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Superfund



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



7.0 DOCUMENTING POST-ROD CHANGES: MINOR CHANGES, EXPLANATIONS OF SIGNIFICANT DIFFERENCES, AND ROD AMENDMENTS¹

7.1 EVALUATING POST-RECORD OF DECISION INFORMATION

After a ROD is signed, new information may be received or generated that could affect the implementation of the remedy selected in the ROD, or could prompt the reassessment of that remedy.¹ The information could be identified at any time during, immediately prior to, or after the implementation of the remedy. Where information is submitted by a PRP, the public, or the support agency after a ROD is signed, the lead agency must consider and respond to this information and place such comments and responses in the Administrative Record file when *all* of the following criteria are met (per NCP §300.825(c)):

- Comments contain significant information;
- The new information is not contained elsewhere in the Administrative Record file;
- The new information could not have been submitted during the public comment period; and
- The new information substantially supports the need to significantly alter the response action.

The lead agency also may evaluate whether a remedy change is warranted on its own merits, even where the requirements of NCP §300.825(c) are not triggered.²

¹ It is EPA's policy to encourage appropriate remedy changes in response to advances in remediation science and technology (*Superfund Reforms: Updating Remedy Decisions*, (EPA 540-F-96-026, September 1996).

² Responding to post-ROD comments submitted by PRPs, the public, or the support agency may only require a general overview of the comments and a simple EPA response if no change to the remedy is involved or the change is minor (see *Answers to Comments Submitted After the Superfund ROD Is Signed*, EPA memorandum, October 11, 1995, <http://es.epa.gov/oeca/osre/951011.html>). However, a formal public comment period may be conducted depending upon whether the change is significant or fundamental (for definitions of these types of changes see Section 7.2).

7.2 TYPES OF POST-RECORD OF DECISION CHANGES

The lead agency's categorization of a post-ROD change to the Selected Remedy is a site-specific determination and must consider the following as set out in NCP §300.435(c)(2).

- *Scope*. Does the change alter the scope of the remedy (*e.g.*, type of treatment or containment technology, the physical area of the response, remediation goals to be achieved, type and volume of wastes to be addressed)?
- *Performance*. Would the change alter the performance (*e.g.*, treatment levels to be attained, long-term reliability of the remedy)?
- *Cost*. Are there significant changes in costs from estimates in the ROD, taking into account the recognized uncertainties associated with the hazardous waste engineering process selected? (Feasibility Study cost estimates are expected to provide an accuracy of +50 percent to -30 percent.)

Based on this evaluation, and depending on the extent or scope of modification being considered, the lead agency must make a determination as to the type of change involved (*i.e.*, nonsignificant or minor, significant, or fundamental change). Remedy changes should fall along a continuum from minor to fundamental. Similarly, an aggregate of nonsignificant or significant changes could result in a fundamental change.

Post-ROD changes fit into one of the three following categories:

- *Nonsignificant or Minor Changes* usually arise during design and construction, when modifications are made to the functional specifications of the remedy to address issues such as performance optimization, new technical informa-

tion, support agency/community concerns and/or cost minimization (*e.g.*, value engineering process). Such changes may affect things such as the type or cost of materials, equipment, facilities, services, and supplies used to implement the remedy. The change will not have a significant impact on the scope, performance or cost of the remedy.

- *Significant Changes* generally involve a change to a component of a remedy that does not fundamentally alter the overall cleanup approach.
- *Fundamental Changes* involve an appreciable change or changes in the scope, performance, and/or cost or may be a number of significant changes that together have the effect of a fundamental change. An example of a fundamental change is one that results in a reconsideration of the overall waste management approach selected in the original ROD.

Highlight 7-1 provides examples of post-ROD changes. (See also NCP preamble, 55 *FR* 8772 for more information.) Please note that the examples presented in Highlight 7-1 are not meant to present strict thresholds for changes in cost, volume, or time.

7.3 DOCUMENTING POST-RECORD OF DECISION CHANGES

The type of documentation required for a post-ROD change depends on the nature of the change. Changes that significantly or fundamentally affect the remedy selected in the ROD will require more explanation and/or opportunity for public comment than those that do not. Each type of post-ROD change is associated with one of three documentation procedures: (1) a memo or note to the post-ROD file for an insignificant or minor change; (2) an explanation of significant differences (ESD) for a significant change, and (3) a ROD amendment for a fundamental change. Sample outlines for ESDs and ROD Amendments are provided in Highlight 7-2.

7.3.1 Documenting Non-Significant (or Minor) Post-ROD Changes: Memo to the Site File

Any non-significant or minor changes should be recorded in the post-ROD site file (*e.g.*, the RD/RA case file). If the lead agency chooses, non-significant

changes can also be documented for the public in a Remedial Design Fact Sheet. Although not legally required, a written statement describing the change is generally recommended (See “*Answers to Comments Submitted After the Superfund ROD is Signed*,” EPA memorandum, October 11, 1995, <http://es.epa.gov/oeca/osre/951011.html>).

7.3.2 Documenting Significant Post-ROD Changes: Explanation of Significant Differences

When documenting significant changes made to a remedy, the lead agency must comply with CERCLA §117(c) and NCP §§300.435(c)(2)(i) and 300.825(a)(2). An ESD must describe to the public the nature of the significant changes, summarize the information that led to making the changes, and affirm that the revised remedy complies with the NCP and the statutory requirements of CERCLA.

To describe the nature of the significant changes, it is suggested that a side-by-side comparison of the original and proposed remedy components be used to clearly display the significant differences.

The ESD should provide additional information on changes that have resulted in the remedy as a result of the change (*e.g.*, changes in the cleanup cost estimate or remediation time frame). Generally, a new nine-criteria analysis is not required; however, the ESD should include a statement that the ROD remains protective and continues to meet ARARs (NCP §§300.430(f)(1)(ii)(B)(1) and (2)).³ It is also generally appropriate to prepare an ESD document when the lead agency decides to exercise a contingency remedy that was previously described in the ROD (see Section 8.3).

While the ESD is being prepared and made available to the public, the lead agency may proceed with the pre-design, design, construction, or operation activities associated with the remedy. The lead agency

³ An ESD does not generally reopen consideration of ARARs for the remedy since an ESD does not fundamentally change the remedy. However, if an ESD results in the addition of any new components to the remedy, any ARARs that apply to the change that the ESD describes must be discussed and met or waived. For example, if any ARARs apply to an ESD change which adds stabilization of residuals to a thermal treatment remedy, they must be discussed in the ESD and met or waived.