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# ADMINISTRATIVE RECORD REQUIREMENTS DURING REMOVAL ACTIONS

## Overview

Section 113(k) of CERCLA, as amended, requires the establishment of an administrative record. The administrative record file, a subset of the site file, has two primary purposes:<sup>4</sup>

- First, it is the basis for judicial review of any issues concerning the removal action. Because a proposed removal action must be supported by the administrative record, the OSC must ensure the adequacy of the administrative record in the event the decision is challenged, such as in a subsequent cost recovery case.
- Second, EPA, through access to the administrative record file, provides for public participation, whenever practical, in removal actions, with opportunity as appropriate for comment on the selected response.

The administrative record file is the body of documents used by the Agency during a removal action to select a response. It includes site-specific data and comments, guidance documents, technical references used in the selection of the response, and documents that reflect the views of the public, including PRPs, concerning this selection [1]. For removal actions, the Action Memorandum is the critical component of the administrative record file because it is the primary decision document for a removal action.

As with the community relations requirements, administrative record requirements vary according to the type of removal action. Specifically, the timing and extent of administrative record activities depends on whether or not a planning period of six months is available before the start of on-site activity. Section 300.820 of the NCP requires the following administrative record activities:

- **Public Participation Activities Required at All Removal Actions**
  - Establish the administrative record file
  - Publish a notice of administrative record availability

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<sup>4</sup> The administrative record file differs from the administrative record because it refers to the documents as they are being compiled. Until a response is selected, there is no complete administrative record for that decision. Thus, to avoid creating the impression that the record is complete at any time prior to the final selection decision, the set of documents is referred to as the administrative record file rather than the administrative record.

