



Office of Environment, Safety and Health

CERCLA/RCRA Information Brief

DOE/EH-231-010/1191(November 1991)
(Updated January 2006)

The Administrative Record

BACKGROUND: Section 113(k) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires the Department of Energy (DOE) to establish an administrative record that serves as the basis for selecting a remedy at facilities undergoing response actions. Under the Resource Conservation and Recovery Act (RCRA) an administrative record must be established by the regulators (i.e., Environmental Protection Agency [EPA] or the state). This information brief provides answers to questions regarding administrative records under these two laws.

STATUTES:

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9601, et seq.

Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments Act of 1984 (HSWA), 42 U.S.C. 6901, et seq.

EXECUTIVE ORDERS:

Executive Order (E.O.) 12580 - Superfund Implementation

REGULATIONS:

40 CFR 270.30 - Conditions applicable to all [RCRA] permits

40 CFR 270.79 - 270.230 - Subpart H - Remedial Action Plans

40 CFR 300.415 - Removal Actions

40 CFR 300.430 - Remedial Investigation/Feasibility Study and Remedy Selection

40 CFR 300.800 - 300.825 - Subpart I - Administrative Record for Selection of Response Action

REFERENCES:

1. EPA. 2005. Removal Records - Superfund Site-Specific. Records Schedule 013.
<http://www.epa.gov/records/policy/schedule/sched/013.htm>
2. EPA. 2004. Remedial Site Files - Superfund Site-Specific. Records Schedule 014.
<http://www.epa.gov/records/policy/schedule/sched/014.htm>
3. EPA. 2002. Administrative Records - Superfund Site-Specific. Records Schedule 019.
<http://www.epa.gov/records/policy/schedule/sched/019.htm>
4. EPA. 1998. *Hazardous Remediation Waste Management Requirements (HWIR-media)*. 63 FR 65873-65947. November 30. <http://www.eh.doe.gov/oeпа/rules/63/63fr65874.pdf>
5. EPA. Office of Solid Waste, Permits Branch. 1996. *RCRA Public Participation Manual*. (supersedes the 1993 edition). http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/chp_5.pdf
6. EPA. Office of Emergency and Remedial Response. 1992. *Community Relations in Superfund: A Handbook*. EPA/540/R-92/009. OSWER Directive 9230.0-03C. January.
http://www.oztoxics.org/research/3000_hcbweb/library/us_super/us_super.html
7. EPA. Office of Solid Waste and Emergency Response. 1990. *Final Guidance on Administrative Records for Selecting CERCLA Response Actions*. OSWER Directive 9833.3A-1. December.
<http://www.adminrec.com/Files/Site-Documents/RT9833.pdf> (retyped)
<http://www.adminrec.com/Files/Site-Documents/9833.pdf> (original)



What is an administrative record?

Under CERCLA an administrative record is the complete collection of documents that forms the basis for selecting a response action (i.e., those documents considered or relied upon by the lead agency in selecting a remedy) (40 CFR 300.800-300.825).

The administrative record under CERCLA serves two primary purposes. First, it limits the judicial review concerning the adequacy of a response action. That is, when a response action is challenged, the court will review only the documents that are contained in the administrative record. Secondly, it provides an opportunity for the public to be involved in the process of selecting a remedy for the site as information is available in the publicly accessible administrative record file.

Under RCRA the administrative record provides the documentation for the basis of EPA's or the authorized state's decision on whether to grant a RCRA permit (40 CFR 124.9, 124.18, 270.140, and 270.150). It allows the public to know the basis for the decision and provides the record to be reviewed if the decision is appealed.

What is an administrative record "file"?

Under CERCLA an administrative record "file" is the collection of documents compiled before a decision is made on a response action. Clearly distinguishing between the administrative record *file* and the administrative record avoids the perception that the administrative record is complete prior to the selection of a response action. All documents considered or relied on in selecting the response action should be in the administrative record file and should be listed in the index to the administrative record file when a decision document is signed. At that point the administrative record file normally closes and becomes the administrative record.

Documents generated or received after the decision document is signed should be kept in a

post-decision document file. This file may include, for example, documents (e.g., administrative orders, consent decrees) relevant to the response selection that are issued after the decision document is signed and public, state, or EPA comments generated or received after the decision document is signed. In general, these post-decision documents should not be added to the administrative record since the record contains the information that was considered or relied on in selecting the response action, and documents generated or received after selecting the response action are not relevant to that response selection decision. However, if such documents are relevant to later response selection decisions, they should be included in the record for the subsequent action. Other situations where documents may be added to the administrative record after the decision document is signed are described in 40 CFR 300.825.

Who is responsible for compiling and maintaining the administrative record?

Under CERCLA the lead agency must compile and maintain the administrative record. [40 CFR 800(a)] Since DOE has lead responsibility for CERCLA response actions at its facilities pursuant to E.O. 12580, "*Superfund Implementation*," DOE compiles and maintains the administrative record.

