall, and Towanda aquifers. VOCs, including TCE, were not detected in the background monitoring wells installed in the site. The majority of the on-site monitoring wells contained VOCs and, in particular, TCE. Water level data demonstrated that the predominant horizontal groundwater flow direction is the north-northwest in the direction of Latimer. There are no municipal systems drawing ground water from within 4 miles of the airfield; however, 92 private wells have been identified within this area. The results from springs and seeps demonstrated the release of TCE to surface water with TCE concentrations ranging from 0.699 to 12.7 $\mu\text{g/L}$. Results of water supply well and spring and seep samples verify the presence of a corridor of contaminated groundwater to the north and northwest of the site.

In December, 2000, a Consent Order was signed by the Raytheon Aircraft Company (RAC) and the KDHE for purposes of conducting a Remedial Investigation/Feasibility Study (RI/FS). Under the KDHE Consent Order, a total of 133 soil borings were completed as part of the RI. In the area of Hangar 1, sixty-five (65) soil samples were obtained from 21 soil borings. The primary contaminants detected were TCE and its degradation products, cis-1,2-DCE and vinyl chloride. Vinyl chloride was detected at 15,000 $\mu\text{g/kg}$ at 1 foot below the concrete pad of the loading dock. The KDHE RSK for soil exposure in a non-residential setting is 540 $\mu\text{g/kg}$. Twenty-three samples had detections of vinyl chloride above the soil to ground water protection pathway RSK of 20 $\mu\text{g/kg}$. The highest vinyl chloride concentration was 24,000 $\mu\text{g/kg}$ at 12 feet at the northwest corner of Hangar 1. Concentrations of DCE ranged from 660 to 300,000 $\mu\text{g/kg}$ in the same area. The soil to ground water protection pathway RSK for DCE is 800 $\mu\text{g/kg}$. Concentrations of TCE ranged up to 300,000 $\mu\text{g/kg}$. The soil to groundwater protection pathway RSK for TCE is 200 $\mu\text{g/kg}$. These results confirm the results reported in the ESI conducted by the EPA in 1998.

The Tetra Tech EM Inc. (Tetra Tech) Superfund Technical Assessment and Response Team (START) was tasked by the EPA Region 7 to conduct removal assessment activities at the TCPA site. These assessment activities were conducted in May 2003 and were focused on the Hangar 1 source area. Subsurface soil, air, and ground water samples were collected and an Soil Vapor Extraction (SVE) pilot was conducted during the removal assessment. TCE, cis-1,2-DCE and vinyl chloride were detected in the soil samples. TCE was detected at a maximum concentration of 20 $\mu\text{g/kg}$. Vinyl chloride was detected at 2,500 $\mu\text{g/kg}$ and DCE at 970 $\mu\text{g/kg}$. The total contaminant mass in the area north of Hangar 1 was estimated from this data with values of 160 pounds of vinyl chloride, 2,817 pounds of TCE, and 1,179 pounds of cis 1,2-DCE. In the perched ground water samples collected TCE was detected at 15,000 $\mu\text{g/L}$, 1,2-DCE at 55,000 $\mu\text{g/L}$, and vinyl chloride at 31,000 $\mu\text{g/L}$.

Two samples were collected for Toxicity Characteristic Leaching Procedure (TCLP) analysis from the areas with the highest field photoionization detector (PID) readings for VOCs

during the removal assessment. The TCLP results from these samples did not exceed regulatory levels for a characteristic hazardous waste.

TCE was detected in two air samples located in the U.S. Stone facility. TCE was detected at a concentration of 0.47 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) and 1,2-DCE at 0.12 $\mu\text{g}/\text{m}^3$ in the northwest office. TCE was detected at a concentration of 0.22 $\mu\text{g}/\text{m}^3$ in the northeast corner of the building. TCE was not detected in the other two samples which were collected in the northwest corner of the building and the break room.