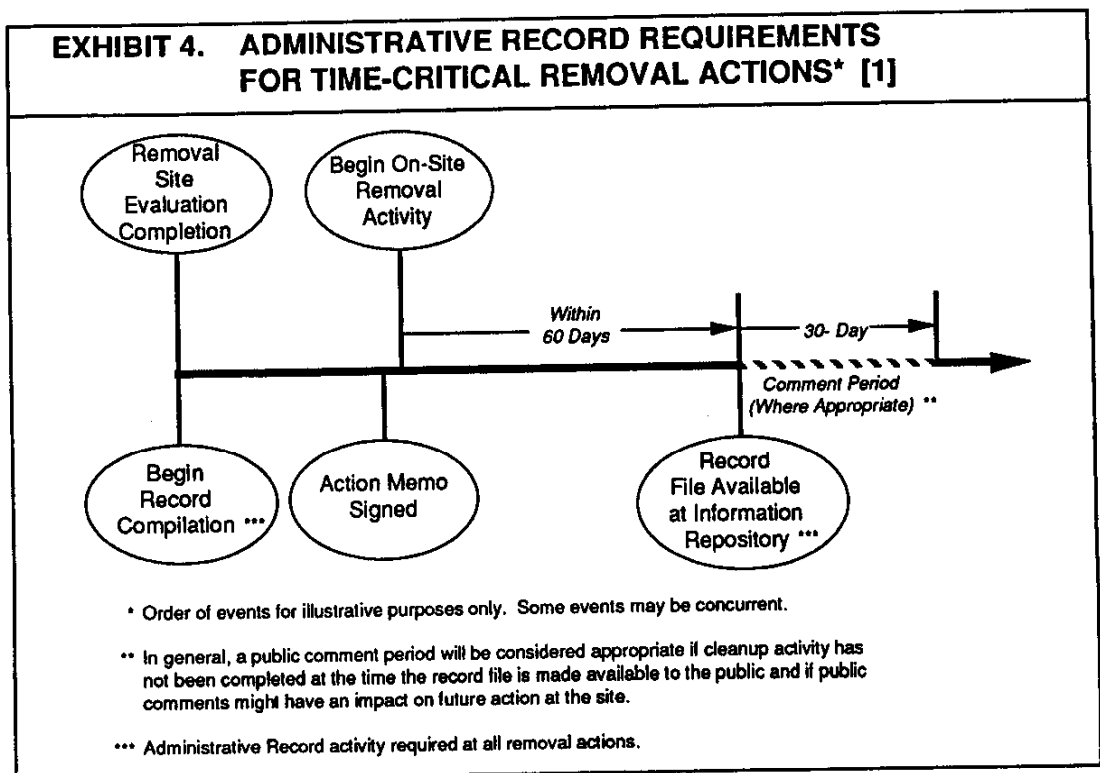
## ADMINISTRATIVE RECORD REQUIREMENTS

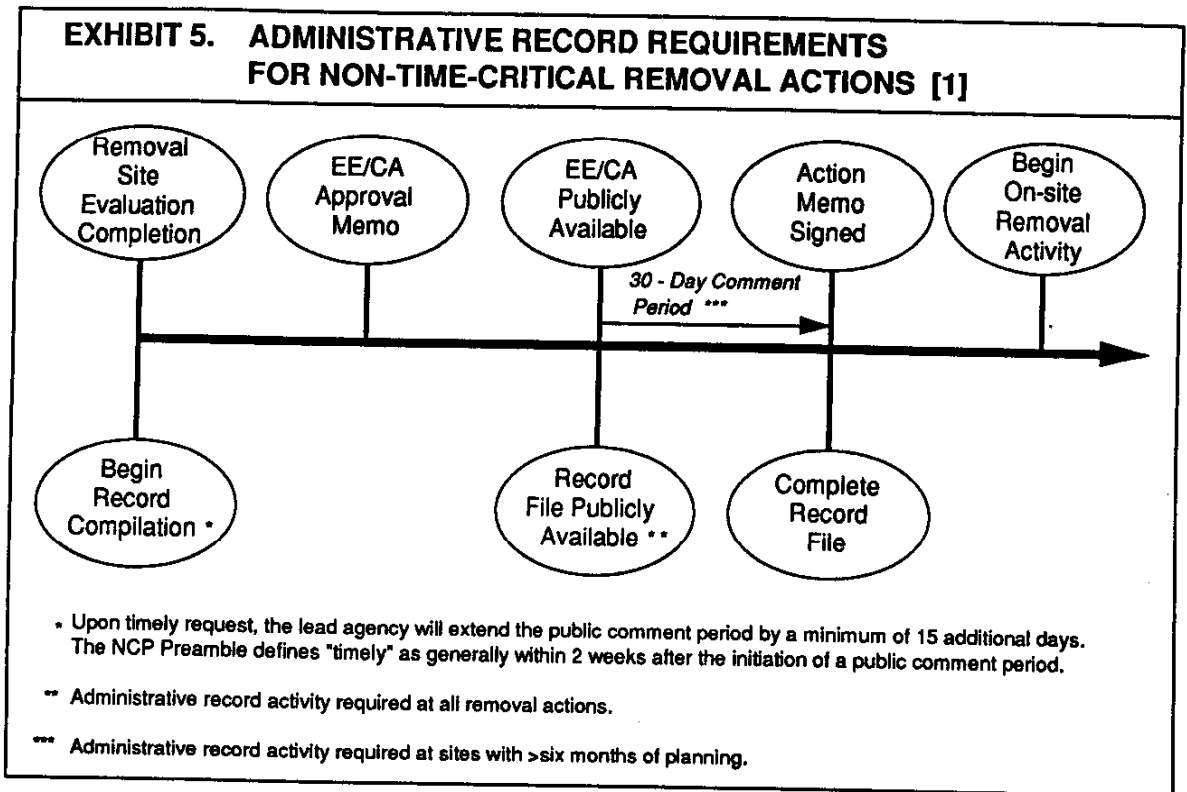
- Public Participation Activities Required at Sites with >Six Months of Planning
  - Hold a public comment period, where appropriate
  - Develop a written response to significant comments.

Section 300.825 of the NCP requires that the lead agency:

- Add documents to the administrative record file after selection of a response action only in certain situations.

