

Federal Register Notice

5598 - 5605 Federal Register / Vol. 56, No. 28 / Monday, February 11, 1991 / Rules and Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL 3903-8]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is amending appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, which was originally 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 2933, 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 6 sites. Based on a review of public comments on these sites, EPA has decided that they meet eligibility requirements of the NPL and are consistent with the Agency's listing policies. In addition, today's action withdraws the proposal of 8 other sites for inclusion on the NPL. Six sites previously proposed for the NPL have had no final disposition to date. Information supporting these actions is contained in the Superfund Public Dockets.

This rule results in a final NPL of 1,189 sites, 116 of them in the Federal section; no sites remain proposed to the NPL.

EFFECTIVE DATE:

The effective date for this amendment to the NCP shall be March 13, 1991. 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**.

ADDRESSES:

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

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

Evo Cunha
Region 1, U.S. EPA Waste Management Records Center, HES-CAN 6
J.F. Kennedy Federal Building
Boston, MA 02203
617/573-5729

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

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

Beverly Fulwood
Region 4, U.S. EPA Library, Room G-6
345 Courtland Street, NE.
Atlanta, GA 30365
404/347-4216

Cathy Freeman
Region 5, U.S. EPA, 5 HSM-TUB 7
230 South Dearborn Street
Chicago, IL 60604
312/886-6214

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

Steven Wyman
Region 7, U.S. EPA Library
726 Minnesota Avenue
Kansas City, KS 66101
913/551-7241

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

Lisa Nelson
Region 9, U.S. EPA
75 Hawthorne Street
San Francisco, CA 94105
415/744-2347

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

FOR FURTHER INFORMATION CONTACT:

Robert Myers
Hazardous Site Evaluation Division
Office of Superfund Remediation Technology Innovation (OS-230)
U.S. Environmental Protection Agency
401 M Street, SW.
Washington, DC 20460
or the Superfund Hotline, Phone (800) 424-9346 or (703) 920-9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

Background

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9675 ("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, 1986 (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 March 8, 1990 (55 FR 8666), EPA revised 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 14, 1990 (55 FR 51532), EPA finalized revisions to the HRS in response to CERCLA section 105(c), added by SARA. The effective date for these revisions is March 14, 1991. Until this effective date, 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, 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 may undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). As CERCLA section 105(a)(8)(b) states, 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" interchangeably 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 August 30, 1990 (55 FR 35502). 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 300.425(e) (55 FR 8845, March 8, 1990). To date, the Agency has deleted 33 sites from the final NPL, most recently the following four sites are deleted.

The sites to be deleted from the NPL are:

International Minerals & Chemical Corp. (Terre Haute East Plant) in Terre Haute, Indiana

A Notice of Intent to Delete for this site was published September 22, 1989 (54 FR 39009). The closing date for comments on the Notice of Intent to Delete was October 23, 1989. EPA received one comment regarding perpetual monitoring of the site. No change in EPA's intention to delete the site resulted from the comment because the response action eliminated the need for such monitoring. The comment and EPA's response are contained in a Responsiveness Summary available through the Region V Office of Public Affairs (address above).

Petersen Sand & Gravel in Libertyville, Illinois

A Notice of Intent to Delete for this site was published September 22, 1989 (54 FR 39011). The closing date for comments on the Notice of Intent to Delete was October 23, 1989. EPA received no comments.

Poer Farm in Hancock County, Indiana

A Notice of Intent to Delete for this site was published September 21, 1989 (54 FR 38876). The closing date for comments on the Notice of Intent to Delete was October 23, 1989. EPA received no comments.

Whitehall Municipal Wells in Whitehall, Michigan

A Notice of Intent to Delete for this site was published September 21, 1990 (55 FR 38816). The closing date for comments on the Notice of Intent to Delete was October 30, 1990. EPA received one comment in support of site deletion. The comment and EPA's response are contained in a Responsiveness Summary available through the Region V Office of Public Affairs (address above).

Sites on the NPL may be the subject of Hazardous Substances Superfund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that sites deleted from the NPL are eligible for further Fund-financed actions should future conditions warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

This rule adds 6 sites to the NPL; 14 other sites previously proposed for the NPL are not being added. Of these 14 sites, three have HRS scores below 28.50 based on the information currently available to the Agency, four can be

addressed under corrective action authorities of Subtitle C of the Resource Conservation and Recovery Act (RCRA), and one site no longer meets the health advisory criterion on which its proposal was based. The Agency is making no final decision with respect to the other six sites, for reasons discussed elsewhere in this preamble. EPA has carefully considered public comments submitted for the sites in this final rule and has made certain modifications in response to those comments. This rule results in a final NPL of 1,189 sites, 116 of them in the Federal section. These 1,189 sites include 14 sites in the construction completion category as discussed in a notice elsewhere in today's **Federal Register**.

