

Federal Register Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[SWH-FRL 2853-16]

Amendment to National Oil and Hazardous Substances Contingency Plan: National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is amending the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982, pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") and Executive Order 12316. This amendment revises the National Priorities List ("NPL"), which initially was promulgated as Appendix B of the NCP on September 8, 1983, by adding the Lansdowne Radiation site located in Lansdowne, Pennsylvania to the final NPL. CERCLA requires that the NCP include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, and contaminants throughout the United States, and that the list be revised at least annually. The NPL constitutes this list and meets those requirements. The Lansdowne site is being added to the NPL because the site meets the eligibility requirements of the NPL. EPA has included on the NPL releases and threatened releases of designated hazardous substances as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. Inclusion of the Lansdowne site on the NPL makes this site eligible for Fund-financed remedial actions as specified in § 300.68(a) of the NCP.

DATE:

The effective date for this amendment to the NCP shall be October 16, 1985. ¹

¹ 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 a notice of clarification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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I. Background of the NPL

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. sections 9601-9657 ("CERCLA or the Act"), and Executive Order 12316 (46 FR 42237, August 20, 1981), the Environmental Protection Agency ("EPA" or "the Agency") promulgated the revised National Contingency Plan ("NCP"), 40 CFR Part 300, on July 16, 1982 (47 FR 31180). Those amendments to the NCP implemented responsibilities and authorities created by CERCLA to respond to releases and threatened releases of hazardous substances, pollutants, and contaminants.

Section 105(8)(A) of CERCLA requires that the NCP include criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action, for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to 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)).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases of threatened releases throughout the United States, and that to the extent practicable, at least 400 sites be designated individually on the National Priorities List (NPL). Section 105(8)(B) also requires that the list of priorities be revised at least annually. EPA has included on the NPL releases and threatened releases of designated hazardous substances as well as "pollutants or contaminants" which may present an imminent and substantial danger to the public health or welfare. CERCLA requires that the NPL be included as part of the NCP. An initial NPL of 406 sites was promulgated on September 8, 1983, (48 FR 40658). The NPL has been amended several times since then. On May 8, 1984, EPA amended the NCP by adding four sites in San Gabriel, California, to the NPL. On September 21, 1984, EPA further amended the NCP by adding 128 sites to the NPL (49 FR 37070), and deferred final rulemaking on four sites. The second proposed update was published in the **Federal Register** on October 15, 1984 (49 FR 40320). The second update proposed the addition of 244 sites, two of which were promulgated in the **Federal Register** on February 14, 1985 (50 FR 6320). In addition, the third update proposed 26 sites on April 10, 1985 (50 FR 14115). Today's final rulemaking action adds to the NPL the Lansdowne Radiation site, Lansdowne, Pennsylvania, which was proposed on April 10, 1985 (50 FR 14115). This action is taken pursuant to § 300.66 (b)(4) of the NCP which is promulgated in a separate notice in today's **Federal Register**.

Additional discussion on the purpose and development of the NPL and on generic issues relating to the HRS are included in the preambles to the NPL promulgated on September 8, 1983 (48 FR 40658), and amended on September 21, 1984 (49 FR 37070). Section 300.68(a) of the NCP reserves Fund-financed remedial action for sites on the NPL. Inclusion of a site on the NPL is not necessary for other types of response actions such as removal actions or enforcement actions. Moreover, a site need not be on the NPL to be the subject of a private party cost recovery action pursuant to section 107(a)(4)(B) of CERCLA.

The principal criteria used by the Agency for determining site eligibility for inclusion on the NPL are included in the Hazard Ranking System (HRS) which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). The HRS total score used for the NPL is designed to take into account a standard set of factors related to risks from migration of substances through groundwater, surface water, and air. At present, sites whose scores are 28.50 or above are eligible for the NPL.

