

Federal Register Notice

21460 - 22464 Federal Register / Vol. 56, No. 90 / Thursday, May 9, 1991 / Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL-3955-1]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY:

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

This action proposes to add the White Chemical Corp. site in Newark, New Jersey to the NPL. The identification of a site for the NPL is intended primarily to guide the Environmental Protection Agency ("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.

DATES:

Comments must be submitted on or before June 10, 1991.

ADDRESSES:

Comments must be mailed, in triplicate, to Larry Reed, Acting Director, Hazardous Site Evaluation Division (Attn.: NPL Staff), Office of Superfund Remediation Technology Innovation (OS-230), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Addresses for the Headquarters and Region 2 dockets are provided below. For further details on what these dockets contain, see the Public Comment Section, section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

Docket Coordinator, Headquarters
U.S. EPA CERCLA Docket Office, QS-245
Waterside Mall, 401 M Street, SW.
Washington, DC 20460
202/382-3046

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
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FOR FURTHER INFORMATION CONTACT:

Robert Myers
Hazardous Site Evaluation Division
Office of Superfund Remediation Technology Innovation, (OS-230)
U.S. Environmental Protection Agency
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SUPPLEMENTARY INFORMATION:

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I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act") in response to the dangers of uncontrolled or abandoned hazardous substance sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law No. 99-499, Stat. 1613 *et seq.* To implement CERCLA, 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 was further revised by EPA on September 16, 1985 (50 FR 37624), November 20, 1985 (50 FR 47912), and most recently on March 8, 1990 (55 FR 8666). The NCP sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants.

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 emergency conditions or on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions 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 NCP at 40 CFR 300.425(c) (55 FR 8845, March 8, 1990). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if its scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of 40 CFR part 300, July 16, 1982 and amended on December 14, 1990 (55 FR 51532).

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. See 40 CFR 300.425(c)(2).

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without the computation of an HRS score, if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority (available only at NPL sites) than to use its removal authority to respond to the release.

Based on these criteria, and pursuant to section 105(a)(8)(B) of CERCLA, as amended by SARA, EPA prepares 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 40 CFR part 300, is the NPL.

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 11, 1991 (56 FR 5598). At this time, the NPL contains 1,189 sites.

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 33 sites from the final NPL, most recently on February 11, 1991 (56 FR 5598).

Pursuant to the NCP at 40 CFR 300.425(c)(3), this notice proposes to add one site to the NPL.

Public Comment Period

This **Federal Register** document opens a 30-day comment period for this proposed rule. Comments must be mailed to Larry Reed, Acting Director, Hazardous Site Evaluation Division at the address given above.

The Headquarters and Region 2 public dockets for the NPL (see Addresses portion of this notice) contain documents relating to the proposal to add the White Chemical Corp. site in Newark, New Jersey, to the NPL. Both dockets contain the public health advisory issued by ATSDR and EPA memoranda supporting the findings that the release poses a significant threat to public health and that it would be more cost-effective to use remedial rather than removal authorities at the site. The dockets are available for viewing, by appointment only, after the appearance of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. The hours of operation for the Region 2 docket are from 8 a.m. to 5 p.m., Monday through Friday excluding Federal holidays.

An information written request, rather than a formal request under the Freedom of Information Act (FOIA), should be the ordinary procedure for obtaining copies of any of these documents.

EPA considers all comments received during the 30-day comment period. During the comment period, comments are available to the public only in the Headquarters docket. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the Regional docket on an "as received" basis.

In past rules, EPA has attempted to respond to late comments, or when that was not practicable, to read all late comments and address those that brought to the Agency's attention a fundamental issue concerning the proposed listing. Although EPA intends to pursue the same policy with the site in this rule, EPA can guarantee that it will consider only those comments received during the formal comment period. EPA cannot delay a final listing decision solely to accommodate consideration of late comments.

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 information 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 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 that CERCLA-financed remedial action(s), if any, may be appropriate. The NPL also serves to notify the public of sites that EPA believes warrant further investigation. Finally, listing a site serves as notice to parties interested in the site, including any potentially responsible parties, that the Agency may initiate CERCLA-financed remedial action.

Implementation

EPA has limited, by regulation, the expenditure of Trust Fund monies for remedial actions to those sites that have been placed on the NPL, as outlined in the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). However, EPA may take enforcement actions under CERCLA or other applicable statutes against potential responsible parties regardless of whether the site is on the NPL, although, as a practical matter, the main focus of EPA's CERCLA enforcement actions has been and will continue to be on NPL sites. Similarly, EPA has the authority to take nonremedial response actions at any site, whether listed or not.

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. 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 CERCLA-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 sites' HRS scores, since the Agency has recognized that 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. In addition, certain sites, such as the White Chemical Corp. site, are based on other criteria. Thus, EPA relies on further, more detailed studies including the remedial investigation/feasibility study (RI/FS).

The RI/FS determines the nature and extent of the threat presented by the contamination (40 CFR 300.430(a)(2) (55 FR 8846, March 8, 1990). 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 E of the NCP (55 FR 8839, March 8, 1990). 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.

III. Contents of This Proposed NPL Update

The White Chemical Corp. (WCC) site, in Newark, Essex County, New Jersey, is being proposed for the NPL on the basis of section 425(c)(3) of the NCP, 40 CFR 300.425(c)(3) (55 FR 8845, March 8, 1990). WCC is a former manufacturer of acid chlorides and flame retardant compounds. The site is located at a 4-acre facility (including two on-site laboratories) located on a densely-populated industrial region of New Jersey. It borders on two large manufacturing facilities to its west. One-quarter mile beyond the manufacturing facilities is Weequahic Park and several large housing projects as well as several high-rise senior citizen apartment buildings. The daytime population within one-quarter mile of the site is about 12,000 people. To the east and adjacent to the site is the Conrail railroad line, the major eastern corridor to New York. On the other side of the Conrail line is an Anheuser Busch Brewery. Approximately one-half mile farther east is U.S. Highway No. 1 and Newark International Airport.

