

CHAPTER 3. STANDARDS FOR ADMINISTRATIVE RECORDS FOR HAZARDOUS WASTE SITES

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Authority

The provisions of this Chapter 3 issued under sections 301 and 303 of the Hazardous Sites Cleanup Act (35 P. S. §§ 6020.301 and 6020.303); and section 1920A of The Administrative Code of 1929 (71 P. S. § 510-20), unless otherwise noted.

Source

The provisions of this Chapter 3 adopted June 28, 1991, effective June 29, 1991, 21 Pa.B. 2977, unless otherwise noted.

DEFINITIONS

§ 3.1. Definitions.

The definitions for this chapter have the same meaning as those listed in section 103 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.103), unless specifically stated otherwise.

**CONTENT AND LOCATION OF ADMINISTRATIVE
RECORDS**

§ 3.11. Administrative record.

- (a) Whenever the Department compiles an administrative record for a particular response, it will do so in accordance with this chapter.
- (b) An administrative record is intended to document the following:
 - (1) The site conditions which relate to the release or threatened release.
 - (2) An interim response initiated at the site.
 - (3) The basis for the selection of a response at the site.
 - (4) Public notice and participation in development of the administrative record.
- (c) An administrative record may also include the following:
 - (1) The basis for, and amount of, natural resource damages resulting from the release or threatened release, or to which the release or threatened release significantly contributes.
 - (2) The identity of the known responsible persons.
 - (3) The response costs incurred by the Department.
 - (4) The basis and amount of a civil penalty the Department assesses.
 - (5) Information relevant to the threat to the public health or safety or the environment presented by the release or threatened release.

§ 3.12. Content.

- (a) The administrative record for each response at a minimum, shall consist of the following:
 - (1) An administrative record docket listing the contents of the administrative record.
 - (2) A copy of the notice as required by § 3.22 (relating to notice of prompt interim response) or a copy of the notice as required by § 3.23 (relating to notice of proposed response).
 - (3) The information known and reasonably available to the Department, including, but not limited to, studies, inspection reports, sample results and permit files which relate to the release or threatened release, and to the selection, design and adequacy of the proposed response or the interim response initiated under section 505(b) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.505(b)).
 - (4) Copies of public comments received during the comment period as provided for in § 3.24 (relating to public comment on the response).
 - (5) A transcript of the public hearing held in accordance with § 3.25 (relating to public hearing on the response).
 - (6) The Department's response to significant comments, criticisms and new data received during the public comment period required by § 3.27 (relating to Departmental response to significant comments).

(7) The Department's statement of decision providing notification of the response selected based on the content of the administrative record as required by § 3.31 (relating to decision).

(b) The Department will designate the studies, inspection reports, sample results and permit files which relate to the release or threatened release and to the selection, design and adequacy of the response action. These documents may be incorporated into the administrative record by reference if the reference includes the location and time wherein the documents may be examined.

(c) Treatises, technical literature and other reports or studies which are published and generally available may be incorporated into the administrative record by reference. Documents or literature which is not published or in general circulation may also be incorporated by reference, if the documents or literature are available for examination in the regional office wherein the site is located.

(d) Internal Department documents, such as memoranda, correspondence or draft documents, will not be considered part of the administrative record, unless specifically designated by the Department or submitted during the public comment period. Internal Department documents which are public records will continue to be available to the public. This subsection does not alter existing law or policy regarding public access to Department records.

(e) Documents which are generated for a particular response but which are designated confidential in accordance with § 3.26(a)(4) (relating to submission and acknowledgment of public comments) shall be compiled and maintained separately from the administrative record. Summaries of confidential documents shall be entered into the administrative record.

Cross References

This section cited in 25 Pa. Code § 3.24 (relating to public comment on the response).

§ 3.13. Location of the administrative record.

The Department will maintain the administrative record for a response in the regional office serving the area in which the site is located. The administrative record shall be available for public inspection during normal working hours. If the regional office is not located within reasonable proximity to the site, the Department will make reasonable efforts to locate a copy of the record near the site for the sake of public convenience.

PUBLIC COMMENT ON RESPONSES

§ 3.21. Interim response.

(a) This section does not apply to emergency interim responses taken under section 501(g) of the Hazardous Sites Cleanup Act (act) (35 P. S. § 6020.501(g)).

(b) Under section 505(b) of the act (35 P. S. § 6020.505(b)), the Department may take an interim response before the development of the administrative record

when there is a reasonable basis to believe that prompt action is required to protect the public health or safety or the environment.

(1) If the Department takes an interim response before development of the administrative record, it will provide notice of the action within 30 calendar days of initiating the interim response.

(2) The notice provided under this subsection will conform with § 3.22 (relating to notice of prompt interim response).

(c) For any other interim response, the Department will provide notice in conformance with § 3.23 (relating to notice of proposed response).

§ 3.22. Notice of prompt interim response.

(a) The Department will prepare a notice of prompt interim response for a site which will contain the following:

(1) A description and location of the site.

(2) A description of the known environmental hazards present at the site.

