

Federal Register Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL-3404-1]

National Priorities List for Uncontrolled Hazardous Waste Sites, Sites Subject to the Subtitle C Corrective Action Authorities of the Resource Conservation and Recovery Act

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is reproposing 13 sites that were previously proposed for the National Priorities List ("NPL") and proposing to drop 30 sites from the proposed NPL. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), and Executive Order 12580.

These actions are being proposed for these sites in accordance with the NPL policy concerning sites subject to the Subtitle C corrective action authorities of the Resource Conservation and Recovery Act ("RCRA"), set out at 51 FR 21057 (June 10, 1986), and in the preamble to this proposed rule. This notice solicits comments on the Agency's decisions to either promulgate, or drop from the proposed NPL, certain sites based upon their RCRA status.

DATE:

Comments may be submitted on or before August 23, 1988.

ADDRESSES:

Comments may be mailed to:
Stephen A. Lingle
Director, Hazardous Site Evaluation Division
Office of Superfund Remediation Technology Innovation (WH-548A)
U.S. Environmental Protection Agency
401 M Street SW
Washington, DC 20460

Addresses for the Headquarters and Regional dockets are provided below. For further details on what these dockets contain, see Section III of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

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SUPPLEMENTARY INFORMATION:

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I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* ("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"). To implement CERCLA, the U.S. Environmental Protection Agency ("EPA") promulgated the revised National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300, on July 16, 1982 (47 FR 31180), pursuant to section 105 of CERCLA and Executive Order 12316 (46 FR 42237, August 20, 1981). The National Contingency Plan ("NCP"), further revised by EPA on September 16, 1985 (50 FR 37624) and November 20, 1985 (50 FR 47912), sets forth the guidelines and procedures needed to respond under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants.

Section 105 (a)(8)(A) of CERCLA (as amended) requires that the NCP include criteria for determining priorities among releases or threatened releases for the purpose of taking remedial or 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 actions tend to be long-term in nature and involve response actions that are consistent with a permanent remedy (CERCLA section 101(24)).

Section 105 (a)(8)(B) of CERCLA (as amended) requires that these criteria be used to prepare a list of national priorities among the known releases throughout the United States. These criteria are included in Appendix A of the NCP, *Uncontrolled Hazardous Waste Site Ranking System: A User's Manual* (the "Hazard Ranking System" or "HRS" (47 FR 31219, July 16, 1982)). The list, which is Appendix B of the NCP, is the National Priorities List ("NPL"). Section

105 (a)(8)(B) also requires that the NPL be revised at least annually. EPA proposes to include on the NPL sites at which there have been releases or threatened releases of hazardous substances, or of "pollutants or contaminants." The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Under § 300.68(a) of the NCP, a site must be on the NPL if a remedial action is to be financed by the Hazardous Substances Superfund established under SARA. Federal facility sites are eligible for the NPL pursuant to § 300.66(e)(2) of the NCP (50 FR 47931, November 20, 1985). However, CERCLA section 111(e), as amended by SARA, limits the expenditure of Fund monies at Federally-owned facilities. Federal facility sites are subject to the requirements of section 120 of CERCLA, as amended by SARA.

In this notice, EPA is reproposing 13 sites to the NPL, and proposing to drop 30 sites from the proposed NPL. These sites were proposed in either Update #1 (48 FR 40674, September 8, 1983), Update #2 (49 FR 40320, October 15, 1984), Update #3 (50 FR 14115, April 10, 1985), or Update #4 (50 FR 37950, September 18, 1985). These sites were all proposed prior to publication of the policy for listing certain categories of RCRA sites on the NPL (announced on June 10, 1986 (50 FR 21054) and amended in the preamble to this proposed rule), and have since been identified as sites which may be regulated according to the Subtitle C corrective action authorities of RCRA. Therefore, no opportunity has been provided for notice and comment on the application of the final RCRA listing criteria to these sites. In addition, one site, the J. H. Baxter Co. site in Weed, California, is being reproposed because of its RCRA status and because the HRS score for the site has been revised. In addition, minor modifications have been made to the HRS documents for the sites listed below:

Lorentz Barrel & Drum - San Jose, California
Prestolite Battery Division - Vincennes, Indiana
Union Chemical Co.- South Hope, Maine
Kysor Industrial Corp.- Cadillac, Michigan
Conservation Chemical Co.- Kansas City, Missouri
National Starch and Chemical Corp. - Salisbury, North Carolina
Culpeper Wood Preservers - Culpeper, Virginia

The purpose of this **Federal Register** notice is to provide information and solicit comments on EPA's proposed actions for these sites, and to set out amendments to the June 10, 1986 listing policy.

