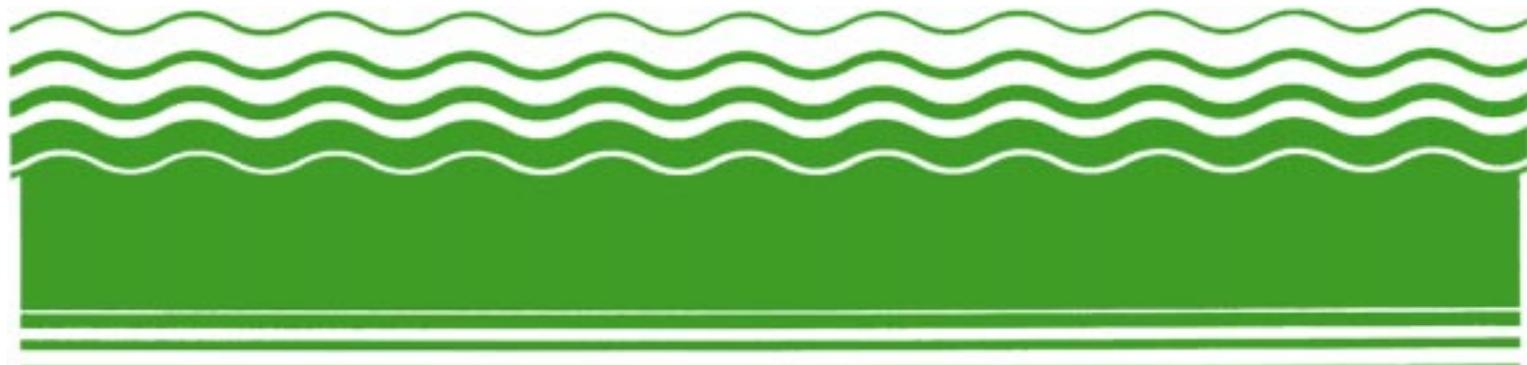


Superfund

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# **A GUIDE TO PREPARING SUPERFUND PROPOSED PLANS, RECORDS OF DECISION, AND OTHER REMEDY SELECTION DECISION DOCUMENTS**



## **NOTICE**

This document provides guidance to EPA and State staff. It also provides guidance to the public and to the regulated community on how EPA intends to exercise its discretion in implementing its regulations. The guidance is designed to implement national policy on these issues. The document does not, however, substitute for statutes EPA administers nor their implementing regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the specific circumstances. EPA may change this guidance in the future, as appropriate.

## **ABSTRACT**

This *Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (also commonly referred to as the “ROD Guidance”) has been developed to accomplish the following:

- Provide recommended formats and content for Superfund remedial action decision documents;
- Clarify roles and responsibilities of the U.S. Environmental Protection Agency (EPA), Federal facilities, States, and Indian Tribes in developing and issuing decision documents;
- Clarify roles and responsibilities of stakeholders in the remedy selection process; and
- Explain how to address changes made to proposed and selected remedies.

The decision documents addressed by this guidance are the Proposed Plan, the Record of Decision (ROD), the Explanation of Significant Differences (ESD), and the ROD Amendment. Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the issuance of decision documents for remedial actions taken pursuant to Sections 104, 106, 120, and 122. Sections 300.430(f)(2), 300.430(f)(4) and 300.435(c)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) establish the regulatory requirements for these decision documents. This guidance document provides additional guidelines and is based upon the Superfund statute and regulations.

## **ADDITIONAL COPIES**

This document is available on the Internet at <http://www.epa.gov/superfund/>. No fee is required to download the document.

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Questions regarding this document should be directed to the Superfund Hotline at (800) 424-9346, (DC Area Local (703) 412-9810), or <http://www.epa.gov/epaoswer/hotline/>.

## Preface

This guidance document is being issued to enhance the clarity and completeness of Records of Decision (RODs) and related remedy selection decision documents. It has been revised to reflect the 1990 final National Oil and Hazardous Substances Pollution Contingency Plan (NCP) and current EPA policies.

This guidance supersedes the following EPA guidance documents:

- *Guidance on Preparing Superfund Decision Documents: The Proposed Plan, The Record of Decision, Explanation of Significant Differences, The Record of Decision Amendment: Interim Final* (EPA 540-G-89-007, July 1989 (pre-publication and October 1989));
- *A Guide to Developing Superfund Records of Decision* (OSWER 9335.3-02FS-1, May 1990);
- *A Guide to Developing Superfund Proposed Plans* (OSWER 9335.3-02FS-2, May 1990);
- *Guide to Developing Superfund No Action, Interim Action, and Contingency Remedy RODs* (OSWER 9355.3-02FS-3, April 1991); and
- *Guide to Addressing Pre-ROD and Post-ROD Changes* (OSWER 9355.3-02FS-4, April 1991).

NOTE: This guidance does not cover the remedy selection process itself. This process is addressed in a separate fact sheet entitled *A Guide to Selecting Superfund Remedial Actions* (OSWER 9355.0-27FS, April 1990). Other remedy selection policies are summarized in *Rules of Thumb for Superfund Remedy Selection* (EPA 540-R-97-013, August 1997).

### ACKNOWLEDGMENTS

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## **Acronyms Used in This Document**

