

# Federal Register Notice

47180 - 47187 Federal Register / Vol. 57, No. 199 / Wednesday, October 14, 1992 / Rules and Regulations

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300  
[FRL-4521-3]

### National Priorities List for Uncontrolled Hazardous Waste Sites

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

#### SUMMARY:

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list.

This rule adds 26 new sites to the General Superfund Section and 7 to the Federal Facilities Section of the NPL, and deletes 4 sites. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This action and a proposed rule published elsewhere in this **Federal Register** result in an NPL of 1,208 sites, 1,085 of them in the General Superfund Section and 123 of them in the Federal Facilities Section. An additional 28 sites are proposed, 25 in the General Superfund Section and 3 in the Federal Facilities Section. Final and proposed sites now total 1,236.

#### EFFECTIVE DATE:

The effective date for this amendment to the NCP shall be November 13, 1992. CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS v. Chadha*, 462 U.S. 919, 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**.

#### ADDRESSES:

For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see "Information Available to the Public" in Section I of the "**SUPPLEMENTARY INFORMATION**" portion of this preamble.

#### FOR FURTHER INFORMATION CONTACT:

Martha Otto  
Hazardous Site Evaluation Division  
Office of Superfund Remediation Technology Innovation (OS-5204G)  
U.S. Environmental Protection Agency  
401 M Street, SW.  
Washington, DC 20460  
or the Superfund Hotline, phone (800) 424-9346 or (703) 920-9810 in the Washington, DC, metropolitan area.

## **SUPPLEMENTARY INFORMATION:**

- I. Introduction
- II. Purpose and Implementation of the NPL
- III. Contents of This Final Rule
- IV. Regulatory Impact Analysis
- V. Regulatory Flexibility Act Analysis

# **I. Introduction**

## ***Background***

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions, most recently on March 8, 1990 (55 FR 8666).

Section 105(a)(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." As defined in CERCLA section 101(24), remedial actions tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release.

Mechanisms for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") are included in the NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if its scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of 40 CFR Part 300. On December 14, 1990 (55 FR 51532). EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure and air. The HRS serves as a screening devise to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2), requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed whether or not they score above 28.50, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA has promulgated a list of national priorities along the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR Part 300, is the National Priorities

List ("NPL"). CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." The discussion below may refer to the "releases or threatened releases" that are included on the NPL interchangeably as "releases," "facilities," or "sites." CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1).

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 25, 1991 (56 FR 48438).

The NPL includes two sections, one of sites evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites being addressed by other Federal agencies (the "Federal Facilities Section"). Under Executive Order 12580 and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA is not the lead agency at these sites, and its role at such sites is accordingly less extensive than at other sites. The Federal Facilities Section includes those facilities at which EPA is not the lead agency.

This final rule adds 26 sites to the General Superfund Section, for a total of 1,085 sites, and 7 sites to the Federal Facilities Section, for a total of 123 Federal facility sites. Therefore, there are now 1,208 sites on the NPL. An additional 28 sites have been proposed, 25 in the General Superfund Section and 3 in the Federal Facilities Section, and are awaiting final Agency action. Final and proposed sites now total 1,236.

The NPL no longer includes four sites for which the listing was vacated by a court order or voluntary removal:

- Kent County Landfill (Houston), Houston, DE
- Anne Arundel County Landfill, Glen Burnie, MD
- Salford Quarry, Salford Township, PA
- Murray-Ohio Manufacturing Co. (Horseshoe Bend Dump), Lawrenceburg, TN

### ***Deletions/Cleanups***

EPA is developing the NPL completions list to better show the successful completion of Superfund response action at present or former NPL sites and enhance public understanding of the status of cleanup progress at sites. Sites are organized into three categories: Construction completion, site completion and NPL deletion. A site will move over time from completion of physical construction (construction completion), to achievement of remedial action objectives specified in the Record of Decision or ROD (site completion) to deletion (being formally removed from the NPL). Thus, the NPL completions list provides a "snapshot" of site cleanup status that will need to be periodically updated to reflect newly categorized sites, and sites moving from one category to the next. More details on the completions list will be published shortly in the **Federal Register**.