On June 30, July 7, and September 8 and 22, 1989, the New Jersey Department of Environmental Protection (NJDEP) inspected the WCC facility and found numerous violations of the Resource Conservation and Recovery Act (RCRA): Specifically, illegal treatment of hazardous waste and storage of hazardous waste without the necessary permits. NJDEP found open or damaged, bulging, and unlabeled containers, numerous spills into the ground, inadequate aisle space between drums, drums of different chemicals stored together, water-reactive materials in open yards, and ignitable waste stored within 50 feet of the property line.

NJDEP issued several notices of violation and assessment of penalties to WCC. However, NJDEP has received no responses to the notices. In early 1990, NJDEP issued several directives to WCC to cleanup the site. Again, there was no response. (The company currently is undergoing Chapter 11 bankruptcy proceedings.) At the request of NJDEP, EPA conducted a preliminary assessment of the site on May 4, 1990, which revealed the presence of more than 8,000 drums of various chemicals and wastes. On May 8, 1990, NJDEP issued a directive to WCC regarding its assessment.

On May 15, 1990, NJDEP began a removal action under the New Jersey Spill Compensation and Control Act. However, by August 1990, after NJDEP had removed approximately 1,000 drums, the project ceiling of \$825,000 was reached, halting the cleanup. As a result, on August 24, 1990, NJDEP requested EPA to assess the site for CERCLA removal consideration.

On September 27, 1990, EPA Region 2 requested that ATSDR review information regarding the site and characterize the threat to public health posed by the site. ATSDR responded to this request by conducting a Health Assessment under section 104(i)(6) of CERCLA on September 28, 1990. ATSDR concluded that the WCC site posed an imminent and substantial threat to public health due to uncontrolled storage of hazardous substances and conditions of ongoing airborne releases. On the basis of that threat, ATSDR has determined that the site warrants a Public Health Advisory, recommending dissociation of individuals from the release.

The advisory discusses two major areas of concern. The first is the threat of catastrophic release posed by the uncontrolled storage of hazardous substances at the site. The second involves reports of adverse health effects in nearby worker populations, and the evidence of continuous airborne releases from the site.

As a result of these concerns, ATSDR has recommended immediate actions to stabilize the site. (See "Public Health Advisory for White Chemical Company, Newark, Essex, New Jersey," issued by the ATSDR, November 21, 1990).

Further, EPA's assessment is that the site poses a significant threat to public health. (See memorandum dated December 28, 1990 from Richard L. Caspe, Director, Emergency and Remedial Response Division, Region 2, to Larry Reed, Acting Director, Hazardous Site Evaluation Division, EPA Headquarters). EPA emergency response staff currently are stabilizing and securing site conditions to address the immediate threat posed by the site. In addition, EPA has concluded it is more cost-effective to use remedial than removal authority for cleanup. The remedial activities anticipated for the long-term remedy at this site are likely to exceed the expenditure limit on CERCLA removal actions and will be more appropriately conducted under remedial authorities. Further, attempting to carry out such activities under the removal program would not represent cost-effective use of removal funds. (See the December 28, 1990 Caspe memorandum.)

Based on this information, and the references in support of the proposal, EPA concludes that the WCC site is appropriate for the NPL pursuant to 40 CFR 300.425(c)(3).

IV. Regulatory Impact Analysis

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

Costs

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 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 proposed rulemaking.

The listing of a site on the NPL may be followed by a search for potentially responsible parties and a remedial investigation/feasibility study (RI/FS) to determine if remedial actions will be undertaken at a site. Design and construction of the selected remedial alternative follow completion of the RI/FS, and operation and maintenance (O&M) activities may continue after construction has been completed.

EPA initially bears costs associated with responsible party searches. Responsible parties may 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.

Section 104 of CERCLA as amended provides that for privately-owned sites, as well as at publicly-owned but not publicly-operated sites, EPA will generally 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 action.

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

Source: Office of Program Management, Office of Superfund Remediation Technology Innovation, U.S. EPA, Washington, DC.

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 proposed 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 designs), remedial action, and first-year O&M costs at publicly-operated sites. The State will assume the cost for O&M after EPA's period of participation.

The WCC site is privately-owned. Therefore, using the budget projections presented above, the cost to the State of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately \$2.5 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 this site 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.

Proposing a hazardous waste site for the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to cleanup 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 proposed amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The benefits associated with today's proposal to place the WCC site 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 can accelerate privately-financed, voluntary cleanup efforts. Proposing sites as national priority targets also may give States increased support for funding responses at particular sites.

As a result of 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 this site.

V. Regulatory Flexibility Act Analysis

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

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites on the NPL does not in itself require any action by 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. A site's proposed inclusion 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 impact 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 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

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: April 30,1991.

Don R. Clay,
Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 300 -[AMENDED]

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

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

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp, p. 793; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Appendix B to part 300 is proposed to be amended by adding to the end of Group 22 in the "National Priorities List (by Rank)" the following site to read as follows:

APPENDIX B

[National Priorities List (by Rank)]

| NPL Rank | EPA Reg. | State | Site Name | City/County |
|-----------------|-----------------|--------------|----------------------|--------------------|
| | | NJ | White Chemical Corp. | Newark/Essex |

Group 22 (HRS Scores 28.90 -28.50, except for health-advisory sites).
Note: Number of cites proposed for listing: 1.

[FR Doc 91-10840 Filed 5-8-91; 8:45 am]

BILLING CODE: 6560-50-M