AA	Assistant Administrator	NPL	National Priorities List
ACH	Automated Clearing House	OERR	Office of Emergency and Remedial Response
ARAR	Applicable or Relevant and Appropriate Requirement	O&M	Operations and Maintenance
ATSDR	Agency for Toxic Substances and Disease Registry	ORC	Office of Regional Counsel
BDAT	Best Demonstrated Available Technology	OSC	On-Scene Coordinator
CA	Cooperative Agreement	OSRE	Office of Site Remediation and Enforcement
CAA	Clean Air Act	OSWER	Office of Solid Waste and Emergency Response
CAG	Community Advisory Group	OU	Operable Unit
CDI	Chronic Daily Intake	PA	Preliminary Assessment
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act of 1980	PCOR	Preliminary Site Closeout Report
CERCLIS	CERCLA Information System	PRG	Preliminary Remediation Goal
CFR	Code of Federal Regulations	POTW	Publicly Owned Treatment Works
COC	Contaminant of Concern	PRP	Potentially Responsible Party
CWA	Clean Water Act	RA	Regional Administrator <i>or</i> Remedial Action
DNAPL	Dense Non-Aqueous Phase Liquid	RAO	Remedial Action Objective
DOD	Department of Defense	RCRA	Resource Conservation and Recovery Act
DOE	Department of Energy	RD	Remedial Design
EJ	Environmental Justice	RfD	Reference Dose
EPA	Environmental Protection Agency	RI	Remedial Investigation
ESD	Explanation of Significant Differences	RI/FS	Remedial Investigation/Feasibility Study
FFA	Federal Facility Agreement	RME	Reasonable Maximum Exposure
FR	Federal Register	ROD	Record of Decision
FS	Feasibility Study	RPM	Remedial Project Manager
FWQC	Federal Water Quality Criteria	SACM	Superfund Accelerated Cleanup Model
HI	Hazard Index	SARA	Superfund Amendments and Reauthorization Act of 1986
HQ	Hazard Quotient	SDWA	Safe Drinking Water Act
HRS	Hazard Ranking System	SF	Slope Factor
IAG	Interagency Agreement	SI	Site Investigation
IRIS	Integrated Risk Information System	SMOA	Superfund Memorandum of Agreement
LDR	Land Disposal Restriction	SSC	Superfund State Contract
MACT	Maximum Achievable Control Technology	SWDA	Solid Waste Disposal Act
MEP	Maximum Extent Practicable	TAG	Technical Assistance Grant
MCL	Maximum Contaminant Level	TBC	To Be Considered
MCLG	Maximum Contaminant Level Goal	TI	Technical Impracticability
MOU	Memorandum of Understanding	TSCA	Toxic Substances Control Act
NAAQS	National Ambient Air Quality Standard	UCL	Upper Confidence Limit
NAPL	Nonaqueous Phase Liquid	VOC	Volatile Organic Compound
NCP	National Oil and Hazardous Substances Pollution Contingency Plan		
NPDES	National Pollutant Discharge Elimination System		

## 1.0 INTRODUCTION

### 1.1 PURPOSE OF THIS GUIDANCE

This *Guide to Preparing Superfund Proposed Plans, Records of Decision, and Other Remedy Selection Decision Documents* (also commonly referred to as the “ROD Guidance”) has been developed to accomplish the following:

- Provide recommended formats and content for Superfund remedial action decision documents.
- Clarify roles and responsibilities of the U.S. Environmental Protection Agency (EPA), Federal facilities, States, and Indian Tribes in developing and issuing decision documents.
- Clarify roles and responsibilities of stakeholders in the remedy selection process.
- Explain how to address changes made to proposed and selected remedies.

The decision documents addressed by this guidance are the Proposed Plan, the Record of Decision (ROD), the Explanation of Significant Differences (ESD), and the ROD Amendment. Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the issuance of decision documents for remedial actions taken pursuant to §§104, 106, 120, and 122. Sections 300.430(f)(2), 300.430(f)(4) and 300.435(c)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) establish the regulatory requirements for these decision documents. This guidance document provides additional guidelines and is based upon the Superfund statute and regulations.<sup>1</sup>

A primary purpose of the ROD guidance is to establish a recommended format for Proposed Plans, RODs, ESDs, and ROD Amendments. Because of

the critical role of public participation in the remedy selection process, and the public’s reliance on decision documents to understand what the lead government agency proposes and ultimately decides to do, clarity within and consistency across these documents are both important. Specifically, the use of these recommended formats should accomplish the following:

- Encourage consistency among EPA Regional Offices, States, and other Federal agencies implementing the Superfund program with respect to the organization, basic content, and level of detail of decision documents;
- Help ensure that all statutory and regulatory documentation requirements are met; and
- Promote clear and logical presentations of the rationales for remedy selection decisions based on site-specific information and supporting analysis.

In addition to the emphasis on providing a recommended format to document remedial action decisions, this guidance specifies the roles and responsibilities of government entities in developing and issuing Superfund decision documents, and the role of the public and potentially responsible parties in the remedy selection process. Finally, this guidance addresses the statutory requirement in CERCLA §§117 (c) and (d) to document significant changes made during and after the remedy selection process, as further detailed in NCP §§300.430(f)(3)(ii) and 300.435.

