

# Federal Register Notice

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## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300  
[SWH-FRL-2646-2]

### Amendment to National Oil and Hazardous Substance 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 document amends the National Priorities List ("NPL"), which was promulgated as Appendix B of the NCP on September 8, 1983. 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 is being revised to meet those requirements.

#### DATES:

The promulgation date for this amendment to the NCP shall be September 21, 1984. Under section 305 of CERCLA, amendments to the NCP cannot take effect until Congress has had at least 60 "calendar days of continuous session" from the date of promulgation in which to review the amended Plan. Since the actual length of this review period may be affected by Congressional action, it is not possible at this time to specify a date on which the NPL will become effective. Therefore, EPA will publish a Federal Register notice at the end of the review period announcing the effective date of this NPL. EPA notes, however, that the legal effect of a Congressional veto pursuant to section 305 has been placed in question by the recent decision, *Immigration and Naturalization Service v. Chadha*, 103 S. Ct. 2764 (1983). Nonetheless, the Agency has decided, as a matter of policy, to submit the NPL for Congressional review. If, however, public health or environmental concerns indicate the necessity for the Agency to initiate remedial action at any of the sites that have been placed on the NPL before the expiration of the time period specified in section 305, such actions will be taken.

#### ADDRESSES:

The public docket for the NCP will contain Hazard Ranking System (HRS) score sheets for all sites on the NPL, as well as a "Documentation Record" for each site, describing the information used to compute the scores. The main docket is located in Room S325, Waterside Mall, 401 M Street, SW, Washington, DC 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for copies of these documents should be directed to EPA at the above address. The EPA Regional Offices maintain dockets concerning the sites located in their Regions. Addresses for the Regional Office dockets are:

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## **I. Introduction**

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 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 includes 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 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 which are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982).

Section 105(8)(B) of CERCLA requires that these criteria be used to prepare a list of national priorities among the known releases or threatened releases throughout the United States, and that to the extent practicable at least 400 sites be designated individually on this 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 not only of designated hazardous substances, but of any "pollutant or contaminant" which presents an imminent and substantial danger to the public health or welfare. CERCLA requires that the NPL be included as part of the NCP. On September 8, 1983, EPA amended the NCP by adding the NPL, consisting of 406 sites, as Appendix B. On that same day, EPA proposed to amend Appendix B to add an additional 133 sites to the NPL. Of that number, four sites (San Gabriel Sites 1, 2, 3 and 4) have already been added to the NPL on May 8, 1984. Today, the Agency is revising Appendix B by adding 128 sites to the NPL. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

## II. Purpose of the NPL

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 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 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 in order 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 private party, nor does it determine the liability of any party for the cost of cleanup at the site.

In addition, although the HRS scores used to place sites on the NPL may be helpful to the Agency in determining priorities for cleanup and other response activities among sites on the NPL, EPA does not rely on the scores as the sole means of determining such priorities, as discussed below. Neither can the HRS itself determine the appropriate remedy for a site. The information collected to develop HRS scores to choose sites for the NPL is not sufficient in itself to determine the appropriate remedy for a particular site. After a site has been included on the NPL, EPA generally will rely 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 these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies EPA may conclude that it is not desirable to conduct response action at some sites on the NPL because of more pressing needs at other sites. Given the limited resources available in the Hazardous Substance Response Fund established under CERCLA, 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 no action is needed at a site because the site does not present a significant threat to public health, welfare or the environment.

## III. Implementation

EPA's policy is to pursue cleanup of hazardous waste sites using all appropriate response and/or enforcement actions which are available to the Agency. Publication of sites on the NPL will serve as notice to any potentially responsible party that the Agency may initiate Fund-financed response action. The Agency will decide on a site-by-site basis whether to take enforcement action or to proceed directly with Fund-financed response actions and seek recovery of response costs after cleanup. To the extent feasible, once sites are listed on the NPL EPA will determine high priority candidates for Fund-financed response action and enforcement action through State or Federal initiative. The determinations will take into account which approach is more likely to accomplish cleanup of the site while using the Fund's limited resources as efficiently as possible.

In many situations, it is difficult to determine whether private party response through enforcement measures of Fund-financed response and cost recovery will be the more effective approach in securing site cleanup until studies have been completed indicating the extent of the problem and alternative response actions. Accordingly, the Agency plans to proceed with remedial investigations and feasibility studies at sites as quickly as possible. (See the NCP, 40 CFR 300.68, and the preamble, 47 FR 31180, July 16, 1982, for a more detailed discussion of remedial investigations and feasibility studies).

Funding of response actions for sites will not necessarily take place in order of the sites' ranking on the NPL. EPA does intend in most cases to set priorities for remedial investigations and feasibility studies largely on the basis of relative position on the list and the States' priorities simply because at this early stage these may be the only sources of information regarding the risks presented by a site. Funding for the design and construction of remedial measures is less likely, however, to be done according to relative position on the list. State assurances that cost sharing and other

State responsibilities will be met are prerequisites for construction of remedial measures. Taking those factors into account, EPA will base priorities for design and construction on impacts on public health and the environment, as indicated by the HRS scores and other available information, and on a case-by-case evaluation of economic, engineering, and environmental considerations.

Revisions to the NPL such as today's rulemaking will tend to result in moving some previously listed sites to a lower position on the NPL. If EPA has initiated remedial action such as a remedial investigation or feasibility study at a site, the Agency does not intend to cease such actions in order to determine whether a subsequently listed site should have a higher priority for funding. Rather, the Agency will continue funding remedial actions once they have been initiated regardless of whether higher scoring sites are later added to the NPL.

The NPL does not determine priorities for removal actions; EPA may take removal actions at any site, whether listed or not, that meets the criteria of §§ 300.65-300.67 of the NCP. Likewise, EPA may take enforcement actions under applicable statutes against responsible parties regardless of whether the site is listed on the NPL, although the focus of EPA's enforcement actions will be on NPL sites.

## IV. Process for Establishing the NPL

Section 105(8) of the CERCLA contemplates that the States will identify the majority of candidate sites for the NPL according to EPA criteria, although EPA also has independent authority to consider sites for listing. For that reason, most of the sites on the NPL were evaluated by the States in accordance with the HRS and submitted to EPA. In some cases, however, EPA Regional Offices, independent of these State efforts, scored other sites using the HRS. For all sites considered for this update of the NPL, including those scored by the States, EPA reviewed the HRS evaluations and conducted quality assurance audits. These audits are intended to ensure accuracy and consistency in HRS scoring among the various EPA and State offices.

On September 8, 1983, EPA proposed the first revision to the NPL in the **Federal Register** (48 FR 40674). Of the 133 sites proposed, 131 had received HRS scores of 28.50 or higher; one site was designated by the State as its top priority and, according to CERCLA, must be included among the top 100 sites; and one site was proposed for listing on the basis of a future NCP amendment which will delineate additional criteria for listing sites on the NPL. The cutoff score of 28.50 points was the same cutoff chosen for the initial NPL (see 47 FR 58476, December 30, 1982, and 48 FR 40658, September 8, 1983). The cutoff score was selected because it would yield an initial NPL of at least 400 sites as suggested by CERCLA, not because of any determination that sites scoring less than 28.50 did not present a significant risk to human health, welfare or the environment.

The public comment period on the proposed rule ended November 8, 1983. EPA considered all comments received by March 30, 1984. Based on the comments received on the September 8, 1983, proposed rule, as well as further investigation by EPA and the States, EPA recalculated the HRS scores for individual sites where appropriate. EPA's response to 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 - 1984." This document is available for review in the EPA dockets in Washington, DC and the Regional Offices.