Between June 1, 2004, and July 2, 2004, KDHE and EPA personnel conducted field activities in the Hangar 1 area. One hundred nineteen (119) soil samples were collected from forty nine (49) grid locations on the north and west side of Hangar 1 to better define the extent of contamination to be excavated. The City of Herington also identified a potential borrow area to be utilized as backfill for the excavated area. The borrow area is located approximately one thousand three hundred (1,300) feet northeast of Hangar 1. Ten (10) soil samples were collected from five (5) locations in the borrow area to determine if the soil is suitable for backfill.

2. Physical Location

The TCPA site is located approximately 7 miles east of the city of Herington, Morris County, Kansas. The geographic coordinates at the approximate center of the site are latitude 38° 41' 46.4" N and longitude 96° 48' 41.7" W. The TCPA site is located on the Delavan Kansas Quadrangle 7.5-minute Topographic Map within the Sections 31 and 32, Township 15 South, Range 6 East, and Sections 5 and 6 Township 16 South, Range 6 East. To reach the site from U.S. Highway 56: take County Road 2600 located approximately 0.25 mile west of Delavan, Kansas, and go north approximately 2.75 miles and the airport lies on the east side of the county road.

The total area of the Tri-County Airport site property, including the open and former runways, is approximately 3.5 square miles. The site property excluding the runways is irregular, but generally takes the shape of a rectangle approximately 0.5 miles east to west by 1.5 miles north to south. The nearest communities are Herington approximately 7 miles to the west, Delavan approximately 2 miles to the south, and Latimer approximately 2.5 miles to the northwest.

3. Site Characteristics

The TCPA facility comprises approximately 3.5 square miles and is located in Morris County, Kansas. The TCPA was originally constructed as the Herington Army Airfield (HAAF) in 1942 and was officially declared surplus in 1946. The airfield property and buildings were quit-claimed by deed to the City of Herington in 1948. Most of the 300 buildings and structures associated with HAAF have been razed or removed. From 1948 to the present, the site has been used by a number of companies for various purposes. Operations have included aircraft restoration, plane storage, and manufacturing of farm implements, black powder, roofing

materials, and stone cutting. From 1950 to the early 1960s, Beech Aircraft (Beech) leased all four hangars and several other buildings at the site. In 1980, RAC acquired Beech. Operations conducted by Beech at the site consisted of a chromium conversion coat process, vapor degreasing, painting, paint stripping, wing-tank manufacturing, aircraft refurbishing, aluminum processing, aircraft starter generator manufacturing, and steel wing-tank shipping container manufacturing. According to RAC, two TCE degreasers were used by Beech, one in Hangar 1 and one in Hangar 4. The TCE was stored in 55-gallon drums in a building located northwest of Hangar 1. The specific storage building and building identification number is not known. The disposal method and usage amounts of TCE by Beech are not known. Beech also reportedly used a paint stripper of unknown chemical identity to remove paint from airplane wings in the northwest corner of Hangar 1.

U.S. Stone Industries is located in the northern most hangar (Hangar 1) and initiated operations at this facility in December 2001. U.S. Stone Industries manufactures stone products at the facility from quarried stone blocks. Production includes cutting, surfacing, splitting, and shaping stone to dimensions specified by U.S. Stone Industries clients. Three lagoons are utilized for treating waste water produced from stone cutting operations. The wastewater contains stone cutting materials in suspension and the lagoons are used for purposes of settling the stone fines out of the water prior to discharge. The lagoons are located south of the U.S. Stone Industries facility.

At the TCPA site the overburden of loess and highly weathered bedrock ranges in thickness from 8 to 15 feet. The uppermost bedrock unit underlying the overburden at higher elevations on the south and central portions of the site was the Herington Limestone. Aquifers encountered at the site include the Cresswell, Stovall, and Towanda Limestone Aquifers which have a primary horizontal flow direction to the northwest. Perched water is found in soils at the TCPA Hangar 1 area.

