



Preparing CERCLA Records of Decision

- BACKGROUND:** This Information Brief presents the basic concepts for planning and preparing a Record of Decision (ROD) at DOE sites under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).
- STATUTES:** Comprehensive Environmental Response, Compensation, and Liability Act, Section 104 (Response Actions), Section 117 (Public Participation), Section 120 (Federal Facilities), and Section 121 (Cleanup Standards).
- REGULATIONS:** 40 CFR 300.430 and 40 CFR 300.435.
- REFERENCES:**
1. "Procedures for Updating Remedy Decisions," EH-413 Memorandum, April 4, 1997.
 2. "Superfund Reforms: Updating Remedy Decisions," U.S. Environmental Protection Agency, OERR Directive No. 9200.0-22, March 27, 1997.
 3. "National Superfund Remedy Review Board," U.S. Environmental Protection Agency, Memorandum from Stephen Luftig, Director, OERR to Regional Office Directors, September 26, 1996.
 4. "The Role of Cost in the Superfund Remedy Selection Process," U.S. Environmental Protection Agency, OSWER Publication 9200.3-23FS, EPA 540/F-96/018, PB96-963245, September 1996.
 5. "Federal Facilities Streamlined Oversight Directive," U.S. Environmental Protection Agency, OSWER Directive No. 9230.0-75, November 29, 1996.
 6. "A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents," OSWER Publication 9200.1-23P, EPA 540-R-98-031, PB98-963241, July 1999.
URL <http://www.epa.gov/superfund/resources/remedy/rods/index.htm>
 7. "CERCLA Record of Decision," published from FY 1982 to FY 1994, EPA CD-ROM catalogued as NTIS PB95-593551 GEI.
 8. "Phased Response/Early Actions," DOE EH-0506, November 22, 1995.
 9. "Environmental Restoration Acceleration Report - Expediting the Cleanup," DOE/S-0116, May 1, 1996.
 10. "Superfund Implementation," Executive Order 12580.

What is a Record of Decision (ROD)?

A Record of Decision (ROD) is a legal document describing final or interim remedial action selected for a DOE CERCLA site or a portion of a site (e.g., operable unit, waste area grouping). The ROD is a public document that:

- certifies that the remedy selection process was carried out in accordance with CERCLA and the National Contingency Plan (NCP);
- describes the technical parameters of the remedy, specifying the methods selected to protect human health and the environment;

- provides the public with a consolidated summary of information about the site and the chosen remedy, including the rationale behind the selection; and,
- meets the requirements and schedules specified in the Federal Facility Agreements (FFAs) for DOE which were established under CERCLA Section 120.

The ROD is based on: (1) technical analysis and information generated during the remedial investigation/feasibility study (RI/FS) or equivalent documents, and (2) formal consideration of public comments and State and community concerns. A ROD is issued following a Proposed Plan, which is the document issued both to identify the preferred alternative and to gather public comments.

What must a ROD contain?

According to 40 CFR 300.430(f)(5), the ROD needs to describe:

- how the selected remedy is protective of public health and the environment;
- federal and State applicable or relevant and appropriate requirements (ARARs) the remedy will meet, those it will not meet, and the justification for any waivers;
- how the remedy is cost-effective; and
- how the remedy uses permanent solutions and alternative treatment or resource recovery technologies to the maximum extent practicable.

Also, the ROD needs to:

- indicate the remediation goals the remedy is expected to achieve;
- discuss significant changes made to the preferred alternative identified in the Proposed Plan in response to comments or any additional information considered relevant to the decision;
- describe whether hazardous substances will remain on site; and
- when appropriate (e.g., for an interim ROD), provide a commitment for further analysis and selection of additional response measures if additional risks remain.

What are the components of a ROD?

The standard ROD consists of a Declaration, a Decision Summary, and a Responsiveness Summary. The specific elements of each section are described in “A Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents,” (See Reference #6). Figure 1 provides an outline for each of these three sections.

What is the Declaration?