(3) A brief analysis of the interim response taken.

(4) A brief analysis of alternative responses considered.

(5) The location of, and periods of access to, the administrative record.

(6) A specific time and place for providing written comments on the interim response.

(7) The time and place at which a public hearing will be held to receive oral comments on the interim response.

(8) Additional actions to be taken prior to the close of the public comment period required by § 3.24(a)(6) (relating to public comment on the response).

(b) The notice will be distributed to the following persons in the manner described:

(1) Copies of the notice will be mailed to each responsible person whose name and address is known to the Department.

(2) Copies of the notice shall be mailed to known holders of liens of record against the property.

(3) The notice will be published in the *Pennsylvania Bulletin*.

(4) The notice will be published in a newspaper of general circulation in the area of the site.

(c) Failure of a responsible person to receive a notice from the Department does not affect that person's liability under the act.

Cross References

This section cited in 25 Pa. Code § 3.12 (relating to content); 25 Pa. Code § 3.21 (relating to interim response); 25 Pa. Code § 3.24 (relating to public comment on the response); and 25 Pa. Code § 3.25 (relating to public hearing on the response).

§ 3.23. Notice of proposed response.

(a) The Department will prepare a notice of proposed response for a particular site which will contain the following:

- (1) A description and location of the site.
- (2) A description of the known environmental hazards present at the site.
- (3) A brief analysis of the response proposed.
- (4) A brief analysis of alternative responses considered.
- (5) The location of, and periods of access to, the administrative record.
- (6) Notification of the public comment period, to include:
 - (i) The length of the comment period and the beginning date.
 - (ii) An address to forward written comments.
- (7) Notification of the public hearing, to include:
 - (i) The time and date of the hearing.
 - (ii) The location of the hearing.
 - (iii) The requirements for participation in the public hearing.

(b) The notice will be distributed to the following persons in the manner described:

- (1) Copies of the notice will be mailed to each responsible person whose name and address is known to the Department.
- (2) Copies of the notice will be mailed to all known holders of liens of record against the property.
- (3) The notice will be published in the *Pennsylvania Bulletin*.
- (4) The notice will be published in a newspaper of general circulation in the area of the site.

(c) Failure of a responsible person to receive a notice from the Department does not affect that person's liability under the act.

Cross References

This section cited in 25 Pa. Code § 3.12 (relating to content); 25 Pa. Code § 3.21 (relating to interim response); 25 Pa. Code § 3.24 (relating to public comment on the response); and 25 Pa. Code § 3.25 (relating to public hearing on the response).

§ 3.24. Public comment on the response.

(a) The Department will establish a period for receipt of public comment for each response for which the Department develops an administrative record.

(b) The comment period will commence on the date of publication of the notice of response in the *Pennsylvania Bulletin*.

(c) The comment period will extend for at least 90 calendar days. Comment periods expiring on a weekend or State holiday will be extended to the first business day thereafter.

(d) During the public comment period, the Department will provide public access to the administrative record, as described in § 3.12(a)(1)—(6) (relating to content).

(e) Once the period for public comment is closed, no oral or written comments will be accepted by the Department for inclusion in the administrative record, except as provided in §§ 3.32 and 3.33 (relating to closing the record; and reopening the record). The Department may extend the period for public comment after giving reasonable notice in the manner provided in § 3.22 or § 3.23 (relating to notice of prompt interim response; and notice of proposed response).

Cross References

This section cited in 25 Pa. Code § 3.12 (relating to content); 25 Pa. Code § 3.22 (relating to notice of prompt interim response); and 25 Pa. Code § 3.25 (relating to public hearing on the response).

§ 3.25. Public hearing on the response.

(a) In addition to the public comment period required by § 3.24 (relating to public comment on the response), a public hearing will be conducted by the Department for each response.

(b) In conducting public hearings under this chapter, the Department will conform to the following procedures:

- (1) At least one public hearing will be held for each response.
- (2) The public hearing will be held at a location near the site.
- (3) A transcript of the proceedings will be maintained.
- (4) The public hearing will be held no less than 30 calendar days, nor more than 60 days, from the beginning of the public comment period.
- (5) The public hearing will be conducted in compliance with the following:
 - (i) A chairperson will conduct the meeting in accordance with generally accepted rules of protocol and procedure or special rules established by the Department and provided in the notice, as provided in § 3.22 or § 3.23 (relating to notice of prompt interim response; and notice of proposed response).
 - (ii) Persons wishing to comment shall register with the chairperson prior to the beginning of the hearing.
 - (iii) Associations, groups, lobbyists or persons with a recognized common interest shall appoint a single spokesperson for the hearing.
 - (iv) The chairperson will have the authority to limit the time for each speaker at the outset of the hearing.

(c) The Department will not respond to comments received during the public hearing until the Department provides its response document under § 3.27 (relating to Departmental response to significant comments).

Cross References

This section cited in 25 Pa. Code § 3.12 (relating to content).

§ 3.26. Submission and acknowledgment of public comments.

- (a) *Submission of public comment.*

(1) A person may submit written comments regarding the Department's response during the period for public comment.