4. Release or Threatened Release into the Environment of a Hazardous Substance, or Pollutant or Contaminant

Hazardous substances as defined by Section 101 (14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, have been detected in the soil and groundwater at the site. These include TCE, DCE, and vinyl chloride. The term release, as defined in CERCLA Section 101 (22), means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. Samples collected during the EPA ESI/RI detected the highest on-site VOC soil concentrations near the Hangar 1 source area with TCE concentrations ranging from 6 $\mu\text{g}/\text{kg}$ to 2,300,000 $\mu\text{g}/\text{kg}$. The TCE contamination detected in various samples exceeded the KDHE Tier 2 RSK soil to groundwater protection pathway value of 200 $\mu\text{g}/\text{kg}$. Numerous monitoring well and residential well samples contained contaminants at concentrations significantly above the MCL. The 1998 EPA ESI/RI analytical results verify that off-site water supply wells to the north and northwest of the site have been impacted by VOCs, primarily TCE. In water supply wells, TCE was detected in concentrations ranging from 1.8 to

280 µg/L. During the 1998 EPA ESI/RI, groundwater samples were collected from 40 monitoring wells located both on and off the site and TCE was reported in 31 of the monitoring wells. Approximately 23 water supply wells used for human consumption exceed the MCL for TCE.

5. National Priorities Listing (NPL) Status

The site was proposed to the National Priorities List on July 27, 2000, based on evidence of groundwater contamination by chlorinated solvents.

6. Maps, Pictures, and Other Graphic Representations

Attached is Figure 1 which identifies the location of the site. Figure 2 identifies the approximate extent of soil contamination in the Hangar 1 area that requires excavation.

B. Other Actions to Date

1. Previous Actions

On November 3, 1997, the EPA issued an Action Memorandum for the TCE site which made the determination that a release of hazardous substances had occurred. TCE and/or carbon tetrachloride were found in 20 private drinking water wells above the MCLs of 5 µg/L. The Action Memorandum stated that the EPA was the only immediate avenue for providing whole house treatment systems and/or bottled water for those wells where the MCL for TCE was exceeded. The objective of the removal action was to reduce TCE exposure to residents with contaminated drinking water wells. Under the provisions of the Action Memorandum the EPA provided bottled drinking water to approximately eighteen residences where drinking water was found to exceed the MCL for TCE of 5 µg/l. The bottled water was provided from November 1997 until January 24, 2001. One residence, with concentrations of TCE over 100 µg/l, was provided with a whole house carbon filtration system as the result of an October 6, 1997, health consult from the Agency for Toxic Substances and Disease Registry (ATSDR).

2. Current Actions

In March 2000 the RAC and the EPA entered into an Administrative Order on Consent (AOC), Docket No. CERCLA-7-2000-0013 pursuant to Sections 104 and 122 of the CERCLA. The 2000 AOC required that the RAC provide water treatment systems for residences with water supply wells exceeding the maximum MCL for TCE and degradation products. The objective of the removal action was to reduce TCE exposure to residents with contaminated drinking water wells. The systems which utilized carbon filtration were installed in 23 residences whose drinking water source exceeded the MCL for TCE. Under this agreement, the RAC was to maintain the water treatment systems and conduct quarterly monitoring of the treatment systems and additional residential water supply wells, to assure that all residences with

water that exceeded the MCL for TCE had water treatment systems installed. Project costs have not been provided to the EPA.

C. State and Local Authorities' Roles

1. State and Local Actions to Date

In May 1996, the KDHE completed a preliminary assessment/screening site inspection (PA/SSI) of the TCPA site in response to the detection of TCE during the USACE investigation. This study included a background search for potential sources, the sampling of selected USACE groundwater monitoring wells, and a limited investigation of the surface water, soil, and air pathways.

The KDHE conducted a Supplemental Sampling Assessment (SSA) at the TCPA in 2001. The SSA was conducted to evaluate three potential source areas identified in previous investigations including the Hangar 1 area. The areas sampled were advanced at, or immediately downslope, of Hangar 1.

