

# Federal Register Notice

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## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300  
[FRL-3825-8]

### 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 2923, 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 106 sites, including 23 Federal facility sites. Based on a review of public comments on these sites, EPA has decided that they meet the eligibility requirements of the NPL and are consistent with the Agency's listing policies. In addition, today's action removes 10 sites, including one Federal facility site, from the proposed NPL. Information supporting these actions is contained in the Superfund Public Dockets.

This rule results in a final NPL of 1,187 sites, 116 of them in the Federal section; 20 sites are proposed to the NPL, none of them in the Federal section. Final and proposed sites now total 1,207.

#### EFFECTIVE DATE:

The effective date for this amendment to the NCP shall be October 1, 1990. 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 section 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.

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**SUPPLEMENTARY INFORMATION:**

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## **I. Introduction**

### ***Background***

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. sections 9601-9657 ("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, 1985 (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 31319, July 16, 1982).

On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to CERCLA section 105(c), added by SARA. EPA intends to issue the revised HRS as soon as possible. However, until the revised HRS is in effect, EPA will continue to use the current HRS in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained in 54 FR 13299 (March 31, 1989).

Based in large part on the HRS criteria, 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, pollutant, 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 can 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" simply 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 March 14, 1990 (55 FR 9688). 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 29 sites from the final NPL, most recently on May 31, 1990 (55 FR 22030), when Reeser's Landfill, Upper Macungie Township, Pennsylvania, was deleted.

This rule adds 106 sites, including 23 Federal facility sites, to the NPL, and removes 10 sites from the proposed NPL, including one Federal facility site. Of the 10 sites being removed, seven have HRS scores below 28.50 and the other three can be addressed under corrective action authorities of Subtitle C of the Resource Conservation and Recovery Act (RCRA). 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 1,187 sites, 116 of them in the Federal section; 20 sites remain in proposed status, none of them in the Federal section. With these changes, final and proposed sites now total 1,207.

### ***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 a.m. to 4 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 - August 1990."

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.

Federal facility sites are eligible for the NPL pursuant to the NCP at 40 CFR 300.425(b)(3) (55 FR 8845, March 8, 1990). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

### ***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 the appropriate response and/or enforcement actions available to the Agency including authorities other than CERCLA. Listing a site will serve as notice to any potentially responsible party that the Agency may initiate CERCLA-financed remedial action. 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 the criteria contained in subpart E of the NCP (55 FR 8839, March 8, 1990). After conducting these additional studies, EPA may conclude that it is not desirable to initiate a CERCLA remedial action at some sites on the NPL because of more pressing needs at other sites, or because a private party cleanup is already underway pursuant to an enforcement action. Given the limited resources available in the Trust Fund, the Agency must carefully balance the relative needs for response at the numerous sites it has studied. It is also possible that EPA will conclude after further analysis that the site does not warrant remedial action.

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. Although CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases<sup>1</sup>. The names of sites are provided for purposes of identification only; the sites are not limited to 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 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)).

EPA regulations do 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.

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 contests 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.

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 example, EPA may evaluate (and list) a release over a 400-acre area, but the Record of Decision may select a remedy over 100 acres only. This information may be useful to a landowner seeking to sell the other 300 acres, but it would result in no formal change in the fact that a release is included on the NPL. The landowner land (and the public) also should note in such a case that if further study (or the remedial construction itself) reveals that the contamination is located on or has spread to other areas, the Agency may address those areas as well.

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 rescoring 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 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 \* \* \* [T]he NPL serves as a guide to EPA and does not determine liability or the need for response.

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<sup>1</sup> Although CERCLA section 101(9) sets out the definition of "facility" and not "release," those terms are often used interchangeably. (See CERCLA section 105(a)(8)(B), which defines the NPL as a list of "releases" as well as of the highest priority "facilities.") (For ease of reference, EPA also uses the term "site" interchangeably with "releases" and "facility".)

### 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.

States have the primary responsibility for identifying non-Federal sites, computing HRS scores, and submitting candidate sites to the EPA Regional Offices. EPA Regional Offices conduct a quality control review of the States' candidate sites, and may assist in investigating, sampling, monitoring, and scoring sites. Regional Offices also may consider candidate sites in addition to those submitted by States. EPA Headquarters conducts further quality assurance audits to ensure accuracy and consistency among the various EPA and 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. For example, EPA has chosen not to list sites that result from contamination associated with facilities licensed by the Nuclear Regulatory Commission (NRC), on the grounds that NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). If, however, the Agency later determines that sites deferred as a matter of policy are not being properly responded to, the Agency may place them on the NPL.