Section 300.66(b)(4) of the NCP has been amended to allow some sites that do not score 28.50 or greater to be added to the NPL. These sites may qualify for the NPL if:

1. The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services (ATSDR) has issued a health advisory which recommends dissociation of individuals from the release;
2. the Agency determines that the release poses a significant threat to public health; and
3. EPA anticipates that it will be more cost-effective to use remedial authority than if EPA uses its removal authority to respond to the release.

The Agency has determined that the Lansdowne site meets these three criteria as described in Section II below.

II. Background of the Lansdowne Radiation Site, Lansdowne, Pennsylvania

The Lansdowne Radiation site located in Lansdowne, Pennsylvania, was included in the proposed rulemaking for Update #3 of the NPL (50 FR 14115, April 10, 1985). The Lansdowne site consists of a residential duplex structure situated on a 0.5 acre lot in a residential area. The basement of the residence at 105 E. Stratford Avenue was used from 1924-1944 by a chemistry/physics professor to manufacture radium sources for medical radiation therapy. In mid-1983, EPA and the Pennsylvania Department of Environmental Resources, Office of Radiation Programs identified the Lansdowne site as suitable for inspection. Since that time, several radiological studies of the site have been completed.

The first of these studies was conducted in June of 1984 by EPA and State of Pennsylvania Department of Environmental Resources (PADER). Results revealed levels of gamma radiation ten times above the level to which the general population is exposed, and levels of radon daughters one hundred times higher than background levels.

In September, 1984, EPA and the Federal Emergency Management Agency, as part of a CERCLA-funded immediate removal, temporarily relocated the two residents living in the structure. EPA Region III recognized that a permanent solution would far exceed the six month, \$1 million limit on immediate removal, and requested a time extension for relocation pursuant to Part 300.65(d)(3) of the NCP.

In the Fall of 1984, the Argonne National Laboratory conducted a survey of the structure to determine levels of radon gas and gamma radiation. Data revealed that all interior measurements of radon daughters exceeded the EPA recommended action level of 0.02 Working Levels (WL). In addition, most interior measurements of gamma radiation exceeded the EPA remedial action guideline of 20 microrentgens/hour above background.

ATSDR reviewed the results of the two above mentioned studies, and on March 5, 1985 issued a health advisory warning that environmental measurements of radon daughters and gamma radiation inside the duplex dwelling indicated exposure levels in excess of those ATSDR considered safe for human habitation. The advisory recommended dissociation of exposed individuals from the structure.

Inhalation of radon gas and its decay products exposes the lungs to alpha radiation, thereby increasing the chances of developing lung cancer. Both radon and its decay products readily adhere to particulate matter, and can be entrained in dust when disturbed, increasing the potential for ingestion, particularly by children. Moreover, the site poses a potential threat of release to the surrounding community which would be particularly severe if a fire occurred. EPA has installed a sprinkler system in the house to temporarily reduce the threat of fire, but believes this is an acceptable solution only for the short term.

In December of 1984, the Argonne Laboratory collected soil samples from the property at 105-107 E. Stratford Avenue. Results of this sampling revealed that radioactive material has migrated beyond the property boundary. Samples were also collected from the off-site sewer. Preliminary data indicated the presence of radioactive materials in the sanitary sewer beneath E. Stratford Avenue.

EPA considers the risks posed by this site to be significant. EPA has also determined pursuant to § 300.66 (b)(4) that a remedial approach to this situation will provide the lowest cost alternative which effectively mitigates and minimizes damage to, and provides adequate protection of, public health. EPA views the complete removal of the house from the

surrounding residential community as the only appropriate way to permanently ameliorate this significant health hazard.

III. Addition of the Lansdowne Radiation Site, Lansdowne, Pennsylvania to the NPL

The action being taken today will add the Lansdowne Radiation site in Lansdowne, Pennsylvania to the NPL. EPA received comments from five parties regarding Lansdowne during the 30-day comment period which ended May 10, 1985. EPA has reviewed the comments addressed below and has determined that no new information has come to the Agency's attention during the comment period that would change EPA's decision to include this site on the NPL.

Several commenters objected to EPA's listing a site on the NPL using a procedure which they perceived as having not yet been promulgated.

