

Federal Register Notice

13296 - 13305 Federal Register / Vol. 54, No. 61 / Friday, March 31, 1989 / Rules and Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL-3546-3]

National Priorities List for Uncontrolled Hazardous Waste Sites - Final Update No. 5

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300, which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and Executive Order 12580 (52 FR 2923, January 29, 1987). CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List ("NPL"), initially promulgated as Appendix B of the NCP on September 8, 1983 (48 FR 40658), constitutes this list and is being revised today by the addition of 93 sites. EPA has reviewed public comments on the listing of 29 of these sites and has decided that they meet the listing requirements of the NPL. No comments were received on the remaining 64 sites. In addition, today's action removes four sites from the proposed NPL. Information supporting these actions is contained in the Superfund Public Dockets.

This rule results in a final NPL of 890 sites, 41 of them in the Federal section; 273 sites are proposed to the NPL, 22 of them of them in the Federal section. Final and proposed sites now total 1,163.

EFFECTIVE DATE:

The effective date for this amendment to the NCP shall be May 1, 1989. 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 notice of clarification in the **Federal Register**.

ADDRESSES:

Addresses for the Headquarters and Regional dockets follow. For further details on what these dockets contain, see Section I of the "**SUPPLEMENTARY INFORMATION**" portion of this preamble.

Tina Maragousis
Headquarters, U.S. EPA CERCLA Docket Office
Waterside Mall
401 M Street, SW.
Washington, DC 20460
202/382-3046

Evo Cunha
Region 1, U.S. EPA Waste Management Records Center
HES-CAN 6
J.F. Kennedy Federal Building
Boston, MA 02203
617/565-3300

U.S. EPA
Region 2, Document Control Center, Superfund Docket
26 Federal Plaza, 7th Floor, Room 740
New York, NY 10278
Latchmin Serrano, 212/264-5540
Ophelia Brown, 212/264-1154

Diane McCreary
Region 3, U.S. EPA Library, 5th Floor
841 Chestnut Building
9th & Chestnut Streets
Philadelphia, PA 19107
215/597-0580

Gayle Alston
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, 5 HS-12
230 South Dearborn Street
Chicago, IL 60604
312/886-6214

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

Connie McKenzie
Region 7, U.S. EPA Library
726 Minnesota Avenue
Kansas City, KS 66101
913/236-2828

Dolores Eddy
Region 8, U.S. EPA Library
999 18th Street, Suite 500
Denver, CO 80202-2405
303/293-1444

Linda Sunnen
Region 9, U.S. EPA Library, 6th Floor
215 Fremont Street
San Francisco, CA 94105
415/974-8082

David Bennett
Region 10, U.S. EPA, 9th Floor
1200 6th Avenue, Mail Stop HW-093
Seattle, WA 98101
206/442-2103

FOR FURTHER INFORMATION CONTACT:

Robert Myers
Hazardous Site Evaluation Division
Office of Superfund Remediation Technology Innovation (OS-230)
U.S. Environmental Protection Agency
401 M Street SW.
Washington, DC 20460
or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Purpose and Implementation of the NPL
- III. NPL Update Process
- IV. Statutory Requirements and Listing Policies
- V. Disposition of Sites in Today's Final Rule
- VI. Disposition of All Proposed Sites/Federal Facility Sit
- VII. Contents of the NPL
- VIII. Regulatory Impact Analysis
- IX. Regulatory Flexibility Act Analysis

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("CERCLA" or the "Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended in 1986 by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Oil and Hazardous Substances 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, further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. On December 21, 1988 (53 FR 51394), EPA proposed revisions to the NCP in response to SARA.

Section 105(a)(8)(A) of CERCLA, as amended by SARA, 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 remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS.

Section 105(a)(8)(B) of CERCLA, as amended by SARA, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is Appendix B of the NCP, is the National

Priorities List ("NPL"). Section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has since been expanded, most recently on July 22, 1987 (52 FR 27620) and, exclusively for Federal facility sites, on March 13, 1989 (54 FR 10512). The Agency has also published a number of proposed rulemakings to add sites to the NPL, most recently on June 24, 1988 (53 FR 23988).

EPA may delete sites from the NPL when no further response is appropriate, as provided in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 26 sites from the NPL, two since March 13, 1989 (54 FR 10513):

- March 17, 1989 (54 FR 11203)
 - New Castle Steel, New Castle County, Delaware

- March 23, 1989 (54 FR 11949)
 - Wade (ABM), Chester, Pennsylvania

This rule adds 93 sites to the NPL. EPA has carefully considered public comments submitted for 29 of the sites in today's final rule and made some modifications in response to those comments. No comments were received on the remaining 64 sites. This rule results in a final NPL of 890 sites, 41 of them in the Federal section; 273 sites are in proposed status, 22 of them in the Federal section. In addition, four sites are being dropped from the proposed NPL. With these changes, final and proposed sites now total 1,163.

EPA includes on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases", "facilities", or "sites".

Information Available to the Public

The Headquarters and Regional public dockets for the NPL (see Addresses portion of this notice) contain documents relating to the 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.