The Declaration identifies the selected remedy and declares that the selection of that remedy satisfies the statutory and regulatory requirements of the CERCLA program. It is signed by the EPA Regional Administrator or Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER) and the authorized DOE Field Office manager. Some FFAs may also require a state representative to sign the declaration.

The Declaration is approximately two pages long and includes specific information such as site name and location, purpose of the ROD, summary of site conditions, the selected remedy, and ARARs.

What is the Decision Summary?

The Decision Summary provides an overview of the impacts posed by the contamination identified at the site and the analysis of the remedial options proposed for the site.

What is the Responsiveness Summary?

The Responsiveness Summary provides an overview of community concerns regarding the contamination identified at the site, the community’s choice of remedial alternatives, and how community concerns were incorporated into the ROD.

When is a ROD required?

CERCLA §120(e) requires that after DOE completes an RI/FS or equivalent process, DOE must enter into an Interagency Agreement (IAG) with EPA. In practice, DOE has negotiated IAGs, often known as FFAs with EPA and the States early in the CERCLA processes. The purpose of FFAs is to govern how all parties will implement investigations and actual cleanups. FFAs provide an enforceable schedule for remedial action, preparation, and issuance of RODs.

After completing the RI/FS report, DOE prepares the Proposed Plan that outlines the preferred cleanup alternative and the reasons for selecting that alternative. Following a public comment period, DOE, EPA, and the State select the remedial alternative to be implemented. According to 40 CFR 300.430(f)(5), this decision must be documented in the ROD.

CERCLA §121 describes cleanup requirements for National Priority List (NPL) sites and Executive Order 12580, “Superfund Implementation,” delegates CERCLA response authority from the President to the Secretary of Energy for facilities under DOE jurisdiction. As the lead agency, DOE is authorized to conduct response measures consistent with the NCP and in accordance with the FFA.

Figure 1
Outline of a Standard ROD

1. Declaration
 - Site name and location
 - Statement of basis and purpose
 - Assessment of the site
 - Description of the selected remedy
 - Statutory determinations
 - Data certification checklist
 - Authorizing signatures
2. Decision Summary
 - Site name, location, and description
 - Site history and enforcement activities
 - Highlights of community participation
 - Scope and role of operable or response unit
 - Site characteristics
 - Current and potential future site uses
 - Summary of site risks
 - Description of alternatives
 - Remedial action objectives
 - Summary of comparative alternative analysis
 - Principal Threat
 - Selected remedy
 - Statutory determinations
 - Documentation of significant changes
3. Responsiveness Summary
 - Stakeholder comments and agency responses
 - Technical and legal issues

Are there different types of RODs?

There are four ROD formats that differ from the standard ROD described above. Each is summarized below along with examples of how DOE has used that type.

No Action ROD - A No Action ROD is prepared when no treatment, engineering controls, or institutional controls are necessary because the site poses no risk to human health or the environment. This could occur if a previous response action eliminated the need for further remedial response. DOE used no action RODs at sites or portions of sites where past releases were thought to have occurred but upon further investigation, no releases occurred (often in conjunction with efforts to release land for new economic development or other uses).

Interim Action ROD - An Interim Action ROD is prepared when: (1) quick action to protect human health and the environment from an imminent threat is necessary, or (2) when a temporary measure to stabilize the site and/or prevent contamination migration has been determined to be appropriate. An interim

action, although limited in scope, may be the final action for a particular site problem, followed by a final ROD. Examples of DOE's use of interim actions include constructing temporary caps, installing wells to restrict migration of a contaminated ground water plume, and excavating hot spots where remediation will be required (i.e., no risk assessment is necessary to determine that conditions are unacceptable).

Contingency Remedy ROD - A Contingency Remedy ROD is prepared when the remedial alternative involves the use of an innovative treatment technology that needs further testing to verify its performance as a "proven approach." A contingency ROD would be appropriate because there is significant uncertainty about the ability of the technology to achieve cleanup levels. For example, use of monitored natural attenuation (MNA) to remediate ground water often requires development of a contingent approach that can be implemented if conditions show that MNA did not achieve cleanup levels.