In December, 2000 a Consent Order was signed by the RAC and the KDHE pursuant to the Kansas Environmental Response Act (K.S.A. 65-32a *et seq.*) for purposes of conducting a Remedial Investigation/Feasibility Study (RI/FS). The objectives of the RI/FS are: 1) determine the nature and areal extent of environmental contamination, 2) evaluate the threat to public health and environment, 3) characterize geological properties of the affected soils and aquifers, and 4) evaluate remedial alternatives for corrective action. On September 24, 2001, the KDHE approved RAC's Work Plan to conduct a RI/FS. As of April 2003 a total of 133 soil borings had been completed as part of the RI. Additional RI/FS work is ongoing with the KDHE oversight.

2. Potential for Continued State/Local Response

The state lacks the resources to conduct the removal action to address a source of groundwater contamination at the site. The KDHE is expected to remain involved in future activities at the site including additional removal assessments and long-term operation and maintenance. The EPA will coordinate all federal activities associated with this removal action with the KDHE and local officials.

**III. THREATS TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT,
AND STATUTORY AND REGULATORY AUTHORITIES**

The site conditions pose a significant threat to the public health and welfare that meet the criteria for a removal action under 40 C.F.R. 300.415(b)(2) of the National Contingency Plan (NCP).

A. Threats to Public Health or Welfare

300.415(b)(2)(i) – Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, or pollutants, or contaminants.

Samples collected during the EPA ESI/RI detected on-site VOC soil concentrations near the Hangar 1 source area with TCE concentrations up to 2,300,000 µg/kg. The TCE contamination detected in various samples exceeded the KDHE Tier 2 RSK soil to groundwater protection pathway value of 200 µg/kg. Numerous monitoring well and residential well samples contained contaminants at concentrations significantly above the MCL. The EPA ESI/RI analytical results verify that off-site water supply wells to the north and northwest of the site have been impacted by VOCs, primarily TCE. During the EPA ESI/RI, groundwater samples were collected from 40 monitoring wells located both on-site and off-site. TCE was reported in 31 of the monitoring wells. TCE was detected in 25 water supply well samples, and the concentration in 22 of the samples exceeded the TCE MCL of 5 µg/L. Approximately 23 water supply wells used for human consumption exceed the MCL for TCE.

Results from the EPA ESI/RI indicated that eight spring or seep samples contained TCE ranging in concentrations from 0.699 µg/L to 12.7 µg/L. Seven of the contaminated springs and seeps lie to the northwest of Latimer and the remaining contaminated seep is located to the northeast of the community. The results show that the groundwater discharging to surface water in the Clarks Creek drainage basin has been impacted by TCE, the likely source of which is the TCPA site.

Hazardous substances as defined by CERCLA have been detected in the soil and groundwater at the site which include TCE, DCE, and vinyl chloride. Breathing small amounts of TCE may cause headaches, lung irritation, dizziness, poor coordination, and difficulty concentrating. Breathing large amounts of TCE may cause impaired heart function, unconsciousness, and death. Breathing it for long periods may cause nerve, kidney, and liver damage. Drinking small amounts of TCE for long periods may cause liver and kidney damage, impaired immune system function, and impaired fetal development in pregnant women, although the extent of some of these effects is not yet clear. TCE is characterized as being highly likely to produce cancer in humans.

300.415(b)(2)(ii) -- Actual or potential contamination of drinking water supplies or sensitive ecosystems.

Actual exposure of 23 private drinking water wells exceeding the MCL for TCE has been documented by the EPA and the RAC data. Release of TCE to a surface water body has occurred as evidenced by the eight spring or seep samples with TCE ranging in concentrations from 0.699 µg/L to 12.7 µg/L.

B. Threats to the Environment

300.415(b)(2)(iv) – High levels of hazardous substances or pollutant or contaminants in soils largely at or near the surface, that may migrate.