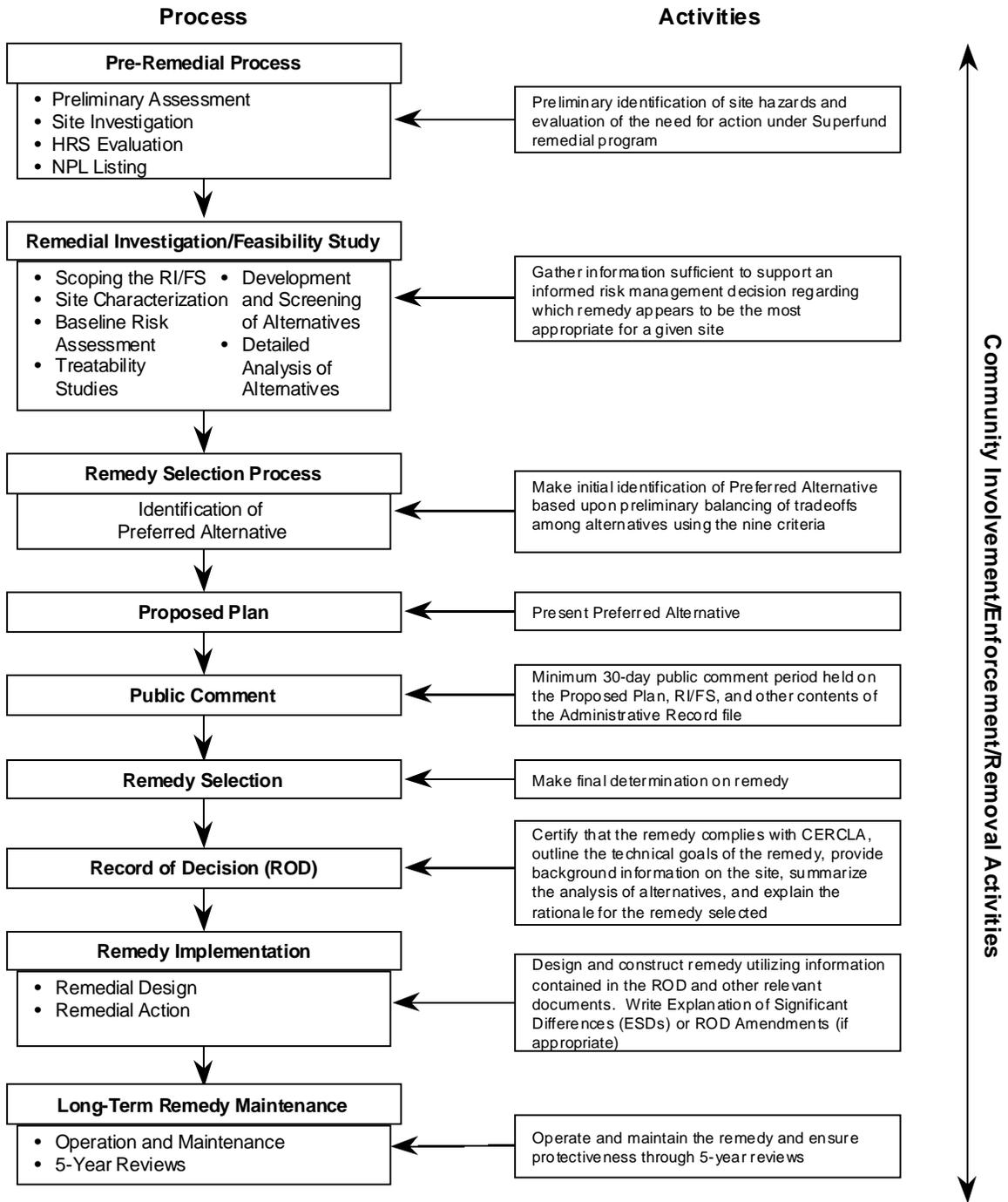
### 1.2 OVERVIEW OF SUPERFUND REMEDIAL RESPONSE PROCESS

This section describes the relationship between the decision documents addressed in this guidance and the overall Superfund remedial response process. The Superfund remedial response process is shown in Highlight 1-1.

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<sup>1</sup> References made to CERCLA, or “the Superfund statute,” throughout this document should be interpreted as meaning CERCLA, as amended by SARA. The NCP, or the “Superfund regulations,” can be found at Chapter 40, Part 300 in the Code of Federal Regulations (CFR).

### Highlight 1-1: Superfund Remedial Response Process



### 1.2.1 The Pre-Remedial Response Process

Historically, the pre-remedial response process has encompassed the identification, initial investigation, and listing of a site on the National Priorities List (NPL). This process is initiated with the Preliminary Assessment (PA). If the results of the PA indicate that further investigation is warranted, a Site Investigation (SI) is performed. If the SI concludes that further response is warranted, more information is gathered to “score” the site using the Hazard Ranking System (HRS). Those sites that score at or above the HRS cut-off score of 28.50 are eligible for the NPL. Generally, a full Remedial Investigation/Feasibility Study (RI/FS) is commenced shortly after a site is placed on the NPL.

However, with the fully implemented Superfund Accelerated Cleanup Model (SACM), all site assessment and initial investigative activities can take place in a continuous process combining appropriate elements of SIs, RI/FSs, removal assessments, and risk assessments. In this case, a final listing of a site on the NPL may occur after the RI/FS has been started or completed. In addition, response actions can be initiated throughout the site assessment and remedial response process through the use of “removal response authorities” or State-lead voluntary cleanup and Brownfields programs.<sup>2</sup> In some circumstances, threats posed by sites can be fully addressed without ever being placed on the NPL. For more information on SACM, see *Guidance on Implementation of the Superfund Accelerated Cleanup Model (SACM) Under CERCLA and the NCP* (OSWER 9203.1-03, July 7, 1992), and five additional SACM fact sheets (OSWER 9203.1-05I, Volume 1, Numbers 1-5, December 1992).

### 1.2.2 Lead and Support Agencies in the Superfund Remedial Response Process

At or before the time a site is placed on the NPL, interagency negotiations are initiated to determine which government agency should act as the lead agency and which as support agency in the remedial process. These negotiations may include EPA, States, other Federal agencies (e.g., Department of Defense (DOD), Depart-

<sup>2</sup> For a more complete discussion of removal response authorities, see NCP §300.415.

ment of Energy (DOE)), and Indian Nations or Tribes.<sup>3</sup> The State role in the remedial process is discussed in CERCLA §121(f)(1), which provides “for substantial and meaningful involvement of each State in the initiation, development, and selection of remedial response actions to be undertaken in that State.” (See the NCP Part 300 Subpart F for regulatory provisions concerning state involvement. See also *Guidance on Lead Determinations for CERCLA Fund-financed Responses*, OSWER 9355.2-02, April 1992.)

The lead agency, which is represented by a Remedial Project Manager (RPM), has the primary responsibility for coordinating a response action. Either EPA, a State environmental agency, or another Federal agency can serve as the lead agency.<sup>4</sup> However, EPA retains final remedy selection authority for all “Fund-financed” actions, and for Federal facility-lead actions taken at NPL sites.<sup>5</sup> EPA also generally has the authority to concur on all enforcement actions taken under CERCLA §§106 and 122. Generally, the lead agency RPM is responsible for overseeing all technical, enforcement, and financial aspects of a remedial response.

The support agency, or agencies, play a review and concurrence role in the remedial process. When EPA acts as the lead agency, the State in which the site is located usually serves as the support agency. When a State is the lead agency, EPA usually serves as the support agency.<sup>6</sup>

<sup>3</sup> For the purpose of this guidance document, the term “State” shall include the governing body of an Indian Nation or Tribe (see NCP §300.515(b), CERCLA §126 and Executive Order 13084, dated May 14, 1998), unless otherwise noted.

<sup>4</sup> At some sites, Federal agencies other than EPA act as lead agencies under CERCLA, pursuant to Executive Order 12580 (52 FR 2923, January 29, 1987).

<sup>5</sup> The following terms will be used throughout this guidance to designate which government entity serves as the lead agency in the Superfund remedial response process: “EPA-lead,” “State-lead,” and “Federal facility-lead.” In addition, the following terms will be used throughout this guidance to refer to the source of cleanup monies: “Fund-financed” (i.e., cleanup money from the Superfund trust fund), and “enforcement site” or “PRP-lead” (i.e., cleanup money from enforcement action taken by lead agency).

<sup>6</sup> Because a State or Indian Tribe may be either the lead agency or the support agency for most remedial activities, this guidance often makes general reference to “lead” and “support” agency responsibilities, rather than “EPA,” “State,” or “Tribal” responsibilities. Specific responsibilities of these entities are noted where appropriate.

