



RCRA Public Participation Manual

*LANL
Order
Reference*



Holding **workshops and informal public meetings** about the CMS process, the remedies being considered, and the activities being conducted at the facility will keep the community involved and informed. **Fact sheets** distributed at significant milestones during the CMS can keep the community abreast of the progress that has been made.

The agency and the facility should provide the name and number of a **contact person**. A contact person will accept comments and answer questions from the community, disseminate information, demonstrate the agency's and facility's willingness to talk with the community, and give the facility or the agency an opportunity to respond to public concerns. The agency or the facility may even consider establishing a **hotline** if a large number of people call with questions. The mailing list and local newspapers are good ways to advertise availability of the hotline.

Remedy Selection

Following receipt of a recommendation of a preferred remedy from the facility owner/operator, the overseeing agency will review the preferred remedy and other remedial alternatives and decide to tentatively approve the preferred remedy, tentatively select a different remedy or require additional analysis of remedial alternatives. The tentatively selected remedy will then undergo public review and comment, usually in the form of a proposed modification to the facility's permit or corrective action order. Following public review, the agency will respond to public comments and then modify the facility permit or corrective action order to incorporate the remedy.

Required Activities

When corrective action is proceeding under a permit, public review and comment on the tentatively selected remedy is generally conducted using the procedures of 40 CFR 270.41 for agency-initiated permit modifications. For such a modification, 40 CFR 270.41 requires the same level of public participation as is required for a draft permit. The agency must release the proposed modification for public review and issue a **public notice** announcing that the proposed modification is available for review. The agency must publish this notice in a major local newspaper, broadcast it over local radio stations, and send it to all persons on the mailing list.

In addition, agency staff must prepare a **fact sheet** or **statement of basis** to explain the proposed modification and the significant factual and legal reasons for proposing the remedy. The statement of basis describes the proposed remedy, but does not select the final remedy for a facility. This approach allows for consideration of additional information during the **public comment period**. Following the comment period, public comment and/or additional data may result in changes to the remedy or in another choice of remedy. After the agency has considered all comments from the public, the final decision -- selecting the remedy or determining the need to

develop another option -- is documented in the response to comments. (For more information on statements of basis, refer to OSWER Directive 9902.6, *RCRA Corrective Action Decision Documents: The Statement of Basis and Response to Comments* (April 29, 1991)).

A **45-day public comment period** on the draft permit modification follows publication of the public notice. The comment period provides the public with an opportunity to comment, in writing, on conditions contained in the draft permit modification. If information submitted during the initial comment period appears to raise substantial new questions concerning the draft permit modification, the agency must re-open or extend the comment period.

The members of the public may request a **public hearing** on the draft permit modification. If a hearing is requested, the agency must give a **30-day advance notice** to the community that states the time and place of the hearing. The agency Director has the discretion to schedule a public meeting or hearing even if the community does not request one. In some cases, scheduling a public hearing before the public requests one may save valuable time in the modification process and demonstrate a willingness to meet with the community to hear its questions and concerns.

After the public comment period closes, the agency must review and evaluate all written and oral comments and issue a final decision on the permit modification. Then the agency must send a **notice of decision** to the facility owner or operator and any persons who submitted public comments or requested notice of the final decision and prepare a written **response to comments**. This document must include a summary of all significant comments received during the public comment period and an explanation of how they were addressed in the final permit modification or why they were rejected. The response to comments must be made available through the Administrative Record and the **information repository**, if one was established, and must be sent to the facility and all persons who submitted comments or requested a copy of your response.

When corrective action is proceeding under a 3008(h) order, the Agency's longstanding policy is that the public's opportunity to review and comment on tentatively-selected remedies should be commensurate with the opportunity that would be available if the corrective action were conducted under a permit. At a minimum, this opportunity should include: publishing a notice and a brief analysis of the tentatively-selected remedy (this is typically referred to as a statement of basis) and making supporting information available; providing a reasonable opportunity for submission of written comments; holding a public hearing or public meeting, if requested by the public or determined necessary by the overseeing agency; preparing and publishing responses to comments; and, publishing the final remedy decision and making supporting information available. Additional guidance is available in OSWER Directives 9901.3, *Guidance for Public Involvement*

in RCRA Section 3008(h) Actions (May 5, 1987) and 9902.6 RCRA Corrective Action Decision Documents: The Statement of Basis and response to Comments (April 29, 1991).

Additional Activities

The agency, public interest groups, or the facility should consider holding **workshops** or **informal meetings** during the public comment period to inform the public about the proposed remedy. These discussion sessions can be especially useful when information about corrective measures in a draft permit modification is quite technical or the level of community concern is high.

Remedy Implementation (CMI)

Once the overseeing agency modifies the permit or corrective action order to include the selected remedy, the facility must begin to implement the remedy. Remedy implementation typically involves detailed remedy design, remedy construction, and remedy operation and maintenance; it is called Corrective Measures Implementation or CMI. Corrective measures implementation is generally conducted in accordance with a CMI plan, approved by the overseeing agency.

Required Activities

When corrective action is proceeding under a permit, the public will have an opportunity to comment on CMI conditions and schedules during the permit modification for remedy selection or when the permit is modified to incorporate the CMI plan. Significant changes to the scope of CMI may be considered Class 3 permit modifications. Changes to the CMI schedule are typically considered either Class 1 or Class 2 permit modifications, as appropriate.

When corrective action is proceeding under a 3008(h) order, the public's opportunity to comment on CMI conditions and schedules should be consistent with the opportunities that would be available if corrective action were taking place under a permit.

Additional Activities

Remedy implementation will often involve highly visible activities, such as construction of new on-site treatment and containment systems, and staging and transportation of large volumes of materials. These activities may result in increased levels of public interest, which may already be high due to the public's participation in remedy selection.

EPA recommends that the facility notify all individuals on the facility **mailing list** when the construction plans and specifications are available for public review. If the facility has established an **information repository**,