

Federal Register Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL-3187-5]

National Priorities List for Uncontrolled Hazardous Waste Sites; Federal Facility Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is reproposing seven Federal facility sites that were previously proposed for the National Priorities List ("NPL") and proposing to expand the boundaries of an eighth Federal facility site. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), and Executive Order 12580.

These sites are being reproposed to be consistent with EPA's recently proposed policy for placing on the NPL sites located on Federally-owned facilities that may be subject to Subtitle C corrective action authorities of the Resource Conservation and Recovery Act ("RCRA") (see 52 FR 17991, May 13, 1987). This notice solicits comments on the Hazard Ranking System score for seven previously proposed Federal facility sites which include areas that are subject to RCRA corrective action authorities. In addition, EPA solicits comments on the expansion of one Federal facility site to include an area previously identified as a RCRA land disposal unit. This site is one of 32 Federal facility sites being promulgated elsewhere in today's **Federal Register**.

DATE:

Comments may be submitted on or before August 21, 1987.

ADDRESSES:

Comments may be mailed to:

Stephen A. Lingle
Director, Hazardous Site Evaluation Division
Office of Superfund Remediation Technology Innovation (WH-548A)
U.S. Environmental Protection Agency
401 M Street, SW.
Washington, DC 20460.

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

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FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 41 U.S.C. 9601, *et seq.*, ("CERCLA" or "the Act") in response to the dangers of uncontrolled hazardous waste sites; CERCLA was amended in 1986 with the Superfund Amendments and Reauthorization Act (SARA). To implement CERCLA, the U.S. Environmental Protection Agency (EPA) promulgated the revised National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to section 105 of CERCLA and Executive Order 12580 (52 FR 2923, January 29, 1987). The National Contingency Plan (NCP), further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases for the purpose of taking remedial or removal action. Removal action involves cleanup or other

actions that are taken in response to emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial actions tend to be long-term in nature and involve response actions that are consistent with a permanent remedy (CERCLA section 101(24)).

Section 105(8)(B) of CERCLA requires that the criteria be used to prepare a list of national priorities among the known releases throughout the United States. These criteria are included in Appendix A of the NCP, *Uncontrolled Hazardous Waste Site Ranking System: A User's Manual* (the "Hazard Ranking System" or "HRS" (47 FR 31219, July 16, 1982)). The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section 105(8)(B) also requires that the NPL be revised at least annually. EPA proposes to include on the NPL sites at which there have been releases or threatened releases of hazardous substances, or of "pollutants or contaminants." The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Under §300.68(a) of the NCP, a site must be on the NPL if a remedial action is to be financed by the Hazardous Substances Superfund established under SARA. Federal facility sites are eligible for the NPL pursuant to §300.66(e)(2) of the NCP (50 FR 4793, November 20, 1985). However, CERCLA section 111(e), as amended by SARA, limits the expenditure of Fund monies at Federally-owned facilities. Federal facility sites are subject to the requirements of section 120 of SARA.

In this notice, EPA is reproposing seven Federal facility sites originally proposed for the NPL on October 15, 1984 (Update #2) or April 10, 1985 (Update #3) (see 49 FR 40320 and 50 FR 14115), and requesting comment on the expansion of an eighth Federal facility site proposed for the NPL on October 15, 1984 (49 FR 40320). This site along with 31 other Federal and 67 non-Federal sites are promulgated elsewhere in today's **Federal Register**. Since this rule is reproposing sites, the current number of sites proposed for, or on, the NPL does not change as a result of this action. Currently, 149 sites are proposed for the NPL and 802 sites are on the final NPL.

II. NPL Update Process

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 takes into account "pathways" to human or environmental exposure in terms of numerical scores. Those sites that score 28.50 or greater on the HRS, and which are otherwise eligible, are proposed for listing. The eight sites discussed in today's rule were proposed based on HRS scores greater than 28.50.

SARA, enacted on October 17, 1986, directs EPA to revise the HRS. The Agency will continue to use the existing HRS until the revised HRS becomes effective. Sites included on the NPL prior to the effective date of the revised HRS will not be reevaluated.