EPA deletes sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 44 sites from the General Superfund Section of the NPL, including the following 4 sites: Big River Sand Co., Wichita, KS; Pagano Salvage, Los Lunas, NM; BEC Trucking, Town of Vestal, NY; Westline site, Westline, PA. EPA, in consultation with the States of Kansas, New Mexico, New York, and the Commonwealth of Pennsylvania, has determined that no further response is appropriate at these sites. EPA and the respective States have also concluded that remedial actions conducted at the sites to date remain protective of the public health, welfare, and the environment. All four States have concurred on the deletion of the sites from the NPL.

In making a determination to delete a release from the NPL, EPA considers in consultation with the State whether any of the following criteria has been met:

1. Responsible parties or other persons have implemented all appropriate response actions requires;
2. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
3. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate. See section 300.425(e)(1) of the NCP.

Prior to deletion, notice of the proposed deletion is published and an opportunity for comment has been provided for all these sites. Any sites deleted from the NPL remain eligible for Fund-financed remedial action in the event that conditions are later found to warrant such action. Section 300.425(e)(3) of the NCP provides that whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without application of the HRS. Deletion does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. Specific information about the sites follows.

#### **Big River Sand Co., Wichita, Kansas**

EPA published a Notice of Intent to Delete the site on July 9, 1992 (57 FR 30452). EPA also published a notification in the principal local newspaper on July 5, 1992. The closing date for comments was August 10, 1992. EPA received no comments on the merits of the deletion of the site from the NPL, and one procedural comment. After reviewing these comments, EPA has concluded that deletion of the site at this time is appropriate. EPA provided a detailed response to the comment in a responsiveness summary which is contained in the Deletion Docket. Entries in the Deletion Docket may be reviewed at the U.S. EPA Region VII Waste Management Division Records Center, 726 Minnesota Avenue, Kansas City, Kansas, and at the Sedgwick County Public Library, Main Branch, 223 S. Main Street, Wichita, Kansas. For further information contact Diane Brewer, Environmental Protection Specialist, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66212, telephone (913) 551-7811.

#### **Pagano Salvage, Los Lunas, New Mexico**

EPA published a Notice of Intent to Delete the site on June 29, 1992 (57 FR 28817). EPA also published a notification in a local newspaper on June 28, 1992 regarding the proposed deletion. The closing date for comments was July 28, 1992. EPA received several comments regarding the deletion. After reviewing these comments, EPA has concluded that deletion of the site at this time is appropriate. EPA provided detailed responses to these comments in a responsiveness summary which is contained in the Deletion Docket. Entries in the Deletion Docket may be reviewed at the U.S. EPA Region VI office, 1445 Ross Avenue, 12th Floor suite 1200, Dallas, Texas and at the New Mexico Environmental Department in Santa Fe, New Mexico. For further information contact Carlos Sanchez, Remedial Project Manager, U.S. EPA Region VI (6H-SA), 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 655-8507.

#### **BEC (Binghamton Equipment Co.) Trucking, Town of Vestal, New York.**

EPA published a Notice of Intent to Delete the site on August 24, 1992 (57 FR 38289). EPA also published a notification in one local newspaper on August 19, 1992 regarding the proposed deletion. The closing date for comments was September 18, 1992. EPA received four comments.

One commenter expressed concern about a potential threat to the Town's water supply wells, and suggested that deleting the site from the NPL at this time is premature. Based upon the results of extensive investigations, EPA, in consultation with the State of New York, determined that the site does not pose a significant threat to human health or the environment. Therefore, taking additional remedial measures is not appropriate.

The other three commenters indicated that the site should not be deleted since they believe that it should continue to be monitored. Deletion of the site from the NPL does not preclude continued monitoring at the site. In fact, the ROD provides for a continued monitoring program to verify that the remedy continues to be protective of human health and the environment.

