



Public Comment Periods

Overview

The public comment period is the time during which EPA accepts comments from the public on proposed actions and decisions. Public comment periods enable citizens to participate in and contribute to the administrative decision-making process.

This and all tools in the Community Involvement Toolkit should be used in conjunction with the [Community Involvement Handbook](#), which provides guidance to EPA staff on how EPA typically plans and implements community involvement activities at Superfund sites.

Why This Is Important

Public comment periods are important because they allow the affected community to provide input and be involved in a wide variety of site-related decisions throughout the Superfund process. Public comment periods are required at various points in the Superfund process by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the National Oil and Hazardous Substances Pollution Contingency Plan (NCP); the Administrative Procedures Act; and other environmental laws. The points in the Superfund remedial or removal process at which CERCLA or the NCP specifies a formal public comment period are listed below:

Remedial Actions

- National Priorities List (NPL) Listing:
 - The NCP, at 40 CFR §300.425(d)(5)(i), indicates that EPA shall publish the proposed rule in the Federal Register and solicit comments through a public comment period, during a proposal to add a release to the NPL.
- Proposed Plan:
 - Section 117(a)(2) of CERCLA requires that the Agency provide a “reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility” and the President or the State should make a transcript of the meeting available to the public.
 - The NCP, at 40 CFR §300.430(f)(3)(i)(C), specifies that the Agency “[p]rovide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments on the proposed plan and the supporting analysis and information located in the information repository, including the

RI/FS. Upon timely request, the lead agency will extend the public comment period by a minimum of 30 additional days...”

- Revised Proposed Plan:
 - The NCP, at 40 CFR §300.430(f)(3)(ii)(B), says that the lead agency will “[s]eek additional public comment on a revised proposed plan, when the lead agency determines the change could not have been reasonably anticipated by the public based on the information available in the proposed plan.”
- Amendment to the record of decision (ROD):
 - The NCP, at 40 CFR §300.435(c)(2)(ii)(B-F), says that the proposed amendment to the ROD and supporting information be made available for public comment. It is required to provide at least 30 days, “for submission of written or oral comments on the amendment to the ROD. Upon timely request, the lead agency will extend the public comment period by a minimum of 30 additional days...” A transcript of comments received at the public meeting held during the public comment period should be kept. A brief explanation of the amendment and response to each of the significant comments submitted during the public comment period should be included in the amended ROD.
- Consent Decrees:
 - Section 122(d)(2) of CERCLA requires the Attorney General to “provide an opportunity to persons who are not named as parties to the action to comment on the proposed judgment before its entry by the court as a final judgment...”
- NPL Deletion:
 - The NCP, at 40 CFR §300.425(e)(4)(i), indicates that EPA will “publish a notice of intent to delete in the Federal Register and



solicit comment through a public comment period of a minimum of 30 calendar days...”

Removal Actions

- Time-Critical Removals (planning period of less than six months):
 - The NCP, at 40 CFR §300.415(n)(2)(ii), indicates that the lead agency will “provide a public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection, pursuant to §300.820(b)(2).”
 - The NCP, at 40 CFR §300.820(b)(2), says that the lead agency shall “... as appropriate, provide a public comment period of not less than 30 days beginning at the time the administrative record file is made available to the public. The lead agency is encouraged to consider and respond, as appropriate, to significant comments that were submitted prior to the public comment period. A written response to significant comments submitted during the public comment period shall be included in the administrative record file.”
- Non-Time-Critical Removals (planning period of at least six months):
 - The NCP, at 40 CFR §300.415(n)(4)(iii), says that the lead agency will “provide a reasonable opportunity...for submission of written and oral comments after the completion of the [engineering evaluation/cost analysis (EE/CA)]. Upon timely request, the lead agency will extend the public comment period by a minimum of 15 days.”
 - The NCP, at 40 CFR §300.820(a)(2), says that the lead agency shall “... provide a public comment period as specified in §300.415 so that interested persons may submit comments on the selection of the removal action for inclusion in the administrative record file... A written response to significant comments submitted during the public comment period shall be included in the administrative record file.”
 - The NCP, at 40 CFR §300.825(b), says that “[t]he lead agency may hold additional public comment periods or extend the time for the submission of public comment after a decision document has been signed on any issues concerning selection of the response action. Such comment shall be limited to

the issues for which the lead agency has requested additional comment. All additional comments submitted during such comment periods that are responsive to the request, and any response to these comments, along with documents supporting the request and any final decision with respect to the issue, shall be placed in the administrative record file.”

- The NCP, at 40 CFR §300.825(c), says that “[t]he lead agency is required to consider comments submitted by interested persons after the close of the public comment period only to the extent that the comments contain significant information not contained elsewhere in the administrative record file which could not have been submitted during the public comment period and which substantially support the need to significantly alter the response action. All such comments and any responses thereto shall be placed in the administrative record file.”