Concentrations of TCE and vinyl chloride at the Hangar 1 area have been detected in surface soil at a depth of one foot below ground surface (bgs) under concrete at levels up to 2,300,000 µg/kg. TCE contamination detected in various samples exceeded the KDHE Tier 2 RSK soil to groundwater protection pathway value of 200 µg/kg. Vinyl chloride has been detected in surface soil at a depth of one foot bgs at 15,000 µg/kg and at a depth of three feet bgs at 23,000 µg/kg. Vinyl chloride contamination detected in various samples exceeded the KDHE Tier 2 RSK soil to groundwater protection pathway value of 20 µg/kg. TCE and vinyl chloride have been detected in perched water in the vicinity of Hangar 1. TCE was detected at concentrations up to 1000 µg/l and vinyl chloride to 32,000 µg/l. TCE migrating to groundwater has contaminated drinking water wells.

300.415(b)(2)(vii) -- The availability of other appropriate federal or state response mechanisms to respond to the release.

The KDHE entered into negotiations for a state Consent Order with the RAC to prepare an Engineering Evaluation/Coast Analysis (EE/CA) and conduct the response selected in the EE/CA. These parties failed to reach an agreement. In a letter dated February 10, 2003, the KDHE requested that the EPA undertake a removal action to address extremely contaminated soils at the Tri-County Airport Site, Hangar 1 area.

IV. **ENDANGERMENT DETERMINATION**

The actual release of a hazardous substance at this site, if not addressed by implementing the response action selected in this Action Memorandum, presents an imminent and substantial endangerment to the health of the public that comes in contact with the site and to public welfare and the environment. Federal and state agencies are recommending that immediate response actions be taken to reduce potential exposure.

V. **PROPOSED ACTIONS AND ESTIMATED COSTS**

A. Proposed Actions

1. **Engineering Evaluation/Cost Analysis**

The EPA Region 7 Superfund Division prepared an EE/CA, which identified proposed removal action alternatives for contaminated soil at the Hangar 1 area of the TCPA site in Morris County, Kansas. The EE/CA was prepared under CERCLA to provide an organized and systematic framework for evaluating the best response technologies for addressing contaminated soil. The EE/CA evaluated six removal action alternatives to address VOCs in soil. These six removal action alternatives are described in the EE/CA and were evaluated based

on effectiveness, implementability, and cost. Based on the comparative analyses of the corrective action alternatives, the recommended corrective action is excavation with off-site disposal of contaminated soils.

2. Proposed Action Description

The proposed action involves the excavation and off-site disposal of contaminated soils within an engineered disposal cell. Excavated soils will not be treated prior to disposal. Soils will be excavated and transported directly off-site with minimal on-site staging and storage. The proposed action will involve off-site disposal at an approved disposal facility. The excavated soil may be used as daily cover material at the disposal facility providing for beneficial use of the soil from the TCPA site. Areas subject to excavation will be backfilled with clean fill material which will be properly compacted and placed at an elevation suitable for use as a sub-base for the replaced surface. Original surfaces (concrete, gravel, etc.) will be replaced and suitable grading will be maintained or improved, if appropriate, to facilitate surface runoff.

The soil source area was delineated based on contaminants of concern (COC) concentrations detected in on-site soil that exceeded Preliminary Remediation Goals (PRGs) (Table 1). Soils with COC exceeding the PRGs will be excavated during the proposed action. Excavation dimensions for the soil source area are shown in Figure 2, which was developed from investigation results for the COC. On the basis of this information, it is estimated that the area of contamination will be excavated to a maximum depth of approximately 16 feet bgs, which would be approximately 33,704 cubic-yards (yd³) of soil. Excavation will not include bedrock material. Excavation will include removal of soils in an area north and west of Hangar 1. Contaminated soil beneath Hangar 1 will not be excavated. The excavation pit will be de-watered during field activities. Collected water will be treated as appropriate prior to discharge.