The second mechanism allows States to designate a single site, regardless of its score, as the State top priority. A State top priority site will be listed on the NPL even if it does not qualify due its score. In rare instances, EPA may utilize § 300.66(b)(4) of the NCP (50 FR 37624, September 16, 1985), which allows certain sites with HRS scores below 28.50 to be eligible for the NPL. These sites may qualify 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, monitoring, and scoring sites. Regional Offices may 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 States offices participating in the scoring. The Agency then proposes the new

sites that meet the listing requirements and solicits public comments on the proposal. Based on these comments and further EPA review, the Agency determines final scores and promulgates those sites that still meet the listing requirements.

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has since been expanded (see 49 FR 19480, May 8, 1984; 49 FR 37070, September 21, 1984; 50 FR 6320, February 14, 1985; 50 FR 37630, September 16, 1985; and 51 FR 21054, June 10, 1986). On March 7, 1986 (51 FR (7935), EPA published a notice to delete eight sites from the NPL. As of today, the number of final NPL sites is 802. Another 149 sites from previous updates remain proposed for the NPL (see 48 FR 40674, September 8, 1983; 49 FR 40320, October 15, 1984; 50 FR 14115, April 10, 1985; 50 FR 37950, September 18, 1985; 51 FR 21099, June 10, 1986; and 52 FR 2492, January 22, 1987).

III. Public Comment Period, Available Information

This **Federal Register** notice reproposing seven Federal facility sites for the NPL and expanding the boundaries of an eight Federal facility site currently on the NPL opens the formal 30-day comment period. Comments may be mailed to:

Stephen A. Lingle
Director, Hazardous Site Evaluation Division (Attn: NPL Staff)
Office of Superfund Remediation Technology Innovation (WH-548A)
U.S. Environmental Protection Agency
401 M Street, SW.
Washington DC, 20460

Documents providing EPA's justification for today's actions are available to the public in both the Headquarters public docket and in the appropriate Regional Office's public docket (see Addresses portion of this notice).

The Headquarters public docket for this proposal contains: HRS score sheets for each site; a documentation record for each site describing the technical rationale for the HRS scores; and a list of documents referenced in the documentation record. The Headquarters public docket is located in EPA Headquarters, Waterside Mall Subbasement, 401 M Street, SW., Washington, DC 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of these HRS documents may be directed to the EPA Headquarters docket office.

The Regional public dockets contain HRS score sheets, documentation records, and a list of reference documents for each site in that Region. These Regional dockets also contain all documents referenced in the documentation record which contain the data EPA relied upon in calculating or evaluating the HRS scores. The reference documents are available for review only in the Regional public dockets. Interested commenters should direct requests for copies of these documents to the appropriate Regional Superfund Branch Office. Documents with some relevance to the scoring of each site, but which were not used as references, are also available in the appropriate EPA Regional office, and may be viewed and copied by arrangement with that office. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

A statement of EPA's information release policy, describing what information the Agency discloses in response to Freedom of Information Act requests from the public, is printed in the **Federal Register** at 52 FR 5578, February 25, 1987.

EPA considers all comments received during the formal comment period. Comments are placed in the Headquarters docket and, during the comment period, are available to the public only in the Headquarters docket. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional Office docket approximately one week after the comment period closes. Comments received after the close of the comment period will be available in the Headquarters docket and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of these comments. After considering the comments received during the comment period, EPA will add to the NPL those sites that meet EPA's listing requirements. In past NPL rulemakings, EPA has considered comments received after the

close of the comment period. EPA will continue to consider late comments, but only to the extent practicable, prior to final rulemaking.

IV. Eligibility

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants or contaminants and expressly excludes some substances, such as petroleum, from its response authority. In addition, as a matter of policy, EPA may choose not to respond to certain types of releases because other authorities can be used to achieve cleanup. Where such other authorities exist and the Federal government can undertake or enforce cleanup pursuant to a particular established program, using the NPL to determine the priority or need for response under CERCLA may not be appropriate. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly addressed, the Agency may consider placing them on the NPL.