The Headquarters docket 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 special study waste or other requirements or Resource Conservation and Recovery Act or other 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, Update #5."

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data EPA relied upon in calculating or evaluating the HRS scores for sites in the Region. These reference documents are available only in the Regional dockets. They may be viewed "by appointment only" in the appropriate Regional Docket or Superfund Branch office. Requests for copies may be directed to the appropriate Regional docket or Superfund Branch.

An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

EPA has published a statement describing what background information (resulting from the initial investigation of potential CERCLA sites) the Agency discloses in response to Freedom of Information Act requests (52 FR 5578, February 25, 1987).

II. Purpose and Implementation of the NPL

Purpose

The primary purpose of the NPL is stated in 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)):

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 serve as an informational and management tool. The initial 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 EPA believes warrant further investigation.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at Federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

Implementation

A site can undergo remedial action financed by the Trust Fund established under CERCLA only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). 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 enforcement actions has been and will continue to be on NPL sites. Similarly, in the case of 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 300.65-67.

EPA's policy is to pursue cleanup of NPL sites using the appropriate response and/or enforcement actions available to the Agency, including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. The Agency will decide on a site-by-site basis whether to take enforcement or other action under CERCLA or other authorities, proceed directly with CERCLA-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 Superfund-financed response action and/or enforcement action through both State and Federal initiatives. These determinations will take into account which approach is more likely to most expeditiously accomplish cleanup of the site while using CERCLA's limited resources as efficiently as possible.

Remedial response actions will not necessarily be funded in the same order as a site's ranking on the NPL - that is, its HRS score. The information collected to develop HRS scores is not sufficient in itself to determine either the extent of contamination or the appropriate response for a particular site. EPA relies on further, more detailed studies in the remedial investigation/feasibility study (RI/FS) to address these concerns.

The RI/FS determines the type and extent of contamination. It also takes into account the amount of contaminants in the environment, the risk to affected populations and environment, the cost to correct problems at the site, and the response actions that have been taken by potentially responsible parties or others. 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 these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already 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.

Revisions to the NPL such as today's rulemaking may move some previously listed sites to a lower position on the NPL. However, if EPA has initiated action such as an RI/FS at a site, it does not intend to cease such actions to determine if a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding site studies and remedial actions once they have been initiated, even if higher-scoring sites are later added to the NPL.

RI/FS at Proposed Sites

An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(l). (Section 101(23) of CERCLA defines "remove" or "Removal" to include "such actions as may be necessary to monitor, assess and evaluate the release or threat of release * * * ." The definition of "Removal" also includes "action taken under Section 104(b) of this Act * * * ," which authorizes the Agency to perform studies, investigations, and other information-gathering activities.)

Although an RI/FS is generally conducted at a site after the site has been placed on the NPL, in a number of circumstances the Agency elects to conduct an RI/FS at a proposed NPL site in preparation for a possible CERCLA-financed remedial action, such as when the Agency believes that a delay may create unnecessary risks to human 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

A "facility" is defined under CERCLA section 101(9) and the NCP at 40 CFR 300.6 as "(A) any building, structure, * * * well, pit, pond, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." (The term "site" is frequently used interchangeably with facility.) The "come to be located" language implements the broad remedial purposes of CERCLA, giving EPA authority to clean up contamination when it has spread from the original source. In *U.S. v. Bliss*, 667 F. Supp. 1298, 1305 (E.D. Mo. 1987), the courts have affirmed this interpretation:

As the Special Master noted succinctly in *United States v. Conservation Chemical Co.*, 619 F. Supp. (162,) at 185 ((W.D.Mo. 1985)), "simply put, the term 'facility' includes any place where hazardous substances come to be located." Thus, to show that an area is a "facility", the plaintiff need only show that a hazardous substance has been placed there or has "otherwise come to be located" there.

The extent of the contamination, and thus the "facility", is first described when a release or threatened release is scored using the HRS. However, HRS scoring and the subsequent listing of a release merely represent the initial determination that a certain area may need to be addressed under CERCLA. Accordingly, EPA contemplates that the preliminary description of facility boundaries at the time of scoring will need to be refined and improved as more information is developed as to where the contamination has come to be located; this refining step generally comes during the RI/FS stage. As the NCP provides at 40 CFR 300.68(d):

An RI/FS shall ... determine the nature and extent of the threat presented by the release and ... evaluate proposed remedies. This includes ... the gathering of sufficient information to determine the necessity for and proposed extent of remedial action.

The preliminary description of a facility when it is listed does not preclude the Agency, during the RI/FS, from following the contamination as far as it goes, and then considering the facility, for response purposes, as the entire area where hazardous substances have come to be located, even if that area extends beyond the boundary for which the site was named.

III. NPL Update Process

Placing Sites on the NPL

There are three mechanisms for placing sites on the NPL. The principal mechanism is the application of the HRS. The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to cause human health or safety problems, or ecological or environmental damage. The HRS score is calculated by estimating

risks presented in three potential "pathways" of human or environmental exposure: ground water, surface water, and air. Within each pathway of exposure, the HRS considers three categories of factors "that are designed to encompass most aspects of the likelihood of exposure to a hazardous substance through a release and the magnitude or degree of harm from such exposure":

1. Factors that indicate the presence or likelihood of a release to the environment;
2. factors that indicate the nature and quantity of the substances presenting the potential threat; and
3. factors that indicate the human or environmental "targets" potentially at risk from the site.