When EPA and/or a State are involved in remedial action, the lead and support agencies are identified in either a Superfund State Contract (SSC) or a Cooperative Agreement (CA). SSCs and CAs are site-specific agreements that establish Federal and State responsibilities for a CERCLA remedial action. When EPA leads the remedial action, the SSC is used to identify the roles and responsibilities of EPA and the State, and to document assurances by the State that are required under CERCLA. When the State leads the remedial action, the CA is used to identify the roles and responsibilities of the State and EPA, and to document assurances by the State that are required under CERCLA. The CA also provides the mechanism to transfer trust fund (*i.e.*, Superfund) monies to the State for the response activities.<sup>7</sup> In addition, the State and EPA may enter into a Superfund Memorandum of Agreement (SMOA), which is a general, non-site-specific agreement that defines the roles of, and interaction between, EPA and the State for conducting response actions.

A Federal agency other than EPA can also assume the roles and responsibilities of the lead agency. These responsibilities include coordinating and communicating with EPA and the State in their shared role as support agencies. At NPL sites, the division of authority and responsibility between the Federal agency as lead and the support agencies, particularly in preparing the Proposed Plan and the ROD, should be specified in an Interagency Agreement (IAG). IAGs must follow the requirements of CERCLA §120(e). This agreement should be reached by considering the process and activities outlined in this guidance, the CERCLA requirements, and the NCP. At NPL and non-NPL sites, Federal agency response actions are expected to be consistent with this and other EPA guidance, as specified in CERCLA §120(a).<sup>8</sup>

<sup>7</sup>All funds committed and obligated to a State in a Cooperative Agreement are tracked with an account number. After the funds have been obligated, payments to the State are made through the Automated Clearing House (ACH) process.

<sup>8</sup> Generally, this guidance applies to other Federal agencies in the same manner and extent that it applies to EPA. If questions arise regarding the application of this guidance to remedial response actions at Federal facility sites, the Federal agency staff should consult their legal counsel as well as EPA. CERCLA requires that EPA concur with remedy selection decisions at Federal facility sites on the NPL. If EPA does not concur, EPA has the authority to select the remedy in lieu of the Federal facility.

### 1.2.3 Potentially Responsible Parties

Under CERCLA §104, a person or entity potentially responsible for a release of hazardous substances, pollutants, or contaminants into the environment (*i.e.*, a Potentially Responsible Party (PRP)), may also be allowed to conduct certain response actions in accordance with CERCLA §122, if the lead agency determines that party is qualified and otherwise capable. For a PRP-lead RI/FS response action, either EPA or the State is the lead agency for overseeing the PRP's work and for developing the Proposed Plan and the ROD.<sup>9</sup> The lead agency determines whether the PRP, or the PRP's contractor, is qualified and capable of doing the work. PRPs may participate in the remedy selection process by submitting comments on the Proposed Plan or other information contained in the Administrative Record file during the formal public comment period held before the final selection of a remedy for a site. However, PRPs generally should not be permitted to write Proposed Plans, RODs or any amendments to those documents.

### 1.2.4 Remedial Investigation/Feasibility Study

At or before the time a site is listed on the NPL, the lead agency or PRP begins an RI/FS.<sup>10</sup> During an RI/FS, the lead agency gathers or oversees the gathering of information to support an informed decision regarding which remedy (if any) is most appropriate for a given site or an operable unit within a site. Interim or early actions can be taken throughout the RI/FS process to initiate risk reduction activities. It is recommended that all parties involved in the development of

<sup>9</sup> For detailed information pertaining to PRP oversight, refer to *Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies*, Volumes 1 and 2 (EPA 540-G-91-010a and b, July 1991).

<sup>10</sup> An RI/FS can be performed on the site as a whole, or for a particular portion of the site. The NCP defines an operable unit (OU) as a "discrete action that comprises an incremental step toward comprehensively addressing site problems. This discrete portion of a remedial response manages migration, or eliminates or mitigates a release, threat of a release, or pathway of exposure" (NCP §300.5). Hence, an operable unit can be a certain geographic portion of a site or can address an environmental medium at the site (*e.g.*, ground water, soil). Operable units may also be comprehensive but temporary remedies (*e.g.*, temporary caps across a site) that provide interim protection of human health and the environment before final remediation. The cleanup of a site can be divided into a number of operable units, depending on the complexity of the problems associated with the site.

the RI/FS engage in a joint scoping meeting prior to finalization of the RI/FS Work Plan. Increased efficiency and cost savings can be gained through coordination and mutual understanding of project expectations.

Usually, the RI and FS are conducted concurrently in an interactive, iterative manner. The data collected during the RI are used to develop remedial alternatives in the FS, and the alternatives identified in the FS determine the necessity of treatability studies or the collection of additional data in the RI. In general, the RI consists of the following actions:

- Determining the nature and extent of the contamination at the site or operable unit.
- Assessing risks to human health and the environment from this contamination.
- Conducting treatability tests to evaluate the potential performance and cost of the treatment technologies being considered for addressing these risks.

In characterizing the site, the lead agency or PRP identifies the source of contamination, potential routes of migration, and current and potential human and environmental receptors. A baseline risk assessment conducted during the RI estimates what risks the site poses now and would pose in the future if no cleanup action were taken. Thus, it provides the basis for taking action and identifies contaminants and the exposure pathways that need to be addressed by the remedial action. Treatability studies are bench, pilot, or full-scale tests of particular technologies on samples of actual site wastes. Such studies may be conducted to identify which technologies are suitable for addressing the waste to be treated.

A component of this investigation and planning process should be early and continuing consultation with the community. This consultation can elicit useful knowledge about the site (*e.g.*, current and reasonably anticipated future land uses and current and potential beneficial ground-water uses) as well as major public concerns that should be considered.

The FS involves the identification and detailed evaluation of potential remedial alternatives. This process begins with the formulation of viable alternatives, which involves defining remedial action objectives, gen-

eral response actions, volumes or area of media to be addressed, and potentially applicable technologies. Following a preliminary screening of alternatives, a reasonable number of appropriate alternatives undergoes a detailed analysis using the nine evaluation criteria in the NCP. (For a discussion of this analysis, see Chapters 3 and 6.) The detailed analysis profiles individual alternatives against the criteria and compares them with each other to gauge their relative performance. Each alternative that makes it to this stage of the analysis, with the exception of the required “No Action” alternative, is expected to be protective of human health and the environment and compliant with Applicable or Relevant and Appropriate Requirements (ARARs) (unless a waiver is justified), both threshold requirements under CERCLA.<sup>11</sup>

### **1.2.5 Proposed Plan**

The Preferred Alternative for a site is presented to the public in a Proposed Plan. The Proposed Plan briefly summarizes the alternatives studied in the detailed analysis phase of the RI/FS, highlighting the key factors that led to identifying the Preferred Alternative. The Proposed Plan, as well as the RI/FS and the other information that forms the basis for the lead agency’s response selection, is made available for public comment in the Administrative Record file. The opportunity for a public meeting must also be provided at this stage.