Currently, 378 sites are proposed for the NPL and 799 sites are on the final NPL for a total of 1177 sites. However, the number may change in the future as a result of final actions resulting from this proposed rule.

II. 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 takes into account "pathways" to human or environmental exposure in terms of numerical scores. Those sites that score 28.50 or greater on the HRS, and which are otherwise eligible, may be proposed for listing. The sites discussed in today's rule were proposed based on HRS scores greater than 28.50.

SARA, enacted on October 17, 1986, directs EPA to revise the HRS. The Agency will continue to use the existing HRS until the revised HRS becomes effective. Sites placed on the final NPL prior to the effective date of the revised HRS will not be re-evaluated under the revised system, consistent with section 105(c)(3) of CERCLA (as amended).

The second mechanism for placing sites on the NPL allows States to designate a single site, regardless of its score, as the State's top priority. A State top priority site will be listed on the NPL even if it does not qualify due to its score.

In rare instances, EPA may utilize § 300.66(b)(4) of the NCP (50 FR 37624, September 16, 1985), which allows certain sites with HRS scores below 28.50 to be eligible for the NPL. These sites may qualify for the NPL if all of the following occur:

- The Agency for Toxic Substances and Disease Registry of the U.S. Department of Health and Human Services has issued a health advisory which 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 removal authority to respond to the release.

States have the primary responsibility for identifying 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, monitoring, and scoring sites. Regional offices 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 new sites that meet the listing requirements and solicits public comments on the proposal. Based on these comments and further EPA review, the Agency determines final scores and promulgates those sites that still meet the listing requirements.

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has since been expanded (see 49 FR 19480, May 8, 1984; 49 FR 37070, September 21, 1984; 50 FR 6320, February 14, 1985; 50 FR 37630, September 16, 1985; 51 FR 21054, June 10, 1986; and 52 FR 27620, July 22, 1987). To date, EPA has deleted 11 sites from the NPL (51 FR 7935, March 7, 1986; 53 FR 12680, April 18, 1988). As of today, the number of final NPL sites is 799. Another 378 sites from seven updates remain proposed for the NPL (see 48 FR 40674, September 8, 1983; 49 FR 40320, October 15, 1984; 50 FR 14115, April 10, 1985; 50 FR 37950, September 18, 1985; 51 FR 21099, June 10, 1986; 52 FR 2492, January 22, 1987; and a notice published elsewhere in today's **Federal Register**).

III. Public Comment Period, Available Information

This **Federal Register** notice, which repropose 13 sites to the NPL and proposes to drop 30 sites from the proposed NPL, opens the formal 60-day comment period. These sites were all proposed in one of the first four updates to the NPL (Update #1, 48 FR 40674, September 8, 1983; Update #2, 49 FR 40320, October 15, 1984; Update #3, 50 FR 14115, April 10, 1985; or Update #4, 50 FR 37950, September 18, 1985). The Agency is soliciting comment on the application of the policy for listing certain categories of RCRA sites on the NPL, discussed on June 10, 1986 (51 FR 21099), and later in this rule, to these proposed NPL sites. Comment is also being solicited on the revision of the HRS score for the J.H. Baxter site. In addition, as previously mentioned, minor modifications have been made to the HRS documents for several other sites. Comments may be mailed to Stephen A. Lingle, Director, Hazardous Site Evaluation Division (Attn: NPL Staff), Office of Superfund Remediation Technology Innovation (WH-548A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Documents providing EPA's justification for today's proposed actions are available to the public in both the Headquarters and appropriate Regional public dockets. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any of these documents. The Headquarters public docket is located in EPA Headquarters, Waterside Mall Subbasement, 401 M Street SW., Washington, DC 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding Federal holidays. The Regional public dockets are identified in the Address portion of this notice.