Information Available to the Public

The Headquarters and Regional public dockets for the NPL (see Addresses portion of this notice) contain documents relating to the evaluation and scoring of sites in this final rule. The dockets are available for viewing, by appointment only, after the appearance of this notice. The hours of operation for the Headquarters docket are from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Please contact individual Regional dockets for hours.

The Headquarters docket contains HRS score sheets for each final site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by special study waste or other requirements, or RCRA or other listing policies; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule - February 1991."

Each Regional docket includes all information available in the Headquarters docket for sites in that Region, as well as the actual reference documents, which contain the data principally relied upon by EPA in calculating or evaluating the HRS scores for sites in that Region. These reference documents are available only in the Regional dockets. They may be viewed, by appointment only, in the appropriate Regional Docket or Superfund Branch Office. Requests for copies may be directed to the appropriate Regional Docket or Superfund Branch. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents.

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. Finally, listing a site may, to the extent that potentially responsible parties are identifiable at the time of listing, serve as notice to such parties that the Agency may initiate CERCLA-financed remedial action.

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 300.425(b)(1) (55 FR 8845, March 8, 1990). 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 300.415 (55 FR 8842, March 8, 1990).

EPA's policy is to pursue cleanup of NPL sites using all 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 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 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.

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

RI/FS at Proposed Sites

An RI/FS may be performed at proposed sites (or even sites that have not yet been proposed for the NPL) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.425(b)(1) (55 FR 8845, March 8, 1990). 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 NPL does not describe releases in precise geographical terms, and the agency believes 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. The names of sites are provided for identification purposes only; the sites are not limited to (or coextensive with) the boundaries of properties that may be referred to in the name. Of course, HRS data upon which listing is based will, to some extent, describe which release is at issue; that is, the NPL site would include

(but not be limited to) 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)).

Identifying a release or facility on the NPL¹ provides notice that the entire facility will be addressed; the facility includes the source or sources of contamination and any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)). The listing process is not intended to define or reflect the "boundaries" of such facilities or releases. In fact, CERCLA does not refer to site "boundaries", and that term has little or no legal significance.

The NCP does 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 300.430(d)(2) (55 FR 8847, March 8, 1990)). 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 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. 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 these reasons, the NPL need not be amended if further research into the extent of the contamination expands the apparent boundaries of the release. As discussed above, 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 wishes to contest 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.

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, or as stated in 49 FR 37081, September 21, 1984:

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 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 series as a guide to EPA and does not determine liability or the need for response.

¹ The terms "facility" and "release" are used interchangeably in CERCLA section 105(a)(8)(B), which establishes the NPL. For ease of reference, EPA also uses the term "site", which is not defined in CERCLA, in referring to a release or facility on the NPL. The term "site" is meant to be synonymous with "facility" or "release" and is not meant to suggest that the listing is geographically defined.

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

1. Factors that indicate the presence or likelihood of a release to the environment;
2. factors that indicate the nature and quantity of the substances presenting the potential threat; and

3. factors that indicate the human or environmental "targets" potentially at risk from the site.

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

Under the second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism is provided by section 105(a)(8)(B) of CERCLA, as amended by SARA, which requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State.

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3) (55 FR 8845, March 8, 1990), has been used only in rare instances. It allows certain sites with HRS scores below 28.50 to be eligible for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Department of Health and Human Services 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 than to use its removal authority to respond to the release.

All of the sites in today's final rule have been placed on the NPL based on their HRS scores.

The EPA Regional Offices have the primary responsibility for screening sites that have been entered into the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS), computing HRS scores, and submitting candidate sites to the EPA Headquarters. States often play a major role in this process as well. EPA Regional Offices conduct a quality control review of any candidate sites submitted by the States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and State offices participating in the scoring. The Agency then proposes the sites that meet one of the three criteria for listing (as well as statutory requirements and EPA's listing policies) and solicits public comment on the proposal. Based on these comments and further review by EPA, the Agency determines final HRS scores and places those sites that still qualify on the final NPL.