At National Priorities List (NPL) sites and any other DOE facility where EPA is involved in selecting a response action, EPA participates in compiling and maintaining the record. DOE must provide the appropriate EPA regional office with key documents [40 CFR 300.800(b)(3)] that, at a minimum, include a copy of the index to the administrative record file, the remedial investigation/feasibility study (RI/FS) work plan, the RI/FS as released for public comment, the proposed plan, and any public comments received on the RI/FS and proposed plan.

Under RCRA the administrative record is compiled and maintained by the regulators, either EPA or the state.

When should an administrative record file be established?

Under CERCLA the administrative record file should be compiled as relevant documents on the response action are generated or received. For a *remedial action* the administrative record file must be established and made available for public inspection before the remedial investigation field work begins (including interim remedial actions) (40 CFR 300.815).

The time to establish the administrative record file for a *removal action* depends on the nature of the action. For *non-time critical* removal actions (i.e., those that will begin more than 6 months from the date of discovery), the administrative record file must be established prior to completion of the engineering evaluation/cost analysis (EE/CA) [40 CFR 300.820(a)]. For all removal actions requiring more than 120 days of on-site action to complete, the administrative record file must be available for public inspection by the end of the 120-day period [40 CFR 300.415(n)(3)]. For *time-critical* removal actions (i.e., those that must be initiated in less than 6 months, including emergency removals), the administrative record file must be available within 60 days of initiating on-site removal activity, even if an action is started and finished within that time period [40 CFR 300.820(b)].

Since their contents often overlap, the administrative record file may be established at approximately the same time as the information repository. [See RCRA/CERCLA information brief: *The Information Repository, EH-231-009/1191 (November 1991) (Updated January 2006.)*] When the CERCLA administrative record file is first made publicly available, DOE must, at a minimum, publish a notice of its availability in a widely circulated local newspaper.

Under RCRA the administrative record is to be compiled by the regulators after preparing the draft permit or notice of intent to deny the permit (40 CFR 270.140) and must be complete on the date the final permit is issued (40 CFR 270.150). Information contained in the administrative record must be made available for public review upon request. The public should be notified by the regulators when a tentative decision on the RCRA permit is made and told where the administrative record can be reviewed (40 CFR 270.145).

Where should an administrative record file be located?

Under CERCLA DOE must establish a publicly accessible docket containing the administrative record file at a central location such as a DOE office closest to the site. Additionally, a copy of the documents in the administrative record file must be available at or near the facility where the response action is occurring (40 CFR 300.805). The documents at both locations should be available for public inspection at reasonable times. Documents generated or received after the decision document is signed should be kept in a post-decision document file that should be located only at the central location.

When a release or threat of a release requires that on-site removal activities be initiated within hours of a determination that a removal is appropriate and if on-site removal activities cease within 30 days of initiation, the administrative record needs to be available for public inspection only at the central location [40 CFR 805(a)(5)].

Under RCRA the administrative record is compiled and maintained by the regulators, either EPA or the state.

What information should be included in an administrative record?

Under CERCLA the administrative record for selection of a *remedial* action should include

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

The administrative record for selection of a *removal* action should include

- documents that were considered or relied on to select the removal action and
- documents that demonstrate the public's opportunity to participate in and comment on the selection of the removal action, when appropriate.

Documents in the administrative record are not limited to those that support a response decision. Relevant documents that were considered but ultimately rejected are also included.

Thus, the administrative record file typically, but not invariably, includes the following documents [40 CFR 300.810(a)]:

- an index of all documents found in it, organized either by subject or in chronological order;
- general and site-specific guidance documents;
- final reports (e.g., RI/FS, record of decision) generated by DOE;
- technical and site-specific information;
- information or comments submitted by interested parties or the public during public comment periods; and
- DOE's responses to the comments received.

If they are relied upon in the selection of the remedy, primary and secondary documents, as specified in the federal facility agreement, should also be in the administrative record file. Examples of such documents include:

- project plan scope of work and the actual project plan, including the sampling and analysis plan, the community relations plan, the health and safety plan, and the RI/FS work plan;

- risk assessments, RI/FS reports, initial remedial alternatives/data quality objectives, site characterization summary, initial screening of remedial alternatives, detailed analysis of alternatives;
- EE/CAs;
- post-screening investigation work plan, treatability studies and work plans, treatability test evaluation report, validated sampling and data results;
- proposed plan (i.e., the remedial action); and
- draft and final records of decision.

Under RCRA the administrative record for a draft permit typically includes the following documents [40 CFR 270.140(b)]:

- the permit application and any supporting data furnished by the applicant,
- the draft permit or notice of intent to deny the permit,
- the statement of basis for the decision and all documents cited therein, and
- any other documents that support the decision on the permit.

For a final permit the administrative record for the draft permit is typically supplemented by the regulator adding the following documents [40 CFR 270.150(f)]:

- all comments received during the public comment period,
- the tape or transcript of any hearings,
- any written materials submitted at the hearings,
- responses to comments,
- any new material placed in the record since the draft permit was issued,
- other documents supporting the permit, and
- a copy of the final permit.

What documents do not need to be included in the administrative record file?