One commenter disagreed with EPA's approach for selecting sites for the NPL update. The commenter was concerned over the lack of a permanent and consistent rationale for the NPL cutoff score of 28.50. The commenter said that the threshold should be based on risk, not on the need to include a specified number of sites. The commenter suggested that EPA should begin to address this issue for long-range planning purposes in its implementation of CERCLA. The commenter expressed concern that EPA and others may "erroneously assume there is an automatic need to continually replenish the list." The commenter said that if sites posing minimal or non-existent risks continue to be added to the NPL, the public could be misled about the nature of the risks, and unnecessary demands could be placed on public and private resources.

In response, EPA selected the 28.50 score for the initial NPL because it would yield a list of at least 400 sites as required in section 105(8)(B) of CERCLA. The decision to retain the 28.50 cutoff score for the first update was based on the absence of any scientific evidence of an alternative HRS threshold score. EPA has not made a determination that sites scoring less than 28.50 do not present a significant risk to human health, welfare, or the environment.

The HRS was designed to use information such as that collected during a site inspection in order to allow EPA to include sites which have not been extensively investigated. As stated in the Preamble to the NCP (47 FR 31188), the requirements of section 105(8)(A) of CERCLA to list national priorities would not be met if EPA waited until extensive information has been generated for all releases. Consequently, the HRS does not measure absolute risks associated with a site. EPA believes that such a risk assessment would require significantly greater time and funds than are presently required for placing a site on the NPL. The HRS does distinguish relative risks among sites and does identify sites that appear to present a significant risk to public health, welfare, or the environment.

A much more detailed investigation is conducted following a site's listing on the NPL. Decisions on the type and extent of actions to be taken at these sites are made in accordance with the criteria contained in subpart F of the NCP. These more detailed studies would determine if sites posing minimal or nonexistent risks had been included on the NPL. In response to the commenter's concerns, EPA could conclude after further analysis that no action is needed at such a site because it does not present a significant threat to public health, welfare, or the environment.

EPA has initiated a preliminary study to characterize the potential threats from sites that score below the cutoff score of 28.50. Generally, these are sites that potentially affect fewer people, or where there is less opportunity for exposure. EPA has acknowledged that in limited circumstances it may be appropriate to consider other criteria than simply a sufficiently high HRS total score for purposes of listing sites on the NPL. These criteria, described in the Preamble to the first NPL update (48 FR 40676, September 8, 1983) were the basis for proposing the Quail Run Mobile Manor, Missouri site for inclusion on the NPL. Although the NCP does not currently include provisions to add sites on the basis of these criteria, EPA intends to modify the NCP in such a way that Quail Run and other similar sites will qualify for the NPL.

EPA considered several alternatives for adding sites to the NPL:

1. Maintaining the size of the list at approximately 400 sites by raising the threshold HRS score and removing lower-scoring sites from the list;
2. allowing the list to expand in a limited way by raising the threshold score but not removing lower-scoring sites from the list; and
3. maintaining the threshold score of 28.50 and allowing the size of the NPL to be determined by the number of sites exceeding the threshold score.

EPA selected the third approach in order to be consistent at all sites and to give equal treatment to all interested parties. EPA's decision was not based on a need to replenish the list. The list is growing because EPA and the States continue to identify candidates as a result of their investigative programs.

Some commenters stated that certain specific sites not included in the September 8, 1983, proposed rule should be on the NPL. EPA and States are evaluating those sites and will propose any sites that meet EPA's criteria in future updates.

## **V. Contents of the NPL**

As noted above, CERCLA requires that the NPL include, if practicable, at least 400 sites. The NPL amendment published today contains a total of 538 entries, including 128 new sites. Each entry contains the name of the facility, the State and city or county in which it is located, and the corresponding EPA Region. For informational purposes, each entry is accompanied by a notation on the current status of response and enforcement activities at the site. The definitions of the status codes are described more fully below.

The new sites added to the NPL are incorporated into the previously promulgated NPL in order of their HRS score (except where EPA modified the order to reflect top priorities designated by States, as discussed in the following paragraph). Those new sites are also listed separately in Table 2. The NPL is presented in groups of 50 sites to emphasize the fact that minor differences in HRS scores do not necessarily represent significantly different levels of risk. EPA considers the sites within a group to have approximately the same priority for response actions.

Section 105(8)(B) of CERCLA requires that, to the extent practicable, the NPL include within the 100 highest priorities at least one facility designated by each State as representing the greatest danger to public health, welfare, or the environment among known facilities in the State. The Agency did not require States to rely exclusively on the HRS in designating their top priority sites, and the HRS scores of some of these sites did not place them among the first 100. These lower-scoring State priority sites are listed at the bottom of the first 100 sites. All top priority sites designated by States are indicated by asterisks.

For informational purposes, the NPL includes several categories of notation reflecting the status of response and enforcement actions based on the Agency's most current information. Because a site's status may change periodically, these notations may become outdated. Site status will be noted in the following categories: Voluntary or Negotiated Response (V); Federal and State Response (R); Federal or State Enforcement (E); and Actions to be Determined (D). Each category is explained below.

### ***Voluntary or Negotiated Response (V)***

Sites are included in the Voluntary or Negotiated Response category if private parties are taking response actions pursuant to settlement agreements or consent orders to which EPA is a party. Voluntary or negotiated cleanup may also include actions taken pursuant to a consent decree reached after EPA has commenced an enforcement action. This category of response may include remedial investigations, feasibility studies, and other preliminary work, as well as actual cleanup.

### ***Federal and State Response (R)***

The Federal and State Response category includes sites at which EPA or State agencies have commenced or completed removal or remedial actions under CERCLA, including remedial investigations and feasibility studies (see NCP, § 300.68 (f)-(i), 47 FR 31217, July 16, 1982). For purposes of this classification, EPA considers the response action to have commenced when EPA has obligated funds. For some sites in this category EPA may follow remedial investigations and feasibility studies with enforcement actions, at which time the site status would change to "Federal or State Enforcement".

### ***Federal or State Enforcement (E)***

This category includes sites where the United States or the State has filed a civil complaint or issued an administrative order. It also includes sites at which a Federal or State court has mandated some form of nonconsensual response action following a judicial proceeding. It does not, necessarily, include all sites at which preliminary enforcement activities are underway. A number of sites on the NPL are the subject of enforcement investigation or have been formally referred to the Department of Justice for enforcement action. EPA's policy is not to release information concerning a possible enforcement action until a lawsuit has been filed. Accordingly, such sites are not included in the enforcement category.

### ***Actions to be Determined (D)***

This category includes all sites not listed in any other category. A wide range of activities may be in progress for such sites. The Agency may be considering whether to undertake response action, or may be conducting an enforcement investigation. EPA may have referred a case involving the site to the Department of Justice prior to formal commencement of enforcement action. Other examples of actions not covered in other categories include investigations to determine the source of a release in areas adjacent to or near a Federal facility or cleanup operations by responsible parties that are not covered by consent orders, consent decrees, or settlement agreements.

## **VI. Eligibility**

CERCLA restricts EPA's authority to respond to the release of certain substances into the environment, and explicitly excludes some substances from the definition of release. In addition, as a matter of policy, EPA may choose not to respond to certain types of releases under CERCLA because existing regulatory or other authority under other Federal statutes provides for an appropriate response. Where such other authorities exist, and the Federal government can undertake or enforce cleanup pursuant to a particular established program, listing on the NPL to determine the priority or need for response under CERCLA may not be appropriate. EPA has therefore chosen not to consider certain types of

sites for the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency will consider listing them on the NPL.