Factors within each of these three categories are assigned a numerical value according to a set scale. Once numerical values are computed for each factor, the HRS uses mathematical formulas that reflect the relative importance and interrelationships of the various factors to arrive at a final site score on a scale of 0 to 100. The resultant HRS score represents an estimate of the relative "probability and magnitude of harm to the human population or sensitive environment from exposure to hazardous substances as a result of the contamination of ground water, surface water, or air" (47 FR 31180, July 16, 1982). Those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under the 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 is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which 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 300.66(b)(4) (50 FR 37624, September 16, 1985), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which 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 than to use its removal authority to respond to the release.

States have the primary responsibility for identifying sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Office may also consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify for the final NPL.

Revised HRS Effective Date

EPA recently proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA (53 FR 51926 (December 23, 1988); 54 FR 6153 (February 8, 1989)). Several commenters have questioned EPA's authority to include sites on the NPL after October 17, 1988 (the date 24 months after the enactment of SARA), because CERCLA section 105(c)(1), as amended, provides that EPA should revise the HRS by that date. The commenters argue that the October 17, 1988, date is *the* effective date for all purposes of section 105(c)(1), and that the Agency cannot use the current HRS after that date to add sites to the NPL. Under the commenters' view, the Agency may not resume the listing of sites until the HRS revisions are issued and made effective. EPA disagrees with this interpretation.

First, the language of CERCLA section 105(c)(l) provides that the current HRS shall continue in force until the new HRS becomes effective:

Such amended hazard ranking system shall be applied to any site or facility to be newly listed on the National Priorities List after the effective date established by the President. Until such effective date of the regulations, the hazard ranking system in effect on September 1, 1984 shall continue in full force and effect.

Although the section does call upon EPA (the President's delegate ¹) to establish an effective date by 24 months after the enactment of SARA (i.e., by October 17, 1988), the references to the applicability of the revised HRS, and to the continued applicability of the current HRS, are not to the date two years after the enactment of SARA, but rather to the effective date "established by the President [EPA" and "such" effective date. EPA has not yet established an effective date for the HRS revisions.

Section 105(c)(l) does not state that if no revised HRS is established by a date certain, there will be no HRS until a revised system is issued and effective, nor does it state that no sites may be listed in the interim period. Indeed, it states quite the opposite: the current HRS will remain in effect until a revised system is in place and effective. EPA notes that when Congress has wanted to prescribe specific consequences that would result from a failure to take a certain action, it has established a "hammer" provision, like that in section 116(d)(2) of CERCLA and section 3004(f)(3) of RCRA. Congress did not do so in the case of the HRS revisions.

EPA's interpretation is consistent with the overall goal of CERCLA to expeditiously list and address problem sites in the nation. See *Eagle-Picher v. EPA*, 759 F. 2d 905, 911 (D.C. Cir. 1985) (the purpose of the NPL is "to identify, quickly and inexpensively, sites that may warrant further action under CERCLA"). It is not reasonable to attribute to Congress the intent to leave the Agency without the means to list and address sites on the NPL, based simply on a delay in revising a rule. To do so would harm both the public and goal of protecting health and the environment.

In addition to being the best reading of the statutory language and the general statutory intent, the Agency's interpretation is also compelled by the legislative history behind CERCLA section 105(c)(l). In the Conference Report on SARA, the legislators adopted the Senate amendment, which they summarized as providing that the current HRS shall continue in force "until the new regulations are *in effect*." H.R. Rep. No. 962, 99th Cong., 2d Sess. 198 (1986) (emphasis added).

Similarly, the report on SARA of the Senate Committee on Environment and Public Works provided that,

The provision is meant to deal with this problem *without interfering with* continued EPA progress toward assessing potential site hazards, *listing sites*, or beginning clean-up action. It would not affect any site or facility listed prior to the *actual* effective date of the new hazard ranking system, *nor would it require the ranking or listing of any site or facility to be delayed*. * * * (The amendment leaves) the present hazard ranking system in operation until the more accurate hazard ranking system can be *put into effect* for sites to be listed thereafter. S. Rep. No. 11, 99th Cong., 1st Sess. 41(1985) (emphasis added).

Finally, in the floor debate over the CERCLA amendments, members of Congress made their intent clear:

To allow the Administrator to continue adding sites to the NPL *while the HRS is being reviewed*, the new amendments provide that the current HRS be applied until the effective date of the revised HRS. 132 Cong. Rec. H9624 (daily ed., October 8, 1986) (statement of Rep. Eckhart) (emphasis added); and 132 Cong. Rec. S14931 (daily ed., October 3, 1986) (statement of Sen. Baucus).