The NPL eligibility policies of particular relevance to this proposed rule are discussed below. These policies, as well as other NPL eligibility policies, have been explained in greater detail in earlier rulemakings (51 FR 21054, June 10, 1986).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

When the initial NPL was promulgated, EPA announced certain eligibility policies relating to sites that might qualify for the NPL. One such policy was that units regulated under RCRA-i.e., land disposal units that received hazardous waste after the effective date of the RCRA land disposal regulations (48 FR 40662, September 8, 1983)-would not be included on the NPL. On June 10, 1986 (51 FR 21057), EPA announced several components of a revised policy for placing non-Federal RCRA-related sites on the NPL. This policy was developed as a result of authorities enacted in the Hazardous and Solid Waste Amendments of 1984, which expanded RCRA's authority to enforce cleanup. The Agency stated that, in general, it would defer listing non-Federal sites with releases that can be addressed under the expanded RCRA Subtitle C corrective action authorities. However, the policy states that RCRA sites which fall into one of the following categories would remain eligible for the NPL:

1. Facilities owned by persons who are bankrupt;
2. Facilities whose owners/operators have lost interim status under RCRA and there are indications that the owners/operators will be unwilling to undertake corrective action;
3. Facilities whose owners/operators, determined on a case-by-case basis, have shown an unwillingness to undertake corrective action.

On June 10, 1986 (51 FR 21059), EPA announced that it would consider whether this policy should be applied to Federal facilities in the future.

Federal Facility Releases

CERCLA section 111(e)(3) limits the expenditures of Fund monies for remedial actions at Federally-owned facilities. However CERCLA, as amended by SARA, requires that Federal facilities be subject to, and comply with, the Act in the same manner as any non-governmental facility. Section 120(a) of SARA provides that:

All guidelines, rules, regulations, and criteria which are applicable to . . . inclusion on the National Priorities List. . . shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities.

Section 120 of SARA also contains requirements for assessing releases at Federal facilities, placing them on the NPL, and effecting remedial actions at those sites that qualify for the NPL.

The Agency considered the effects of applying the non-Federal RCRA policy discussed above to Federal facility sites and determined that a separate policy should be adopted. The majority of Federal facility sites that would be considered for the NPL have RCRA operating units within the Federal facility property boundary. Therefore, applying

the current non-Federal RCRA policy to Federal facilities would result in placing very few Federal facility sites on the NPL. Given that Congress anticipated that Federal facility sites would be placed on the NPL, EPA interprets the provisions of section 120 to mean that the criteria to list Federal facility sites should not be more exclusionary than the criteria to list non-Federal sites. In addition, the Agency believes that placing Federal facility sites on the NPL informs the public of potential hazards and Federal government cleanup efforts.

On May 13, 1987 (52 FR 17991), the Agency proposed that Federal facility sites that may be subject to the corrective action authorities of Subtitle C of RCRA be eligible for the NPL (see the **Federal Register** for more details on the development of this policy). The Agency stated that placing these sites on the NPL does not, however, restrict the use of either RCRA corrective action or enforcement authorities to achieve cleanup at Federal facilities. EPA is in the process of developing regulations for corrective action under RCRA and for cleanup of Superfund sites under the NCP. The cleanup goals established in those regulations will be consistent with each other, within the limits of each statute, and it is EPA's expectation that remedies selected and implemented under CERCLA will generally satisfy the RCRA corrective action requirements, and vice versa.

Federal facility sites are placed in a separate section of the NPL. Currently, 32 Federal facility sites are on, and 16 are proposed for, the NPL.

V. Contents of This Proposed Rule

The seven Federal facility sites being repropoed today were originally proposed for the NPL on October 15, 1984 or April 10, 1985. At that time, the Agency's policy was to include only non-regulated land disposal units in the area scored by the HRS when there were RCRA-regulated units located elsewhere on the Federal facility. The Agency has since determined that the HRS scores for these seven Federal facility sites include areas that are regulated under RCRA. As a result of the recently proposed policy for placing Federal facility sites that maybe subject to RCRA Subtitle C corrective action authorities on the NPL, the Agency has decided to retain the RCRA units in the HRS score for those sites. This is consistent with the proposed policy. The HRS documents for these sites are available for review in the public docket (see Section III, Public Comment Period, Available Information). Five Federal facility sites being repropoed were first proposed on October 15, 1984.