### **1.2.6 Record of Decision**

Following receipt of public comments and any final comments from the support agency, the lead agency selects and documents the remedy selection decision in a ROD. The ROD documents the remedial action plan for a site or operable unit and serves the following three basic functions:

- It certifies that the remedy selection process was carried out in accordance with CERCLA and, to the extent practicable, with the NCP.<sup>12</sup>

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<sup>11</sup> ARARs include any Federal or State standards, requirements, criteria, or limitations that are determined to be legally applicable or relevant and appropriate to a CERCLA site or action.

<sup>12</sup> Section 121(a) of CERCLA provides that remedial actions should be carried out in accordance with §121 “and, to the extent practicable, the National Contingency Plan.”

- It describes the technical parameters of the remedy, specifying the methods selected to protect human health and the environment including treatment, engineering, and institutional control components, as well as cleanup levels.
- It provides the public with a consolidated summary of information about the site and the chosen remedy, including the rationale behind the selection.

While the ROD should provide a comprehensive description of site conditions, the scope of the action, the Selected Remedy, cleanup levels, and the reason for selecting the remedy, it is only one part of the Administrative Record file, which contains the full details of site characterization, alternatives evaluation, and remedy selection.

### **1.2.7 Remedial Design**

The ROD provides the framework for the transition into the next phase of the remedial process. Remedial Design (RD) is an engineering phase during which additional technical information and data identified are incorporated into technical drawings and specifications developed for the subsequent remedial action. These specifications are based upon the detailed description of the Selected Remedy and the cleanup criteria provided in the ROD.

### **1.2.8 Remedial Action**

After completion of the RD, the Remedial Action (RA) begins. During RA, the implementation phase of site cleanup occurs. Upon completion of the remedial action for an operable unit, a remedial action report is prepared. Upon completion of remedial construction activities for the final operable unit at the site, a Preliminary Site Closeout Report (PCOR) is prepared which documents NPL site construction completion (pursuant to *Close Out Procedures for National Priority List Sites* (EPA 540-R-95-062, August 1995, update anticipated in FY99).

When all phases of remedial activity at a site have been completed and no further response is appropriate, the site may be eligible for deletion from, or recategorization on, the NPL. Completed cleanup re-

sults documented in a Remedial Action Report or Final Closeout Report (as detailed in the above referenced guidance) should be compared with the terms in the ROD to determine whether remedial action objectives and cleanup levels have been attained so that the site may be further evaluated for deletion from the NPL, pursuant to the requirements of NCP §300.425(e). CERCLA requires a review to be conducted at least every five years at sites where an action has been selected that results in hazardous substances, pollutants, or contaminants remaining at the site above levels that allow for unlimited use and unrestricted exposure (see Highlight 6-36 for more information on five year reviews). Changes to the remedy selected in the ROD that occur during the RD/RA process must be described in an Explanation of Significant Differences (ESD) or ROD Amendment pursuant to NCP §§300.435(c)(2) and 300.825(a).

## **1.3 OUTLINE OF THIS GUIDANCE**

This guidance is organized as follows.

- Chapter 2 summarizes the roles and responsibilities of lead and support agencies in developing the Proposed Plan. It also highlights the requirements for the newspaper notification that announces the availability of the Proposed Plan and discusses the public comment process.
- Chapter 3 presents the purpose and regulatory requirements of the Proposed Plan. This chapter also contains a detailed checklist outlining the components of a Proposed Plan. This checklist may be used as a worksheet when writing or reviewing a Proposed Plan.
- Chapter 4 describes the general framework for categorizing minor and significant changes made to the Preferred Alternative before issuance of the ROD and discusses documentation and public information activities that may be necessary as a result of these changes.
- Chapter 5 summarizes the roles and responsibilities of lead and support agencies in developing the ROD. It also outlines how to issue the notice of ROD availability.

- Chapter 6 presents the purposed and regulatory requirements for the ROD, as well as a recommended format which discusses key elements and summary tables for each section. This chapter also contains a detailed checklist outlining the components of a ROD. This checklist may be used as a worksheet when writing or reviewing a ROD.
- Chapter 7 discusses the procedures to follow when changes occur to the Selected Remedy after a ROD is signed. A sample outline and checklist is presented for Explanations of Significant Differences (ESDs) and ROD Amendments.
- Chapter 8 presents the recommended ROD formats for three specific types of remedial action decisions: no action, interim action, and contingency remedy decisions.
- Chapter 9 presents information on documenting the following remedy selection situations: lead (Pb), presumptive remedies, and ground water.
- Appendix A provides an example Proposed Plan that satisfies the requirements and suggestions described in this guidance.
- Appendix B provides additional information on addressing the following ground-water issues: phased approach, non-aqueous phase liquids (NAPLs), deferral of design, and monitored natural attenuation.
- Appendix C contains a fact sheet and a transmittal memorandum which discuss consultation procedures for Superfund response decisions.
- Appendix D outlines the procedures for submitting final remedy selection decision documents to the Superfund Document Center at EPA Headquarters.
- Appendix E lists additional sources of information on the remedy selection process and other stages of the remedial process that might be helpful to a remedy selection decision document writer.

## 2.0 PROCESS FOR DEVELOPING THE PROPOSED PLAN

### 2.1 OVERVIEW

This chapter summarizes the roles and responsibilities of the lead and support agencies in developing the Proposed Plan. Personnel in the lead and support agencies should begin discussions on the alternatives analyzed in the FS as early as possible and attempt to reach an agreement on identifying a Preferred Alternative. These early discussions should help prevent delays in the later stages of the remedy selection process. PRPs conducting the RI/FS should identify to the lead agency which alternatives have been considered and screened from further consideration before the detailed analysis. The remaining alternatives should be analyzed in detail.

The results of this analysis provide the basis for the lead agency to identify a Preferred Alternative. Throughout the RI/FS process the lead agency should keep the community and others well-informed of site activities through meetings, information bulletins, and by regularly updating the Administrative Record file. The lead agency should also actively seek input from the community on the remedial alternatives being considered.

The general steps in preparing the Proposed Plan for public comment are summarized in Highlight 2-1. The sequence in which these steps are taken may vary somewhat among EPA Regional Offices and States.