The Agency has 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.

The listing policies and statutory requirements of relevance to this final rule cover Resource Conservation and Recovery Act (RCRA) (U.S.C. 6901-6991i) sites, Federal facility sites, sites with "special study wastes," and radioactive mining waste sites. These and other listing policies and statutory requirements have been explained in previous rulemakings, the latest being February 21, 1990 (55 FR 6154).

### ***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 solidwaste 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 or 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. (Further definition of these terms is contained in the June 24, 1988 policy announcement.) Consistent with this policy, 23 RCRA sites were placed on the final NPL on October 4, 1989 (54 FR 41000).

In this final rule, EPA is adding to the NPL five sites that are subject to RCRA subtitle C corrective action authorities. These sites are being placed on the NPL under the NPL/RCRA policy. Three sites are converters, one site has lost its RCRA authorization to operate and appears unwilling to undertake corrective action, and one site has contamination that may not be addressable under RCRA. Listing a site because of an unresolved question as to whether RCRA subtitle C corrective action authorities apply to all contamination associated with the site is consistent with EPA's NPL/RCRA policy (53 FR 23983, June 24, 1988).

In addition, EPA is not listing three sites under the NPL/RCRA policy because they can be addressed under RCRA Subtitle C corrective action authorities. Of these, one site was proposed as a pre-HSWA permittee, but is not being listed because the pre-HSWA permit has expired and the owner/operator is now subject to a new permit which includes corrective action requirements (see 54 FR 41006, October 4, 1989). Another site is a converter, but is not being listed because the owner/operator has agreed to corrective action under a RCRA consent corrective action order (see 54 FR 41005, October 4, 1989). The third site is a late filer, but is not being listed because the site has come within the RCRA system and demonstrated a history of compliance with RCRA regulations (see 54 FR 41005, October 4, 1989).

### ***Releases From Federal Facility Sites***

On March 13, 1989 (54 FR 10520), the Agency announced a policy for listing Federal facility sites, if they meet the prescribed eligibility criteria (e.g., an HRS score of 28.50 or greater), even if the Federal facility also is subject to the corrective action authorities of RCRA subtitle C. In that way, cleanup, if appropriate, could be affected at those sites under CERCLA.

Federal facility sites are placed in a separate section of the NPL. This rule adds 23 Federal facility sites to the final NPL and drops one, bringing the total number of final Federal facilities sites to 116. No Federal facility sites remain proposed to the NPL.

### ***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 also 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). EPA will, however, list releases from facilities that hold a current license issued by a State pursuant to an agreement between the State and the NRC under section 274 of the Atomic Energy Act. Facilities whose licenses are no longer in effect are also considered for listing.

In this final rule, EPA is adding to the NPL three sites with radioactive releases that meet EPA's criteria for the NPL. None of the three sites has releases that are excluded by statute from the NPL. The sites are also not excluded by EPA's NPL/NRC policy because they were not contaminated as a result of a NRC-licensed operation.

### ***Releases of Special Study Wastes***

Section 105(g) of CERCLA, as amended by SARA, requires EPA to consider certain factors before adding sites involving RCRA "special study wastes" to the NPL. Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain significant quantities of special study wastes as defined under RCRA sections 3001(b)(2) [drilling fluids], 3001(b)(3)(A)(ii) [mining wastes], and 3001(b)(3)(A)(iii) [cement kiln dusts]. Before these sites can be added to the NPL, section 105(g) requires that the following information be considered:

- The extent to which the HRS score for the facility is affected by the presence of the special study waste at or released from the facility.
- Available information as to the quantity, toxicity, and concentration of hazardous substances that are constituents of any special study waste at, or released from, the facility; the extent of or potential for release of such hazardous constituents; the exposure or potential exposure to human population and environment; and the degree of hazard to human health or the environment posed by the release of such hazardous constituents at the facility.