This section discusses the comments received on these categories of releases and the Agency's decisions with respect to including them on the NPL.

### ***Releases of Radioactive Materials***

Section 101(22) of CERCLA 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 inclusion on the NPL. The exclusions apply to the following:

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 also chosen not to list releases of source, by-product, or special nuclear material from any facility with a current license issued by the Nuclear Regulatory Commission (NRC), on the grounds that the NRC has full authority to require cleanup of releases from such facilities. Formerly licensed facilities whose licenses no longer are in effect will, however, be considered for listing.

Some commenters took issue with EPA's position on releases of radioactive materials in presenting the following arguments:

1. EPA should not include facilities on the NPL that hold a current license issued by a State pursuant to a delegation of authority from the NRC pursuant to section 274 of the Atomic Energy Act (42 U.S.C. 2021);
2. EPA should not include sites containing radioactive materials on the NPL because other Federal authorities, such as UMTRCA, provide adequate authority to control releases from such sites; and
3. HRS scores do not accurately reflect the real hazards presented by radioactive sites especially when the releases are within radiation limits established by NRC pursuant to the Atomic Energy Act.

These comments reiterate points made when the first NPL was published. EPA's response (48 FR 30661, September 8, 1983) remains unchanged. Regarding the points that facilities regulated by States should not be included on the NPL, one commenter said that EPA is incorrect as to the control exercised by the NRC in such agreement States and that such State controls are adequate. EPA on the other hand believes that if such controls are adequate, then the sites will not have sufficiently high HRS scores to warrant including them.

### ***Releases From Federal Facilities***

CERCLA section 111(e)(3) prohibits use of the Fund for remedial actions at Federally owned facilities. EPA has not listed any sites where the release clearly resulted solely from a Federal facility, regardless of whether contamination remains on-site or has migrated off-site. EPA did, however, consider eligible for inclusion on the NPL sites where it was unclear whether the Federal facility was the sole source of contamination based on the rationale that if some other source were also responsible, EPA might be authorized to respond. In these situations, the off-site contaminated area associated with this type of release was considered eligible for inclusion. Sites previously, but not currently, owned by the Federal government were also considered eligible. Finally, sites not owned by the Federal government but where the Federal government may have contributed to a release were also eligible.

EPA chose not to list releases coming solely from Federal facilities because EPA lacks response authority and because Executive Order 12316 (46 FR 42237, August 20, 1981) assigns the responsibility for cleanup of these sites to the



responsible Federal agency. EPA incorporated this position into the NCP, at § 300.66(e)(2) (47 FR 31215, July 16, 1982). However, after further consideration of this policy, the Agency concluded that it may be useful for informational purposes to include Federal facility sites on the NPL and will propose a future amendment to the NCP to permit the Agency to do so. EPA intends to consider Federal facilities in the next update proposal.

### ***Indians Lands***

Sites on Indian lands are currently eligible for inclusion on the NPL. EPA is developing a discovery and investigation program for evaluating potential sites on Indian lands. The Agency urges commenters to submit information on any sites which they feel may need to be evaluated for future updates to the NPL.

### ***RCRA Sites***

As stated in EPA's previous NPL rulemaking (48 FR 40658, September 8, 1983), both CERCLA and the Resource Conservation and Recovery Act (RCRA) contain authorities applicable to hazardous waste facilities. These authorities overlap for certain sites. Accordingly where a site consists only of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA except as provided in the paragraph that follows. The Land Disposal Regulations under RCRA (40 CFR Parts 122, 260, 264, and 265) gives EPA and the States authority to control active sites through a broad program which includes monitoring, compliance inspections, penalties for violations, and requirements for postclosure plans and financial responsibility. RCRA regulations require a contingency plan for each facility. The regulations also contain ground water protection standards (40 CFR Part 264 Subpart F) that cover detection monitoring, compliance monitoring (if ground water impacts are identified) and corrective action for releases within the boundaries.

These monitoring and corrective action standards apply to all "regulated units" of RCRA facilities, i.e., any part of the waste treatment, storage, or disposal operation within the boundaries of the facility that accepted waste after January 26, 1983, the effective date of the Land Disposal Regulations (47 FR 32349, July 26, 1982). Even if the unit ceases operation after this time, EPA has the authority to require it to obtain a permit, and the monitoring and corrective action requirements could therefore be enforced by this mechanism. Given this alternative authority to ensure cleanup, regulated units of RCRA facilities generally are not included on the NPL. If the facility is abandoned or lacks sufficient resources and the RCRA corrective action requirements cannot be enforced, EPA will consider listing the site on the NPL for possible response under CERCLA. This policy is applicable not only to sites subject to EPA-administered hazardous waste programs but also to sites in States that administer programs approved by EPA. In the latter instance, close Federal control is ensured by the comprehensiveness of the program elements required of all State programs along with EPA's authority to enforce State program requirements directly if the State fails to do so. EPA does, however, consider eligible for listing on the NPL those RCRA facilities where a significant portion of the release appears to come from "non-regulated units" of the facility (that is, portions that ceased operation prior to January 26, 1983).

### ***Releases of Mining Wastes***

Some commenters expressed their views that CERCLA does not authorize EPA to respond to releases of mining wastes and, therefore, sites involving mining wastes should not be included on the NPL. The commenters argued that it is unclear if CERCLA was intended to address the type of waste problem, characterized by low concentrations and large volumes, associated with mining waste. The commenter believed the HRS is not an appropriate tool to estimate the risk to health and the environment presented by mining waste sites. Finally, the commenters stated that the mining waste sites are generally in rural areas, so that no sizable target populations are affected.

These comments also were received during the previous rulemaking and EPA's response to these comments (48 FR 40663, September 8, 1983) remains unchanged. Some commenters raised a new issue related the EPA's authorities to respond to mining sites; that is, certain sites do not pose imminent hazards, thus, should not have been included on the NPL or are not eligible. EPA believes that if the substance involved at a site is a "hazardous substance," the Agency can respond to any release, or any threatened release, without any need to determine that a threshold level of hazard is present. With respect to pollutants or contaminants, EPA does not agree that response authority is limited to releases that pose an imminent and substantial danger. Section 104(a)(1)(B) of CERCLA clearly states that response is authorized for any release that "may" present an imminent and substantial danger, and is not limited to those that actually do present such danger. More importantly, response is authorized not only for releases, but for any "substantial threat of release." As one example, the East Helena site in Montana presents at least a substantial threat

of release, as indicated by the fact that its HRS score was based on the potential for a release, which resulted in a score high enough to place it on the NPL.

Regarding the issue of whether the HRS is appropriate for evaluating mining sites, one commenter elaborated on the point that HRS does not use information on the concentrations of the substances involved and that mineral substances do not pose the same risks as man-made chemicals. In response, the commenters have presented no information that would support a contention that concentrations of hazardous substances in discharges from mining sites are lower than from other types of sites or are too low to cause problems. The toxicity values specified in the HRS instructions, including those for mineral substances, are derived from standard references in the field of toxicology. Concentrations at which various health effects occur are the basis for assigning toxicity values to various mineral substances. The fact that these standard texts assign the highest toxicity values to some mineral substances contradicts the position set forth by the commenter. Furthermore, EPA believes that there is ample evidence that the concentrations and amounts of pollutants and contaminants discharged by mining sites can and do have a significant impact on public health and the environment. As the commenter pointed out, mining sites tend to generate extremely large quantities of wastes. Thus, even if the concentration of hazardous substances in the wastes are low, as the commenter contends, the total quantities of substances available to be discharged into the environment are high. Finally, as the commenter's own studies demonstrate, the two most important factors in determining whether a mining site is included on the NPL are whether the site is known to be discharging into the environment and the size of and distance to the potentially affected populations. EPA believes that these are reasonable factors to use in assessing sites.