- Anniston Army Depot (Southeast Industrial Area), Anniston, Alabama
- Dover Air Force Base, Dover, Delaware
- Savanna Army Depot Activity, Savanna, Illinois
- Louisiana Army Ammunition Plant, Doyline, Louisiana
- Air Force Plant #4 (General Dynamics), Fort Worth, Texas

Two were first proposed on April 10, 1985:

- Joliet Army Ammunition Plant (Load Assembly-Packing Area), Joliet, Illinois
- Letterkenny Army Depot (Property Disposal Office), Franklin County, Pennsylvania

The Federal facilities listing policy on which this repropoal is based is currently proposed. The Agency will consider the comments submitted on the proposed policy, along with the comments submitted on this repropoal, before placing these Federal facility sites on the NPL.

The eighth Federal facility site discussed in today's proposed rule is the Rocky Mountain Arsenal (RMA) site in Adams County, Colorado. This site was proposed for the NPL on October 15, 1984 (49 FR 40336), and is promulgated elsewhere in today's **Federal Register**. In this rule, the Agency is proposing to expand the RMA site to include a surface impoundment known as Basin F. Basin F is an approximately 93-acre asphalt-lined lagoon located in the

northern half of Section 26 of RMA, and includes all associated liquid, sludge, overburden, liner, soils, and groundwater found within the Basin F fenced area.

EPA omitted Basin F from the HRS score in the earlier proposal because the Agency believed that Basin F received hazardous waste after the effective date of the RCRA Subtitle C land disposal regulations. Consistent with the September 8, 1983 policy (to list only non-regulated units), the Agency is now proposing to add Basin F to the NPL site for the following reasons: (1) The Agency learned that Basin F did not, in fact, receive hazardous waste after the effective date of the RCRA land disposal regulations, and (2) a significant portion of the plume of groundwater contamination to which Basin F contributes appears to come from "non-regulated " units at RMA (48 FR 40674, September 8, 1983). The Agency also believes that Basin F would be appropriately included as part of the RMA site under the new policy recently proposed for RCRA-regulated Federal facilities.

EPA is soliciting comments on this proposal to add Basin F to the RMA NPL site. (The HRS documentation package for RMA, including Basin F, is available in the public docket. EPA will only consider comments pertaining to the Basin F expansion. The remainder of the site is promulgated elsewhere in today's **Federal Register**).

VI. Regulatory Impact Analysis

EPA has determined that this proposed 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. In addition, today's proposed rule involves only Federally-owned sites, and section 111(e)(3) of CERCLA prohibits use of the Fund for remedial actions at Federally-owned facilities. In addition, since these sites were previously proposed for the NPL, no additional costs are incurred by today's rulemaking. This action was submitted to the Office of Management and Budget for review.

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 governmental jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. In today's proposed rule, only Federally-owned facilities are affected. Therefore, this proposal will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 300

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

It is proposed to amend 40 CFR Part 300 as follows:

PART 300-[AMENDED]

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

Authority: 42 U.S.C. 9605(8)(B)/CERCLA 105(8)(B).

2. It is proposed to add the following sites by Group, to Appendix B of Part 300.

Note. - In proposed rules, the number in the left column corresponds to the Group number in Appendix B.

Jack W. McGraw,
Deputy Assistant Administration, Office of Solid Waste and Emergency Response.

July 16, 1987.

BILLING CODE 6560-50-M

**Table 1-National Priorities List - Federal Facilities Sites - Proposed July 1987
(By Group)**

NPL Gr ¹	St	Site name	City/county	Response category ²	Cleanup status ³
3	AL	Anniston Army Depot (SE Ind Area)	Anniston	R	O
7	IL	Savanna Army Depot Activity	Savanna	R	
8	TX	Air Force Plant #4 (Gen Dynamics)	Fort Worth	R	O
9	PA	Letterkenny Army Depot (PDO Area)	Franklin County	R	
10	DE	Dover Air Force Base	Dover	R	I
10	IL	Joliet Army Ammu Plant (LAP Area)	Joliet	R	
14	LA	Louisiana Army Ammunition Plant	Doyline	R	

Number of Federal Facilities Sites Proposed for Listing: 7

1. Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL
2. V = Voluntary or negotiated response
R = Federal and State response
F = Federal enforcement
S = State enforcement
D = Category to be determined
3. I = Implementation activity underway, one or more operable units
O = One or more operable units completed; others may be underway
C = Implementation activity completed for all operable units

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