After reviewing these comments, EPA has concluded that deletion of the site at this time is appropriate. EPA provided detailed responses to these comments in a responsiveness summary which is contained in the Deletion Docket. Entries in the Deletion Docket may be reviewed at the U.S. EPA Region II office in New York; at the Vestal Town Hall, 605 Vestal Parkway West, Vestal, New York; and the Vestal Public Library, 320 Vestal Parkway East, Vestal, New York. For further information contact Arnold Bernas, Remedial Project Manager, Superfund Branch, U.S. EPA Region II (2 ERRD-NYCS1), 26 Federal Plaza, Room 29-30, New York, New York, telephone (212) 264-7612.

### **Westline Site, Westline, Pennsylvania**

EPA published a Notice of Intent to Delete the site on December 17, 1991 (56 FR 65462). EPA also published a notification in three local newspapers on December 9, 1991 regarding the proposed deletion. The closing date for comments was January 16, 1992. EPA received one comment, which was in favor of deleting the site. After reviewing the comment, EPA has concluded that deletion of the site at this time is appropriate. Entries in the Deletion Docket may be reviewed at the U.S. EPA Region III office in Philadelphia, Pennsylvania; the McKean County Courthouse in Smethport, Pennsylvania; the Bradford Area Public Library in Bradford, Pennsylvania; and the Westline Firehall in Westline, Pennsylvania. For further information contact Roy Schrock, Remedial Project Manager, Superfund Branch, U.S. EPA, Region III (3HW22), 841 Chestnut St., Philadelphia, Pennsylvania 19107, telephone (215) 597-0913.

In addition to the 44 sites that have been deleted from the NPL, 105 sites are in the construction or site completion categories, all but one from the General Superfund Section. Thus, as of September 30, 1992, a total of 149 NPL sites have been cleaned up.

Cleanups at sites on the NPL do not reflect the total picture of Superfund accomplishments. As of August 31, 1992, EPA has conducted 2,349 removal actions, 557 of them at NPL sites. The removal actions taken will either stabilize or completely clean up the site. Information on removals is available from the Superfund hotline.

### ***Information Available to the Public***

The Headquarters and Regional public dockets for the NPL contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact individual Regional Dockets for hours.

Addresses for the Headquarters and Regional dockets follow.

Docket Coordinator  
Headquarters, U.S. EPA CERCLA Docket Office, OS-245  
Waterside Mall  
401 M Street, SW  
Washington, DC 20460  
202/260-3046

Evo Cunha  
Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6  
J.F. Kennedy Federal Building  
Boston, MA, 02203-2211  
617/573-5729

Ben Conetta  
Region 2, 7th Floor, Room 740  
26 Federal Plaza  
New York, NY 10278  
212/264-6696

Diane McCreary  
Region 3, U.S. EPA Library, 3rd Floor  
841 Chestnut Building  
9th & Chestnut Streets  
Philadelphia, PA 19107  
215/597-7904

Beverly Fulwood  
Region 4, U.S. EPA Library, Room G-6  
345 Courtland Street, NE  
Atlanta, GA 30365  
404/347-4216

Cathy Freeman  
Region 5, U.S. EPA Records Center  
Waste Management Division 7-J  
Metcalfe Federal Building  
77 West Jackson Blvd.  
Chicago, IL 60604  
312/886-6214

Bart Canellas  
Region 6, U.S. EPA  
1445 Ross Avenue, Mail Code 6H-MA  
Dallas, TX 75202-2733  
214/655-6740

Steven Wyman  
Region 7, U.S. EPA Library  
726 Minnesota Avenue  
Kansas City, KS 66101  
913-551-7241

Greg Oberley  
Region 8, U.S. EPA  
999 18th Street, Suite 500  
Denver, CO 80202-2466  
303/294-7598

Lisa Nelson  
Region 9, U.S. EPA  
75 Hawthorne Street  
San Francisco, CA 94105  
415/744-2347

David Bennett  
Region 10, U.S. EPA, 11th Floor  
1200 6th Avenue, Mail Stop HW-114  
Seattle, WA 98101  
206/553-2103

The Headquarters docket for this rule contains HRS score sheets for each final site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by statutory requirements or EPA listing policies; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule - October 1992." Each Regional docket for this rule contains all information in the Headquarters docket for sites in that Region, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS scores for sites in that Region. These

reference documents are available only in the Regional dockets. The Headquarters docket and the Region 3 docket also contain documents relating to the decision to add the Austin Avenue Radiation Site in Delaware County, PA, to the NPL. Both dockets contain the public health advisory issued by ATSDR and EPA memoranda supporting the findings that the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the site.