This final rule includes 14 sites containing or potentially containing special study wastes subject to section 105(g). EPA has placed in the dockets an addendum that evaluates for each site the information called for in section 105(g). The addenda indicate that the special study wastes present a threat to human health and the environment, and that the sites should be added to the NPL.

CERCLA section 125, as amended by SARA, addresses specific special study wastes described in RCRA section 3001(b)(3)(A)(i) (fly ash and related wastes). No sites in this rule are subject to section 125.

### ***Response to Public Comments on Special Study Waste Sites***

When EPA proposed to include on the NPL the special study waste sites in this final rule, the Agency received several public comments. The Agency's responses to site-specific comments are contained in the "Support Document for the Revised National priorities List Final Rule - August 1990." (See section V of this final rule).

EPA also received general (i.e., non-site-specific) comments from one organization concerning the Agency's evaluation of sites with coal tar special study waste. A summary of the issues raised in these comments and the Agency's response was contained in the final rule published on February 21, 1990 (55 FR 6158). EPA's response generally applies to the coal tar and other special study waste sites included in this final rule as well.

## **V. Disposition of Sites in Today's Final Rule**

This final rule promulgates 106 sites (Table 1) and removes 10 sites from several proposed rulemakings. These 116 sites are from the following proposed updates:

- Update #2 (49 FR 40320, October 15, 1984): 10 sites
- Update #5 (51 FR 21099, June 10, 1986): 2 sites
- Update #6 (52 FR 2492, January 22, 1987): 6 sites
- Update #7 (53 FR 23988, June 24, 1988): 54 sites
- Update #8 (54 FR 19526, May 5, 1989): 4 sites
- Update #9 (54 FR 29820, July 14, 1989): 17 sites
- Update #10 (54 FR 43778, October 26, 1989): 23 sites

EPA read all comments received on these sites, including late comments. In past rules, EPA responded even to late comments. However, given the volume and number of late comments received and the need to make final decisions on all 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 all sites included in this final rule that were proposed in Updates #2, 5, 6, and 7, to those comments postmarked no later than September 12, 1989 for sites in its final rule that were proposed in Update #8, to those comments postmarked no later than October 3, 1989 for sites in this final rule that were proposed in Update #9, 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.

**Table 1**  
**National Priorities List, New Final Sites (by Rank)**  
 [August 1990]

NPL Gr <sup>1</sup>	NPL Rank	St	Site Name	City/county
2	68	IA	Lehigh Portland Cement Co.	Mason City
2	72	ID	Eastern Michaud Flats Contamin.	Pocatello
2	74	IA	Northwestern States Portland Cem.	Mason City
2	78	PA	Salford Quarry	Salford Township
3	114	ID	Monsanto Chemical (Soda Springs)	Soda Springs
4	159	WA	Seattle Mun Lndfill (Kent Hghlnds)	Kent
4	164	IL	Beloit Corp.	Rockton
4	176	IN	Whiteford Sales&Ser/Nationalease	South Bend
4	188	CA	Industrial Waste Processing	Fresno
5	205	IL	MIG/Dewane Landfill	Belvidere
5	223	WI	Better Brite Chrome & Zinc Shops	DePere
6	284	IA	Peoples Natural Gas Co.	Dubuque
6	285	MO	Oronogo-Duenweg Mining Belt	Jasper County
6	293	AR	Monroe Auto Equip (Paragould Pit)	Paragould