IV. Statutory Requirements and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants by expressly excluding some substances, such as petroleum, from the response program. In addition, CERCLA section 105(a)(8)(B) directs EPA to list priority sites among the known releases or threatened releases of hazardous substances, pollutants, or contaminants, and section 105(a)(8)(A) directs EPA to consider certain enumerated and "other appropriate" factors in doing so. Thus, as a matter of policy, EPA has the discretion not to use CERCLA to respond to certain types of releases. Where other authorities exist, placing the site on the NPL for possible remedial action under CERCLA may not be appropriate. Therefore, EPA has chosen to defer certain types of sites from the NPL even though CERCLA may provide authority to respond.

The Agency solicited comment on a policy to expand deferral to other Federal and State authorities (53 FR 51415, December 21, 1988); however, that policy is not currently in effect and has not been applied to sites in this rule. The Agency has committed not to implement any part of an expanded deferral policy until public and Congressional concerns have been fully reviewed and analyzed, and a decision reached on whether or not to implement such a policy (55 FR 8666, March 8, 1990).

The listing policies and statutory requirements of relevance to this final rule cover sites subject to the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901-6991i), one radioactive mining waste site licensed by the NRC, and one site listed under the ATSDR criteria. These policies and requirements are explained below. The majority have been explained in previous rulemakings, the latest being August 30, 1990 (55 FR 35502).

Releases From Resource Conservation and Recovery Act (RCRA) Sites

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

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

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

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

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

On June 24, 1988 (53 FR 23978), EPA announced its intent to list several other categories of RCRA facilities that the Agency considers appropriate for the NPL. These categories are non- or late filers, converters (i.e., facilities whose Part A permits have been withdrawn), protective filers, and sites holding RCRA permits issued before enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984 (54 FR 41000, October 4, 1989).

In this final rule, EPA is adding to the NPL one site that is subject to RCRA Subtitle C corrective action authorities. This site is being placed on the NPL under the NPL/RCRA policy. This site was originally proposed to be dropped from the NPL (53 FR 23978, June 24, 1988) because it is a treatment and storage facility. This site is now being added to the NPL because the site is a major contributor to an area-wide ground water contamination problem. Although area-wide contamination generally can be addressed by coordinating RCRA and CERCLA, in this instance the combination of overlapping NPL and non-NPL sites, multiple sources of contamination, and the advanced stage of the CERCLA

response process make it more appropriate to complete the cleanup under CERCLA. The Agency believes that in these unusual circumstances the transfer of responsibility to RCRA would likely result in the type of duplication of effort and waste of EPA resources the NPL/ RCRA policy was designed to avoid. Specific comments regarding EPA's approach are discussed in the support document accompanying this rule.

In addition, EPA is not listing four sites under the NPL/RCRA policy because they can be addressed under RCRA Subtitle C corrective action authorities. Three of these sites were proposed to be dropped (53 FR 23978, June 24, 1988) because they are subject to RCRA Subtitle C corrective action authorities. The other is a ground water plume where the source can be addressed under Subtitle C corrective action authorities.

Releases of Radioactive Materials

CERCLA section 101(22) excludes several types of releases of radioactive materials from the statutory definition of "release." These releases are therefore not eligible for CERCLA response actions or the NPL. The exclusions apply to (1) releases of source, by-product, or special nuclear material from a nuclear incident if these releases are subject to financial protection requirements under section 170 of the Atomic Energy Act, and (2) any release of source, by-product, or special nuclear material from any processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). Accordingly, such radioactive releases have not been considered eligible for the NPL.

As a policy matter, EPA has in general chosen not to list releases of source, by-product, or special nuclear material from any facility with a current license issued by the NRC, on the grounds that the NRC has full authority to require cleanup of releases from such facilities (48 FR 40658, September 8, 1983). One site in this final rule involves a release from a facility currently licensed by the NRC, but the NRC does not have authority to require cleanup of that release. Since the site cannot be addressed by the NRC, EPA is listing the site.

Agency for Toxic Substances and Disease Registry (ATSDR) Criteria

EPA is dropping one site originally proposed under the ATSDR criteria. Although ATSDR originally recommended dissociation of individuals from the release because of the health risks at the site, ATSDR no longer believes this is necessary. Since the advisory criterion no longer is met, the site does not meet all conditions necessary for listing and is being dropped.