Implementation

When to Use Public Comment Periods

Public comment periods are required at specific times. These times vary with the action that an administrative agency is taking. In addition, the NCP, at 40 CFR §300.430(c)(2)(ii)(A), states that the community involvement plan (CIP) should “ensure the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternatives analysis, and selection of remedy...” This means that there may be additional times when EPA or the lead agency may choose to invite public comment to enhance community involvement and participation in site decisions. These additional public comment periods often will be identified in the CIP. In addition, EPA may informally seek comments from people who have shown an interest in the site. Interested parties may include the technical assistance grant (TAG) recipient groups or a site’s community advisory group (CAG), affected residents on various site mailing lists, and people who attended public meetings or provided comments to EPA previously.

Additional public comment periods should be coordinated with the remedial project manager (RPM) or on-scene coordinator (OSC). There are a number of times when input from the affected residents might be helpful. These include:



- When identifying potentially responsible parties (PRPs) — announce the PRP list, and solicit comments. This must be coordinated with and approved by the EPA enforcement attorney assigned to your site.
- When identifying the contaminants — announce what you know, and solicit comments.
- When writing the CIP — release the draft, and solicit comments.
- When analyzing test results — announce results and initial interpretation, and solicit comments.
- Before moving from the remedial investigation (RI) to the feasibility study (FS) — announce the end of the RI, including the various options being considered for remediating the site as a result of the RI, and solicit comments.
- Before finishing the proposed plan — announce the leading alternative, with modifications resulting from citizen input, and solicit further comments.
- When the design process reaches 75 percent completion — share the progress with the residents, and solicit comments.
- Before beginning the planning for actual implementation or construction — announce how you are considering to implement the remedy, and solicit comments.
- When there is an explanation of significant differences (ESD) — provide an opportunity for public comment, especially when there is considerable public or PRP interest.
- Before releasing final documents — share “near final” documents, and solicit input.

Ensuring a Public Comment Period is Effective

The components of an effective comment period are a timely [public notice](#), an organized comment collection system, careful consideration of every comment, a response to each significant comment, and a publicly available record.

Public comment periods are most effective when the community involved is informed ahead of time. Community members should know when a public comment period will be announced, the period of time in which comments will be accepted, what forms of comment will be accepted, and how to submit them. Community members also should be made aware that once comments are submitted to [Regulations.gov](#), the comments may not be edited or deleted. Even though it is not specified in the NCP, it is a good idea

to inform the community when there is an extension to the public comment period.

Making effective public comments is often a challenge for the lay person. The process can be intimidating and confusing. There are various tools at the public’s disposal in order to help them comment effectively. EPA resources include the Technical Assistance Services for Communities program and the technical assistance grant. More information about these resources can be found in the [Summary of Technical Assistance](#) tool. Step-by-step tips on writing effective public comments can be found on [EPA’s website](#). In addition, universities or non-governmental organizations may provide assistance.

In many cases, CERCLA or the NCP specifies how the community must be informed about a public comment period. This usually is through some form of public notice. In addition to a formal public notice usually published in a newspaper, it usually is a good idea to publicize the public comment period through other communications methods, such as [fact sheets](#), [social media](#), and the [media](#). Many times, EPA will schedule a [public meeting](#) connected to the public comment period.

You can identify the best ways to communicate with members of the affected community in [community interviews](#) conducted for preparation of the CIP. This research will help identify the most effective ways to ensure that community members receive the information they need to respond to public comment periods.

Once you have notified the local community of a public comment period, develop an organized system to receive, catalogue, and respond to comments. Implement an effective collection system to ensure that no comments fall through the cracks. Although public comment periods have an end date, it is EPA policy to receive comments from the public after the close date and throughout the remedial process. A complete set of public comments — verbal and written — will be made available on the regional docket approximately one week after the formal comment period closes.

Following each formal public comment period, EPA prepares a document with responses to all significant comments that were submitted. These documents, often called responsiveness summaries, allow the public to see how their input was recorded and considered in the Superfund process.



Ensuring EPA Receives Useful Comments from the Community

CICs should be aware of the types of comments that are most useful to EPA in order to relay this information to the community. Community members should consider the following when submitting comments to the EPA:

- *The most useful comments explain why a proposed action is good or unacceptable.*
- *If important points are missing from a proposed decision or the conclusion is based on wrong assumptions or incorrect scientific data, point this out to EPA and describe exactly what is wrong and why.*
- *If possible, commenters should describe alternative information or actions.*

Acknowledging and responding to all substantive comments supports the Agency's goal to involve members of the community in decisions that impact them and provide justification for how their input is used. These summaries should be concise and written in terms that the general public can understand. Once completed, responsiveness summaries will be placed in the site's [*information repository*](#) and made available on EPA's website.

Tips

- Do not use comment periods if you have no intention of considering comments received. This will only breed frustration and resentment among community members.
- Avoid sending the message that a decision has already been reached; for example, make it clear that public input on EPA's Proposed Plan, or any action where public input is invited, is important to forming a final plan.
- Use the services of a court reporter to ensure that all comments at a public meeting are recorded fully and can be answered in detail in the responsiveness summary.
- When responding to a comment, explain how the site team interpreted the comment and the decision about the comment (i.e., if appropriate, whether the comment was usable as submitted, usable with some modifications [explain], or not usable).
- Public meetings are an effective means for collecting public comments. During public meetings, EPA should listen to all comments received rather than respond to them. EPA should respond only to comments about technical processes or issues that need to be explained or clarified. Public meetings are not the time to explain or defend actions or decisions.