Interested parties may view documents, by appointment only, in the Headquarters or appropriate Regional Docket or copies may be requested from the Headquarters or appropriate Regional Docket. An information written request, rather than a formal request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

## **II. Purpose and Implementation of the NPL**

### ***Purpose***

The legislative history of CERCLA (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)) states the primary purpose of the NPL:

The priority lists serve primarily informational purposes, identifying for the States and the public those facilities and sites or other releases which appear to warrant remedial actions. Inclusion of a facility or site on the list does not in itself reflect a judgment of the activities of its owner or operator, it does not require those persons to undertake any action, nor does it assign liability to any person. Subsequent government action in the form of remedial actions or enforcement actions will be necessary in order to do so, and these actions will be attended by all appropriate procedural safeguards.

The purpose of the NPL, therefore, is primarily to service as an information and management tool. The identification of a site for the NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of the public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site may, to the extent potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

### ***Implementation***

After initial discovery of a site at which a release or a threatened release may exist, EPA begins a series of increasingly complex evaluations. The first step, the Preliminary Assessment (PA), is a low-cost review of existing information to determine if the site poses a threat to the public health or the environment. If the site presents a serious imminent threat, EPA may take immediate removal action. If the PA shows that the site presents a threat but not an imminent threat, EPA generally will perform a more extensive study called the Site Inspection (SI). The SI involves collecting additional information to better understand the extent of the problem at the site, screen out sites that will not qualify for the NPL, and obtain data necessary to calculate an HRS score for sites that warrant placement on the NPL and further study. To date EPA has completed approximately 33,000 PAs and approximately 16,000 SIs.

The NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990) limits expenditure of the Trust Fund for remedial actions to sites on the NPL. However, EPA may take enforcement actions under CERCLA or other applicable statutes against responsible parties regardless of whether the site is on the NPL; although, as a practical matter, the focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of CERCLA removal actions, EPA has the authority to act at any site, whether listed or not, that meets the criteria of the NCP at 40 CFR 300.415(b)(2) (55 FR 8842, March 8, 1990). EPA's policy is to pursue cleanup of NPL sites using all the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities prior to undertaking response action, to proceed directly with Trust Fund-financed response actions and seek to recover response costs after cleanup, or do both. To the extent feasible, once sites are on the NPL, EPA will determine high-priority candidates for CERCLA-financed response action and/or enforcement action through both State and Federal initiatives. EPA will take into account which approach is more likely to accomplish cleanup of the site most expeditiously while using CERCLA's limited resources as efficiently as possible.

Although it is a factor that is considered, the ranking of sites by HRS scores does not by itself determine the sequence in which EPA funds remedial response actions since the information collected to develop HRS scores is not sufficient to determine either the extent of contamination or the appropriate response for a particular site. (40 CFR 300.425(a)(2), 55 FR 8845). Additionally resource constraints may preclude EPA from evaluating all HRS pathways; only those presenting significant environmental risk and sufficient to make a site eligible for the NPL may be evaluated. Moreover the sites with the highest scores do not necessarily come to the Agency's attention first, so that addressing sites strictly on the basis of ranking would in some cases require stopping work at sites where it already was underway. In addition, certain sites such as the Austin Avenue Radiation Site, are based on other criteria. More detailed studies of a site are undertaken in the Remedial Investigation/ Feasibility Study ("RI/FS") that typically follows listing. The purpose of the RI/FS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy (40 CFR 300.430(a)(2)) (55 FR 8846, March 8, 1990). It takes into account the amount of contaminants released into the environment, the risk to affected populations and environment, the cost to remediate contamination at the site, and the response actions that have been taken by potentially responsible parties or others. Decisions on the type and extent of response action to be taken at these sites are made in accordance with 40 CFR 300.415 (55 FR 8842, March 8, 1990) and 40 CFR 300.430 (55 FR 8846, March 8, 1990). After conducting these additional studies, EPA may conclude that initiating a CERCLA remedial action using the Trust Fund at some sites on the NPL is not appropriate because of more pressing needs at other sites, or because a private party cleanup already is underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