### ***Sites Which May Be Cleaned Up by Responsible Parties***

Some commenters said that EPA should not include on the NPL those sites associated with known active waste sources with identified responsible parties because such listing misrepresents the amount of Fund money required for response actions and may give an unduly negative impression with respect to ongoing cleanup activities. One commenter suggested deleting from the NPL sites undergoing such cleanups. Another commenter said that EPA should not include on the NPL those sites where the responsible parties are "acting appropriately." Other commenters said that EPA should not have included certain sites on the NPL because responsible parties had concluded agreements with State agencies or the Federal government providing for response actions.

In developing the policy on eligibility for the NPL, EPA considered several alternatives for excluding sites where private parties might be performing cleanup. The Agency decided, however, that making such exclusions was not the best approach, taking into account the purpose of the NPL as stated in the legislative history of CERCLA, the objectives of protecting public health and the environment, and the need to administer the program consistently. The NPL is primarily for informational purposes (Report of the Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess. 60 (1980)). The Agency believes that even where a site is undergoing response actions, interested parties such as neighboring residents may need to know about the threats posed by that site relative to other sites. In addition, the Agency believes that including sites on the NPL until appropriate cleanup actions have been completed will provide more incentives for early and effective actions than the alternatives such as excluding sites where responsible parties have agreed to begin cleanup. Another consideration is that the comprehensiveness and effectiveness of such agreements will vary considerably among States, and in some cases agreements may not be completely consistent with the standards of the NCP. Excluding sites on the basis of the financial resources of responsible parties may establish a dual standard that is unfair to small businesses. Furthermore, some financially viable responsible parties have refused to undertake response actions. Finally, excluding sites on the basis of financial resources of potentially responsible parties would necessitate identification of those parties and comparison of their resources with potential cleanup costs before listing them on the NPL, which EPA believes would significantly increase the costs of the NPL, and seriously delay its implementation. Accordingly, consistent with previous Agency policy, EPA has decided not to exclude any sites based on the financial resources of responsible parties or their willingness to respond to releases.

### ***Sites Which Are Difficult To Address***

One commenter said that "unbounded or unmanageable sites, such as well fields" should not be included on the NPL. In response, EPA believes that unless a remedial investigation and feasibility study has been completed at a site, it is not possible to specify whether a site presents a manageable problem. Furthermore, at many of those sites where commonly applied remedial actions are infeasible, some response actions short of waste removal or source controls, e.g., providing alternative water supplies, may be appropriate. EPA believes that the technologies for response actions have been developing rapidly; a response which was infeasible in the past may become feasible in the near future. Finally, with the case specifically mentioned, wellfields, the Agency has generally found the need for CERCLA response

particularly acute since this generally involves contamination of public water supplies. Hence, EPA has not attempted to exclude sites which are especially difficult to address through current response technologies.

### ***Noncontiguous Facilities***

Section 104(d)(4) of CERCLA authorizes the Federal government to treat two or more noncontiguous facilities as one for purposes of response, if such facilities are reasonably related on the basis of geography or their potential threat to public health, welfare, or the environment. As previously stated (48 FR 65058, September 8, 1983), for purposes of the NPL, EPA has decided that in most cases such sites should be scored and listed individually because the HRS scores more accurately reflect the conditions at the sites if each is scored individually. In other cases, however, the nature of the operation that created the sites and, possibly, the nature of the appropriate response may indicate that two geographically separate properties should be treated as one site for purposes of listing. EPA has done so for some sites previously listed separately on the NPL.

Factors relevant to such a determination may include whether the two or more areas were operated as parts of a single unit. Another factor is whether contamination from the two or more sites is threatening the same part of an aquifer or surface water body. Finally, EPA will also consider the distance between the noncontiguous sites and whether the target population (i.e., within 3 miles) is essentially the same or substantially overlapping for the sites.

One commenter, Governor Bond of Missouri, submitted the 33 known dioxin sites in that State as a single site on the NPL. Using characteristics from various sites, he assigned a single HRS score to the 33 sites. Governor Bond maintained that the dioxin was produced by a single waste generator and that the sites had a common method of disposal. According to the Governor, by treating the sites individually EPA has complicated negotiations for health studies, development of cost recovery suits, and the State's accounting procedures.

EPA carefully considered the Governor's proposal and, taking into account the factors discussed above, decided that his reasons did not warrant consolidating the 33 sites into a single site. The sites are dispersed over a wide area of the State and affect different target populations. The 33 sites generally comprised different disposal operations rather than parts of the same facility. Many of the 33 sites would not individually score high enough to be on the NPL and, thus, the overall score for the 33 sites would be misleading. EPA has also concluded that listing the 33 sites as a single site on the NPL is not a prerequisite for developing a consolidated response strategy for the Missouri dioxin sites. Many of these sites may qualify for Fund-financed removal actions. The Agency is currently evaluating ways of coordinating possible response strategies at these sites to alleviate the problems which Governor Bond has identified.

Another commenter expressed the view that any grouping of noncontiguous sites would be inappropriate. EPA disagrees. In some instances the property boundaries or other factors commonly used to define a site may not be very useful or reasonable for determining if a problem involves one site or several. One example is the Minker/Stout/Romaine Creek site in Missouri where dioxin contaminated soils were used as fill in several yards in a residential neighborhood. Even though the contaminated areas are not contiguous and the properties involved have several different owners, the Agency determined that the site was really a single operation, that the same target populations might be affected, and that there is no logic to support treating the various areas as separate sites. Given the many factors involved in making such determinations and the differing importance that each factor may take on in various situations, the Agency must weigh each situation individually to determine if noncontiguous disposal areas are a single site or several.

Where EPA determines, based on the above considerations, that two or more noncontiguous locations are most logically considered as a single site, they will appear as a single site on the NPL. While the listing suggests prospective response actions, it does not prescribe them; EPA may decide that response efforts should be distinct and separate for the two locations. Also, EPA may decide to respond to several sites listed separately on the NPL with a single response if it appears cost-effective to do so.

### ***Scoring of Air Releases***

A comment was received concerning how past air releases are scored. Language in the preamble to the final NCP caused a commenter on the Bayou Sorrell, Louisiana site to question whether past air releases may properly be included in a site's HRS score. This issue is discussed in detail in the "Support Document for the revised National priorities List - 1984" for the Bayou Sorrell site. However, the main points of this issue are presented in the following discussion.

EPA believes that past air releases are included in a site's HRS score. The HRS stipulates that a site is to be scored for an air release if data "show levels of a contaminants at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of the occurrence (47 FR 31236). According to the HRS as established in the NCP revisions, therefore, the single evidence of an air release such as that which occurred at Bayou Sorrell, requires that the site be scored as having an observed release to air. This approach to scoring has been clarified by EPA's stated policy that sites are to be scored on the basis of conditions existing before any remedial measures were performed. This policy was clearly stated at the time of promulgation of the NCP revisions (47 FR 31188), and EPA considers it to be firmly established as part of the HRS. In addition, the Agency has attempted to clarify further the reasons for this policy in subsequent statements (48 FR 40664-5).