<b>NPL Gr <sup>1</sup></b>	<b>NPL Rank</b>	<b>St</b>	<b>Site Name</b>	<b>City/county</b>
6	295	IA	E.I. Du Pont (County Rd X23)	West Point
7	332	AL	T.H. Agricul & Nutri (Montgomery)	Montgomery
7	335	CA	Sulphur Bank Mercury Mine	Clear Lake
7	339	NM	Prewitt Abandoned Refinery	Prewitt
7	344	MI	Peerless Plating Co.	Muskegon
7	347	KY	Fort Hartford Coal Co. Stone Quarry	Olaton
8	356	IA	White Farm Equipment Co. Dump	Charles City
9	413	PA	Ohio River Park	Neville Island
9	414	GA	Woolfolk Chemical Works, Inc.	Fort Valley
9	416	IN	Tippecanoe Sanitary Landfill, Inc.	Lafayette
9	417	IN	Conrail Rail Yard (Elkhart)	Elkhart
9	423	MN	Dakhue Sanitary Landfill	Cannon Falls
9	428	SD	Williams Pipe Line Disposal Pit	Sioux Falls
9	436	AK	Arctic Surplus	Fairbanks
9	447	UT	Sharon Steel (Midvale Tailings)	Midvale
10	453	PA	Westinghouse Elec (Sharon Plant)	Sharon
11	505	CA	Western Pacific Railroad Co.	Oroville
11	513	IL	Kerr-McGee (Reed-Keppler Park)	West Chicago
11	516	FL	Woodbury Chemical (Princeton Plant)	Princeton
11	521	AZ	Apache Powder Co.	St. David
11	522	NV	Carson River Mercury Site	Lyon/Churchill Cnty
11	542	TX	Tex-Tin Corp.	Texas City
12	554	IL	Kerr-McGee (Residential Areas)	W Chic/DuPage Cnty
12	564	IA	Farifield Coal Gasification Plant	Fairfield
12	570	NJ	Chemical Insecticide Corp.	Edison Township
12	573	DE	Chem-Solv, Inc.	Cheswold
12	575	FL	Madison County Sanitary Landfill	Madison
12	584	CO	Chemical Sales Co.	Denver
12	587	CA	Hexcel Corp.	Livermore
12	588	CA	Crazy Horse Sanitary Landfill	Salinas
12	589	OR	Union Pacific Railroad Tie Treat	The Dalles
13	635	VA	Abex Corp.	Portsmouth
13	637	MI	Allied Paper/Portage Ck/Kalamaz R.	Kalamazoo

<b>NPL Gr <sup>1</sup></b>	<b>NPL Rank</b>	<b>St</b>	<b>Site Name</b>	<b>City/county</b>
13	640	WA	Centralia Municipal Landfill	Centralia
14	660	GA	Diamond Shamrock Corp. Landfill	Cedartown
14	662	CT	Cheshire Ground Water Contamin.	Cheshire
14	699	FL	B&B Chemical Co., Inc.	Hialeah
15	703	FL	BMI-Extron	Lake Park
15	709	IL	Kerr-McGee (Sewage Treatment Plant)	West Chicago
15	748	KY	Caldwell Lace Leather Co., Inc.	Auburn
15	750	IL	Adams County Quincy Landfill 2&3	Quincy
16	791	LA	Combustion, Inc.	Denham Springs
16	799	IA	Farmers' Mutual Cooperative	Hospers
17	806	IA	Sheller-Globe Corp. Disposal	Keokuk
17	814	DE	Kent County Landfill (Houston)	Houston
17	826	DE	Koppers Co., Inc. (Newport Plant)	Newport
17	829	NJ	Lodi Municipal Well	Lodi
17	838	DE	Sealand Limited	Mount Pleasant
17	845	SC	Para-Chem Southern, Inc.	Simpsonville
18	854	WA	North Market Street	Spokane
18	868	PA	Paoli Rail Yard	Paoli
18	874	WY	Mystery Bridge Rd/U.S. Highway 20	Evansville
18	895	NE	Nebraska Ordnance Plant (Former)	Mead
19	901	CA	Advanced Micro Devices (Bldg. 915)	Sunnyvale
19	922	OH	Reilly Tar & Chemical (Dover Plnt)	Dover
19	942	FL	Anaconda Aluminum/Milgo Electron.	Miami
19	950	TN	Murray-Ohio Mfg (Horseshoe Bend)	Lawrenceburg
20	952	NJ	Higgins Disposal	Kingston
20	990	MI	Cannelton Industries, Inc.	Sault Sainte Marie
20	1000	NC	Hevi-Duty Electric Co.	Goldsboro
21	1003	MO	Westlake Landfill	Bridgeton
21	1022	NY	Sealand Restoration, Inc.	Lisbon
21	1030	KY	Green River Disposal, Inc.	Maceo
21	1034	IL	Central Illinois Public Serv Co.	Taylorville
21	1045	PA	Dublin TCE Site	Dublin Borough
21	1047	WI	Waste Management (Brookfield Lfl)	Brookfield