Confirmation sampling will be conducted to assure that soils containing COC above PRGs have been removed. Upon completion of the excavation, confirmation sidewall samples will be collected from the perimeter cells and analyzed to verify the PRGs for COC-contaminated soils have been achieved. The total number of samples will vary, depending on the size of the actual excavation. Where appropriate, samples will be collected from the bottom of excavations. All site sampling activities for comparison to the cleanup level will be conducted in accordance with an approved Quality Assurance Project Plan (QAPP).

Monitoring and site control measures, such as dust suppression by spraying water and storm water runoff control measures, will be implemented to ensure that removal activities do not expose nearby populations and site workers to harmful levels of contaminants.

2. Contribution to Remedial Performance

The proposed action will address a source of the groundwater contamination, mitigating the direct contact threat posed by exposure to contaminated groundwater. The proposed action will be consistent with future remedial actions that may be necessary to address groundwater contamination.

4. Applicable Relevant and Appropriate Requirements (ARARs)

Section 300.415(j) of the NCP provides that fund-financed removal actions under CERCLA Section 104 and removal actions pursuant to CERCLA Section 106 shall, to the extent practicable considering the exigencies of the situation, attain ARARs under federal environmental, state environmental, or facility-citing laws. The following site-specific ARARs have been identified for this action:

Resource Conservation and Recovery Act (RCRA) - Subtitle C of RCRA, 42 U.S.C. Section 6901, *et seq.*, 40 C.F.R. Part 260, *et seq.* and implementing federal and state regulations for contaminated soil that exhibit the characteristic of toxicity and are considered RCRA hazardous waste. The EPA has concluded that the TCE-waste in the soil and groundwater is not a listed hazardous waste. Based on soil analytical results at the TCPA Hangar 1 area, it is unlikely that excavated soils will contain levels of TCE, DCE, or vinyl chloride that exceed the TCLP level. Two samples were collected for TCLP analysis from the areas with the highest field photoionization detector (PID) readings for VOCs during the removal assessment. The TCLP results from these samples did not exceed regulatory levels for a characteristic hazardous waste. The hazardous waste determination requirements in 40 C.F.R. 261.24 are applicable.

Occupational Safety and Health Act Standards - 29 C.F.R. Part 1910 and Part 1926.20 - 1926.26, will be applicable to all actions.

Clean Water Act (33 U.S. Code 1251 to 1376), as amended by the Water Quality Act of 1987, provides authority for each state to adopt water quality standards designed to protect beneficial uses of each water body and requires states to designate uses for each water body. Kansas Water Pollution Control Regulations under Kansas Administrative Regulations (K.A.R.) 28-16 provide for definition of pollution and statutory authority to regulate and protect waters of the state. For response actions at the TCPA site involving construction and excavation of contaminated soil, engineering controls designed to prevent discharges that may affect the water quality of nearby surface waters will be implemented. A specific National Pollutant Discharge Elimination System (NPDES) permit will not be required if remediated groundwater is discharged on-site. Discharges would meet the substantive requirements for storm water and wastewater discharge including monitoring requirements established by K.A.R. 28-16.

In a March 28, 2003, letter the KDHE identified state ARARs. Kansas Ambient Air Quality Pollution Control Regulations under K.A.R. 28-19 provide emission standards for listed hazardous air pollutants and state air quality standards to protect public health. Vinyl chloride is a regulated pollutant under K.A.R. 28-19 which sets a significant emission level potential-to-emit (PTE) of 1 ton/year. TCE and DCE are not specifically regulated under K.A.R. 28-19 and would be in the VOC category of regulated pollutants which has a state permit PTE threshold of 40 tons/year. It is anticipated that neither the vinyl chloride nor the VOC emission standards from any of the alternatives evaluated in this EE/CA would be exceeded.

The Risk Based Standards for Kansas are "to be considered" (TBC) standards for the appropriate site related contaminants. This includes the soil to groundwater protection pathway and non-residential soil pathway values for TCE, DCE and, vinyl chloride.