### ***RI/FS at Proposed Sites***

An RI/FS may be performed at sites proposed in the **Federal Register** for placement on the NPL (or even sites that have not been proposed for placement on the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.415. Although an RI/FS generally is conducted at a site after it has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a site proposed for placement on the NPL in preparation for a possible Trust Fund-financed response action, such as when the Agency believes that a delay may create unnecessary risks to public health or the environment. In addition, the Agency may conduct an RI/FS to assist in determining whether to conduct a removal or enforcement action at a site.

### ***Facility (Site) Boundaries***

The purpose of the NPL is merely to identify releases or threatened releases of hazardous substances that are priorities for further evaluation. The Agency believes that it would be neither feasible nor consistent with this limited purpose for the NPL to attempt to describe releases in precise geographical terms. The term "facility" is broadly defined in CERCLA to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), and the listing process is not intended to define or reflect boundaries of such facilities or releases. Site names are provided for general identification purposes only. Knowledge of the geographic extent of sites will be refined as more information is developed during the RI/FS and even during implementation of the remedy.

Because the NPL does not assign liability nor define the geographic extent of a release, a listing need not be amended if further research into the contamination at a site reveals new information as to its extent. This is further explained in preambles to past NPL rules, most recently February 11, 1991 (56 FR 5598).

## **III. Contents of This Final Rule**

This final rule adds 26 sites to the General Superfund Section of the NPL (Table 1) and 7 sites to the Federal Facilities Section (Table 2). Proposal #11 (56 FR 35840, July 29, 1991) provided 15 of the sites; all are being added to the NPL based on HRS scores of 28.50 or greater. Proposal #12 (57 FR 4824, February 7, 1992) provided 18 sites; all but one are being added to the NPL based on HRS scores of 28.50 or greater. The Austin Avenue Radiation Site is being added to the NPL on the basis of 40 CFR 300.425(c)(3)(55 FR 8845, March 8, 1990). A description of the site and EPA's basis for listing it were included when the site was proposed. As discussed more fully below, Table 1 presents the sites in this rule arranged alphabetically by State and identifies their rank by group number. Group numbers are determined by arranging the NPL by rank and dividing it into groups of 50 sites. For example, a site in Group 4 has a score that falls within the range of scores covered by the fourth group of 50 sites on the NPL.



**Table 1  
National Priorities List Final Rule - General Superfund Section**

<b>State</b>	<b>Site name</b>	<b>Location</b>	<b>Group</b>
AR	Popile, Inc	El Dorado	6
AR	South 8th Street Landfill (once listed as West Memphis Landfill)	West Memphis	4
CA	McCormick & Baxter Creosoting Co	Stockton	1
CA	Ralph Gray Trucking Co. (once listed as Westminster Tract #2633)	Westminster	15
FL	Helena Chemical Co. (Tampa Plant)	Tampa	20
IL	Ottawa Radiation Areas	Ottawa	5
KS	57th and North Broadway Streets Site	Wichita Heights	5
KY	National Electric Coil Co./Cooper Industries	Dayhoit	5
LA	American Creosote Works, Inc. (Winnfield Plant)	Winnfield	4
MO	Big River Mine Tailings/St. Joe Minerals Corp	Desloge	1
NE	Cleburn Street Well	Grand Island	5
NE	Sherwood Medical Co	Norfolk	5
NH	New Hampshire Plating Co	Merrimack	5
NY	Li Tungsten Corp	Glen Cove	5
OR	Northwest Pipe & Casing Co	Clackamas	4
PA	Austin Avenue Radiation Site	Delaware County	*
PA	Crater Resources, Inc./Keystone Coke Co./Alan Wood Steel Co	Upper Merion Township	5
PA	Crossley Farm	Hereford Township	21
PA	Foot Mineral Company	East Whiteland Township	5
PA	Metropolitan Mirror and Glass Co., Inc.	Frackville	15
PA	Rodale Manufacturing Co., Inc.	Emmaus Borough	5
RI	West Kingston Town Dump/URI Disposal Area	South Kingstown	5
UT	Petrochem Recycling Corp./Ekotek, Inc.	Salt Lake City	1
WA	Moses Lake Wellfield Contamination	Moses Lake	5
WA	Vancouver Water Station #4 Contamination	Vancouver	5
WI	Refuse Hideaway Landfill	Middleton	15