<b>NPL Gr <sup>1</sup></b>	<b>NPL Rank</b>	<b>St</b>	<b>Site Name</b>	<b>City/county</b>
21	1049	NE	10th Street Site	Columbus
22	1052	CA	Watkins-Johnson Co. (Stewart Div.)	Scotts Valley
22	1053	CA	Intersil Inc./Siemens Components	Cupertino

Number of New Final Sites: 83. <sup>1</sup> Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

**National Priorities List, Federal Facility Sites, New Final (by Group)**  
[August 1990]

<b>NPL Gr <sup>1</sup></b>	<b>St</b>	<b>Site Name</b>	<b>City/county</b>
3	ID	Mountain Home Air Force Base	Mountain Home
3	WA	Bangor Naval Submarine Base	Silverdale
3	UT	Tooele Army Depot ( North Area)	Tooele
6	AK	Standard Steel & Met Sal Yd (USDOT)	Anchorage
7	AK	Elmendorf Air Force Base	Greater Anchorage Bor.
8	AK	Fort Wainwright	Fairbanks N Star Bor.
8	FL	Homestead Air Force Base	Homestead
10	TX	Air Force Plant #4 Gener Dynamics	Fort Worth
11	TX	Longhorn Army Ammunition Plant	Karnack
11	NJ	Federal Aviation Admin Tech Cent.	Atlantic County
11	NM	Lee Acres Landfill (USDOJ)	Farmington
12	PA	Tobyhanna Army Dept.	Tobyhanna
12	AZ	Luke Air Force Base	Glendale
13	CT	New London Submarine Base	New London
13	CA	Tracy Defense Dept.	Tracy
14	NY	Seneca Army Depot	Romulus
16	KS	Fort Riley	Junction City
17	CA	Edwards Air Force Base	Kern County
17	SD	Ellsworth Air Force Base	Rapid City
19	CA	Lawrence Livermore Lab-300 (USDOE)	Livermore
21	NJ	Naval Weapons Stat Earle (Site A)	Colts Neck
21	IA	Iowa Army Ammunition Plant	Middletown
22	HI	Schofield Barracks	Oahu

Number of New Final Federal Facility Sites: 23. \* State top priority site.

<sup>1</sup> Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

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 removed from the NPL. 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 - August 1990".

### ***RCRA Sites***

Three sites are subject to subtitle C corrective action authorities, but the Part A permits have been withdrawn (converter status). These sites are being added to the final NPL consistent with the NPL/RCRA policy:

- Advanced Micro Devices (Building 915), Sunnyvale, California (converter)
- Hexcel Corp., Livermore, California (converter)
- Westinghouse Electric Corp. (Sharon Plant), Sharon, Pennsylvania (converter)

One site is being listed, consistent with the NPL/RCRA policy, because the contamination may not be addressable under RCRA subtitle C corrective action authorities:

- Apache Powder Co., St. David, Arizona

Based on the NPL/RCRA policy announced on June 10, 1986 (51 FR 21057) and in effect at the time of proposal, one site is being listed because it has lost its RCRA authorization to operate and appears unwilling to undertake corrective action:

- Chem-Solv, Inc., Cheswold, Delaware

One site is not being listed because it is a late-filer that has come within the RCRA system and demonstrated a history of compliance with RCRA regulations:

- Kearney-KPF, Stockton, California (late filer)

One site is not being listed because it now is subject to a post-HSWA permit that includes corrective action requirements:

- Solvent Service, Inc., San Jose, California

One site is not being listed because it is a converter that has agreed to corrective action under a RCRA consent corrective action order:

- Warner Electric Brake & Clutch Co., Roscoe, Illinois

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

### ***Federal Facility Sites***

This final rule adds 23 Federal facility sites to the NPL (Table 1) and drops 1 from the proposed NPL.