5. Project Schedule

On-site removal activities are anticipated to begin in the fall of 2004 and require approximately three months to complete. If other areas are discovered which require additional work, this may affect the completion time.

6. Post-Removal Site Controls

The excavation would be backfilled and the site restored. No equipment would be installed or require ongoing operation and maintenance and no post-removal site controls would be required.

B. Estimated Costs

The PRP will implement and complete the work described in this Action Memorandum.

VI. EXPECTED CHANGE IN THE SITUATION SHOULD ACTION BE DELAYED OR NOT TAKEN

Delayed action will continue to cause contaminated soils in the Hangar 1 area to leach into the Cresswell, Stovall, and Towanda aquifers which are sources of drinking water.

VII. OUTSTANDING POLICY ISSUES

None.

VIII. ENFORCEMENT

There is an Enforcement Addendum for this site. For NCP consistency purposes, it is not part of this Action Memorandum.

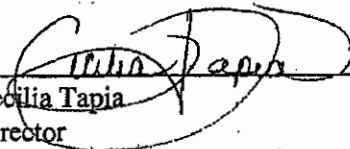
IX. RECOMMENDATION

This decision document represents the recommended removal action for the contaminated soil at the TCPA site, Morris County, Kansas. The removal action was developed in accordance with CERCLA, as amended, and is not inconsistent with the NCP. This decision is based on the Administrative Record for the site.

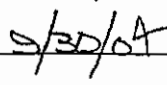
Conditions at the site meet NCP Section 300.415(b) criteria for a removal action and I recommend your approval of the proposed PRP-lead removal action.

For purposes of this removal action, I recommend that Bill Bunn be designated as an on-scene coordinator (OSC) for this removal action, if a PRP conducts the response action.

Approved:



Cecilia Tapia
Director
Superfund Division



Date

Attachments

Table 1

**PRELIMINARY REMEDIATION GOALS
TRI-COUNTY PUBLIC AIRPORT SITE**

Chemical	Surface Soil (ug/kg) ^a	Sub-surface Soil (ug/kg) ^b
cis-1,2-Dichloroethylene	180,000	800
trans-1,2-Dichloroethylene	290,000	1,500
Trichloroethylene	98,000	200
Vinyl Chloride	540	20

^a - Risk Based Standards for Kansas, RSK Manual - 3rd Version, March 1, 2003 - Non- residential scenario, Soil Pathway

^b - Risk Based Standards for Kansas, RSK Manual - 3rd Version, March 1, 2003 - Soil to Groundwater Protection Pathway

