

# Federal Register Notice

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## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300  
[WH-FRL-2749-4]

### Amendment to National Oil and Hazardous Substances Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

#### SUMMARY:

The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. This amendment revises the National Priorities List ("NPL"), which initially was promulgated as Appendix B of the NCP on September 8, 1983, by adding the Glen Ridge Radium Site located in Glen Ridge, New Jersey, and the Montclair/West Orange Radium Site located in Montclair and West Orange, New Jersey, to the final NPL.

#### EFFECTIVE DATE:

The promulgation date for this amendment to the NCP shall be March 18, 1985. <sup>1</sup>

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<sup>1</sup> CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, - U.S. - , 103 S. Ct. 2764 (1983), cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, the Agency will publish a notice of clarification in the **Federal Register**.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

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# I. Background of the NPL

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601-9657 ("CERCLA" or "the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implemented responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, take into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible Fund-financed remedial actions are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable, at least 400 sites be designated individually on this National Priorities List (NPL). Section 105(8)(B) also requires that the list of priorities be revised at least annually. EPA has included on the NPL releases and threatened releases of designated hazardous substances as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. CERCLA requires that the NPL be included as part of the NCP. An initial NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). On May 8, 1984, EPA amended the NCP by adding four sites in San Gabriel, California, to the NPL. On September 21, 1984, EPA further amended the NCP by adding 128 sites to the NPL (49 FR 37070). The second proposed update was published in the **Federal Register** on October 15, 1984 (49 FR 40320). The second update proposed the addition of 244 sites, including the two sites which are the subject of this regulation. Additional discussion on the purpose and development of the NPL and on generic issues relating to the HRS are included in the preambles to the NPL promulgated on September 8, 1983 (48 FR 40658), and amended on September 21, 1984 (49 FR 37070).

Section 300.68(a) of the NCP reserves Fund-financed remedial actions for sites on the NPL. Inclusion of a site on the NPL is not necessary for other types of response actions such as removal actions or enforcement actions. Moreover, a site need not be on the NPL to be the subject of a private action pursuant to section 107(a)(4)(B) of CERCLA.

## II. Background of the Glen Ridge and Montclair/West Orange, NJ, Radium Sites

The Glen Ridge and Montclair/West Orange, NJ, Radium Sites were included in the proposed rulemaking for the second update of the NPL (49 FR 40320, October 15, 1984). These two sites are located in residential areas of Essex County. The Glen Ridge Radium Site, located in a suburban residential neighborhood area of about 0.25 square miles, contains approximately 9,000 cubic yards of soil contaminated with radioactive material, which is believed to be radium-processing waste. The Montclair/West Orange Radium Site, located in two suburban residential neighborhood areas of about 0.5 square miles, contains approximately 9,000 cubic yards of soil contaminated with radioactive material, also believed to be radium-processing waste.

Several years ago, the State of New Jersey investigated a radium-processing facility in Orange, NJ, that had ceased operation in the 1920's. The possibility of off-site disposal of radium-processing waste prompted an aerial survey of surrounding areas for gamma radiation. Based on the results of the aerial survey, field surveys conducted in July 1983 identified a number of suburban homes in Glen Ridge, Montclair, and West Orange, with high levels of radon gas. In December 1983, EPA started a major field investigation to define the extent of contamination and identify additional problem homes.

The special conditions at these two sites that warrant their expedited addition to the NPL are elevated concentrations of radon gas measured inside residential homes within the sites and the gamma radiation that has been detected both

inside and outside a number of homes and at a nearby park. The Centers for Disease Control (CDC) have advised EPA to take remedial action to adequately address the emission of radon gas into residential basements and the gamma radiation in and around the homes. The Agency has taken emergency action under its CERCLA removal authority to temporarily address the release of radon gas by installing ventilation systems in and around many of the homes, but it is expected that additional, expedited actions will be necessary to further reduce radon to acceptable levels and to mitigate areas of high gamma radiation.

EPA is conducting remedial planning activities consistent with section 300.68 of the NCP to determine what remedial actions are justified by the actual or potential threat posed by the contaminated soil.