Comments are placed in the Headquarters docket and, during the comment period, are available to the public only in the Headquarters docket. A complete set of comments pertaining to sites in a particular EPA Region will be available for viewing in the Regional office docket approximately one week after the close of the comment period. Comments received after the close of the comment period will be available in the Headquarters docket and in the appropriate Regional office docket on an "as received" basis.

EPA considers all comments received during the formal comment period. In past NPL rulemakings, EPA has considered comments received after the close of the comment period. EPA will attempt to continue that practice to the extent that is practicable. The Agency is currently working to revise the HRS pursuant to requirements in SARA. EPA anticipates making final decisions on the 43 sites in this rule prior to the effective date of the revised HRS. Because of this time constraint, EPA may not have the opportunity to consider late comments as in the past. Any sites still proposed as of the effective date of the HRS will have to be re-evaluated using the revised HRS.

A statement of EPA's information release policy, describing what information the Agency discloses in response to Freedom of Information Act requests from the public, was published on February 25, 1987 (52 FR 5578).

IV. Eligibility and Listing Policies

CERCLA restricts EPA's authority to respond to certain categories of releases of hazardous substances, pollutants, or contaminants and expressly excludes some substances, such as petroleum, from its response authority. In addition, as a matter of policy, EPA may choose not to respond to certain types of releases because other authorities can be used to achieve cleanup. Where such other authorities exist and the Federal government can undertake or enforce cleanup pursuant to a particular established program, using the NPL to determine the priority or need for review under CERCLA may not be appropriate. If, however, the Agency later determines that sites not listed as a matter of policy are not being or cannot be addressed in an adequate or timely manner, the Agency may consider placing them on the NPL.

The listing policy of relevance to this proposed rule pertains to sites which may be subject to the corrective action authorities of Subtitle C of the Resource Conservation and Recovery Act (RCRA).

NPL Listing/Deferral of RCRA Sites

Background

Since the first NPL final rule (48 FR 40658, September 8, 1983), the Agency's policy has been to defer placing sites on the NPL that could be addressed by the RCRA Subtitle C corrective action authorities. Until 1984, those authorities were limited to facilities with releases to ground water from surface impoundments, waste piles, land treatment areas, and landfills that received RCRA hazardous waste after July 26, 1982, and did not certify closure prior to January 26, 1983 (i.e., land disposal facilities addressable by an operating or post-closure permit). Sites which met these criteria were placed on the NPL only if they were abandoned, lacked sufficient resources, Subtitle C corrective action authorities could not be enforced, or a significant portion of the release came from non-regulated units.

On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. HSWA greatly expanded RCRA Subtitle C corrective action authorities as follows:

- Section 3004(u) requires permits issued after the enactment of HSWA to include corrective action for all releases of hazardous waste or constituents from solid waste management units at a treatment, storage, or disposal facility seeking a permit.
- Section 3004(v) requires corrective action to be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner/operator of the facility demonstrates that despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action.
- Section 3008(h) authorizes the Administrator of EPA to issue an order requiring corrective action or such other response measures as deemed necessary to protect human health or the environment whenever it is determined that there is or has been a release of hazardous waste into the environment from a facility with interim status.

As a result of the broadened Subtitle C corrective action authorities of HSWA, the Agency announced a policy for deferring the listing of non-Federal sites subject to the Subtitle C corrective action authorities (50 FR 14117, April 10, 1985). The policy proposed to defer listing of such sites unless and until the Agency determined that RCRA corrective action was not likely to succeed or occur promptly due to factors such as:

1. The inability or unwillingness of the owner-operator to pay for addressing the contamination at the site;
2. Inadequate financial responsibility guarantees to pay for such costs; and
3. EPA or State priorities for addressing RCRA sites.

The intent of the policy was to maximize the number of site responses achieved through the RCRA corrective action authorities, thus preserving the CERCLA Fund for sites for which no other authority is available. Federal facility sites

were not considered in the development of the policy at that time because the NCP prohibited placing Federal facility sites on the NPL.

