

Federal Register Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL-3745-3]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Pollution 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"). CERCLA has since been amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA") and is implemented by 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 1 site, United Heckathorn Co., Richmond, CA. Based on a review of public comments on this site, EPA has decided that it meets the eligibility requirements of the NPL and is consistent with the Agency's listing policies. Information supporting this action is contained in the appropriate Superfund Public Dockets.

This rule results in a final NPL of 1,082 sites, 93 of them in the Federal section; 136 sites are proposed to the NPL, 24 of them in the Federal section. Final and proposed sites total 1,218.

EFFECTIVE DATE:

The effective date for this amendment to the NCP shall be March 14, 1990. This rule is being made effective immediately in order to preserve any claims for natural resource damages against any possible future suggestions that such claims are barred under CERCLA section 113(g). Due to the limited effect of NPL listing, no party is prejudiced by making this listing immediately effective.

ADDRESSES:

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

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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 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 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, 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 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 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 that 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 in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until the revised HRS is in effect,

EPA will continue to use the current HRS in accordance with CERCLA section 105(c)(l) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepared 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" or "NPL"). The list has been promulgated as appendix B of the NCP. 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).

As is stated in CERCLA section 105(a)(8)(b), the NPL is a listing of "releases or threatened releases" of hazardous substances, pollutants, or contaminants. For simplicity, the discussion below may refer to these "releases or threatened releases" simply as "releases", "facilities", or "sites".

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). Pursuant to CERCLA section 105(a)(8)(B), which requires that the NPL be revised at least annually, the NPL has been updated periodically, most recently on November 21, 1989 (54 FR 48184). The Agency also has proposed adding new sites to the NPL, most recently on October 26, 1989 (54 FR 43778).

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 28 sites from the final NPL, most recently on September 22, 1989 (54 FR 38994), when Cecil Lindsey, Newport, Arkansas, was deleted.

This rule adds the United Heckathorn Co. site to the NPL. EPA has carefully considered public comments submitted and has made certain modifications in response to those comments. This rule results in a final NPL of 1,082 sites, 93 of them in the Federal section; 136 sites remain in proposed status, 24 of them in the Federal section. With these changes, final and proposed sites now total 1,218.

Information Available to the Public

The Headquarters and Region 9 public dockets for the NPL (see Addresses portion of this notice) contain documents relating to the evaluation and scoring of United Heckathorn Co. 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 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the EPA Region 9 for docket hours.

The Headquarters docket contains HRS score sheets and a Documentation Record describing the information used to compute the score; a list of documents referred 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, March 1990."

The Region 9 docket includes all information available in the Headquarters docket as well as the actual reference documents, which contain the data principally relied upon by EPA in calculating or evaluating the HRS scores for United Heckathorn Co. These reference documents are available only in Region 9, and may be viewed, by appointment only. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

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 Senate Committee on Environment and Public Works, Senate Rep. 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.

Implementation

A site may undergo remedial action financed by the Trust Fund established under CERCLA ("Superfund") 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 nature and extent of the threat posed by the release or threatened release. 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, if any, 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.

RI/FS at Proposed Sites

An RI/FS may 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)(1). 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 generally is 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

The Agency's position is that the NPL does not describe releases in precise geographical terms, and that it would be neither feasible nor consistent with the limited purpose of the NPL (as the mere identification of releases), for it to do so.

CERCLA section 105(a)(8)(B) directs EPA to list national priorities among the known "releases or threatened releases" of hazardous substances. Thus, the purpose of the NPL is merely to identify releases of hazardous substances that are priorities for further evaluation. Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases.¹ Of course, HRS data upon which the NPL placement was based will, to some extent, describe which release is at issue; that is, the NPL site would include all releases evaluated as part of that HRS analysis (including noncontiguous releases evaluated under the NPL aggregation policy, see 48 FR 40663 (September 8, 1983)).

EPA regulations do provide that the "nature and extent of the threat presented by a release" will be determined by an RI/FS as more information is developed on site contamination (40 CFR 300.68(d)). During the RI/FS process, the release may be found to be larger or smaller than was originally known, as more is learned about the source and the migration of the contamination. However, this inquiry focuses on an evaluation of the *threat* posed; the boundaries of the release need not be defined, and in any event are independent of the NPL listing. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies *and* remedial work are completed at a site; indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it will be impossible to describe the boundaries of a release with certainty.

For these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. Further, the NPL is only of limited significance, as it does not assign liability to any party or to the owner of any specific property. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96-848, 96th Cong., 2d Sess. 60 (1980), quoted at 48 FR 40659 (September 8, 1983). If a party contests liability for releases on discrete parcels of property, it may do so if and when the Agency brings an action against that party to recover costs or to compel a response action at that property.