Exhibits 4 and 5 illustrate administrative record requirements for removal actions with planning periods of less than six months (i.e., time-critical actions, including emergencies) and more than six months (i.e., non-time-critical actions). In addition, the close relationship between administrative record requirements and community relations requirements is demonstrated by numerous cross-references throughout the NCP. For example, NCP section 300.415(m), which contains community relations requirements, cites most of the administrative record activities specified above. It is the responsibility of the OSC to ensure that all relevant administrative record and community relations requirements are completed. The OSC may determine that site circumstances merit additional public participation requirements beyond what is required; in such cases, the OSC may conduct those activities as appropriate, *in addition to* the required activities.





### Administrative Record Activities

#### Establish Administrative Record (This activity is required at all removal actions)

The OSC, as the leader of on-site activity, is responsible for compiling and maintaining the administrative record in accordance with the NCP [1, 6]. The OSC should work closely with the Region's Administrative Record Coordinator (ARC) to help compile and index the administrative record file; develop and implement document room procedures to ensure orderly public access to the record; and monitor the condition of record documents to ensure the integrity of the record. Exhibit 6 lists the required contents of the administrative record file, as defined in the NCP. The length of time a record must be available at or near the site will be dependent on site-specific considerations such as on-going site activity, pending litigation, and the level of community interest. The administrative record file may be made available to the public in document-form or microform.

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### EXHIBIT 6. ADMINISTRATIVE RECORD CONTENTS

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

- Documents containing factual information and analysis of the factual information that may form a basis for selection of a response action, such as:
  - Verified sampling data
  - Chain of custody forms
  - Site inspection reports
  - Preliminary assessment and site evaluation reports for EE/CA
  - ATSDR health assessment
  - Documents supporting the lead agency's determination of imminent and substantial endangerment/risk assessment
  - Technical, treatability, and engineering evaluations and studies
  - Requests for information and responses solicited under Section 104(e) and Section 122(e), when they contain information relied on by the decisionmaker, and responses to Section 104(e) information request letters and Section 122(e) subpoenas
  - Sampling plan.
- PRP notice letters.
- Factual information from the public/PRPs.
- Guidance documents, technical literature, and site- or issue-specific policy memoranda that may form a basis from the selection of the response action, such as:
  - Articles from technical journals
  - Memoranda on the application of a specific regulation to a site
  - Memoranda on off-site disposal capacity.
- Documents received, published, or made available to the public under section 300.820 of the NCP such as:
  - Community Relations Plan
  - Public comment and information received by the lead agency/State and Federal Agency comments
  - Written response to significant comments
  - Documentation of Public Meetings
  - Documentation of State involvement.
- Decision documents, such as Action Memoranda, and Closeout Documents.
- Enforcement orders, such as administrative orders, consent decrees and affidavits.
- Index of the documents included in the administrative record file. \*

In general, only final documents are included in the administrative record file. Confidential documents will be placed in the record, but not at the site information repository.

\* If documents are customarily grouped together, as with sampling data chain-of-custody documents, they may be listed as a group in the administrative record file.

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NCP requirements for the timing of the availability of the administrative record file depend on the urgency of the situation. For all removal actions where there is a planning period of less than six months prior to the initiation of on-site activity, the administrative record file must be made available for public inspection no later than 60 days after the initiation of on-site removal activity. For removal actions where a planning period of six months or more exists before on-site removal activities must begin, the administrative record file must be made available for public inspection when the EE/CA is made available for public comment.<sup>5</sup>

NCP requirements concerning the location of the administrative record file also depend on the urgency of the removal action. For emergency removal actions lasting less than 30 days, the record file need only be placed at a central location, such as an EPA Regional office. For those sites where emergency removal activity is expected to extend beyond 30 days, and for all other time-critical and non-time critical removal actions, the OSC must make the administrative record file available at both a central location and at or near the site.

The Region may choose to have the ARC certify that the record was compiled and maintained in accordance with applicable Agency regulations and guidance. Such certification would not, however, address the completeness of the record file [1]. Only the Regional Administrator's designee, after consultation with the Office of Regional Counsel (ORC) and the OSC, may certify the administrative record for completeness. Certification of the record should be made by program staff and not legal staff.