### **III. Addition of the Glen Ridge and Montclair/West Orange, NJ Radium Sites to NPL**

The action being taken today will add the Glen Ridge Radium Site in Glen Ridge, NJ and the Montclair/West Orange Radium Site in Montclair and West Orange, NJ, to the NPL. No public comments were received by EPA on these two sites during the 60-day comment period, which concluded on December 14, 1984, following the proposed addition of these two sites to the NPL. EPA has reviewed the HRS score for each of these two sites and has determined that no information has come to the Agency's attention during the comment period that would justify a change in the HRS scores. The final scores for both sites are 49.14, substantially above the minimum score of 28.50 required for a site to be included on the NPL.

The decision to add these two sites to the NPL immediately rather than waiting until completion of rulemaking on the other 242 sites included in the October 15, 1984 (49 FR 40320), proposed rule, is based on the serious and immediate nature of the problem. In all probability, this release can be addressed most efficiently through a remedial rather than a removal action. Remedial actions are restricted to sites on the final NPL. The recommendation of the CDC was that remedial actions should be completed by December 1985. Immediate regulatory action must be taken in order to be able to complete remedial actions by that date.

### **IV. Regulatory Impact**

The addition of these two sites to the final rulemaking on the NPL does not meet the Executive Order 12291 definition of the term "major rule."

The purpose of the NPL is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site on the NPL is intended primarily to guide EPA in determining which sites warrant further investigation designed to assess the nature and extent of the public health and environmental risks associated with the site and to determine what response action, if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any person, nor does it determine the liability of any person for the cost of cleanup at the site.

The HRS scores used to place sites on the NPL are helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL. However, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. Neither can the HRS itself determine the appropriate remedy for a site. The information collected to develop HRS scores to choose sites for the NPL is not sufficient in itself to determine the appropriate remedy for a particular site. EPA generally relies on further, more detailed studies conducted at the site to determine what response, if any, is appropriate. Decisions on the type and extent of action to be taken at these two sites will be made on the basis of such studies and in accordance with the criteria contained in Subpart F of the NCP.

A full assessment of the cost of remedial action at these two sites has not yet been developed by EPA. Cost estimates for remedial alternatives will be developed during the remedial planning activities. However, very preliminary analyses indicate that although the cost will almost certainly exceed \$1 million, it is extremely unlikely that remedial action will cause an annual effect on the economy of \$100 million or more. It is not expected that remedial action will cause a major increase in costs or prices, nor will it have significant adverse effects on competition, employment, investment

or any other criteria of Executive Order 12291. Rather, beneficial effects are anticipated from any actions taken to reduce exposure to radon gas, radon progeny and gamma radiation.

## V. Regulatory Flexibility Act Analysis

After reviewing the criteria for significant economic impact on substantial numbers of small entities as defined by the Regulatory Flexibility Act, EPA has concluded that promulgation of this rule will not have a significant effect on a substantial number of small entities.

In defining the purpose of the NPL (49 FR 40320, October 15, 1984), EPA has determined that listing does not require any action of any private party for the cost of cleanup at the site. Currently, EPA and the State of New Jersey expect to fund remedial activities at the two sites; however, a search for potentially responsible parties is underway. Should any potentially responsible parties be identified, EPA may seek to recover any costs of remedial activities conducted at these two sites. However, the cost of cleaning up these sites and the portion of costs that might be borne by any identifiable potentially responsible parties cannot be estimated at this time. Moreover, any costs borne by responsible parties would result from subsequent discretionary enforcement actions by EPA, not from listing the sites on the NPL. In addition, it is unlikely that any EPA remedial activities at these two sites would significantly affect a substantial number of small business entities.

### List of Subjects in 40 CFR Part 300

Air pollution control, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: February 1, 1985.

**Lee M. Thomas,**  
*Acting Administrator.*

### PART 300 - [AMENDED]

### Appendix B - [Amended]

The National Priorities List, which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, is hereby amended to add the following sites to Group 4:

EPA region	State	Site Name	City	Response # category	Cleanup @ status
2	NJ	Glen Ridge Radium Site	Group 4 Glen Ridge	R	O
2	NJ	Montclair/West Orange Radium Site	Montclair/West Orange	R	O

#: V=Voluntary or Negotiated response; F=Federal enforcement; R=Federal and State Response; S=State enforcement; D=Actions to be Determined.

@: I=Implementation activity underway, one or more operable units; O=One or more operable units completed, others may be underway; C=Implementation activity completed for all operable units.

(42 U.S.C. 7605(a)(b) CERCLA 105)

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