

Federal Register Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[SWF-FRL 2555-5]

Amendment to National Oil and Hazardous Substance Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is amending the National Priorities List ("NPL"), which was promulgated on September 8, 1983, as Appendix B of the National Oil and Hazardous Substances Contingency Plan ("NCP"), pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. CERCLA requires that the NPL be revised at least annually, and on September 8, 1983, the first update to the NPL ("proposed NPL") was proposed concurrent with the promulgation of the final rule. Today's rule amends the NPL to include San Gabriel Areas 1, 2, 3, and 4. These four sites were included in the September 8, 1983 proposed rule.

DATES:

The promulgation date for this amendment to the NCP shall be May 8, 1984. Under section 305 of CERCLA, amendments to the NCP cannot take effect until Congress has had at least 60 "calendar days of continuous session" from the date of promulgation in which to review the amended Plan. Since the actual length of this review period may be affected by Congressional action, it is not possible at this time to specify a date on which the NPL will become effective. Therefore, EPA will publish a **Federal Register** notice at the end of the review period announcing the effective date of this NPL amendment. EPA notes, however, that the legal effect of a Congressional veto pursuant to section 305 has been placed in question by the recent decision, *Immigration and Naturalization Service v. Chadha*, 103 S. Ct. 2764 (1983). Nonetheless, the Agency has decided, as a matter of policy, to submit the NPL amendments for Congressional review.

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I. Background of 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). The revised NCP implemented the new 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 taking 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 emergency conditions or 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 permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (40 CFR Part 300, Appendix A).

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. EPA has included releases on the NPL where CERCLA authorizes Federal response to the release. Under section 104(a) of CERCLA, this response authority is quite broad and extends to releases or threatened releases not only of designated hazardous substances, but of any "pollutant or contaminant" which presents an imminent and substantial danger to the public health or welfare. CERCLA requires that this National Priorities List ("NPL") be included as part of the NCP. On September 8, 1983, the Agency amended the NCP by adding the NPL as Appendix B. Additional discussion on the purpose and development of the NPL and on generic issues relating to the Hazard Ranking System (HRS) is included in the preamble to the NPL promulgated on September 8, 1983, (48 FR 40658).

Section 300.68(a) of the NCP reserves remedial actions for those releases on the NPL taken to prevent or mitigate the migration of hazardous substances into the environment. The NPL promulgated on September 8, 1983, contains 406 sites eligible for EPA remedial actions financed by the Hazardous Substance Response Trust Fund established by Section 221 of CERCLA. Inclusion of a site on the NPL is not necessary for other types of response actions such as removal actions or for enforcement actions.

CERCLA requires the NPL to be revised at least once per year. The first proposed update was published at the same time as the final rulemaking on the NPL and included 133 sites. The four San Gabriel sites that are now being added to the NPL were among the 133 sites proposed at that time.

II. Background of San Gabriel Area Sites

The four San Gabriel Area sites were included in the proposed rulemaking for the first update of the NPL (48 FR 40674, September 8, 1983). The four sites are located in Los Angeles County, California. Over 400 domestic and municipal water supply wells are located in the four areas. EPA has determined that a release of hazardous substances into the environment has occurred. Chlorinated organic hydrocarbon contamination has been detected in the ground water at all four sites. EPA and the State have identified levels of contamination that pose an actual or potential threat to public health and the environment. The Agency is evaluating the situation to determine the appropriate response action (e.g., removal or remedial response) and expects that remedial response will be appropriate given the nature, extent and concentrations of contamination at the sites.

EPA has conducted remedial planning activities consistent with § 300.68 of the NCP to determine if a remedial action is justified by the actual or potential threat posed by the hazardous substances. Based on these planning activities, EPA believes that an initial remedial measure may be appropriate and that EPA should consider proceeding immediately to limit exposure or threat of exposure to a significant public health or environmental hazard. The initial

remedial measure which is under consideration would provide alternative drinking water supplies to mitigate the public health threat. In addition, EPA and the State expect to undertake additional remedial planning activities to determine if further remedial actions are needed to mitigate any continued public health or environmental effects.

III. Addition of San Gabriel Area Sites to NPL

This action being taking today will add San Gabriel Area sites 1, 2, 3, and 4 to the NPL. No public comments were received by EPA, either during or after the 60-day comment period following addition of the sites on the proposed NPL. EPA has reviewed the Hazard Ranking System (HRS) score for each site and has determined that no information has been presented during or after the comment period that would justify a change in the HRS scores. The final scores exceed 28.5, which is the minimum score required for a site to be included on the NPL.

The decision to add the San Gabriel sites to the NPL immediately rather than waiting until rulemaking on the other 129 sites included in the September 8, 1983, proposed rule, is based on the serious nature of the problem. Approximately 500,000 people are potentially affected by consumption of contaminated ground water. It may be necessary to take remedial action at the sites in the near future.

IV. Regulatory Impact

The addition of these four 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 in 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 private party, nor does it determine the liability of any party for the cost of cleanup at the site.

In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL. 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. After a site has been included on the NPL, EPA generally will rely 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 sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting those additional studies, EPA may conclude that it is not feasible to conduct response action at some sites on the NPL because of more pressing needs at other sites. Given the limited resources available in the Hazardous Substance Response Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied.

No accurate assessment of the cost of remedial action at these four sites has yet been developed by EPA. However, preliminary analyses indicate that EPA might expend approximately \$600,000 at the sites. It is not expected that, even at its highest cost, remedial action could cause an annual effect on the economy of \$100 million or more. Further, it is not expected that remedial action could cause a major increase in costs or prices, nor could it have significant adverse effects on competition, employment investment or any other criteria of Executive Order 12291. Rather, beneficial effects may be anticipated from any actions taken to supply alternative sources of clean drinking water.

V. Regulatory Flexibility Act Analysis

After reviewing the criteria for significant economic impact on a substantial number 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 (48 FR 40659, September 8, 1983), 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 California expect to fund remedial activities at the four sites. A search for potentially responsible parties is underway, but thus far, not have been identified. Should any potentially responsible parties be identified, EPA may seek to recover any costs of remedial activities conducted at these four sites. However, the portion of costs that might be borne by any identifiable potentially responsible parties cannot be estimated at this time.

Of the businesses and organizations possibly involved with the San Gabriel Area sites, the fraction constituting small business entities, as defined by the Small Business Administration would not be substantial. It is therefore unlikely that any EPA remedial activities at these four sites would significantly affect 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.

PART 300 - [AMENDED]

Appendix B - [Amended]

The National Priorities List which is Appendix B of the National Oil and Hazardous Substance Contingency Plan (40 FR 40658) is hereby amended to add the following sites:

Group 8

EPA region	State	Site Name	City/county	Response status #
09	CA	San Gabriel Area 1	El Monte	D
09	CA	San Gabriel Area 2	Baldwin Park Area	D

Group 9

EPA region	State	Site Name	City/county	Response status #
09	CA	San Gabriel Area 3	Alhambra	D
09	CA	San Gabriel Area 4	La Puente	D

#: V=Voluntary or Negotiated Response.
R=Federal and State Response.
E=Federal and State Enforcement.
D=Actions to be Determined.

Dated: May 1, 1984.

William D. Ruckelshaus
Administrator.

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