### Publish Public Notice (This activity is required at all removal actions)

A public notice is an advertisement, usually a display ad, published in major local newspapers in the site community to announce officially Agency decisions, major removal activity milestones, public meetings, or to solicit public comment on Agency actions [1, 5]. The NCP requires the lead agency to publish a public notice to inform the public of the availability of the administrative record file.

The public notice announcing the availability of the administrative record file must appear when the record file is placed in the information repository. For removal actions where the planning period is less than six months, the NCP stipulates that the public notice must appear when the administrative record file is made available for public inspection, no later than 60 days after initiation of on-site removal activity. For removal actions with a planning period of six months or more, the public notice announcing the availability of the administrative record file must be published when the EE/CA Approval Memorandum is signed.

Public notices should include the following information:

- Site background
- A brief description of the major components of the EE/CA, if applicable

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<sup>5</sup> NCP section 300.415(b) requires the preparation of an EE/CA or its equivalent (e.g., a Remedial Investigation/Feasibility Study) for all removal actions with a planning period of at least six months before the start of on-site activity. The EE/CA then must be made available to the public for comment.

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- Location and hours of availability of the information repository
- Dates of public comment period, if applicable
- Time, date, and location of public meeting, if applicable
- Name of the Agency contact to whom written comments on the administrative record file should be addressed.

In addition, if the notice is announcing a public comment period for a non-time-critical removal action, it must state that upon timely receipt of a request (defined in the NCP Preamble as generally within two weeks after the initiation of a public comment period), the comment period will be extended a minimum of 15 additional days.<sup>6</sup> Exhibit 7 provides a sample public notice announcing the availability of the administrative record file.

The OSC should ensure that a public notice is placed in a newspaper with general circulation in the site community. Where there is more than one general circulation newspaper serving the community or if the site community is a broad geographic area, the public notice may be placed in more than one newspaper. Where time permits and the OSC determines that the level of interest in the site warrants additional notice of events, a press release noting information included in the public notice may be distributed for broadcast to local media or sent as individual mailings to interested parties on the mailing list.

### Hold Public Comment Period (This activity is required at sites with >six months of planning)

A public comment period is a designated time period when written comments from citizens and oral comments received at a public meeting are accepted formally by the agency responsible for the removal action. The purpose of these public comment periods is to provide an opportunity for citizens to review and comment on the Agency's proposed course of action [1, 5]. For the administrative record, an additional purpose is to ensure that interested persons may submit comments on the selection of the removal action for inclusion in the administrative record file.

For time-critical removal actions, the NCP requires a public comment period, if appropriate, of not less than 30 days, when the administrative record file is made available for public inspection. For non-time critical removal actions, the NCP requires a 30-day public comment period on the EE/CA and any supporting documentation at the time the EE/CA is made available for public comment. While public comment periods are *always* required for non-time-critical removal actions, they will be considered appropriate in time-critical situations 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. In addition, the public comment period for non-time-critical removal actions must be extended for a minimum of 15 additional days upon timely receipt of a request.

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<sup>6</sup> Note that this is a new requirement per NCP section 300.415(m)(4)(iii), published March 8, 1990. The NCP also requires that documents supporting the request for an additional comment period be placed in the administrative record file.

**EXHIBIT 7. SAMPLE PUBLIC NOTICE**

**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY**

Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202

**NOTICE OF PUBLIC AVAILABILITY**

**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ANNOUNCES THE AVAILABILITY OF THE  
REMOVAL ADMINISTRATIVE RECORD FILE  
A & B PETROLEUM  
BELLFIELD, BELL PARISH, LOUISIANA**

The U.S. Environmental Protection Agency (EPA) announces the availability for public review of documents comprising the A & B Petroleum administrative record file for the selection of the removal action. The documents are available at the Bell Parish Public Library. EPA encourages the public to comment on documents as they are placed in the record file.