The lead agency should begin drafting the Proposed Plan upon completion of the RI/FS Report (in some circumstances, a draft can be developed as the RI/FS is being finalized). If a PRP prepares the RI/FS, then the Proposed Plan should be drafted by the lead agency after the lead agency approves the RI/FS. The RI/FS Report should be sent to the support agency as soon as it is available, but no later than when the draft Proposed Plan is transmitted to the support agency for review and comment.

A Preferred Alternative is identified tentatively on the basis of the RI/FS Report and ongoing discussions between the lead and support agencies and the affected community and PRPs.<sup>1</sup> A formal briefing on the RI/FS and the Preferred Alternative should be made

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<sup>1</sup> The Preferred Alternative must be identified by the lead agency itself. A technical support contractor hired to assist a government entity in performing its duties or a PRP can recommend, but can not identify, the Preferred Alternative.

to lead agency management. After this meeting, a draft Proposed Plan is written and submitted to the support agency and lead agency management for review and comment.

The lead agency should prepare the final Proposed Plan taking into consideration the comments from the support agency and based on the results of the internal program and management review process. This final version should include either a summary of the support agency's agreement with the Plan or its dissenting comments.<sup>2</sup> Finally, the notice announcing the availability of the Proposed Plan, along with a brief abstract of its content, must be published in a major local newspaper. The Proposed Plan and any supporting analysis and information (including the RI/FS) must be made available in the Administrative Record file.

### 2.2 ROLE OF LEAD AND SUPPORT AGENCIES

For the remedy selection process to succeed, lead and support agencies should interact throughout the entire RI/FS and Proposed Plan process. The goal of this continued interaction is to reach agreement on the Proposed Plan and the RI/FS Report before the public comment period starts.

#### 2.2.1 Designation of Roles and Responsibilities

EPA and the State play specific roles throughout the remedial process. These roles should be defined in the SSC, SMOA, or CA.<sup>3</sup> State participation specifi-

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<sup>2</sup> If the State is the lead agency and EPA does not approve the Proposed Plan, then the State may not issue the Plan unless the proposed action is a non-Fund financed State-lead enforcement action. (See NCP §300.515(e)(1) and Section 2.3 of this chapter for more detailed information.) If a Federal facility is the lead agency and EPA does not approve the Proposed Plan, then the Federal facility may not issue the Plan unless the proposed action is for a non-NPL site at the Federal facility.

<sup>3</sup> The SMOA is a non-binding agreement that outlines cooperative efforts between States and EPA Regions and defines the roles and responsibilities of each party in the conduct of a Superfund program in a State. For more information, see NCP §300.505 and *Interim Final Guidance on Preparing a Superfund Memorandum of Agreement (SMOA)* (OSWER 9375.0-01, May 1989, or its revised edition). The CA is a legal instrument between EPA and the State in which EPA may transfer money to the State to conduct response activities.

### Highlight 2-1: Preparation of The Proposed Plan by the Lead Agency



cally during the RI/FS and Proposed Plan process is important to the successful selection of the remedy and completion of the remedial process. First, the State must be given the opportunity to concur on the ROD; second, for Fund-financed remedial actions, certain State assurances including those for cost share and Operations and Maintenance (O&M) are required to conduct the RA. The SSC or CA should designate the lead and support agency for conducting the RI/FS, developing the Proposed Plan, and drafting the ROD. The SMOA, if applicable, should describe the general procedures for oversight and interaction between EPA and the State.

At Federal facility sites on the NPL, designation and coordination of roles and responsibilities among EPA, the State, and the lead Federal agency are also very important for the successful completion of the remedial process. At such sites, these roles are defined in an IAG. Where EPA may be involved at Federal facility sites not on the NPL, these roles may be established by way of memoranda of understanding (MOUs), letter agreements, etc. Generally, at Federal facility sites, the EPA and the State are co-regulators and the Federal agency which owns and/or operates the site is the lead agency.

### **2.2.2 Lead and Support Agency Responsibilities**

NCP §300.430(f)(3)(i) requires the lead agency to do the following after preparation of the Proposed Plan and review by the support agency:

- Publish a notice of availability and brief analysis of the Proposed Plan in a major local newspaper.
- Make the Proposed Plan and supporting analysis and information available in the Administrative Record file.
- Provide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments on the Proposed Plan and the material contained in the Administrative Record file.
- Provide the opportunity for a public meeting to be held during the public comment period.

- Keep a transcript of the public meeting held during the public comment period and make such transcript available to the public.
- Prepare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period and the lead agency response to each issue. This Responsiveness Summary must be made available with the ROD.

NCP §300.515 discusses the requirements for State involvement in the preparation and publication of the Proposed Plan.

The role of other program offices within EPA and State agencies is to provide specific comments on the alternatives analyzed in the RI/FS Report. EPA and the State should establish the appropriate procedures and time frames for these reviews. Other program offices should review the RI/FS Report at appropriate times during the process to ensure that alternatives in the detailed analysis phase of the RI/FS Report comply with substantive requirements of other laws that qualify as ARARs. For EPA, this may involve review by program offices with responsibility for implementing the Clean Water Act (CWA), Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA) and Toxic Substances Control Act (TSCA) programs. If a draft Proposed Plan is available when the RI/FS Report is ready to be circulated, it should be circulated at the same time.

### **2.2.3 Management Review of Proposed Plan**

The lead and support agencies should determine the appropriate level of managerial review for the draft Proposed Plan and, as appropriate, include this in the SMOA, SSC, or CA. The Regional Administrator and State Director (or their appropriate designees) should be briefed on the contents of both the RI/FS Report and Proposed Plan, as well as on any unresolved or potentially controversial issues, by their respective staffs before these documents are released to the public.

All draft Proposed Plans should be sent to the appropriate EPA headquarters regional coordinator for review pursuant to *Focus Areas for Headquarters OERR Support for Regional Decision Making* (OSWER 9200.1-17,

May 1996). Some remedy selection decisions will also be eligible for consultation with the National Remedy Review Board or another Cross-Regional review group. See Appendix C for a more complete discussion of Proposed Plan consultation procedures. For more information on the National Remedy Review Board, see <http://www.epa.gov/superfund/programs/nrrb/index.htm>.

### **2.2.4 Support Agency Comment Period**

The support agency's comment period presents an important opportunity for the lead and support agencies to reach agreement on the Preferred Alternative.<sup>4</sup> The comment period begins when the support agency receives the Proposed Plan from the lead agency and lasts 5 to 10 working days. If a different review period is established in the SMOA, it should be followed. In the absence of a SMOA, the support agency has a minimum of 5 working days and a maximum of 10 working days to comment on the Proposed Plan (NCP §300.515(h)(3)).<sup>5</sup>

During the review period, the support agency should provide written comments on the Preferred Alternative and other components of the Proposed Plan. These comments should indicate one of the following:

- Agreement, with or without comments.
- Disagreement, with or without comments.
- No comment on the Proposed Plan at this time.