Number of Sites Listed: 28 \* Based on issuance of health advisory by the Agency for Toxic Substances

**Table 2  
National Priorities List Final Rule - Federal Facilities Section**

<b>State</b>	<b>Site name</b>	<b>Location</b>	<b>Group</b>
CA	Jet Propulsion Laboratory (NASA)	Pasadena	5
GU	Andersen Air Force Base	Yigo	5
HI	Pearl Harbor Naval Complex	Pearl Harbor	1
TN	Memphis Defense Depot	Memphis	2
VA	Naval Surface Warfare Center-Dahlgren	Dahlgren	5
VA	Naval Weapons Station-Yorktown	Yorktown	5
WA	Hamilton Island Landfill (USA/COE)	North Bonneville	4

Number of Sites Listed: 7

**Public Comments**

EPA reviewed all comments received on sites included in this rule. The formal comment period ended March 9, 1992 for the Austin Avenue Radiation site, April 7, 1992 for all other sites included from Proposal 12, and September 27, 1991 for all sites included from Proposal 11.

Based on the comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule - October 1992." For 20 of the sites, including the Austin Avenue Radiation site, EPA received no comments.

**NPL Format**

Since promulgation of the original NPL (Appendix B of 40 CFR Part 300) on September 8, 1983 (48 FR 40660), EPA has arranged the NPL by rank based on HRS scores. Sites in the General Superfund Section of the NPL were presented in groups of 50 (with their rank) to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk. Sites on the Federal Facilities Section were presented by group number. In addition, each preamble for a proposed rule provided the group number for each proposed site.

On July 29, 1991 (56 FR 35843), EPA proposed to change the NPL format and list sites alphabetically by State and by site name within each State. EPA proposed this change because the growth of the NPL has made it increasingly difficult for users to find individual sites. Almost all public requests about the NPL ask if a particular site in a particular State is on the NPL, or ask for all sites in specific States, rather than ranks or scores for individual sites. In addition, the increase in the size of the NPL has meant that different groups of 50 may no longer represent significantly different scores.

EPA received seven comments supporting the change in format and no negative comments. The comments supported EPA's view that information by State is most helpful and questions of rank are infrequent.

As a result of the support received for EPA's proposed format change, and lack of negative comments, EPA will present Appendix B alphabetically by State beginning with the NPL following this preamble.

EPA recognizes that some requests are for rankings. On July 29, 1991 (56 FR 35843), EPA also requested comment on whether each preamble should continue to include a ranking for sites in that particular rule, and if so, what form that ranking should take. One commenter suggested that sites be ranked by thirds based on score; another suggested the sites be listed alphabetically and be accompanied by HRS scores. No other comments addressed this issue. In response, because of these concerns that some form of ranking sites be maintained, the preamble of each rule will list proposed or final sites alphabetically by State and also identify the group number for each site. EPA believes this is a

reasonable compromise between the need to make the NPL more useful, and the need to retain some indication of site rank.

EPA will continue to provide lists of all NPL sites ranked by HRS scores upon request to the Superfund Hotline, Phone (800) 424-9346 or (703) 920-9810 in the Washington, DC, metropolitan area. Requestors should note that EPA generally is able to respond more quickly to an informal request than to a formal request under the Freedom of Information Act.

### **Costs**

One commenter questioned the cost estimates presented in the Regulatory Impact Analysis (RIA) section of the preamble to the July 29, 1991, proposed rule (56 FR 35845). The commenter stated that the values were substantially different from values in a similar table published on August 30, 1990 (55 FR 35511). The commenter also suggested that the Agency's cost estimate for operation and maintenance (O&M) of the cleanup remedy should be adjusted to account for inflation.