The administrative record file includes documents which form the basis for the selection of a removal action at this site. Documents now in the record file include, but are not limited to, preliminary assessment and inspection reports, test results and the Action Memorandum. Other documents could be added to the record file as site work progresses. These additional documents may include, but are not limited to, technical reports, additional validated sampling data, comments and new data submitted by interested persons, and EPA responses to significant comments. No further announcement of availability will be made.

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

Bell Parish Public Library  
204 West Main  
Bellfield, Louisiana 71483

and U.S. EPA - Region 6  
145 Ross Avenue  
Dallas, Texas 75202

Public comments on the response decision will be accepted for thirty (30) days from the date this notice appears in print. At the end of the thirty (30) day comment period, a written response to all pertinent comments will be prepared in a responsiveness summary and will be placed in the record file. Written comments on the administrative record file should be sent to:

U.S. EPA - Region 6  
ATTN: John Doe  
1445 Ross Avenue  
Dallas TX, 75231

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The OSC is responsible for designating the public comment period and should ensure the completion of the following tasks if a public comment period is required:

- Identifying a contact person within the Agency who will respond to questions regarding the public comment period
- Announcing the start of the public comment period at least two weeks in advance of the event <sup>7</sup>
- Documenting by a memo to the file or record of communications any significant comments expressed that are not received in written form
- Conducting a public meeting to discuss site activities.

At the conclusion of a public comment period, a written response to significant comments is prepared as described below.

Prepare A Written Response to Significant Comments (This activity is required at sites with >six months of planning)

The OSC is required to include a written response to significant comments in the administrative record file for comments received during the comment period on documents in the record file [4]. The written response to significant comments is prepared by the OSC or a designee in conjunction with the ORC with technical understanding of the removal action to address those community concerns received during the public comment period. All comments received by EPA during the comment period should be included in the administrative record. The response may be to comments received in writing or orally, through community interviews or public meetings [5].

Adding to the Administrative Record File After Selecting the Response (This activity is required at sites with >six months of planning)

Following the selection of the response, NCP section 300.825 stipulates that documents may be added to the administrative record file *only* in certain situations [1]. Specifically, the lead agency may add documents to the administrative record file after the decision document selecting the response for the removal action has been signed if:

- The documents concern a portion of the selected response that the decision document (usually the Action Memorandum) does not address or reserves to be decided at a later date
- An amended decision document is issued

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<sup>7</sup> Depending on site circumstances (e.g., time and resource constraints or the level of public interest), a second notice may be issued immediately prior to the public comment period.



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- The lead agency holds an additional or extended public comment period after the decision document has been signed and additional comments, responsive to the issues included in the request for additional comment, are received
- The lead agency receives comments after the close of the public comment period that contain significant information not contained elsewhere in the administrative record file which could not have been submitted during the public comment period and which substantially support the need to alter the response significantly.

If any of the above situations apply to a removal action, supporting documentation should be included in the administrative record file.



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## PUBLIC PARTICIPATION ROLES AND RESPONSIBILITIES

The OSC works with the Community Relations Coordinator (CRC) and Administrative Record Coordinator (ARC) when possible to coordinate the design and implementation of public participation activities during a removal action. Additional resources, including other EPA Regional personnel, State or local government representatives, and contractor support are available to assist the OSC with public participation activities [5]. The OSC may use these resources to build a site-specific public participation team, depending on Regional and State procedures as well as site circumstances, such as the level of public interest and the immediacy of the removal action. While the OSC may delegate the conduct of the public participation activities to a team member, ultimate responsibility rests with the OSC. For example, although the actual compilation of the record may have been delegated to the records management staff, the Regional Administrator may consult the OSC prior to certifying the completeness of the administrative record.<sup>8</sup> Exhibit 8 illustrates the resources available to assist the OSC in implementing each of the public participation activities.