Plug-in ROD - The "Plug-in" ROD is an initiative undertaken by EPA and DOE to streamline the implementation of the CERCLA process. The Plug-in ROD results in selecting generic RODs for facilities with a large number of sites or subsites that have similar characteristics. Once a remedy is selected and the ROD is developed for the site type, subsequent subsites that match predefined conditions are "plugged" into the generic ROD. Individual site RODs are developed only when they differ in the site-specific data and information. Throughout plug-in RODs, care must be taken to ensure appropriate public comment and participation. DOE has used this approach at Hanford where many sites contaminated by reactor operations have similar remedies. By selecting a "plug-in" ROD, DOE can easily adjust the decisions for individual sites within the context of an overall generic remedial approach.

How are changes to DOE RODs addressed and documented?

CERCLA §117 and the NCP (40 CFR 435(c)) contain provisions for changing RODs after they have been adopted. Typically RODs are changed to reflect new

information on characteristics or volumes of contamination present. Also, EPA encourages changes in response to advances in remediation science and technologies that can improve cost and cleanup effectiveness. Thus, as technical developments warrant, DOE may initiate a remedy update with a request to the EPA Regional Office to implement the review process. DOE is responsible for collecting and assembling relevant documentation to effect the update and to seek EPA and State approval in accordance with the FFA.

Documentation of any changes to the DOE ROD must comply with the requirements of the NCP. Minor changes can be made through an administrative process with public notification. If the remedial action changes significantly, but does not fundamentally alter the remedy selected in the ROD, DOE must prepare an explanation of significant differences, as detailed in 40 CFR 300.435(c)(2)(i), which is made available to the public and placed in the administrative record. If the action fundamentally alters the selected remedy with respect to scope, performance, or cost, then DOE must amend the ROD. Amending the ROD requires public notification and comment; 40 CFR 300.435(c)(2)(ii) details specific ROD amendment procedures. (For a detailed guidance on this process see Reference #6.)

What is the National Remedy Review Board and how does it affect DOE RODs?

EPA established the National Remedy Review Board (NRRB) in 1995 to help control remedy costs and promote consistent and cost-effective decisions at NPL sites (See Reference #3). The NRRB reviews proposed cleanup actions at DOE sites where: (1) the primary contaminant is radioactive waste; and, (2) the preferred alternative costs more than \$75 million, or the preferred alternative costs more than \$25 million and this cost is 50% greater than the least-costly, protective alternative. Also, for DOE sites where the primary contaminant is not radioactive waste, the NRRB will review proposed cleanup decisions where the preferred alternative costs more than \$30 million, or the preferred alternative costs more than \$10 million and this cost is 50% greater than the least costly protective alternative.

Based on information supplied by DOE and the EPA Regional Office, the NRRB reviews the preferred alternative and provides recommendations to DOE prior to public participation and ROD completion. The NRRB issues advisory recommendations that

DOE can use to ensure that the selected remedy is both protective and cost effective.

Are there any ways to simplify the ROD process for DOE sites?

Yes. Although E.O. 12580 delegated Superfund lead agency authority to DOE, EPA is responsible for overseeing remedial activities at DOE NPL sites. On November 29, 1996, EPA issued a Directive to reduce oversight activities at federal NPL sites (See Reference #5). According to the "Federal Facilities Streamlined Oversight Directive," DOE may propose possible sites as candidates for streamlined oversight. The nomination criteria includes; a history of cooperation and compliance with EPA, technical capability, and responsiveness to the community. Once a DOE NPL site is selected, the Directive lists several activities that can be instituted, modified, or streamlined, as appropriate, to expedite the oversight and cleanup processes. Those criteria that pertain to the ROD process include developing document formats to ensure inclusion of all the required components as well as methods for eliminating interim deliverables.

Other Information Resources

- EPA's RCRA/Superfund Hotline
(800) 424-9346
- USDOE/ Office of Environmental Policy and Assistance (EH-41) Web Page
<http://tis.eh.doe.gov/oea>
- National Technical Information Service
(703) 487-4650 <http://www.ntis.gov>

Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this information brief to Jerry DiCerbo, RCRA/CERCLA Division, EH-413, (202) 586-5047.