(2) A written comment shall be deemed to have been submitted if it is postmarked or received by the Department on or before the last day of the public comment period.

(3) Written comments may not be limited in scope and may include studies, analyses, Department records or other documents deemed relevant by the person submitting the written comment.

(4) A person submitting a written comment which contains confidential business information under section 503(h) of the Hazardous Sites Cleanup Act (35 P. S. § 6020.503(h)) may request that the Department maintain the comment as confidential. The person shall provide a written summary of the comment to the Department for approval which shall disclose the general nature of the confidential information and its relevance to the response for the site. Upon approval of the request for confidentiality and approval of the content of the summary, the Department will designate the comment as confidential and will enter only the written summary into the administrative record.

(b) *Acknowledgment of receipt of comments.*

(1) The Department will record receipt of all comments submitted during the comment period in the administrative record docket and will acknowledge receipt of written comments submitted during the comment period if the name and address of the person submitting the comment is provided.

(2) The name, address and affiliation of the person submitting comments, if provided, shall be incorporated into the administrative record docket.

(3) A copy of the comments will be incorporated into the administrative record, except as provided in subsection (a)(4).

(4) It is the responsibility of the person submitting written comments to verify that the comments have been noted in the docket and to notify the Department before the close of the comment period if the comments have not been noted.

Cross References

This section cited in 25 Pa. Code § 3.12 (relating to content).

§ 3.27. Departmental response to significant comments.

(a) After the close of the public comment period, the Department will consider all significant comments, criticisms and new data received during that period, including those made at the public hearing, and will respond in a response document. The response document will be incorporated into the administrative record after the close of the public comment period.

(b) The Department will use the following criteria for preparation of responses to significant comments, criticisms and new data received during the comment period:

- (1) Comments, criticisms and new data will be considered significant if they provide a reasonable basis for concluding that the determinations of the Department might be altered.
- (2) The Department may group comments, criticisms or new data if similar and may respond to the groupings in a single statement.
- (3) If significant comments, criticisms or new data are already addressed in the administrative record, the Department's response may simply reference the appropriate part of the record.

Cross References

This section cited in 25 Pa. Code § 3.12 (relating to content); 25 Pa. Code § 3.25 (relating to public hearing on the response); and 25 Pa. Code § 3.31 (relating to decision).

CLOSING AND REOPENING THE RECORD

§ 3.31. Decision.

(a) After the close of the comment period, and consideration of all significant comments, criticisms and new data received during that period, the Department will select a response and file a statement of decision. The statement of decision will contain the following:

- (1) The findings of fact pertaining to the response.
- (2) An analysis of the response selected.
- (3) The reasons and basis for the response selected.
- (4) An analysis of the alternative responses considered.
- (5) An explanation of major changes in the selected response from the proposed response contained in the notice.
- (6) A copy of the Department's response to significant comments, criticisms and new data received during the comment period, as specified in § 3.27 (relating to Departmental response to significant comments).

(b) In selecting a response for the site, the Department may make reasonable assumptions regarding the nature of a risk to the public health or environment it believes necessary to adequately protect the public health and environment both at the time of the response and in the future.

(c) In evaluating alternatives to the response, the Department will consider whether the alternative provides comparable protection to the public health or safety or the environment both at the time of response and in the future.

(d) The Department's decision will be based on the information contained in the administrative record.

Cross References

This section cited in 25 Pa. Code § 3.12 (relating to content).

§ 3.32. Closing the record.

(a) The administrative record will be closed, except as provided in subsection (b), after the Department has responded to significant comments, criticisms and new data received during the comment period and has filed a statement of decision pertaining to the response.

(b) The administrative record may only be reopened for one or more of the following reasons:

(1) The Department obtains information during implementation of the response action which it determines to be of central relevance to the selected response.

(2) A person raising an objection to the response may demonstrate to the Department that it was impracticable to raise the objection during the comment period or that the grounds for the objection arose after the public comment period.

(3) The Department chooses to document its response costs.

(4) The case is remanded to the Department under section 508 of the Hazardous Sites Cleanup Act (35 P. S. § 6020.508).

Cross References

This section cited in 25 Pa. Code § 3.24 (relating to public comment on the response).

§ 3.33. Reopening the record.

(a) The Department will provide notice of reopening of the record, indicating the purpose, and providing the time and place for submission of written comments.

(b) The Department will publish notification of the beginning of the comment period in the *Pennsylvania Bulletin*. The comment period will extend for 60 calendar days from the date of publication. Comment periods expiring on a weekend or State holiday will extend to the first business day thereafter.

(c) The Department may hold a public hearing at its discretion or if a written request is received within 30 calendar days of publication of the notice of reopening.

(d) Additional information, written or oral comments, and the Department's response to significant comments received during the comment period provided by subsection (b) will be added to the administrative record and noted in the administrative record docket.

(e) The administrative record will be closed upon filing of the Department's response to significant comments received during the public comment period.

Cross References

This section cited in 25 Pa. Code § 3.24 (relating to public comment on the response).

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