### Primary Resources

The primary resources available to the OSC for the design and implementation of public participation activities are:

- Community Relations Coordinator (CRC) - serves as the OSC's primary resource for coordinating and monitoring contractor support. The CRC may conduct or oversee support activities such as preparing a community relations plan and fact sheets, conducting community interviews, and maintaining an information repository for the site.
- Administrative Record Coordinator (ARC) - organizes information for the administrative record file according to the Regional file structure. The ARC may provide site file materials from which to compile the record file, assist in compiling the record file to meet the timing requirements established by the NCP, and help identify materials for the information repository.
- Regional Public Affairs staff - provide support for the OSC in media relations tasks, such as developing press releases, processing information requests from the media, or acting as an Agency spokesperson. The assistance of the public affairs staff may be enlisted directly by the OSC or through the CRC.

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<sup>8</sup> The actual certification of the administrative record is made by a designee of the Regional Administrator.

# ROLES AND RESPONSIBILITIES

EXHIBIT 8. PUBLIC PARTICIPATION RESOURCES AVAILABLE TO ASSIST OSCs								
Public Participation Activities	Public Participation Team							
	Community Relations Coordinator	Public Affairs Staff	State or Local Government Representatives	Regional Removal Enforcement Staff	Office of Regional Counsel	Regional Records Management Staff	Public Information Assist Team	Contractor Support**
Designate Agency Spokesperson	•	•						
Establish Administrative Record File				•	•	•		
Conduct Community Interviews	•		•					•
Prepare Community Relations Plan	•		•					•
Establish Information Repository	•		•	•		•		•
Publish Public Notice								•
Designate Public Comment Period					•			
Prepare Written Response to Significant Comments	•				•			•
Conduct Public Meeting*	•	•	•				•	
Develop Fact Sheets or other Public Information Materials*	•	•		•			•	•
Develop Community Relations Mailing List*	•	•						•
Prepare Meeting Summary*	•							•
Establish On-scene Information Office*	•	•	•	•			•	•

\* These community relations activities are available to supplement the community relations approach; they are not required by the NCP.

\*\* In most Regions, CRCs delegate activities to contractor support, where appropriate, and oversee conduct of those activities.

- State or local government representatives - may assist or, in some situations, take the lead for public participation activities. State and local government personnel are helpful particularly in situations where immediate support is necessary and Regional staff are not available.

### **Additional Resources**

Other support available to assist the OSC in implementing public participation activities includes:

- Regional removal enforcement staff - supports the establishment or maintenance of the information repository. The enforcement staff has many of the site documents necessary for the information repository including documentation of any removal activity conducted by the responsible parties, such as the Work Plan and the Site Safety Plan.
- Office of Regional Counsel (ORC) - must consult with the OSC regarding the contents of the administrative record file prior to documents being made available publicly. The ORC also should be involved in any site activity involving the public's right to information as required by the NCP and CERCLA, including reviewing documentation for inclusion in the administrative record file, preparing the public notice, preparing the community relations plan, and developing the written response to significant comments.
- The United States Coast Guard Public Information Assist Team (PIAT) - is available to assist OSCs in meeting the demands for public information and participation. Assistance from the PIAT may include the preparation of public informational materials and press releases. Requests for the PIAT may be made through the National Response Center.
- Contractor support - may be used to assist in developing the community relations plan, establishing the information repository, and preparing the written response to comments. The OSC may delegate tasks to contractor support personnel identified by the CRC. Depending on the information needs of the site community, the public participation support contractor also may be involved in the development of public information materials and other public participation activities beyond those required by CERCLA and the NCP.

The use of these public participation resources is coordinated by the OSC. As the leader in implementing these activities, the OSC will be responsible for identifying the roles and responsibilities of each staff member and communicating information about the site community and public participation strategy to the staff.

## **APPENDIX A. COMMUNITY RELATIONS PLAN OUTLINE [5]**

### *Section 1. Overview of Community Relations Plan*

This section outlines the purpose of the CRP and the distinctive or central features of the community relations efforts for the site. Any special characteristics of the community and the site also should be introduced. This overview should identify the community relations objectives designed for this particular removal action and describe the relevance of these objectives to the removal process.