Several considerations underlie the policy. Actions by States to conduct or enforce cleanup might be discouraged if partial cleanup of a site could reduce the score such that the site would not be eligible for the NPL.

Another concern is that responsible parties might be encouraged to conduct minimal, incomplete cleanup actions at sites that might reduce the HRS score but fail to remedy the problems completely. For example, a site may present problems in all three routes - ground water, surface water, and air, and only the air route is remedied. In such a situation, because the partial cleanup could leave significant health threats unaddressed, the site would not be scored on the basis of the latest conditions, but rather on the basis of conditions existing prior to the remedy of the air route (48 FR 40664).

A third consideration is that the HRS was designed according to the reasonable approximations of risk that could be derived from certain basic conditions at a site as they existed prior to any cleanup actions. Where the data on a site reflect conditions after some cleanup actions, the assumptions upon which the HRS was designed may no longer be appropriate, and the score would not represent an approximation of risk that is accurate or consistent with scores for other sites. All three of these considerations are explained in detail in the preamble to the initial NPL (48 FR 40664-5).

Another consideration is that the level of scrutiny provided by the HRS and the NPL listing process, while sufficient to provide a general approximation of risks and comparison among sites, is not sufficiently detailed to evaluate the adequacy of cleanup actions. The HRS was designed to take into account as many factors regarding the condition of sites and the risk they present as can be considered simply and for many sites across the country. It does not take into account factors that the Agency believes would require sophisticated data or analysis. In developing the HRS, EPA considered evidence that a release above background has occurred is relatively easily determined. However, the Agency determined that evidence as to whether past cleanup actions are sufficient to have eliminated the release and potential for future releases is much more difficult to obtain and evaluate, and therefore chose not to include consideration of this factor in the HRS. Likewise, the Agency decided not to require evidence of frequency and continuation of a release, as explained in the promulgation of the HRS (47 FR 31188). To do otherwise would render the NPL process unnecessarily expensive and time-consuming, which would divert funds from cleanup activities and impede the progress of the program. EPA recognizes that these considerations are very relevant to determining the risks presented by a site and the remedies, if any, that should be conducted. Factors of this type, however, are intended to be evaluated after the NPL listing process has identified a limited number of sites as potential problems. Having taken this approach in the HRS, EPA must apply it consistently to individual sites.

A commenter on the Bayou Sorrell, Louisiana site cited preamble language which states that "air releases must currently exist, must be measured, and must not be caused by disturbances from investigations" (47 FR 31189). EPA believes that the commenter took this language out of context. Read in context, it in no way contradicts the Agency's policies of scoring on the basis of a single observation and scoring on the basis of conditions existing before any cleanup actions.

The portion of the preamble (47 FR 31189) containing this language was written in response to comments arguing that the HRS should provide for scoring for the potential of a release, rather than only scoring when an actual release is observed. The HRS does score for potential releases in the ground water and surface water routes if no actual release has been observed. For the air route, however, EPA believed that evidence of the potential for an air release could not be easily established and would be too tenuous a possibility to warrant taking it into account. Therefore, in order to calculate any score at all for the air route, an actual release must be observed. By stating that air releases must "currently exist," EPA was attempting to explain that the release must have actually occurred, rather than being merely a potentiality. This interpretation is consistent with the actual HRS instructions, which require "data that show levels of a contaminant at or in the vicinity of the facility that significantly exceed background levels, regardless of the frequency of occurrence" (47 FR 31236).

Any other interpretation of this language would be illogical. If the word "current" were to be interpreted as meaning "today," then an observed release to air would have to be continually updated and redocumented. This would not only entail considerable expense but would also allow the assignment of an observed release to the air to be negated by a removal or remedial action. The Agency has consistently scored sites on the basis of conditions before removal or remedial actions, as explained in 48 FR 40664.

## **VII. Changes From the Proposed NPL**

The Agency received a total of 128 comments on the proposed NPL update. Of these, 112 comments pertained to 50 of the proposed sites. The remainder of the comments addressed sites that were not proposed or generic or technical issues that were not site specific. General comments on the NPL are addressed throughout this preamble. Significant comments regarding specific sites are addressed in the "Support Document for the Revised National Priorities List - 1984." A number of the site-specific comments addressed similar issues, and EPA's rationale for addressing those issues is presented in this section. Many of the issues raised in comments are the same as those raised previously and discussed in the previous final rulemaking on the NPL (48 FR 40658, September 8, 1983). The Agency's positions on these issues remains unchanged.

### ***Waste Quantity***

A number of commenters said that the waste quantity values assigned under the HRS were too high because EPA had included the non-hazardous constituents of the hazardous substances in calculating the quantity of waste located at the facility. Commenters raised similar issues when the first NPL was published (48 FR 40658, September 8, 1983), and EPA's response remains unchanged.

### ***Consideration of Flow Gradients***

In some instances commenters maintained that, based upon their conclusions regarding prospective movement of contaminants in ground waters, the values assigned by EPA to population served by ground water are too high. The commenters said that EPA should only count the population using those wells which they believed would be affected by the releases. As was the case with the waste quantity issue, this issue was addressed and resolved when the NPL was first promulgated (48 FR 40658). The rationale for the Agency's approach is further discussed in the preamble to the NCP (47 FR 31190-91, July 16, 1982) and is equally applicable now. The HRS specifies that all the population using the aquifer of concern within 3 miles of the facility should be included in the calculations of population served by ground water. The Agency's approach is based on the difficulty of predicting precisely the movements of ground water based on the limited amount of data consistently available at the time of HRS scoring. Furthermore, in establishing the rating scales, the Agency took into account the fact that most wells within 3 miles would not be affected. If EPA were to establish rating scales based only on the populations that have been or are certain to be affected, the scales would have assigned high values for much smaller populations than those specified in the current HRS. Another consideration is that population using the aquifer is a measure of the value of the ground water to the local population. Thus, even if EPA determines at a specific site that currently operating wells will not be affected, taking current water use into account is important because it allows the Agency to indirectly estimate the potential uses of the resource.

### ***Scoring on the Basis of Current Conditions***

Many commenters felt that EPA should take current conditions into account when scoring sites where response actions have reduced the hazards posed by the site. For the ground water, surface water, and air pathways, EPA scored sites for inclusion in the NPL based on the hazards that existed before any response actions were initiated. This policy was explained in the preamble to the final revisions to the NCP (47 FR 31187, July 16, 1982). At that time the Agency explained that public agencies might have been discouraged from taking early response if such actions could lower the HRS score and prevent a site from being included on the NPL. Another reason, stated in the Preamble to the NCP, is that EPA does not want to encourage incomplete solutions that might leave significant health threats unaddressed. EPA is also concerned that if a site is rescored taking the response actions into account, the drop in score that may result might not reflect a commensurate reduction in the level of risk presented by a site. EPA has elaborated on this rationale in the Preamble to the previous NPL final rule (48 FR 40658, September 8, 1983), and the Agency's position remains unchanged.

Where response actions have already been initiated by private parties or another agency, listing such sites will enable EPA to evaluate the need for a more complete response. Inclusion on the NPL therefore does not reflect a judgment that responsible parties are failing to address the problems. The Agency believes, therefore, that this approach is appropriate, and consistent with the purpose of the NPL as stated in the legislative history of CERCLA.

