

Sept. 21, 1995

MEMORANDUM

SUBJECT: Answers to Comments Submitted After the Superfund ROD is Signed

FROM: Jerry Clifford, Director
Office of Site Remediation Enforcement

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TO: Waste Management Division Directors, Regions I - X
Regional Counsels, Regions I - X

Questions are frequently raised about EPA's responsibilities for answering comments submitted by interested parties after the Record of Decision (ROD) is in place or the comment period has ended. Section 300.825(c) of the NCP addresses this issue. This section does not require a written response to such comments unless they meet certain stringent criteria.¹ Even where not legally required, however, a short written answer is generally recommended.

First, such a response demonstrates that EPA properly reviewed the comments according to the standards laid out in the regulation and properly determined that the comments do not warrant detailed consideration. Written answers to late commenters can help

¹Specifically, a detailed consideration is required where:

- (1) the comments contain significant information;
- (2) the information is not contained elsewhere in the administrative record file;
- (3) the information could not have been submitted during the public comment period; and
- (4) the information substantially supports the need to significantly alter the response action.

See also, OSWER Directive 9355.3-02 ("Guidance on Preparing Superfund Decision Documents," Interim Final, July 1989), and OSWER Directive 9833.3A-1 ("Final Guidance on Administrative Records for Selecting CERCLA Response Actions," December 1990).

ensure that the decision not to consider the comments can itself be reviewed on the record. Written answers can thus help avoid the risk of having to provide agency witnesses or open up the decision to discovery in litigation.

Second, a written answer would also provide feedback to stakeholders, including community groups with environmental justice concerns, so they know their comments had been evaluated by the Agency. EPA should also ensure that steps were taken during earlier comment periods to notify and communicate proposed actions at the site to late commenters, including affected community groups with environmental justice concerns at the site.

Evaluation of comments not meeting the criteria in section 300.825(c) should only require a general overview of the comments. A simple response document, outlining the NCP criteria used in the decisionmaking process and the basis for not considering the comments, should be sufficient. For example, in some cases, it will be enough to show that the comment simply raises issues that could have been raised during the public comment period. A simple response document also demonstrates, as a courtesy to each commenter, the receipt and review of their comments.

If you have any further questions, please contact Steven Rollin in the Office of Site Remediation Enforcement at 703/603-8934.

cc: Earl Salo, OGC
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