### ***Radioactive Release Sites***

Three sites with radioactive releases are being added to the final NPL consistent with the NPL/NRC policy because the sites were not contaminated as a result of a NRC-licensed operation:

- Kerr-McGee (Reed-Kepler Park), West Chicago, Illinois
- Kerr-McGee (Residential Areas), West Chicago/DuPage County, Illinois
- Kerr-McGee (Sewage Treatment Plant), West Chicago, Illinois

### ***Special Study Waste Sites***

Fourteen sites containing or possibly containing special study wastes are being added to the NPL in this rule:

- Sulphur Bank Mercury Mine, Clear Lake, California (mining wastes)
- Sealand Limited, Mount Pleasant, Delaware (coal tar wastes)
- Eastern Michaud Flats Contamination, Pocatello, Idaho (mining wastes)
- Monsanto Chemical Co. (Soda Springs Plant), Soda Springs, Idaho (mining wastes)
- Central Illinois Public Service Co., Taylorville, Illinois (coal tar wastes)
- Fairfield Coal Gasification Plant, Fairfield, Iowa (coal tar wastes)
- Lehigh Portland Cement Co., Mason City, Iowa (cement kiln dust)
- Northwestern States Portland Cement Co., Mason City, Iowa (cement kiln dust)
- Peoples Natural Gas Co., Dubuque, Iowa (coal tar wastes)
- Oronogo-Duenweg Mining Belt, Jasper County, Missouri (mining wastes)
- Lee Acres Landfill (USDOJ), Farmington, New Mexico (drilling muds and produced waters)
- Carson River Mercury Site, Lyon/Churchill Counties, Nevada (mining wastes)
- Reilly Tar & Chemical Corp. (Dover Plant), Dover, Ohio (coal tar wastes)
- Tex-Tin Corp., Texas City, Texas (mining wastes)

### ***Score Revisions***

EPA has revised the HRS scores for 37 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 seven of these sites, the public comments have resulted in scores below the cut-off of 28.50. Accordingly, these sites are being dropped from the proposed NPL at this time:

- Magnolia City Landfill, Magnolia, Arkansas
- Concord Naval Weapons Station, Concord, California
- Ford Motor Co. (Sludge Lagoon), Ypsilanti, Michigan
- Gautier Oil Co., Inc., Gautier, Mississippi



- Sunray Oil Co. Refinery, Allen, Oklahoma
- Rio Grande Oil Co. Refinery, Sour Lake, Texas
- Fort Howard Paper Co. (Sludge Lagoons), Green Bay, Wisconsin

**Table 2**  
**Sites With HRS Score Changes**

<b>State/site name</b>	<b>Location</b>	<b>HRS score Proposed</b>	<b>HRS score Final</b>
AR/Magnolia City Landfill	Magnolia	29.49	( <sup>1</sup> )
AZ/Apache Powder Co.	St. David	49.74	39.09
CA/Concord Naval Weapon Station	Concord	29.92	( <sup>1</sup> )
CA/Crazy Horse Sanitary Landfill	Salinas	39.92	37.93
CA/Intersil Inc./Siemens Components	Cupertino	37.79	28.90
CA/Sulphur Bank Mercury Mine	Clear Lake	46.59	44.42
CA/Tracy Defense Depot	Tracy	31.12	37.16
CA/Watkins-Johnson Co. (Stewart Division)	Scotts Valley	44.46	28.90
CT/Cheshire Ground Water Contamination	Cheshire	36.11	35.57
DE/Kent County Landfill (Houston)	Houston	38.11	33.62
FL/BMI-Textron	Lake Park	37.93	35.34
FL/Woodbury Chemical Co (Princeton Plant)	Princeton	39.76	39.43
IA/Fairfield Coal Gasification Plant	Fairfield	33.76	38.05
IA/Northwestern States Portland Cement Co.	Mason City	58.18	57.80
IA/Sheller-Globe Corp. Disposal	Keokuk	35.42	33.66
IA/White Farm Equipment Co. Dump	Charles City	53.42	43.40
IL/Beloit Corp.	Rockton	40.15	52.08
IL/Central Illinois Public Service Co.	Taylorville	48.91	28.95
KY/Green River Disposal, Inc.	Maceo	31.24	29.12
MI/Ford Motor Co. (Sludge Lagoon)	Ypsilanti	31.55	( <sup>1</sup> )
MI/Peerless Plating Co.	Muskegon	38.95	43.94
MO/Oronogo-Duenweg Mining Belt	Jasper County	46.33	46.20
MS/Gautier Oil Co., Inc.	Gautier	29.79	( <sup>1</sup> )
NC/Hevi-Duty Electric Co.	Goldsboro	32.05	29.88
NJ/Higgins Disposal	Kingston	35.73	30.87
NJ/Naval Weapons Station Earle (Site A)	Colts Neck	37.21	29.65
NM/Lee Acres Landfill (USDOJ)	Farmington	37.01	39.37