When the State is the support agency, it has the option of submitting its comments at the end of the public comment period.

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<sup>4</sup> For Fund-financed projects, EPA must approve the Proposed Plan even if the State is the lead agency (NCP §300.515(e)(1)). For State-lead, non-Fund financed enforcement sites where the State is using their own authorities rather than CERCLA, no EPA concurrence is required.

<sup>5</sup> The draft RI/FS Report could be given to the support agency before the Proposed Plan is ready for review. The review period for the draft RI/FS Report should last at least 15 working days, unless a different time period is established in the SMOA or CA or between the lead and support agencies. In the absence of a SMOA, the support agency has a minimum of 10 working days and a maximum of 15 working days to comment on the RI/FS (NCP §300.515(h)(3)).

EPA must respond to State comments on waivers from or disagreements about State ARARs, as well as on the Preferred Alternative, when making the RI/FS report and Proposed Plan available for public comment (NCP §300.515(d)(4)). The Proposed Plan must include a statement that the lead and support agencies have reached agreement, or where this is not the case, a statement explaining the concerns of the support agency with the lead agency's Proposed Plan (NCP §300.515(e)(1)). These comments and the lead agency's formal response to these comments must be included, in their entirety, in the Administrative Record file.

## **2.3 PROCEDURES FOR RESOLVING DISPUTES**

If a dispute occurs between the lead and support agencies during any phase of the remedial process, the staffs of the agencies should attempt a timely resolution of the disputed issue. If staff resolution is not possible, the issue should be brought promptly to management's attention for resolution.<sup>6</sup>

The lead and support agencies should use the dispute resolution process specified in the SMOA or CA when appropriate. If other Federal agencies besides EPA are involved, the dispute resolution process specified in the IAG should be followed. Alternatively, the lead and support agencies could consider using the dispute resolution process recommended in the NCP Preamble to subpart F (55 *FR* 8781). The section entitled "State Involvement in Hazardous Substance Response" outlines a process that EPA Regional Offices and States should use to resolve disputes that arise during the RI/FS and remedy selection process. This approach encourages the lead and support agencies' RPMs to resolve any disputes promptly. If this cannot be accomplished, the dispute could be referred to their supervisors for further EPA/State consultation. This supervisory referral and resolution process should continue, if necessary, to the level of Director of the State agency and the Regional Administrator, respectively. If agreement still cannot be reached, the dispute should be referred to the Assistant Administrator of OSWER, who serves as final arbiter on remedy selection issues.

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<sup>6</sup> Potential EPA Regional and Headquarters resources to access neutral mediators should be explored, as appropriate.

Regardless of the process used, the result should be an equitable resolution of outstanding issues. There may be instances, however, in which a final resolution cannot be achieved. If this should occur, two alternatives exist for continuing effective action. First, if EPA is the lead agency (pursuant to CERCLA §§104, 106, or 122), the Region should use its discretion as to whether to proceed with publication of the Proposed Plan. Second, if the State is the lead agency (pursuant to §104), EPA must approve the Proposed Plan before it may be issued (NCP §300.515(e)(1)). In some cases, EPA could elect to become the lead agency for the Proposed Plan, public participation activities, and the ROD. (This applies only to Fund-financed, State-lead projects.) However, mutual acceptance of the Preferred Alternative (and, ultimately, of the selected remedy) by both EPA and the State is an important goal in order to effect timely cleanup at the site. In addition, State involvement during the RI/FS and Proposed Plan process is important to the successful selection of the remedy and completion of the remedial action.

## 2.4 ROLE OF OTHER FEDERAL AGENCIES

Executive Order 12580 (52 FR 2923 January 29, 1987) delegates the authority for carrying out the requirements of CERCLA §§117(a) and (c) to Federal agencies for those Federal facilities under their jurisdiction, custody, or control. A Federal agency, therefore, has the responsibility to issue the Proposed Plan. At a Federal facility on the NPL, the IAGs between a Federal agency, EPA, and, in many cases, the State, should establish the responsibilities for each party in preparing the Proposed Plan for Federal facility sites. Where the Federal agency is the lead agency, the responsibilities for preparing the Proposed Plan include those lead agency responsibilities specified in Chapters 2 and 3 of this guidance.

## 2.5 ROLE OF POTENTIALLY RESPONSIBLE PARTIES

In accordance with CERCLA §§104 and 122, EPA can provide PRPs with the opportunity to conduct the required response actions (*i.e.*, the RI/FS, remedial design, and remedial action). If the PRPs conduct the RI/FS (including the risk assessment), either EPA or the State will become the lead governmental agency for

general oversight of the RI/FS. EPA or the State should prepare the Proposed Plan and the ROD, even if the PRP conducts the RI/FS (*i.e.*, the lead agency identifies the Preferred Alternative (see footnote #1 in this chapter)). At those sites for which the PRP conducts the RI/FS, the alternative preferred by the PRP should not be indicated in the RI/FS Report.<sup>7</sup>

PRPs may also participate in the remedy selection process by commenting on the Proposed Plan and on other publicly available information in the Administrative Record file during the formal public comment period. If comments are submitted by PRPs and members of the public prior to the formal public comment period, the lead agency should advise those parties that their concerns may not be addressed until the end of the formal comment period.

## 2.6 PUBLIC PARTICIPATION

The regulatory requirements for public participation in association with the Proposed Plan are listed in Section 2.2.2. Additional information concerning newspaper notification and the public comment period is provided below.

### 2.6.1 Newspaper Notification

The announcement of the availability of the Proposed Plan and Administrative Record file should be made at least two weeks prior to the beginning of the public comment period so that the public has sufficient time to obtain and read the Proposed Plan. The lead agency's newspaper notification must include a brief abstract of the Proposed Plan, which describes the alternatives analyzed and identifies the Preferred Alternative (NCP §300.430(f)(3)(i)(A)). The notice should be published in a widely read section of the newspaper. The notification should be designed to attract attention and engage the reader and should be written in simple, non-technical language. Key elements of the notification are summarized below. Highlight 2-3 provides a sample newspaper notification.

The newspaper notification should consist of the following elements:

<sup>7</sup> For more information, see *Guidance on Oversight of Potentially Responsible Party Remedial Investigations and Feasibility Studies*, Volumes 1 and 2 (EPA 540-G-91-010a and b, July 1991).