This policy is also relevant to evaluating the waste management practices at a facility for the purpose of assigning a score for the "containment" factor as a part of the "Route Characteristics" score for a site. Some commenters said the EPA should have considered corrective actions at sites in assigning containment values. In response, the containment values were designed to allow EPA to evaluate the likelihood of a release occurring in light of the measures taken to prevent such a release (e.g., infiltration controls designed to prevent leachate generation). If such controls are not operational until some time after disposal, then the likelihood of a release is high, and subsequent installation of the controls does not alter that fact. Thus, in scoring the containment factor EPA has considered only those waste management practices that clearly have been applied in a timely manner.

### ***Small Observed Release***

Some commenters maintained that EPA incorrectly assigned values for observed releases to ground waters because the measured concentrations of the substances involved were below the regulatory limits specified under the Safe Drinking Water Act or other Federal and State laws. Their comments reiterate comments made when the first NPL was published. EPA's response (48 FR 40658, September 8, 1983) remains unchanged.

Some commenters submitted data showing lower concentrations of contaminants in the environment than EPA or the States had found in previous analyses; in some instances the data indicated the absence of any contaminants at the time of sampling. These commenters suggested that EPA had erred in assigning an observed release. In all such instances EPA carefully reviewed the original EPA or State data as well as that furnished by the commenters. In those cases where EPA determined that the original data substantiating the observed releases were valid, EPA assigned values based on that data even if subsequent sampling failed to detect the same contaminants. Such an approach is consistent with the HRS and recognizes that many releases vary in concentration through time or occur sporadically. Thus, negative results during one or more sampling intervals cannot refute a finding, when based on valid sampling and analyses, that an observed release has occurred.

Several commenters questioned the validity of the sampling and analytical data used to establish observed releases, particularly in instances where the amount of contaminant detected in a sample is near the detection limit of the appropriate analytical method. As stated in the HRS (47 FR 31224), the standard requirement for establishing an observed release is that the measured concentration of a contaminant in a sample must be significantly higher than background concentrations of the contaminant in other samples from the site. The methodologies used to establish background levels and to determine significantly higher concentrations are explained below in response to these comments.

In cases in which a specific contaminant is not detected in some site samples, the background level of that contaminant is assumed to be some unknown value less than the detection limit. Any measurable quantity of contaminant in the site samples is considered significantly higher than the background and provides the basis for scoring an observed release. The validity of these assumptions is supported by the statistical analysis used to establish detection limits for the analytical methodology.

In situations in which a specific contaminant is detected in all site samples, an observed release is sometimes more difficult to determine than in the case where the substance is not detected in background samples. Generally, there are insufficient numbers of samples from a site to apply conventional statistical tests for significance. The scorer must often rely on inspection of the data to evaluate whether an observed release has occurred. If the data cluster into a group of high values and a group of lower values, particularly if the high values are attributed to sampling locations that appear to be downgradient of a site, an observed release is confirmed. If the analytical results from only one sampling location are significantly higher than from all other locations, an observed release has also occurred. However, if the contaminant concentrations are similar among background and monitoring wells within a 10 to 20 percent range, for example, EPA generally cannot state conclusively that an observed release has occurred. In addition, low concentrations (e.g., less than 10 parts per billion) of phthalates and other substances very commonly found in ground water are examined very carefully along with any other evidence that might tend to corroborate or disprove that a release has occurred.

## Summary of Score Changes

For the 133 sites proposed on September 8, 1983, a total of 14 HRS scores changed on the basis of the Agency's reviews of comments and other information (Table 1). For 12 sites, the changes had no effect on listing; however, some of these changes resulted in the site being placed in different groups. For two sites, final HRS scores were below 28.50 and the sites will not be included on the NPL at this time. For four sites, the Agency is still considering the comments received.

**Table 1**  
**HRS Score Changes**

| State city and county              | Site Name                                    | HRS score<br>As Proposed | HRS score<br>Revised |
|------------------------------------|--|--------------------------|----------------------|
| <b>Region II</b>                   |  |                          |                      |
| New Jersey:<br>Shamong Township    | Ewan Property                                | 45.08                    | 50.19                |
| Florence Township                  | Florence Land Recontouring                   | 58.79                    | 47.39                |
| Mount Holly                        | Landfill & Development Co                    | 31.03                    | 33.62                |
| <b>Region III</b>                  |  |                          |                      |
| Delaware:<br>Delaware City         | Old Brine Sludge Landfill                    | 40.32                    | 14.49                |
| Pennsylvania:<br>Williams Township | Industrial Lane (Chrin)                      | 41.12                    | 42.47                |
| <b>Region IV</b>                   |  |                          |                      |
| Florida:<br>Medley                 | Pepper Steel & Alloy                         | 32.11                    | 31.92                |
| <b>Region V</b>                    |  |                          |                      |
| Indiana:<br>Indianapolis           | Reilly Tar & Chemical                        | 42.92                    | 34.03                |
| Minnesota:<br>Faribault            | Nutting Truck & Caster                       | 42.38                    | 37.89                |
| New Brighton                       | MacGillis & Gibbs Co./Bell Lumber & Pole Co. | 52.52                    | 48.33                |
| Ohio:<br>Dayton                    | Powell Road Landfill                         | 30.86                    | 31.62                |
| Wisconsin:<br>Milwaukee            | Moss American                                | 43.53                    | 32.14                |
| <b>Region VI</b>                   |  |                          |                      |
| Oklahoma:<br>Tulsa County          | Compass Industries (Avery Drive)             | 33.83                    | 36.57                |
| <b>Region X</b>                    |  |                          |                      |
| Idaho:<br>Pocatello                | Pacific Hide and Fur Recycling Co.           | 44.52                    | 42.30                |
| Washington:<br>Roy                 | Rosch Property                               | 29.31                    | 10.38                |

In addition, on September 8, 1983, EPA deferred rulemaking on a total of seven sites that had been included in the first proposed rule for the NPL, December 30, 1982 (47 FR 58476). Those sites are listed below along with the originally proposed scores and the final scores.

| State     | Site Name                       | Proposed score | Final score |
|-----------|---------------------------------|----------------|-------------|
| Arizona   | Kingman Airport Industrial Area | 40.02          | 8.45        |
| Kentucky  | Airco                           | 35.19          | 33.29       |
| Louisiana | Bayou Sorrel                    | 45.58          | 34.69       |
| Michigan  | Clare Water Supply              | 32.38          | 38.43       |
| Michigan  | Electrovoice                    | 29.77          | 35.36       |
| Michigan  | Littlefield Township Dumps      | 32.09          | 28.48       |
| Michigan  | Whitehall Wells                 | 29.85          | 35.45       |

***Proposed NPL Sites with Scores below 28.50***

The following sites will not be included on the NPL because the final HRS scores are below 28.50:

*State and Site Name*

- Arizona - Kingman Airport Industrial Area (proposed 12/30/82).
- Delaware - Old Brine Sludge Landfill.
- Michigan - Littlefield Township Dump (proposed 12/30/82).
- Washington - Rosch Property.

***Sites Still Under Consideration***

In the case of the following sites, EPA was unable to reach a final decision on listing in time for this publication:

*State and Site Name*

- Georgia - Olin Corporation (Areas 1, 2, & 4).
- Missouri - Quail Run Mobile Manor.
- Oklahoma - Sand Springs.
- Texas - Pig Road.