State/site name	Location	HRS score Proposed	HRS score Final
NM/Prewitt Abandoned Refinery	Prewitt	29.49	44.24
NY/Seneca Army Depot	Romulus	37.30	35.52
OK/Sunray Oil Co. Refinery	Allen	35.47	( <sup>1</sup> )
PA/Ohio River Park	Neville Island	49.27	42.24
TN/Murray-Ohio Manufacturing Co. (Horshoe Bend Dump)	Lawrenceburg	40.27	30.93
TX/Rio Grande Oil Co. Refinery	Sour Lake	36.80	( <sup>1</sup> )
UT/Sharon Steel Corp. (Midvale Tailings)	Midvale	73.49	41.85
UT/Toole Army Dept (North Area)	Tooele	38.32	53.95
WI/Fort Howard Paper Sludge Lagoons	Green Bay	30.83	( <sup>1</sup> )
WY/Mystery Bridge Rd/U.S. Highway 20	Evansville	45.22	32.10

<sup>1</sup> Score indeterminate but below 28.50.

### **Name Revisions**

The names of two sites addressed in this final rule have been changed in response to information received during the comment period. The changes are intended to reflect more accurately the location, nature, or potential sources of contamination at the sites:

- Cheshire Ground Water Contamination (formerly Cheshire Associates Property), Cheshire, Connecticut
- North Market Street (formerly Tosco Corp. (Spokane Terminal)), Spokane, Washington

## **VI. Disposition of All Proposed Sites/Federal Facility Sites**

To date, EPA has proposed 10 major updates to the NPL. This rule results in a total of 20 non-Federal sites that continue to be proposed pending completion of response to comment, resolution of technical issues, and resolution of various policy issues (Table 3). All sites that remain proposed will be considered for future final rules. Although these sites remain proposed, the comment periods have not been extended or reopened.

**Table 3  
NPL Proposals**

Update #	Date/Federal Register citation	Number of sites/Federal facility sites Proposed	Number of sites/Federal facility sites Remaining proposed
1	9/8/83 48 FR 40674	132/1	1/0
2	10/15/84 49 FR 40320	208/36	11/0
3	4/10/85 50 FR 14115	26/6	0/0
4	9/18/85 50 FR 37950	38/3	0/0
5	6/10/86 51 FR 21099	43/2	2/0

Update #	Date/Federal Register citation	Number of sites/Federal facility sites Proposed	Number of sites/Federal facility sites Remaining proposed
6	1/22/87 52 FR 2492	63/1	1/0
7	6/24/88 53 FR 23988	215/14	4/0
8	5/5/89 54 FR 19526	10/0	0/0
9	7/14/89 54 FR 29820	0/52	0/0
10	10/26/89 54 FR 43778	23/2	1/0
ATSDR	8/16/89 54 FR 33846	2/0	0/0
Total		760/117	20/0

## VII. Contents of the NPL

The 106 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.

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.

This rule adds 23 new sites to the Federal facility section of the NPL by group number.

## VIII. 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 106 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.

The State cost share for site cleanup activities has been amended by section 104 of SARA. 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 ground water and surface water, EPA will share in startup costs according to the criteria in the previous paragraph for 10 years or until a sufficient level of protectiveness is achieved before the end of 10 years.
- For other cleanups, EPA will share for up to 1 year the cost of that portion of response needed to assure that a remedy is operational and functional. After that, the State assumes full responsibilities for O&M.

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

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

Source: Office of Program Management, Office of Superfund Remediation Technology Innovation, U.S. EPA. <sup>1</sup> 1988 U.S. Dollars.

<sup>2</sup> Includes State cost-share

<sup>3</sup> Assumes cost of O&M over 30 years, \$400,000 for the first year and 10% discount rate.

Costs to States associated with today's 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 83 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 \$301.6 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 \$265.5 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 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.

## **IX. 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 effected 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 not expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 83 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: August 22, 1990.

**Mary Gade,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

40 CFR part 300 is amended as follows:

#### **PART 300 - [AMENDED]**

1. The authority citation for part 300 continues 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 (38 FR 21243); E.O. 12580 (52 FR 2923).

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