### *Section 2. Capsule Site Description*

This section provides the basic historical, geographical, and technical details in order to convey the necessity of a removal action at the site. The description of the site should include:

- Site location and relationship to homes, schools, playgrounds, businesses, lakes, streams, and parks
- History of site use and ownership
- Type of hazardous substances at the site
- Nature of threat and potential threat to public health and environment
- History of inspections and studies conducted at the site.

In addition, the description should identify the lead agency responsible for the removal action.

### *Section 3. Community Background*

This section is a compilation of information gathered during the community interviews. Consequently, this section should focus on the community's perceptions of the events and problems at the site, if applicable. This information should be divided into three parts:

- Community profile, which familiarizes the reader with the community and analyzes key local issues and interests
- Chronology of community involvement, which identifies how the community has reacted to the site in the past
- Description of key community concerns, which analyzes the major public concerns regarding the site and discusses how the removal action addresses these concerns.

#### ***Section 4. Highlights of the Community Relations Program***

This section summarizes the design for the community relations strategy at the site. If applicable, information about site-specific methods of communication, resources to be used in the implementation of the community relations program, key individuals or organizations expected to play a role in the implementation of the program, and areas of special sensitivity that have been or are being considered during removal activities should be presented in this summary.

#### ***Section 5. Community Relations Activities and Timing***

This section presents the community relations activities that will be conducted at the site and the proposed timeline for implementing these activities. A planning tool, such as a matrix of the community relations activities as related to the removal activities or milestones at the site, may be used to clarify this section.

#### ***Appendix A: Contact List of Key Community Leaders and Interested Parties***

The names, addresses, and telephone numbers of all officials and group representatives contacted during the community interviews, along with others who will receive information about site developments, are listed in this appendix. This appendix should not include the names, addresses, and telephone numbers of private citizens contacted for interviews; this information should be included in a separate mailing list that is not made available for public review. The list of community leaders and interested parties should be categorized as follows:

- EPA Regional officials
- Community organizations, environmental groups, and citizens' groups
- State and local officials and agencies
- Media.

This appendix generally requires more frequent updates than the rest of the CRP, to be consistent with changes in government administration and community leadership.

#### ***Appendix B: Suggested Locations of Meetings and Information Repositories***

Appendix B lists the resources available for implementing the community relations program for the site. This appendix lists recommended locations for public meetings, public availability sessions, and the information repository. Facilities recommended for holding public meetings or public availability sessions include school gyms, town halls, and library meeting rooms. The locations selected for public meetings or availability sessions should be accessible to handicapped individuals and geographically convenient to the community. To aid future planning, the capacity of the meeting room and the name of the contact person for scheduling facilities also should be included in the appendix. Typical locations for information repositories include local libraries, town or city halls, and county offices. Appendix B should include the hours of availability, the names of contacts for access to repository materials, and photocopy fees.

## APPENDIX B. REFERENCES<sup>9</sup>

### Guidance

- [1] OSWER Dir. 9833.3A-1, "Final Guidance on Administrative Records for Selecting CERCLA Response Actions" (December 3, 1990)

### Manuals

- [2] Community Relations Resources Catalog, Office of Emergency and Remedial Response (March 1989)
- [3] "Dealing with the Media: Print and Electronic," Superfund Removal Program Policy Notebook, Volume 2, Office of Emergency and Remedial Response
- [4] OSWER Dir. 9203.0-06, "Superfund Responsiveness Summaries (Superfund Management Review: Recommendation #43E)" (June 1990)
- [5] OSWER Dir. 9230.0-3B, Community Relations in Superfund: A Handbook (June 1988)
- [6] OSWER Dir. 9833.4, Compendium of CERCLA Response Selection Guidance Documents Office of Waste Programs Enforcement (February 1990)
- [7] OSWER Dir. 9837.2A, Enforcement Project Management Handbook (January 1991)
- [8] Superfund Community Relations Program: A Guide to Effective Presentations with Visual Aids, Office of Emergency and Remedial Response (June 1988)

### Statutes and Regulations

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. sections 9601-9675

The National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 (March 1990)

<sup>9</sup> Bracketed numbers in front of each reference appear throughout the text to guide the reader to the appropriate information resources.



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