Regarding Quail Run Mobile Manor, the site does not meet the criteria currently specified in the NCP for including a site on the NPL. The Agency does, however, intend to modify the NCP in such a way that Quail Run and other similar sites will qualify for the NPL. Regarding the Sand Springs and Olin Corporation (Areas 1, 2, & 4) sites, EPA has determined that the HRS scoring documents for these sites, on which the September 8, 1983, Notice of Proposed Rulemaking (48 FR 40674) was based, were not in the public docket and were not available to the public during the 60 day comment period for this rule. Thus, EPA is seeking further public comment on these sites for a period of 60-days following publication of this notice. Interested parties may inspect the HRS scoring documents for these sites in the EPA Headquarters or Region IV (Olin Corporation) and Region VI (Sand Springs) dockets. In the case of Pig Road site, the Agency has determined that further sampling and laboratory analysis will be necessary to determine the appropriate HRS scores. Interested persons may obtain copies of that sampling and analysis data when it becomes available by notifying the EPA Region VI docket of their intent to provide further comments on that site. EPA will announce deadlines for comments on the Pig Road site in a later notice. EPA will continue to evaluate these sites and announce its decisions in subsequent NPL rulemaking.



### **Name Revision**

In some instances EPA has determined that the names of sites should be revised to more accurately reflect the location or nature of the problem. Those name revisions are listed below:

| <b>State</b>  | <b>Site name for proposed NPL</b> | <b>New site name</b>             |
|---------------|-----------------------------------|----------------------------------|
| New Hampshire | Kearsarge Metallurgical Corp.     | Kearsarge Metallurgical Corp.    |
| New Jersey    | Chemical Leaman Tank Liners, Inc. | Chemical Leaman Tank Lines Inc.  |
| Texas         | Compass Industries                | Compass Industries (Avery Drive) |
| Montana       | East Helena Smelter               | East Helena Site                 |

In addition, the name of the Toms River Chemical, New Jersey site promulgated on September 8, 1983 (48 FR 40674) has been changed to the Ciba-Geigy Corporation site.

### **Additional Criteria for Listing**

In the September 8, 1983, proposed rule to update the NPL (48 FR 40674), EPA invited comments on the general issue of alternative criteria for selecting sites for the NPL in addition to the HRS and State's top priority designations. EPA has concluded that at some sites remedial actions may be the only adequate response, but that these sites will not score sufficiently high to be included on the NPL. That can occur where the type of problem (e.g., direct contact), is usually addressed through removal actions, and thus the HRS total score does not reflect the associated risks. EPA cited Quail Run Mobile Manor, in Gray Summit, Missouri, as an example and included that site in the proposed update to the NPL. EPA intends to propose an amendment to the NCP to authorize consideration of additional criteria.

Several commenters addressed the issue of additional criteria. One expressed interest in the specifics of the proposed amendment and suggested that it include a clear statement of goals and an explanation of where emergency and removal authority will "prove inadequate." The commenter also suggested that criteria for extraordinary listings require "a demonstration for each proposed site that remedial action, as opposed to other types of response action, is necessary and an actual health threat beyond some threshold exists."

Another commenter stated that EPA's invitation to provide comments on additional criteria for listing "belies the Agency's assertion that the HRS is effective in approximating risks and raises the questions as to the overall validity of the HRS/MITRE model in assessing risks at any site." The same commenter suggested that the additional criteria be the subject of a detailed separate notice of proposed rulemaking, so that the overall effectiveness of the HRS can be examined.

In response, EPA does intend to publish a separate notice of proposed rulemaking revising the NCP to incorporate additional criteria for listing. EPA is developing such a notice, and the comments received so far have been useful for defining the issues. When that rule is proposed, EPA will seek further public comment on the additional criteria. The full scope of that proposed revision has not been determined. EPA disagrees with the commenter's assertion that inviting comment on the additional criteria raises questions regarding the validity of using the HRS to assess risks at any site.

Since EPA is still working on revising the NCP and establishing additional criteria for listing, the Agency will not at this time complete rulemaking on Quail Run, which was included in the September 8, 1983, proposed rule.

## **VIII. Updates (Additions and Deletions) to the NPL**

CERCLA requires that the NPL be revised or updated at least once per year. The Agency plans to identify, consider, and propose additional sites for NPL updates as it has in the past. States have the primary responsibility for identifying sites, computing HRS scores, and providing that information to EPA. EPA Regional Offices may assist in investigation, sampling, monitoring, and scoring, and may in some cases consider candidate sites on their own initiative. In advance of each update publication, EPA will notify the States of the closing dates for submission of proposed additions (or deletions, as discussed below) to EPA. EPA will exercise quality control and quality assurance to

verify the accuracy and consistency of scoring. The Agency will then propose the new sites that appear to meet the criteria for listing and solicit public comment on the proposal. Based on comments, and any further review by EPA, the Agency will determine final scores and in the next update publication will include on the final NPL any sites that score high enough for listing.

In addition to these periodic updates, EPA believes it may be appropriate in rare instances to add sites to the NPL individually as in the case of the Times Beach site in Missouri.

One commenter said that EPA should clarify whether it will follow notice and comment rulemaking procedures in future updates. The commenter said that such rulemaking might have a substantial impact on private parties and that EPA should adhere to the Administrative Procedures Act. In response, EPA intends to continue seeking public comment prior to final rulemaking on the NPL updates as long as most response actions are not significantly delayed as a result. The Agency reserves the right to depart from that general approach should a situation require expedited rulemaking.

### ***Deletion of Sites***

There is no specific statutory requirement that the NPL be revised to delete sites. However, EPA has decided to consider deleting sites to provide incentives for cleanup to private parties and public agencies. Furthermore, deleting sites allows the Agency to give notice that the sites have been cleaned up and gives the public an opportunity to comment on those actions. EPA does not consider this policy to be binding, and may revise it to provide for deletion of sites based on other factors in appropriate cases.

EPA will consider deleting sites at which any of the following criteria have been met:

1. EPA, in consultation with the State, has determined that responsible parties have completed all appropriate response actions.
2. EPA, in consultation with the State, has determined that all appropriate Fund-financed response actions have been completed and that no further cleanup by responsible parties is appropriate.
3. Based on a remedial investigation, EPA in consultation with the State has determined that the facility poses no significant threat to public health, welfare, or the environment and, therefore, construction of remedial measures is not appropriate.

Although there are not any deletions included in this rulemaking, EPA intends to publish a notice of proposed rulemaking and solicit public comments on rulemaking actions to delete sites in future updates. EPA is considering some alternative approaches, but for now the Agency will follow the procedures specified in the guidance memorandum, "Interim Procedures for Deleting Sites from the National Priorities List." March 27, 1984. This document is available in the EPA dockets (see Addresses section of this announcement).

### ***Rescoring Sites***

EPA expects that updates to the NPL will be solely for the purposes of adding sites to or deleting sites from the NPL. The current EPA position, which will serve as guidance for individual listing and deletion decisions, is that EPA will not rescore sites that previously had been placed on the NPL.

Several commenters presented suggestions to the contrary. Some recommended that EPA revise HRS scores periodically to reflect the results of cleanup activities, and suggested deleting any site whose HRS score dropped below the cutoff. Other commenters pointed out that new data gathered on a site might alter previous assumptions in scoring, and suggested continual rescoring to reflect any new data for purposes of adjusting a site's position on the list or deleting it if the score fell below the cutoff.

Another commenter suggested that EPA reevaluate all HRS scores, preferably after a thorough site investigation. The commenter said that this process would help assure that sites most in need of remedy would be identified and that the process would allow the deletion of sites placed on the list due to scoring based on incorrect facts.