In response, the Agency inadvertently used an outdated table of cost estimates in the RIA section in the July 29, 1991, proposed rule. The following table shows the correct values:

<b>Cost category</b>	<b>Average total cost per site <sup>1</sup></b>
RI/FS	1,300,000
Remedial Design	1,500,000
Remedial Action	25,000,000 <sup>2</sup>
Net present value of O&M <sup>3</sup>	3,770,000 <sup>2</sup>

Source: Office of Program Management, Office of Superfund Remediation Technology Innovation, U.S. EPA, Washington, DC <sup>1</sup> 1988 U.S. Dollars.

<sup>2</sup> Includes State cost-share.

<sup>3</sup> Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate.

In response to the suggestion that the Agency account for inflation in cost estimates for O&M of cleanup remedies, the numbers do not account for inflation. The Agency uses current cost estimates because it cannot predict future inflation levels.

### **Statutory Requirements**

CERCLA section 105(a)(8)(B) directs EPA to list priority sites "among" the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing sites on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen not to place certain types of sites on the NPL even though CERCLA does not exclude such action. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The listing policies and statutory requirements of relevance to this final rule cover sites subject to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6991i) and Federal facility sites. These policies and requirements are explained below and have been explained in greater detail in previous rulemakings.

### **Releases From Resource Conservation and Recovery Act (RCRA) Sites**

EPA's policy is that sites in the General Superfund Section subject to RCRA Subtitle C corrective action authorities will not, in general, be placed on the NPL. However, EPA will list certain categories of RCRA sites subject to Subtitle C corrective action authorities, as well as other sites subject to those authorities, if the Agency concludes that doing so

best furthers the aims of the NPL/RCRA policy and the CERCLA program. EPA has explained this policy in detail in the past (51 FR 21054, June 10, 1986; 53 FR 23978, June 24, 1988; 54 FR 41000, October 4, 1989; 56 FR 5602, February 11, 1991).

Consistent with EPA's NPL/RCRA policy, EPA is adding three sites to the NPL, McCormick & Baxter Creosoting Co. in Stockton, CA, New Hampshire Plating Co. in Merrimack, NH, and Petrochem Recycling Corp./Ekotek, Inc. in Salt Lake City, UT, that are subject to RCRA Subtitle C corrective action authorities. Material has been placed in the public docket for the Petrochem Recycling Corp./Ekotek, Inc. site and the McCormick & Baxter Creosoting Co. site confirming that the owners are in bankruptcy and unable to pay for cleanup. Regarding the New Hampshire Plating Co. site, even though the owner has not formally invoked the bankruptcy laws, available documentation indicates that the company assets cannot cover a current State lien on the property for response action, much less address any new expenses that would be incurred in financing corrective action. A more detailed discussion of this issue as well as supporting documentation is available in the public docket for this site.

### ***Releases From Federal Facility Sites***

On March 13, 1989 (54 FR 10520), the Agency announced a policy for placing Federal facility sites on the NPL that meet the eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA Subtitle C. In that way, those sites may be cleaned up under CERCLA, if appropriate.

This rule adds seven sites to the Federal Facilities Section of the NPL.

### ***Name Revision***

The names of two sites addressed in this final rule have been changed based upon additional information obtained since the sites were proposed. The site proposed as "Westminster Tract #2633 in Westminster, CA, has been changed to Ralph Gray Trucking Co. The site proposed as the West Memphis Landfill in West Memphis, AR, has been changed to the South 8th Street Landfill. Finally, the name of a site previously placed on the NPL, Holton Circle Ground Water Contamination Site, in Londonderry, NH, has been changed to Town Garage/Radio Beacon. These changes make it easier for the public to identify the sites.