The Agency has promulgated an amendment to § 300.66(b)(4) of the NCP which provides EPA with a new mechanism for including releases on the NPL irrespective of their HRS scores, when specific criteria are met (see Section II of the § 300.66(b)(4) preamble published elsewhere in today's **Federal Register**). Sites may be added to the NPL based on this amendment if, as is true at Lansdowne, a small number of people are or will be exposed to hazardous substances through one of several routes of exposure.

One commenter concluded that no immediate threat to public health exists at the site.

EPA disagrees with the commenter's assessment of the public health hazards associated with the site. A detailed explanation of the public health concerns associated with the site is provided in Section II of this preamble.

One commenter agrees with EPA's decision to relocate the occupants of the home, and believes that the security measures (sprinkler system, alarm, fence) are adequate to mitigate any immediate threat until EPA has considered public comment on the February 12, 1985 proposed amendments to the NCP.

EPA has considered comments received regarding the February 12, 1985 proposed NCP amendments and has promulgated § 300.66(b)(4) of the NCP in a separate notice of today's **Federal Register**. EPA sees no reason to delay permanently remedying this public health threat.

One commenter stated that the cost estimate for remedial action at Lansdowne is unjustifiably high.

EPA's preliminary cost estimate for remedial action at the site is approximately \$3.5 million. This cost estimate includes dismantling and packing the structure, transport to an acceptable disposal facility, disposal costs, monitoring, and financial reimbursement to the owners of the house. EPA views the complete removal of the house from this residential area as the only appropriate way to permanently ameliorate this significant health hazard, and believes the costs are not excessive.

One commenter suggested that the cleanup of contaminated residences is an inappropriate use of CERCLA. The commenter stated that CERCLA is primarily an inactive waste site cleanup program. The commenter felt that by diverting its focus away from hazardous waste site cleanup, EPA would not only divert scarce CERCLA management and legal resources, but it could also put an intolerable drain on Fund resources.

EPA believes that neither CERCLA nor the Hazardous Ranking System limits response to hazardous waste sites, and it would be inappropriate to so limit § 300.66(b)(4). ATSDR may issue advisories with respect to other releases, and the threats posed may be significant and warrant national response. EPA does not expect that the amendment to § 300.66(b)(4) of the NCP will result in a substantial re-direction of CERCLA resources. In particular, the Agency does not foresee using substantial portions of the CERCLA Trust Fund to clean up private residences. Few sites are expected to be added to the NPL pursuant to § 300.66(b)(4), and not all sites listed pursuant to § 300.66(b)(4) will be residences. But where, as is the case of the Lansdowne Radiation site, releases at residences threaten both inhabitants and the surrounding community, the Agency believes it appropriate to consider them candidates for fund-financed remedial action. As the commenter notes, CERCLA's authority is very broad and can extend to residences.

One commenter compared the situation at Lansdowne to that of the approximately 733,000 asbestos-contaminated buildings in the United States, and stated that responding to this analogous situation could dwarf the program for hazardous waste sites. The commenter asserted that listing the Lansdowne site would be inconsistent with the following statement in EPA's CERCLA 301(a)(1)(c) study: "EPA's current policy is that the Agency will not respond to air releases within buildings. However, if EPA were to make a policy change to address such indoor releases, this would significantly affect the number of sites to which Superfund responds."

As previously stated, EPA does not expect that the amendment to § 300.66(b)(4) will result in a substantial re-direction of CERCLA Trust Fund monies from hazardous waste sites to private residences. In addition, the quotation from the study was taken out of context. The sentences were contained in a paragraph which discussed asbestos inside schools and other buildings. It did not address situations in which indoor releases present threats or potential threats to the ambient atmosphere, as in the case of Lansdowne.

One commenter stated that Congress intended the Superfund petrochemical feedstock tax structure to reflect some relationship between "front-end" chemicals taxed and their fate of ending up at waste sites. The commenter further added "that Congress had no radiation-contaminated residence nexus in mind when designing the tax."