[T]he existing hazard ranking system would continue in effect until the revised system is in place. Thus, *the provision should not* disrupt progress to clean up existing NPL sites or *preclude EPA from listing new sites in the interim until the HRS is revised* as required by section [105] of the bill. 131 Cong. Rec. S11681 (daily ed., September 18, 1985) (statement of Sen. Baucus) (emphasis added).

EPA intends to issue the revised HRS as soon as possible. However, until that newly proposed system has been subject to public comment and put into effect, EPA will continue to list sites using the current HRS, in accordance with CERCLA section 105(c)(l) and Congressional intent.

¹ The responsibility for the revision of the NCP and all of the other functions vested in the President by sections 105 (a), (b), (c), and (g), 125, and 301(f) of CERCLA, was delegated to the Administrator of EPA by Executive 12580, sec. 1(b)(l) (January 23, 1987).

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, 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. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types of sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites deferred 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 Resource Conservation and Recovery Act (RCRA) (U.S.C. 6901-6991i) sites, sites with "special study wastes," and mining waste sites, and are discussed below. These and other listing policies and statutory requirements have been explained in greater detail in previous rulemakings, the latest being June 24, 1988 (53 FR 23978 and 53 FR 23988).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

On June 10, 1986 (51 FR 21054), EPA announced a decision on components of a policy for the listing or the deferral from listing on the NPL of several categories of non-Federal sites subject to RCRA Subtitle C corrective action authorities. Under the policy, sites not subject to RCRA Subtitle C corrective action authorities will continue to be placed on the NPL. Examples of such sites include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the Subtitle C regulations) and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed.
- Contamination areas resulting from the activities of RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters, which are not required to have Interim Status or a final RCRA permit.

Also under the policy, certain RCRA sites at which Subtitle C corrective action authorities are available may also be listed if they meet the criteria for listing (e.g., an HRS score of 28.50 or greater) and they fall within one of the following categories:

- Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.
- Facilities that have lost authorization to operate, and for which there are additional indications that the owner or operator will be unwilling to undertake corrective action.
- Sites, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action.

On August 9, 1988 (53 FR 30005), EPA published a policy for determining whether RCRA facilities are unwilling to perform corrective actions, and therefore should be proposed to the NPL. Additionally, on August 9, 1988 (53 FR 30002), EPA published a policy statement requesting comment on a policy for determining when an owner/operator should be considered unable to pay for addressing the contamination at a RCRA-regulated site.

On June 24, 1988 (53 FR 23978), EPA proposed to list RCRA sites in several other categories which the Agency considers appropriate for placement on the NPL. These categories are non- or late filers, converters, protective filers, and sites holding permits issued before enactment of the Hazardous and Solid Waste Amendments of 1984.

In today's final rule, EPA is adding four sites subject to Subtitle C corrective action authorities to the final NPL. These sites are not subject to deferral under the NPL/RCRA deferral policy because the site owners have invoked the protection of the bankruptcy laws.

Releases of Special Study Wastes

Section 105(g) of CERCLA, as amended by SARA, requires additional information before sites involving RCRA "special study wastes" can be added to the NPL. Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain sufficient quantities of special study wastes as defined under RCRA sections 3001(b)(2) [drilling fluids], 3001(b)(3)(A)(ii) [mining wastes], and 3001(b)(3)(A)(iii) [cement kiln dust]. Before these sites can be added to the NPL, SARA requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from, the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and environment and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

This final rule includes three sites containing or potentially containing special study wastes. EPA has placed in the dockets addenda that evaluate for each site the information called for in section 105(g). The addenda indicate the special study wastes present a threat to human health and the environment, and that the sites should be added to the NPL.

CERCLA section 125, as amended by SARA, addresses special study wastes described in RCRA section 3001(b)(3)(A)(i) [fly ash and related wastes]. No sites in this rule are subject to the provisions of section 125.

Releases from Mining Sites

The Agency's position is that mining wastes may be hazardous substances, pollutants, or contaminants under CERCLA and, therefore, mining waste sites are eligible for the NPL. This position was affirmed in 1985 by the United States Court of Appeals for the District of Columbia Circuit (*Eagle-Picher Industries, Inc. v. EPA*, 759 F. 2d 922 (D.C. Cir 1985)).

The Agency's policy, prior to listing mining sites, is to consider whether they might be satisfactorily addressed using State-share monies from the Abandoned Mine Land Reclamation (AMLR) Fund under the response authorities of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (e.g., 53 FR 23988, 23993 (June 24, 1988); 54 FR 10512, 10514-15 (March 13, 1989)). The AMLR funds are primarily intended to address reclamation and restoration of land and water resources adversely affected by past coal mining. Sites not meeting the SMCRA eligibility requirements (e.g., abandoned prior to August 3, 1977) or located in States without an approved AMLR Fund have been routinely listed: a SMCRA-eligible site has also recently been listed (March 13, 1989; 54 FR 10512, 10514-16).

Although the AMLR Fund was designed primarily to address coal mining sites, SMCRA sections 409 (a) and (c) provided the States can use funds to address noncoal sites if either all coal sites have been addressed, or the Governor of the State declares that the noncoal project is necessary for the protection of public health or safety. It is important to note that generally the decision to use AMLR funds at a particular site resides with the State concerned.