- *Site name and location.* Gives proper site name and location.
- *Date and location of a public meeting.* If a public meeting is scheduled, it should be held at a reasonable time at or near the site. If one has not been scheduled, the notice should inform the public of the opportunity for a public meeting.
- *Identification of lead and support agencies.* Identifies which entities (*i.e.*, EPA, State agency, or other Federal agency) are serving as lead and support agencies.
- *Alternatives evaluated in the detailed analysis.* Lists remedial alternatives evaluated in the detailed analysis phase of the FS.
- *Identification of Preferred Alternative.* States briefly the major components of the Preferred Alternative.
- *Request for public comments.* The notice should emphasize that the lead agency is soliciting public comment on all alternatives evaluated in the detailed analysis phase of the FS, as well as on the Preferred Alternative. The request should include a clear statement that the Preferred Alternative is only a preliminary determination and that the Preferred Alternative could be modified since any of the other options presented could be selected as the remedy based upon public comment, new information, or a re-evaluation of existing information. The readers should be referred to the RI/FS Report and other contents of the Administrative Record file for further information on all remedial alternatives considered.
- *Public participation opportunities.* The notice informs the public of its role in the remedy selection process and provides the following:
  - Location of information repositories and Administrative Record file.
  - Methods by which the public may submit oral and written comments, including a contact person.

- Dates of the public comment period.
- Contact person for a Community Advisory Group (CAG), or Technical Advisory Grant (TAG) recipient, if applicable.

For further information on writing newspaper notification, please see EPA's Quick Reference Fact Sheet, *Publishing Effective Public Notices* (OSWER 9378.0FS, April 1997).

### **Highlight 2-2: Tips for Writing an Effective Public Notice**

- Publish the notice about 10 days before the event. If budgets permit, publish the notice again 5 days before and 1 day before the event.
- Choose a location in the paper that is well-read (sports, TV, or local news section).
- Be specific about what the reader should do and how to do it.
- Keep the notice as short as possible and use simple, non-technical words.
- Remember, the appearance of the notice, as well as the message, is important. Make it visually appealing.

## **2.6.2 Public Comment Period**

This section provides guidance on the procedures the lead agency should follow to satisfy the public participation requirements in NCP §300.430(f)(3).

The lead agency is charged with making the relevant documents, such as the Proposed Plan and the RI/FS Report, available to the public at the time the newspaper notification is made.<sup>8</sup> In addition, the lead agency must ensure that any information that forms the

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<sup>8</sup> In addition to being published in the newspaper, the notice of the Proposed Plan should be sent directly to the citizens and PRPs via the community relations or enforcement mailing list for the site. (Although not a statutory or regulatory requirement, this may allow timely participation from citizens and PRPs outside the circulation area of the local newspaper.)

basis for selecting the response action is included as part of the Administrative Record file and is available to the public during the public comment period.

CERCLA §117(a)(2) also requires the lead agency to provide the public with a reasonable opportunity to submit written and oral comments on the Proposed Plan. NCP §300.430(f)(3)(i) requires the lead agency to allow the public a minimum of 30 days to comment on the information contained in the RI/FS Report and Proposed Plan (including any proposed waivers relating to ARARs). In addition, the lead agency must extend the comment period by a minimum of 30 additional days, upon timely request.

The lead agency must provide an opportunity for a public meeting to be held at or near the site during the comment period. A transcript of the meeting conducted during the public comment period must be made available to the public and should be included as part of the Administrative Record file (pursuant to NCP §300.430(f)(3)(i)(E)). The lead agency should also place the transcript in the information repository. Although the lead agency may respond to oral or written comments received during the RI/FS process and before the public comment period, it has no legal obligation to do so. To ensure that their comments are addressed, commenters may wish to resubmit their comments during the formal public comment period as well.

Further guidance on the public comment period and the lead agency's responsibilities can be found in *Incorporating Citizen Concerns into Superfund Decision-Making* (OSWER 9230.0-18, January 1991). For more information specific to procedures at Federal facility sites, refer to the *Restoration Advisory Board Implementation Guidelines* (U.S. EPA and DOD, September 27, 1994) and *Site-Specific Advisory Board Guidance* (Office of Environmental Management, DOE, October 1995).

**Highlight 2-3: Sample Newspaper Notification of Availability  
of Proposed Plan and Public Meeting**

**EPA Proposes Cleanup Plan  
for the EIO Industrial Site**

**Proposed Plan  
Nameless, TN  
March 1, 1999**

The U.S. Environmental Protection Agency (EPA) and the Tennessee Department of Environment and Conservation (TDEC) will hold a Public Meeting to discuss the Remedial Investigation/Feasibility Study (RI/FS) Report and Proposed Plan for the cleanup of the EIO Industrial Site, Nameless, TN. The RI/FS Report discusses the risks posed by the site and presents an evaluation of cleanup options. The Proposed Plan identifies a preferred cleanup alternative for the public to comment on along with the other options considered.

EPA and TDEC evaluated the following options for addressing the contaminated soil and ground water at the site:

**Soil**

- No action
- In-situ soil vapor extraction and solidification, and capping
- Excavation, on-site thermal destruction, solidification, and capping

**Ground Water**

- No action
- Pump and treat by carbon adsorption and discharge to XYZ River
- Pump and treat by carbon adsorption followed by reinjection

Based on available information, the preferred option proposed for public comment at this time is to treat the contaminated soil at the site through in-situ vapor extraction, to solidify the soils, disposing them on site, and to pump and treat the ground water by carbon adsorption and discharge it to the XYZ River. Although this is the Preferred Alternative at the present time, EPA and TDEC welcome the public's comments on all of the alternatives listed above. The formal comment period ends on March 30. EPA and TDEC will choose the final remedy after the comment period ends and may select any one of the options after taking public comments into account.

**Copies of the RI/FS and  
Proposed Plan along with the  
rest of the Administrative Record file  
are available at:**

Nameless Public Library  
619 South 20th Street  
Nameless, TN 00000  
(101)999-1099  
Hours: 9 a.m. to 9 p.m.  
Monday through Saturday

U.S. EPA Records Center, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-3104  
(555)555-5555  
Hours: 8:30 a.m. to 5:00 p.m.  
Monday through Friday

**Public Meeting  
March 13, 1999 at 7:30 p.m.  
Community Hall  
237 Appleton Street, Nameless, TN.**

**For further information or to submit written comments, please contact:**

Joshua Doe  
Community Relations Coordinator  
U.S. Environmental Protection Agency  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-3104  
(555) 555-5555