V. Disposition of Sites in Today's Final Rule

This final rule promulgates 6 sites (Table 1) and removes 14 sites from several proposed rulemakings. These 20 sites are from the following proposed updates:

- Update #1 (48 FR 40674, September 1983): 1 site
- Update #2 (49 FR 40320, October 15, 1984): 11 sites
- Update #5 (51 FR 21099, June 10, 1986): 2 sites
- Update #6 (52 FR 2492, January 22, 1987): 1 site
- Update #7 (53 FR 23988, June 24, 1988): 4 sites
- Update #10 (54 FR 43778, October 26, 1989): 1 site

**Table 1
National Priorities List, New Final Sites (by Rank) February 1991**

Grade ¹	Rank	State	Site Name	City/County
5	205	UT	Wasatch Chemical Co. (Lot 6)	Salt Lake City
8	394	UT	Midvale Slag	Midvale
11	524	IL	Kerr-McGee (Kress Creek)	DuPage County
12	575	MD	Anne Arundel County Landfill	Glen Burnie
13	614	CA	Spectra-Physics, Inc.	Mountain View
21	1007	CA	Fairchild Semiconduct (Mt View)	Mountain View

Number of New Final Sites: 6 ¹ Sites are placed in groups (Gr) corresponding to groups of 50 in the

EPA read all comments received on these sites, including late comments. Because of the volume and number of late comments received and the need to make final decisions on currently proposed sites prior to the date that the revised HRS takes effect, EPA was not able to respond to all late comments received for sites in this rule. EPA has responded (in the Support Document) to those comments postmarked no later than October 31, 1988 for sites included in this final rule that were proposed in Updates #1, 2, 5, 6, and 7, and to those comments postmarked no later than February 6, 1990 for sites in this final rule that were proposed in Update #10. (EPA had previously indicated that it may no longer be able to consider late comments (53 FR 23990, June 24, 1988 and, most recently 54 FR 43779, October 26, 1989). Although EPA has not responded to all late comments, it has read all late comments and endeavored to respond in the Support Document to those late comments that bring to the Agency's attention a fundamental error in the scoring of a site. In addition, the Agency has routinely responded to late comments resulting from EPA correspondence that provided commenters with more recent data or requested that the commenters be more specific in their comments.

Based on the comments received on the proposed sites, as well as investigation by EPA and the States (generally in response to comment), EPA recalculated the HRS scores for individual sites where appropriate. Where the public comments or additional information dropped a score below 28.50, the site has been withdrawn at this time. EPA's response to site-specific public comments and explanations of any score changes made as a result of such comments are addressed in the "Support Document for the Revised National Priorities List Final Rule - February 1990".

RCRA Sites

One site in this final rule is subject to subtitle C corrective action authorities, but the transfer of primary responsibility from CERCLA to RCRA would likely cause delays and inefficiencies that could threaten the remediation of the site. This site is being added to the final NPL consistent with the intent of the NPL/RCRA policy:

- Fairchild Semiconductor Corp. (Mountain View Plant) Mountain View, California

Four sites are not being listed because they can be addressed under Subtitle C corrective action authorities:

- Mesa Area Ground Water Contamination, Mesa, Arizona
- Chemplex Co., Clinton/Camanche, Iowa
- Findett Corp., St. Charles, Missouri
- Burlington Northern Railroad (Somers Tie-Treating Plant), Somers, Montana

Documentation supporting EPA's decisions on these sites is available in the appropriate Support Documents.

Radioactive Release Sites

One site with radioactive releases is being added to the final NPL consistent with the NPL/NRC policy, because although the site may be under NRC jurisdiction, the contamination cannot be addressed by NRC:

- Kerr-McGee (Kress Creek/West Branch of DuPage River), DuPage County, Illinois

Documentation supporting EPA's decision is available in the appropriate Support Document.

Pesticide Sites

Six of the sites addressed in this rule involve contamination that appears to result, at least in part, from the field application of pesticides registered under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). The Agency is in the process of developing a general strategy for addressing contamination from agricultural chemicals in ground water under FIFRA. It would be premature to make a final decision on these sites until that broader strategy and its relationship with the Superfund program, have been determined. Therefore, these six sites are not being added to the NPL at this time:

- Kunia Wells I, Oahu, Hawaii
- Kunia Wells II, Oahu, Hawaii
- Mililani Wells, Oahu, Hawaii
- Waiawa Shaft, Oahu, Hawaii
- Waipahu Wells, Oahu, Hawaii
- Waipio Heights Well II, Oahu, Hawaii

ATSDR Sites

One site is being dropped because the ATSDR criteria are no longer met:

- Quail Run Mobile Manor, Gray Summit, Missouri

Score Revisions

EPA has revised the HRS scores for 6 sites based on its review of comments and additional information developed by EPA and the States (Table 2). Some of the changes have placed the sites in different groups of 50 sites. For three of these sites, the public comments have resulted in scores below the cut-off of 28.50. Accordingly, these proposed sites are being withdrawn at this time. They may be reconsidered in the future, based on further information.