Under CERCLA the administrative record file includes only documents that form a basis for the selection of the response action. Documents that are irrelevant to the decision on selecting a

response action may include Hazard Ranking System scoring packages, contractor work assignments, cost documentation (as opposed to cost effectiveness information), and NPL deletion information. Other documents that do not belong in the administrative record file include, but are not limited to, draft documents, internal memoranda, day-to-day staff notes, and public requests for information. If, however, any of the aforementioned documents contain information that is considered or relied on in the response action selection and is not contained elsewhere in the record file, then that document should be included in the record file.

Must all documents be physically included in the administrative record file?

Some documents that are part of the administrative record file (e.g., sampling data, guidance and policy documents, technical literature, statutes and regulations) do not have to be maintained in the copy of the record file located at or near the site or, in some cases, at a central location. The index must, however, list them and indicate where they are publicly accessible.

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. Other guidance documents not generated for the particular site for which the record file is being compiled may be kept in a compendium of guidance documents maintained at the central location. This compendium of guidance documents must be available to the public, but only at the central location. The record file located at or near the site should, however, contain an index to 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. If a guidance document that is not included in the guidance compendium is considered or relied on in selecting a response action, that document should be physically included in the record file.

Technical literature generated for the site at issue should be physically included in the administrative record file for that site, whether or not that literature is readily publicly available. Technical literature relied on to select the response but not specifically generated for the site should also be included in the record file if it is not publicly available. Such documents may 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 specifically generated for the site does not need to be physically included in the record file, but the documents must be referenced in the index to the record file.

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 models and databases should be physically included in the record file if such documents contain information that was considered or relied on in selecting the response action.

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. Copies of the actual standards (i.e., statutes or regulations) comprising federal and state applicable or relevant and appropriate requirements (ARARs) should be physically included in the record file if they are not readily accessible.

Can the administrative record file be corrected?

Under CERCLA documents that are erroneously placed in the administrative record file (e.g., documents that have no relevance to the selection of the response action or that pertain to an entirely different site) should not become part of the final administrative record. Thus, they should be removed from the administrative record file, and the index to the record file should be revised to reflect their removal. Also,

a memo should be placed in the record file explaining that certain documents previously included in the index have been withdrawn since they were not the basis for a CERCLA decision, and the withdrawn documents should be listed.

Must each CERCLA response action have a separate administrative record?

Generally, yes, a separate administrative record must be compiled for each CERCLA removal or remedial action at a facility. However, information relevant to more than one response action (e.g., separate operable units) may be placed in the administrative record file for the initial response action and incorporated by reference in the indexes of subsequent administrative record files for that same site.

How should the administrative record file be maintained?

Under CERCLA DOE must maintain the security and integrity of the record file at all times to ensure that the documents in the record file are complete, properly organized, and legible. DOE should establish document room procedures to ensure orderly public access to the documents. The record file should be treated as a non-circulating reference; that is, documents should not be left unattended or leave the local repository except under DOE supervision.

DOE may make the administrative record file available to the public in microform. If using micrographics to maintain the record files, DOE must provide a micrographic reader at or near the administrative record site.

How long must the administrative record file be available for public review?

Under CERCLA if there is ongoing or possible litigation, the record file in the central location should be available at least until the litigation is over.

CERCLA is silent concerning the duration of public availability of the record file. According

to EPA, the length of time a record must be available at or near the site will depend on site-specific considerations (e.g., ongoing activity, pending litigation, community interest). The statutory provisions in sections 113(g) and (h) of CERCLA for judicial review and deadlines for filing cost recovery actions provide useful references for keeping the record file publicly available.

How long must the administrative record file be retained?

Under CERCLA the administrative record file continues to serve as a historical account of the response selection, even after the statute of limitations for cost recovery action has passed. Thus, administrative record files are permanent records that must be retained (EPA 1990). According to the disposition instructions in EPA's records management schedule #019 (EPA 2002), the actual Administrative Record is disposable and should be destroyed when 30 years old. However, the removal (EPA 2005) or remedial (EPA 2004) files, of which the Administrative Record is a subpart, should be transferred to the National Archives for permanent preservation.

What are the provisions for documents containing privileged, confidential, or classified information?

Under CERCLA both privileged documents (e.g., those subject to attorney-client, attorney work product, deliberative process privileges) and business confidential documents (e.g., those containing confidential business information) will be kept in a confidential or restricted portion of the administrative record file [40 CFR 300.810(c) and (d)]. The confidential portion of the record file should be separate from the publicly available record file to protect against inadvertent disclosure. It should be stored in locked files at the central location, but it should not be located at or near the response site. All documents contained in the confidential portion of the record file must be listed in the index that is available to the public. Questions on how to

handle classified information should be referred to the appropriate field security officer.

Under RCRA some information required in permit applications may be confidential business information. At the time the information is submitted, the facility owner or operator may assert a claim of confidentiality by stamping the words “confidential business information” on each page containing such information. EPA will treat that information according to the requirements in 40 CFR part 2 - *Public Information*.

EH-43 Information Briefs are based on established federal environmental regulatory requirements, policies, and guidance. These documents do not institute new DOE policy or address issues requiring DOE policy decisions.

Please refer any questions concerning the subject material covered in this Information Brief to:

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