## **IV. Regulatory Impact Analysis**

The costs of clean up actions that may be taken at sites are not directly attributable to placement on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of this amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision to the NPL are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

### ***Costs***

This final rulemaking is not a "major" regulation because it does not established that EPA necessarily will undertake remedial action, nor does it require any action by a private party to determine any party's liability for site response costs. Costs that arise out of responses at sites in the General Superfund Section result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Nonetheless, it is useful to consider the costs that may be associated with responding to all sites in this rule. Placing of a site on the NPL may be followed by a search for potentially responsible parties and a Remedial Investigation/Feasibility Study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may enter into consent orders or agreements to conduct or pay the costs of the RI/FS, remedial design and remedial action, and O&M, or EPA and the States may share costs up from and subsequently bring an action for cost recovery.

The State's share of site cleanup costs for Trust Fund-financed actions is governed by CERCLA section 104(c). For privately-owned sites, as well as publicly-owned but not publicly-operated sites, EPA will pay from the Trust Fund for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs of the remedial action, leaving 10% to the State. For sites operated by a State or political subdivision, the State's share is at least 50% of all response costs at the site, including the cost associated with the RI/FS, remedial design, and construction and implementation of the remedial action selected. After construction of the remedy is complete, costs fall into two categories:

- For restoration of ground water and surface water, EPA will pay from the Trust Fund a share of the start-up costs according to the cost-allocation criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years. 40 CFR 300.435(f)(3). After that, the State assumes all O&M costs. 40 CFR 300.435(f)(1).
- For other cleanups, EPA will pay from the Trust Fund a share of the costs of a remedy according to the cost-allocation criteria in the previous paragraph until it is operational and functional, which generally occurs after one year. 40 CFR 300.435(f)(2), 300.510(c)(2). After that, the State assumes all O&M costs. 40 CFR 300.510(c)(1).

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average-per-site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, costs for individual sites vary widely, depending on the amount, type and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost-recovery actions.

<b>Cost category</b>	<b>Average total cost per site <sup>1</sup></b>
RI/FS	\$1,300,000
Remedial design	1,500,000
Remedial action	25,000,000 <sup>2</sup>
Net present value of O&M <sup>3</sup>	3,770,000 <sup>2</sup>

Source: Office of Program Management, Office of Superfund Remediation Technology Innovation, U.S. EPA, Washington, DC. <sup>1</sup> 1988 U.S. Dollars.

<sup>2</sup> Includes State cost-share.

<sup>3</sup> Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate.

Possible costs to States associated with today's final rule for Trust Fund-financed response action arise from the required State cost-share of:

1. for privately owned sites at which remedial action involving treatment to restore ground and surface water quality are undertaken, 10% of the cost of constructing the remedy, and 10% of the cost of operating the remedy for a period of up to 10 years after the remedy becomes operational and functional;
2. for privately-owned sites at which other remedial actions are undertaken, 10% of the cost of all remedial action, and 10% of costs incurred within one year after remedial action is complete to ensure that the remedy is operational and functional; and
3. for sites publicly-operated by a State or political subdivision at which response actions are undertaken, at least 50% of the cost of all response actions.

States must assume the cost for O&M after EPA's participation ends. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the non-Federal sites proposed for the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions at all non-Federal sites in today's proposed rule, but excluding O&M costs, would be approximately \$99 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share start-up costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately \$83 million. As with the EPA share of costs, portions of the State share will be borne by responsible parties.

Placing a hazardous waste site on the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, these effects cannot be precisely estimated. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

### ***Benefits***

The real benefits associated with today's final rule are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of the additional CERCLA remedies, there will be lower human exposure to high-risk chemicals, and higher-quality surface water, ground water, soil, and air. These benefits are expected to be significant, although difficult to estimate before the RI/FS is completed at these sites.

## **V. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities, the Act refers to small businesses, small government jurisdictions, and nonprofit organizations.

While this rule revises the NCP, it is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that the listing of the sites in this NPL rule could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only the firm's contribution to the problem, but also its ability to pay.

The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule does not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

#### **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: October 5, 1992.

**Don R. Clay,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

#### **PART 300 - [AMENDED]**

1. The authority citation for part 300 is revised to read as follows:

**Authority:** 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Appendix B to part 300 is revised to read as set forth below:

#### **Appendix B - National Priorities List**

[FR Doc. 92-24893 Filed 10-13-92; 8:45 am]

**BILLING CODE 6560-50-M**