- Comet Oil Co., Billings, Montana
- Kerr-McGee Corp. (Cushing Plant), Cushing, Oklahoma
- Richardson Flat Tailings, Summit County, Utah

**Table 2
Sites With HRS Score Changes**

State/site name	Location	HRS Score Proposed	HRS Score Final
CA/Spectra Physics, Inc.	Mountain View	39.92	37.20
MT/Comet Oil Co.	Billings	48.10	(1)
OK/Kerr-McGee Corp (Cushing Plant)	Cushing	31.49	(1)
UT/Midvale Slag	Midvale	34.68	42.47
UT/Richardson Flat Tailings	Summit County	39.13	(1)
UT/Wasatch Chemical Co. (Lot 6)	Salt Lake City	63.31	49.91

¹ Score indeterminate but below 28.50.

VI. Disposition of All Proposed Sites/ Federal Facility Sites

To date, EPA has proposed 10 major updates to the NPL. With this final rule no sites remain in proposed status. Future sites will be evaluated using the revised HRS. The 6 new sites added to the NPL in this rule (Table 1) have been incorporated into the NPL in order of their HRS scores except where EPA modified the order to reflect top priorities designated by the States, as discussed in greater detail in previous rules, 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 risk. Except for the first group, the score range within the groups, as indicated in the list, is less than 4 points. EPA considers the sites within a group to have approximately the same priority for response actions. For convenience, the sites are numbered. Federal facilities are listed separately.

The following three sites previously were placed on the NPL because they met the requirements of the NCP at § 300.425(c)(3), as explained in section III of this rule:

- Forest Glen Mobile Home Subdivision, Niagara Falls, New York
- Radium Chemical Co., Inc., New York, New York
- Lansdowne Radiation Site, Lansdowne, Pennsylvania

These sites have HRS scores less than 28.50 and appear at the end of the list.

VII. 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 this 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 these 6 sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. This rule was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Costs

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

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

EPA initially bears costs associated with responsible party searches. Responsible parties may bear some or all the costs of the RI/FS, remedial design and construction, and O&M, or EPA and the States may share costs.

Section 104 of CERCLA, as amended, provides that for privately-owned sites, as well as for 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 groundwater and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional.

After that, the State assumes full responsibilities for O&M.

In previous NPL rulemakings, the Agency estimated the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. EPA will continue with this approach, using the most recent (1988) cost estimates available; these estimates are presented below. However, there is wide variation in costs for individual sites, depending on the amount, type, and extent of contamination. Additionally, EPA is unable to predict what portions of the total costs responsible parties will bear, since the distribution of costs depends on the extent of voluntary and negotiated response and the success of any cost recovery actions.

Cost category	Average total cost per site ¹
RI/FS	1,300,000
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.

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

1. 10% of remedial actions and 10% of first-year O&M costs at privately-owned sites and sites 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 assumptions developed in the 1982 RIA for the NCP, EPA has assumed that 90% of the 6 non-Federal sites added to the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately \$20 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately \$18 million.

Placing a hazardous waste site on the NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the sites voluntarily, or it may act as a potential trigger for subsequent enforcement or cost-recovery actions. Such actions may impose costs on firms, but the decisions to take such actions are discretionary and made on a case-by-case basis. Consequently, precise estimates of these effects cannot be made. EPA does not believe that every site will be cleaned up by a responsible party. EPA cannot project at this time which firms or industry sectors will bear specific portions of the response costs, but the Agency considers: the volume and nature of the waste at the sites; the strength of the evidence linking the wastes at the site to the parties; the parties' ability to pay; and other factors when deciding whether and how to proceed against the parties.

Economy-wide effects of this amendment to the NCP are aggregations of effects on firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this amendment on output, prices, and employment is expected to be negligible at the national level, as was the case in the 1982 RIA.

Benefits

The real benefits associated with today's amendment placing additional sites on the NPL are increased health and environmental protection as a result of increased public awareness of potential hazards. In addition to the potential for more federally financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts. Listing sites as national priority targets 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.

VIII. 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 programs could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 6 non-Federal sites 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 what enforcement actions to take, including not only the firm's contribution to the problem, but also the firm's ability to pay.

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

List of Subjects in 40 CFR Part 300

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

Dated: February 6, 1991.

Don R. Clay,

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 is revised 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, 3 CFR, 1971-1975 Comp., p. 793; E.O. 12580, 3 CFR, 1987 Comp., p.193.

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

BILLING CODE 6560-50-M