EPA discussed in the preamble to the revisions to the NCP (53 FR 51394, December 31, 1988), a draft policy to add noncoal mining sites to the NPL should States choose not to take action to respond to the site under SMCRA. The one exception to this is where a State has funded all of its known coal and noncoal mining projects, and is proposing to use its remaining AMLR funds for impact assistance (e.g., construction of roads, recreation facilities, etc.). EPA would not list a mining site if: (a) the site is discovered in a State where it was previously thought that all mining projects had been completed and impact assistance had been granted, (b) the site is eligible for AMLR funding, (c) sufficient AMLR funds remain to fund the entire response action, and (d) the State intends to use those funds for impact assistance.

While comment is being taken on the policy discussed in the preamble to the proposed NCP revisions, EPA is including one noncoal mining site in today's final rule to avoid delaying possible remedial activities. The applicability of SMCRA and the AMLR Fund to this site is discussed below.

V. Disposition of Sites in Today's Final Rule

This final rule promulgates 93 sites (Table 1) and drops four sites from several proposed rulemakings. These 97 sites are from the following proposed updates:

- Update #2 (49 FR 40320, October 15, 1984): 5 sites
- Update #4 (50 FR 37950, September 18, 1985): 2 sites
- Update #5 (51 FR 21099, June 10, 1986): 15 sites
- Update #6 (52 FR 2492, January 22, 1987): 13 sites
- Update #7 (53 FR 23988, June 24, 1988): 62 sites

Table 1
National Priorities List, New Final Sites (by Rank)
[March 1989]

NPL Gr ¹	NPL Rank	State	Site Name	City/County	Response category ²	Cleanup status ³
2	59	MI	American Anodco, Inc.	Ionia	V,S	
2	94	WI	N.W. Mauthe Co., Inc. *	Appleton	R,S	O
3	115	NY	Circuitron Corp.	East Farmingdale	D	
3	129	MI	Bofors Nobel, Inc.	Muskegon	R,S	
3	137	NC	Aberdeen Pesticide Dumps	Aberdeen	V,R,S	O
3	138	VT	Burgess Brothers Landfill	Woodford	D	
4	155	PA	Hellertown Manufacturing Co.	Hellertown	V,F	
4	165	NY	Rosen Brothers Scrap Yard/Dump	Cortland	R	O
4	177	TX	Brio Refining, Inc.	Friendswood	V,F	
4	194	VT	Bennington Municipal Sanitary Lfl	Bennington	D	
4	199	CA	Southern Calif Edison (Visalia)	Visalia	V,S	O

NPL Gr ¹	NPL Rank	State	Site Name	City/County	Response category ²	Cleanup status ³
5	213	WI	Hechimovich Sanitary Landfill	Williamstown	D	
5	214	IA	Mid-America Tanning Co.	Sergeant Bluff	D	
6	259	IL	Interstate Pollution Control, Inc.	Rockford	D	
6	260	NJ	Global Sanitary Landfill	Old Bridge Township	D	
6	265	WI	Tomah Municipal Sanitary Landfill	Tomah	D	
7	321	KS	Hydro-Flex Inc.	Topeka	D	
7	323	LA	Gulf Coast Vacuum Services	Abbeville	D	
7	324	IL	Tri-County Lf/Waste Mgmt Illinois	South Elgin	R	
7	327	CT	Nutmeg Valley Road	Wolcott	D	
7	350	IL	Southeast Rockford Grnd Wtr Con	Rockford	D	
8	351	IN	Galen Myers Dump/Drum Salvage	Osceola	R	O
8	368	IN	Southside Sanitary Landfill	Indianapolis	V,S	
8	371	NC	Koppers Co Inc (Morrisville Plnt)	Morrisville	D	I
8	381	PA	Delta Quarries/Stotler Landfill	Antis/Logan Twps	V,F,S	
8	386	GA	T.H. Agricul & Nutri (Albany)	Albany	D	I
8	399	NC	FCX, Inc. (Washington Plant)	Washington	F	
8	400	NM	Cleveland Mill	Silver City	D	
9	404	MD	Bush Valley Landfill	Abingdon	D	
9	417	PA	Boarhead Farms	Bridgeton Township	D	
9	427	TX	Sol Lynn/Industrial Transformers	Houston	V,R,F,S	I
9	432	NC	New Hanover Cnty Airport Burn Pit	Wilmington	D	
9	435	LA	PAB Oil & Chemical Service, Inc.	Abbeville	D	
10	459	KY	Red Penn Sanitation Co. Landfill	Peewee Valley	D	