As discussed previously, the Agency believes it has the authority to respond to sites at which releases of radiation present a threat to public health and the environment, unless those releases are expressly excluded by the statutory language. The Lansdowne site does not fit within any of the statutory exclusions.

Several commenters resubmitted comments regarding amendments to § 300.66(b)(4) of the NCP as they would apply to the Lansdowne site. The comments are summarized below, and responses are provided in the preamble to the promulgation of § 300.66(b)(4) of the NCP.

- The commenters opposed the procedure used to list the Lansdowne site. The commenters believed that the use of a health advisory as the basis for listing a site is premature and inappropriate because the term health advisory has not been defined, nor do any criteria for the issuance of health advisories exist. The commenters felt that this would lead § 300.66(b)(4) being used to address any of a number of sites beyond those where a significant health risk to a small number of individuals exists.
- Although the commenter supports EPA's efforts to address a small number of seriously threatened individuals, the commenter felt that EPA already possesses statutory authority to respond to imminent hazards under section 106 of CERCLA.
- The commenter stated that the term "HHS health advisory" requires clarification. The commenter further stated that neither the proposed regulations nor the preamble defines the term, nor do they provide any guidance as to what constitutes a "significant" threat to public health.
- The commenter suggested that the NCP regulations should specify which office of HHS is charged with issuing health advisories for the purpose of adding sites to the NPL.

IV. Regulatory Impact

The addition of this site to the final rulemaking of the NPL does not meet the Executive Order 12991 definition of the term "major rule."

The purpose of the NPL is primarily to serve as an informational tool for use by EPA in identifying sites that appear to present a significant risk to public health or the environment. The initial identification of a site on the NPL is intended primarily to guide EPA in determining which sites warrant further investigation designed to assess the nature and extent of the public health and environmental risks associated with the site and to determine what response action, if any, may be appropriate. Inclusion of a site on the NPL does not establish that EPA necessarily will undertake response actions. Moreover, listing does not require any action of any person, nor does it determine the liability of any person for the cost of cleanup at the site.

The information collected to support selecting a site for the NPL is not sufficient in itself to determine the appropriate remedy for a particular site. EPA generally relies on further, more detailed studies conducted at the site to determine what response, if any, is appropriate. Decisions on the type and extent of action to be taken at this site will be made on the basis of such studies and in accordance with the criteria contained in Subpart F of the NCP.

A full assessment of the cost of remedial action at the Lansdowne site has not been completed, but preliminary cost estimates are approximately \$3.5 million. Thus, the possible remedial action will not cause an annual effect on the economy of \$100 million or more. It is not expected that remedial action will cause a major increase in costs or prices, nor will it have significant adverse effects on competition, employment, investment or any other criteria of Executive Order 12291. Rather, beneficial effects are anticipated from any actions taken to reduce exposures, from radon daughters and gamma radiation.

V. Regulatory Flexibility Act Analysis

After reviewing the criteria for significant economic impact on substantial numbers of small entities as defined by the Regulatory Flexibility Act, EPA has determined that listing does not require any action of any private party for the cost of cleanup at the site. Currently, EPA and the State of Pennsylvania expect to fund remedial activities at the site. It is unlikely that any EPA remedial activities at this site would significantly affect a substantial number of small business entities.

List of Subjects in 40 CFR Part 300

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

Dated: August 14, 1985.

Lee M. Thomas,
Administrator.

PART 300 - [AMENDED]

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

Authority: Sec. 105 Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605; Sec. 311(c)(2), Pub. L. 92- 500 as amended, 86 stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B - [Amended]

2. The National Priorities List, which is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, is hereby amended to add the following site as the last item in Group 9 of the non-Federal portion of the NPL.

Appendix B - National Priorities List

Group 9	EPA Reg	State	Site Name ¹	City/county	Response status ² V R E D
	03	PA	Lansdowne Radiation Site	Lansdowne	R

¹ States' designated top priority sites.

² Response status:

V=Voluntary or negotiated response

R=Federal and State Response

E=Federal and State enforcement

D=Actions to be determined

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