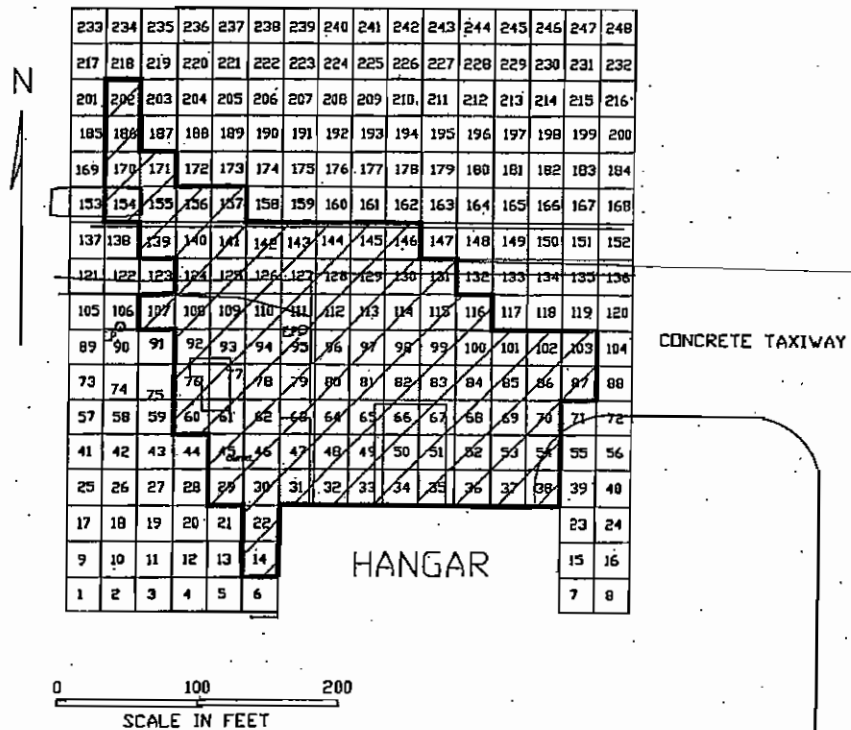


Figure-2. Tri-County Public Airport
Soil Excavation Area.



Region 7

Iowa
Kansas
Missouri
Nebraska

Fact Sheet

September 2003

Engineering Evaluation/Cost Analysis Available Tri-County Public Airport Site, Herington, Kansas

INTRODUCTION

The U.S. Environmental Protection Agency (EPA) Region 7 has completed the development of an Engineering Evaluation/Cost Analysis (EE/CA) to address contaminated soils in the vicinity of the north hangar (hangar 1) at the Herington Regional Airport (Tri-County Public Airport Site). This area is believed to be a source of ground water contamination at the Herington Regional Airport. The EPA prepared the EE/CA at the request of the Kansas Department of Health and Environment (KDHE) in anticipation of a response action to address contaminated soils in the north hangar area.

BACKGROUND

The Herington Army Air Field (HAAF) was utilized by the Department of Defense between 1942 and 1947. In 1948, the federal government transferred the property to the city of Herington. Since 1948, the city of Herington or an agency of the City has owned the Herington Regional Airport property. In addition to the use of the site by the Department of Defense and the City, the property has been leased to numerous other entities who have used it for industrial purposes.

Starting in 1995, investigations of the former HAAF and the surrounding area have been conducted by the U.S. Army Corps of Engineers, KDHE, EPA, and Raytheon Aircraft Company. Several volatile organic compounds (VOCs),

including trichloroethylene (TCE), and vinyl chloride were detected in ground water as were fuel-related chemicals such as: benzene, toluene, ethyl benzene, and xylene. Samples taken from residential wells located north and northwest of the site indicated VOC-contamination above the EPA health based levels for safe drinking water (maximum contaminant levels). TCE is commonly used as an industrial solvent.

EE/CA PROCESS

The EE/CA process for the Herington Regional Airport north hangar area involved reviewing available site investigations, collecting samples, and conducting a pilot study. After completion of the sampling and pilot study activities, an EE/CA report was prepared. The EE/CA report provides background information on the site, identifies the removal action objectives, reviews potential cleanup alternatives, and recommends a final response action alternative. EPA's proposed removal alternative is excavation and off-site disposal of contaminated soil within an engineered disposal cell.

The EE/CA and supporting documents are available for public viewing at the Herington Public Library, 102 South Broadway, Herington, Kansas, (758) 258-2011.

PUBLIC AVAILABILITY SESSION

EPA invites you to an informal meeting:

Tuesday, September 16, 2003
5:00 p.m. - 7:00 p.m.
Herington Community Building
810 South Broadway
Herington, Kansas

Representatives involved at the site will be available to answer your questions on the EE/CA or other site issues one-on-one. You can attend the meeting at your convenience at any time between 5:00 p.m. and 7:00 p.m.

PUBLIC COMMENT PERIOD

The EPA is accepting written comments on the EE/CA report for a period of 30 days starting on September 4, 2003. The EPA will then respond to comments from the public and select the final response action for cleanup of soils in the north hangar area of the Herington Regional Airport.

Comments may be made at the Availability Session or sent in writing to:

Debbie Kring
Community Involvement Coordinator
U.S. Environmental Protection Agency
Office of External Programs
901 North 5th Street
Kansas City, Kansas 66101
kring.debbie@epa.gov
Toll-free @ 1-800-223-0425