EPA believes that the current approach of scoring by EPA or the States, EPA quality assurance review, public comment on the scoring, and EPA review of the comments provides adequate safeguards against incorrect site scores. EPA's experience to date indicates that very few scores, if any, would be lowered sufficiently to remove sites from the NPL if EPA were to do as the commenter suggests. On the other hand, many site scores would increase somewhat if the commenters' approach were followed. Moreover, the alternative recommended by the commenter would significantly increase the time and resources needed to develop the NPL.

EPA believes that a number of important factors support its current position that site on the final NPL should not be rescored for future updates. With respect to sites where response actions have been taken, the HRS was not designed to reflect completeness of cleanup; and therefore should not be used as a tool for deleting sites from the list or altering their relative ranking based on response actions. If response actions were taken into account in scoring, the lower HRS score that results might not reflect a commensurate reduction in the endangerment presented by the site. The result might be to delete sites where cleanups have not been completed, thereby removing incentives for further response and giving incentives for selecting cleanups primarily designed to result in score reductions as opposed to risk reductions.

In addition to the foregoing reasons, other considerations justify the current position not to rescore sites after final listing. These considerations apply not only to cleanup situations but also to situations where a score might be affected by new information about a site or by detection of an error in the original calculations. The process established by EPA for developing the NPL is comprehensive, involving initial scoring, public proposal, consideration of public comment, re-examination of data and scores, final score calculation, and inclusion on the final NPL. Given this level of scrutiny, and the time and expense involved in scoring sites, EPA finds it necessary to rely upon the interested public to identify factors pertinent to HRS score in a timely manner. EPA believes that it is appropriate to consider inclusion of a site on the final NPL to end the scoring process.

Furthermore, as described in Part II of this preamble, the purpose of the NPL is primarily informational, to serve as a tool for EPA to identify sites that appear to present a significant risk to public health or the environment, for purposes of deciding which sites to investigate fully and determine what response, if any, is appropriate. EPA believes that it is most consistent with that statutory purpose to cease the costly and time-consuming efforts of site scoring once a site is on the NPL. Rather than spend the limited resources of the Fund on rescoring, the Agency prefers to use all available resources to clean up sites.

EPA recognizes that the NPL process cannot be perfect, and it is possible that errors exist or that new data will alter previous assumptions. Once the initial scoring effort is complete, however, the focus of EPA activity must be on investigating sites in detail and determining the appropriate response. New data or errors can be considered in that process. Since HRS scores alone do not determine the priorities for actual response actions, any new data or revealed errors indicating that a site is either more or less of a problem than reflected in the HRS score will be taken into account and the priority for response adjusted accordingly. If the new information indicates that the site does not present a significant threat to health, welfare, or the environment, the site may meet one of the EPA criteria for deletion regardless of any original or revised HRS score.

In conclusion, EPA does not currently plan to rescore sites once they have been included on the final NPL because:

1. The HRS was not designed to reflect reductions in hazard resulting from cleanup;
2. EPA does not want to create the incentive for incomplete cleanup actions;
3. the Fund must be conserved and focused on further investigation and cleanup;
4. the NPL serves as a guide to EPA and does not determine liability or the need for response; and
5. any new information can be used to adjust response priorities or to delete a site without recalculating the HRS score.

Actual decisions on the appropriate treatment of individual sites, however, will be made on a case-by-case basis, with consideration of this policy and any other appropriate factors.

# IX. Regulatory Impact Analysis

The cost of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below, and therefore the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. The EPA has conducted a preliminary analysis of the economic implications of today's amendment to the NCP. The EPA believes that the kind of the economic effects associated with this revision are generally 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. The Agency believes the anticipated economic effects related to adding 128 sites to the NPL can be characterized in terms of the conclusions of the earlier regulatory impact analysis. At proposal, the Agency noted that a more extensive analysis of the economic impacts of the NCP would be prepared in the future and would accompany publication of future major amendments to the NCP. The Agency expects to propose major amendments to the NCP and a more comprehensive economic analysis will be made available for comment at that time.

## Costs

The 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 will necessarily undertake response action, nor does it require any action by a private party or determine their 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 a listing rulemaking.

The major events that follow the listing of a site on the NPL are a responsible party search and a Remedial Investigation/Feasibility Study (RI/FS) which determines whether response 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.

Costs associated with responsible party searches are generally borne by EPA. Responsible parties may bear some or all the costs of the RI/FS, design and construction, and O&M, or the costs may be shared by EPA and the States on a 90%: 10% basis (50%:50% in the case of state-owned sites). Additionally, States assume all costs for O&M activities after the first year at sites involving fund-financed remedial actions.

Rough estimates of the average total per-site and total costs associated with each of the above activities are presented below. At this time EPA is unable to predict what portions of the total costs will be borne by responsible parties, since the distribution of costs depends on the extent of voluntary and negotiated response and the successfulness of cost recovery actions where such actions are brought.

| Cost category                                      | Average total cost per site * |
|--|-------------------------------|
| RI/FS  | \$800,000                     |
| Remedial design                                    | 440,000                       |
| Remedial action                                    | 7,200,000                     |
| Initial remedial measures (IRM) at 10 pct of sites | 80,000                        |
| Net present value of O&M (over 30 years)           | 4,100,000                     |

Source: OSRTI budget figures (assumes \$6.5 million Federal share of remedial action). \* 1948 U.S. Dollars

Costs to States associated with today's amendment arise from the statutory State cost-share requirement of:

1. 10 percent of remedial implementation (remedial action and IRM) and O&M costs at privately-owned sites, and
2. 50 percent of the remedial planning (RI/FS and remedial design), remedial implementation and O&M costs at publicly-owned sites.

Using the assumptions developed in the 1982 RIA, we can assume that 90 percent of the 128 sites added to the NPL in this amendment will be privately-owned and 10 percent will be publicly-owned. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial actions at all 128 sites would be \$212 million.

The act of adding a hazardous waste site to the NPL does not necessarily cause firms responsible for the site to bear costs. Nonetheless, 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 response costs, but the Agency considers such factors as: The volume and nature of the wastes contributed; the strength of the evidence linking the wastes at the site to the parties; ability to pay, inequities and aggravating circumstances; and other factors when deciding whether and how to proceed against potentially responsible parties.

Economy-wide effects of this amendment 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 revision 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 come in the form of increased health and environmental protection as a result of increased public awareness of potential hazards and the additional response actions at hazardous waste sites. In addition to the potential for more Federally-financed remedial actions, expansion of the NPL could accelerate privately-financed, voluntary cleanup efforts to avoid potential adverse publicity, torts, and/or enforcement action. Listing sites as national priority targets may also give States increased support for funding responses at particular sites.

As a result of the additional NPL remedies, there will be lower human exposure to high risk chemicals, and higher quality surface water, ground water, soil, and air. The magnitude of these benefits is expected to be significant, although difficult to estimate in advance of completing the RI/FS at these sites.

Associated with the costs are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that each dollar expended for a response puts someone to work directly or indirectly (through purchased materials).

## **X. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act of 1980 requires EPA to review the impacts of this action on small entities, or certify that the action will not have a significant impact on a substantial number of small entities. By small entities the Act refers to small businesses, small governmental jurisdiction, and non-profit 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 listing 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. A site's 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 businesses at this time nor estimate a number of businesses affected. In addition, we cannot define what is "small" for the wide variety of potentially affected firms.

The Agency does expect that certain industries and small firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 128 sites, or the NPL as a whole, to have a significant economic impact on small business as a whole when they are considered as a nation-wide group.

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 non-profit 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.

**PART 300 - [AMENDED]**

Dated: September 11, 1984.

**Alvin L. Aim,**  
*Acting Administrator.*

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