NPL Gr ¹	NPL Rank	State	Site Name	City/County	Response category ²	Cleanup status ³
10	461	OH	TRW, Inc. (Minerva Plant)	Minerva	V,S	I
10	471	FL	Wilson Concepts of Florida, Inc.	Pompano Beach	D	
10	476	WA	Hidden Valley Lndfl (Thun Field)	Pierce County	V,S	
10	477	WA	Yakima Plating Co.	Yakima	D	
10	480	MI	Carter Industrials, Inc.	Detroit	R	O
11	510	IN	Douglass Road/Uniroyal, Inc., Lf	Mishawaka	D	
11	521	TN	Wrigley Charcoal Plant	Wrigley	R	O
11	539	PA	North Penn - Area 1	Souderton	R	
11	540	PA	North Penn - Area 7	North Wales	R	
11	541	PA	North Penn - Area 6	Lansdale	R	
11	542	PA	North Penn - Area 5	Montgomery Township	R	
12	551	CA	Newmark Ground Water Contamin	San Bernardino	D	
12	559	IN	Carter Lee Lumber Co.	Indianapolis	D	
12	560	NH	Fletcher's Paint Works & Storage	Milford	R	O
12	572	NY	C & J Disposal Leasing Co. Dump	Hamilton	D	
12	587	NY	Action Anodizing, Plating Polish	Copiague	D	
13	611	IA	Red Oak City Landfill	Red Oak	R	I
13	612	IN	Lakeland Disposal Service, Inc.	Claypool	D	
13	620	NY	Conklin Dumps	Conklin	D	
13	631	KY	Tri-City Disposal Co.	Shepherdsville	R	O
13	643	VA	H & H Inc., Burn Pit	Farrington	R	
14	652	GA	Cedartown Municipal Landfill	Cedartown	D	
14	660	ND	Minot Landfill	Minot	D	
14	664	NY	Islip Municipal Sanitary landfill	Islip	V,S	
14	667	IL	Yeoman Creek Landfill	Waukegan	D	
14	669	MI	Folkertsma Refuse	Grand Rapids	D	

NPL Gr ¹	NPL Rank	State	Site Name	City/County	Response category ²	Cleanup status ³
14	675	NY	BioClinical Laboratories, Inc.	Bohemia	D	
14	681	OR	Joseph Forest Products	Joseph	D	
14	686	NJ	Industrial Latex Corp.	Wallington Borough	R	O
15	702	CA	Valley Wood Preserving, Inc.	Turlock	V,S	
15	703	PA	Butz Landfill	Stroudsburg	D	
15	706	NH	Holton Circle Ground Water Contam	Londonderry	D	
15	717	NY	Mattiace Petrochemical Co., Inc.	Glen Cove	R	O
15	720	IN	Continental Steel Corp.	Kokomo	D	
15	726	MI	J & L Landfill	Rochester Hills	R	
15	730	SC	Medley Farm Drum Dump	Gaffney	V,R,F	O
15	731	SC	Elmore Waste Disposal	Greer	R	O
15	734	MI	Parsons Chemical Works, Inc.	Grand Ledge	D	
16	754	AK	Alaska Battery Enterprises	Fairbanks N Star Bor	R	I
16	757	OK	Double Eagle Refinery Co.	Oklahoma City	D	
16	758	GA	Mathis Bros Lf (S Marble Top Rd)	Kensington	D	
16	765	PA	Strasburg Landfill	Newlin Township	S	O
16	766	OK	Forth Street Abandoned Refinery	Oklahoma City	D	
16	775	NJ	Higgins Farm	Franklin Township	R	O
16	778	VA	Rentokil, Inc. (VA Wood Pres Div)	Richmond	V,F	
16	790	TX	Sheridan Disposal Services	Hempstead	V,F	O
16	791	KS	Pester Refinery Co.	El Dorado	S	
16	795	PA	Berkley Products Co. Dump	Denver	D	
17	804	MI	Adam's Plating	Lansing	D	
17	812	NY	Warwick Landfill	Warwick	D	
17	813	NY	Sidney Landfill	Sidney	D	
17	819	NC	Potter's Septic Tank Service Pits	Maco	R	O

NPL Gr ¹	NPL Rank	State	Site Name	City/County	Response category ²	Cleanup status ³
17	820	NC	ABC Onc Hour Cleaners	Jacksonville	D	
17	822	PA	Elizabethtown Landfill	Elizabethtown	D	O
17	823	AR	Arkwood, Inc.	Omaha	V,F,S	O
17	829	NJ	Pohatcong Valley Ground Water Con	Warren County	D	
17	830	NJ	Garden State Cleaners Co.	Minolta	D	
17	835	CA	Modesto Ground Water Contamin	Modesto	D	
17	848	NJ	Kauffman & Minter, Inc.	Jobstown	D	

* State Top Priority Site. ¹ Sites are placed in group (Gr) corresponding to groups of 50 on the final NFL.

² V=Voluntary or negotiated response; F=Federal enforcement; D=Category to be determined; R=Federal and State response; S=State enforcement.

³ I=Implementation activity underway, one or more operable units; O=or more operable units completed others may be underway; C=Implementation activity completed for all operable units.

EPA considered all comments received on these sites through March 2, 1989. Based on the comments received on the proposed sites, as well as further investigation by EPA and the States, 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, Update #5."