At the same time, however, the RI/FS or the Record of Decision (which defines the remedy selected) may offer a useful indication to the public of the areas of contamination at which the Agency is considering taking a response action, *based on information known at that time*. For example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

This view of the NPL as an initial identification of a release that is not subject to constant re-evaluation is consistent with the Agency's policy of not rescored NPL sites:

EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. . . . [T]he NPL serves as a guide to EPA and does not determine liability or the need for response.

(49 FR 37081 (September 21, 1984)).²

¹ Although CERCLA section 101(9) sets out the definition of "facility" and not "release," those terms are often used interchangeably. (See CERCLA section 105(a)(8)(B), which defines the NPL as a list of "releases" as well as of the highest priority "facilities.") (For ease of reference, EPA also uses the term "site" interchangeably with "release" and "facility.")

² See also *City of Stoughton, Wisc. v. U.S. EPA*, 858 F. 2d 747, 751 (D.C. Cir. 1988):

Certainly EPA could have permitted further comment or conducted further testing [on proposed NPL sites]. Either course would have consumed further assets of the Agency and would have delayed a determination of the risk priority associated with the site. Yet * * * "the NPL is simply a rough list of priorities, assembled quickly and inexpensively to comply with Congress' mandate for the Agency to take action straightaway." *Eagle-Picher [Industries v. EPA]* II, 759 F. 2d [921,] at 932 [(D.C. Cir.1985)].

III. NPL Update Process

There are three mechanisms for placing sites on the NPL. The principal mechanism, and the one used in evaluating United Heckathorn Co., 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.

The other two mechanisms for adding sites to the NPL are described in previous preambles updating the NPL, most recently EPA's February 21, 1990 final rule (55 FR 6154).

IV. Disposition of Sites

This final rule promulgates a site proposed in Update #10 (54 FR 43778, October 26, 1989):

Group	Rank	St	Site Name	City/county
11	502	CA	United Heckathorn Co.	Richmond

EPA has reviewed the comments received on the site, including a late comment received February 6, 1990, and has revised the score accordingly. EPA's responses to the comments are included in "Support Document for the Revised National Priorities List - Final Rule, March 1990", available with this rule in the Headquarters and Region 9 Superfund dockets. Today's rule results in a total of 112 non-Federal sites and 24 Federal facility sites that continue to be proposed pending completion of response to comment, resolution of technical issues and resolution of various policy issues (Table 1). 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.

**Table 1
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	1/0
2	10/15/84; 49 FR 40320	208/36	16/3
3	4/10/85; 50 FR 14115	26/6	0/0
4	9/18/85; 50 FR 37950	38/3	0/0
5	6/10/86; 51 FR 21099	43/2	4/0
6	1/22/87; 52 FR 2492	63/1	7/0
7	6/24/88; 53 FR 23988	215/14	57/2
8	5/5/89; 54 FR 19526	10/0	5/0
9	7/14/89; 54 FR 29820	0/52	0/17
10	10/26/89; 54 FR 43778	23/2	22/2
ATSDR	8/16/89; 54 FR 33846	2/0	0/0
Total		760/117	112/24

V. Contents of the NPL

The 1 new site added to the NPL in today's rule (Table 1) has been incorporated into the NPL in order of its HRS score, although EPA modified the order to reflect top priorities designated by the States, as discussed in greater detail in previous rulemakings, the most recent on March 31, 1989 (54 FR 13296).

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 risks. 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. For further information, see, most recently, 55 FR 6154 (February 21, 1990).

VI. 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 generally are 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 1 site 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 necessarily will 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 the site 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; the 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	1,300,000
Remedial design	1,500,000
Remedial Action	25,000,000 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 the State of California 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 that 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 budget projections presented above, the cost to California of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately \$2.78 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 if the United Heckathorn Co. site will require this treatment and for how long. Assuming EPA involvement for 10 years is needed, State O&M costs would be approximately \$2.3 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 efforts 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 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 in advance of completing the RI/FS at these sites.

VII. 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 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 this site 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 are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining that 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.

Dated: March 9, 1990.

Mary A Gada,

Deputy 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 to read 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).

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

Note: 1. A determination as to the contract history of any DoD contractor with contracts in excess of \$25,000 annually can be made through a review of the Individual Procurement Action Report (DD Form 350) System as prescribed by 48 CFR subpart 4.6 of the DoD FAR Supplement (reference (b)), DoD Instruction 4105.61 (reference (c)), and DoD 4105.61M (reference (d)).

[FR Doc. 90-5902 Filed 3-13-90; 8:45 am]

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