Resource Conservation and Recovery Act (RCRA) Sites

Four sites are subject to Subtitle C corrective action authorities, but each site owner has invoked the protection of the bankruptcy laws. The sites are being added to the final NPL under the June 1986 policy:

- Continental Steel Corp., Kokomo, IN
- Pester Refinery Co., El Dorado, KS
- Bofors Nobel, Inc., Muskegon, MI
- Mattiace Petrochemical Co. Inc., Glen Cove, NY

Special Study Waste Sites

Three sites containing or possibly containing special study wastes are being added to the NPL in this rule. The sites and the special study wastes are:

- Gulf Coast Vacuum Services, Abbeville, LA (oil drilling mud and produced waters)
- PAB Oil & Chemical Service, Inc., Abbeville, LA (oil drilling mud and produced waters)
- Cleveland Mill, Silver City, NM (mining wastes)

Mining Sites

One noncoal mining site, Cleveland Mill, Silver City, NM, is being added to the NPL in this final rule. It was abandoned prior to the enactment date of SMCRA. Since New Mexico has an approved AMLR program, the site is potentially eligible for SMCRA funds. However, available information suggests the site will not be addressed under SMCRA in the foreseeable future. Information outlining New Mexico's position on use of AMLR funds at the site is available in the docket.

State Top Priority

One site being added to the final NPL, N.W. Mauthe Co., Appleton, WI, received an HRS score of 25.35. It has been designated as a State top priority. All other sites in today's rule received HRS scores of 28.50 or above. Mauthe and other lower scoring top priority sites are listed at the bottom of the first 100 sites on the NPL.

Score Revisions

EPA has revised the HRS scores for 17 sites based on its review of comments and additional information (Table 2). Some of the changes have placed the sites in different groups of 50 sites. In four cases, scores dropped below the cut-off of 28.50. Accordingly, these four sites are being dropped from the proposed NPL at this time:

- Montco Research Products, Inc., Hollister, FL
- E.I. Du Pont de Nemours & Co., Inc., (Montague Plant) Montague, MI
- Horstmann's Dump, East Hanover, NJ
- Olson/Neihart Reservoir, Wasatch County, UT

Table 2
Sites With HRS Score Changes

State	Site Name	Location	HRS score Proposed	HRS score Final
AR	Arkwood Inc.	Omaha	34.21	28.95
CA	Southern California Edison Co. (Visalia Poleyard)	Visalia	53.36	48.91
FL	Montco Research Products, Inc.	Hollister	29.44	25.52
IN	Douglas Road/Uniroyal, Inc., Landfill	Mishawaka	42.39	36.61
IN	Southside Sanitary Landfill	Indianapolis	35.35	41.94
MI	American Anodco, Inc.	Ionia	48.37	57.99
MI	E.I. Du Pont de Nemours & Co., Inc. (Montague Plant)	Montague	38.08	25.23
MI	J & L Landfill	Rochester Hills	37.23	31.65
NJ	Horstmann's Dump	East Hanover	28.96	21.84
NY	BioClinical Laboratories, Inc.	Bohemia	36.64	32.91
PA	Hellertown Manufacturing Co.	Hellertown	51.94	51.91
TX	Sheridan Disposal Services	Hempstead	30.67	30.16
UT	Olson/Neihart Reservoir	Wasatch County	33.75	19.90
VA	H & H, Inc., Burn Pit	Farrington	39.04	33.71

State	Site Name	Location	HRS score Proposed	HRS score Final
VA	Rentokil, Inc. (Virginia Wood Preserving Division)	Richmond	31.67	30.34
WA	Hidden Valley Landfill (Thun Field)	Pierce County	43.92	37.93
WI	Tomah Municipal Sanitary Landfill	Tomah	45.97	45.91

Name Revisions

The names of four sites addressed in this final rule have been changed in response to information received during the comment period (Table 3). The changes are intended to reflect more accurately the location, nature, or parties responsible for problems at the site.

**Table 3
Sites with Name Changes**

State/Site Name	
Proposed NPL	Final NPL
PA American Electronics Laboratories, Inc.	North Penn - Area 5
PA Gentle Cleaners, Inc./Granite Knitting Mills, Inc.	North Penn - Area 1
PA J.W. Rex Co./Allied Paint Manufacturing Co., Inc./Keystone Hydraulics	North Penn - Area 6
PA Spra-Fin, Inc.	North Penn - Area 7

VI. Disposition of all Proposed Sites/Federal Facility Sites

To date, EPA has proposed seven major updates to the NPL (Table 4).

**Table 4
NPL Proposals**

Update No.	Date/Federal Register citation	Number of sites/Federal facility sites Proposed	Number of sites/Federal facility sites Remaining Proposed
1	9/8/83, 48 FR 40674	132/1	2/0
2	10/15/84, 49 FR 40320	208/36	40/4
3	4/10/85, 50 FR 14115	26/6	6/2
4	9/18/85, 50 FR 37950	38/3	11/2
5	6/10/86, 51 FR 21099	43/2	12/2
6	1/22/87, 52 FR 2492	63/1	27/0
7	6/24/88, 53 FR 23988	215/14	153/12
Total		725/63	251/22

At this time, 251 sites and 22 Federal facility sites proposed in Updates #1 through 7 continue to be proposed pending completion of response to comment, resolution of technical issues, and various policy issues. Among them are 43 previously proposed RCRA sites. On June 24, 1988 (53 FR 23978), EPA proposed action on these sites based upon the application of the NPL/RCRA policy.

All sites that remain proposed will be considered for future final rules. Although these sites remain proposed, the comment periods have not been extended or reopened.

VII. Contents of the NPL

The 93 new sites added to the NPL in today's rule (Table 1) have been incorporated into the NPL in order of their HRS scores except where EPA modified the order to reflect top priorities designated by the States, as discussed in greater detail in previous rulemakings, the most recent on June 24, 1988 (53 FR 23988).

The NPL appears at the end of this final rule and will be codified as part of Appendix B to the NCP. Sites on the NPL are arranged according to their scores on the HRS. The NPL is presented in groups of 50 sites to emphasize that minor differences in HRS scores do not necessarily represent significantly different levels of risk. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered.

One site - the Lansdowne Radiation Site in Lansdowne, PA - was placed on the NPL because it met the requirements of the NCP at section 300.66(b)(4), as explained in section III of this rule; it has an HRS score less than 28.50, and appears at the end of the list.

No new sites have been added to the Federal facility section of the NPL since it was last amended (54 FR 10512, March 13, 1989).

Each entry on the NPL contains the name of the facility and the State and city or county in which it is located.

For informational purposes, each entry is accompanied by one or more notations reflecting the status of response and cleanup activities at these sites at the time this list was prepared. Because this information may change periodically, these notations may become outdated.

Five response categories are used to designate the type of response underway. One or more categories may apply to each site. The categories are: Federal and/or State response (R), Federal enforcement (F), State enforcement (S), Voluntary or negotiated response (V), and Category to be determined (D).

EPA also indicates the status of significant CERCLA-financed or private party cleanup activities underway or completed. Three cleanup status codes are used. Only one is necessary to designate the status of actual cleanup activity at each site since the codes are mutually exclusive. The codes are: Implementation activities are underway for one or more operable units (I), Implementation activities are completed for one or more (but not all) operable units (O), and Implementation activities are completed for all operable units (C). These categories and codes are explained in detail in earlier rulemakings, the most recent on June 10, 1986 (51 FR 21075).

VIII. Regulatory Impact Analysis

The costs of cleanup 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 economic implications of today's amendment to the NCP. EPA believes that the kinds of economic effects associated with this revision are generally similar to those effects identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA and the economic analysis prepared when amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes the anticipated economic effects related to adding 93 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

EPA has determined that this rulemaking is not a "major" regulation under Executive Order 12291 because inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA will necessarily undertake

remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses 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 associated with responding to all sites included in this rulemaking.

The major events that follow the proposed listing of a site on the NPL are 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 bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

The State cost share for site cleanup activities has been amended by section 104 of SARA. For privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will pay for 100% of the costs of the RI/FS and remedial planning, and 90% of the costs associated with remedial action. The State will be responsible for 10% of the remedial action. For publicly-operated sites, the State cost share is at least 50% of all response costs at the site, including the RI/FS and remedial design and construction of the remedial action selected. After the remedy is built, costs fall into two categories:

- For restoration of ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

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, there is wide variation in costs for individual sites, 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.

Cost category	Average total cost per site ¹
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	13,500,000 ²
Net present value of O&M ³	3,770,000 ²

Source: Office of Program Management, Office of Superfund Remediation Technology Innovation, U.S. EPA ¹ 1988 U.S. dollars.

² Includes State cost-share.

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

Costs to States associated with today's final rule arise from the required State cost-share of:

1. 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites which are publicly-owned but not publicly-operated; and

2. at least 50% of the remedial planning (RI/FS and remedial design), remedial action, and first-year O&M costs at publicly-operated sites.

States will assume the cost for O&M after EPA's period of participation. Using the assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the 93 sites added to 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, but excluding O&M costs, would be approximately \$193 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M 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 startup costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately \$308 million.

Placing a hazardous waste site on the final 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, precise estimates of these effects cannot be made. 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 amendment 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 amendment placing additional sites on the NPL 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 may also 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 in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional cost to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly (through purchased materials).

IX. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 requires EPA to review the impact 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 modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. The placing of sites on the NPL does not in itself require any action of any private 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, it is hard to predict impacts on any group. Placing a site on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 93 sites to have a significant economic impact on a substantial number of small businesses.

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

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

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.

Date: March 22 , 1989.

Henry L. Longest II ,

Acting Assistant Administrator. Office of Solid Waste and Emergency Response.

Part 300 - [AMENDED]

40 CFR Part 300 is amended as follows:

1. The authority citation for Part 300 continues as follows:

Authority: 42 U.S.C. 9605; 42 U.S.C 9620; 33 U.S.C. 1321(c)(2); E.O. 11735 (38 FR 21243); E.O. 12580 (52 FR 2923).

[FR Doc. 89-7419 Filed 3-30-89; 8:45 am]

BILLING CODE 6560-50