On June 10, 1986 (51 FR 21057), the Agency added to the NPL a number of sites regulated under RCRA, but not subject to the Subtitle C corrective action authorities. Examples included:

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

In the June 10, 1986 notice, the Agency also added to the NPL a number of sites which *were* subject to Subtitle C corrective action authorities. After having reviewed public comments received on the April 10, 1985 policy, the Agency determined that sites which are subject to Subtitle C corrective action authorities should be on the NPL if they are eligible (e.g., HRS scores greater than or equal to 28.50 *and* if the owner/operators are either unable or unwilling to pay for corrective action at the sites. The Agency recognized that in such a situation it may be appropriate to place the sites on the NPL to make CERCLA funds available for the site, if needed.

Specifically, the Agency identified three categories of sites subject to Subtitle C corrective action authorities which could be placed on the NPL. These categories were consistent with the first two factors announced in the April 10, 1985 policy. The three categories are as follows:

1. Facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws.
2. Facilities that have lost authorization to operate and for which there are indications that the owner/ operator has been unwilling to undertake corrective action. Authorization to operate may be lost when issuance of a corrective action order under RCRA section 3008(h) terminates the interim status of a facility or when the interim status of the facility is terminated as a result of a permit denial under RCRA section 3005(c). Also, authorization to operate is lost through operation of section 3005(e)(2) (when an owner/operator of a land disposal facility did not certify compliance with applicable ground water monitoring and financial responsibility requirements and submit a Part B permit application by November 8, 1985-also known in HSWA as the Loss of Interim Status Provision (LOIS)).
3. Facilities that have not lost authorization to operate, but which have a clear history of unwillingness. These situations are determined on a case-by-case basis.

Also, on June 10, 1986 (51 FR 21059), the Agency discussed additional components of the RCRA policy to add specificity to the determination of unwillingness. The Agency's decision on these additional components will be discussed in a upcoming **Federal Register** notice.

Additional Clarification of the NPL/RCRA Policy

Currently, the Agency will place sites subject to RCRA Subtitle C corrective action on the NPL only if they satisfy one of the three criteria discussed previously in this rule (i.e., bankruptcy, LOIS/unwillingness, case-by-case unwillingness). In addition, today's notice amends the RCRA policy by adding four new categories of RCRA sites as appropriate for the NPL. EPA has decided that sites in the following category are appropriate for the NPL.

1. Facilities that were treating, storing or disposing of Subtitle C hazardous waste after November 19, 1980, and did not file a Part A permit application by that date and have little or no history of compliance with RCRA. These are referred to as *non- or late filers*.

The Agency has decided to place on the NPL "non- or late filers" facilities that were treating, storing, or disposing of hazardous waste after November 19, 1980, but did not file a Part A permit application by that date and have little or no history of compliance with RCRA. EPA has found that TSDFs that fail to file Part A of the RCRA permit application generally remain outside the range of cognizance of authorities responsible for compliance with RCRA, and generally are without the institutional mechanisms such as ground water monitoring programs, necessary to assure prompt compliance with the standards and goals of the RCRA program; therefore, EPA believes that it is not appropriate to defer to RCRA for action at these sites, even though RCRA technically may apply. However, in cases where non- or late filer facilities have in fact come within the RCRA system and demonstrated a history of compliance with RCRA regulations (as may often be the case with late filers), the Agency may decide to defer listing and allow RCRA to continue to address problems at the site.

Two other categories of RCRA sites are appropriate for the NPL:

2. Facilities with permits for the treatment, storage, or disposal of Subtitle C hazardous waste which were issued prior to the enactment of HSWA, and whose owner/operator will not voluntarily modify the permit to incorporate corrective action requirements. These are referred to as *pre-HSWA permittees*.
3. Facilities that have filed Part A permit applications for treatment, storage, or disposal of Subtitle C hazardous wastes as a precautionary measure only. These facilities may be generators, transporters, or recyclers of hazardous wastes, and are not subject to Subtitle C corrective action authorities. These are referred to as *protective filers*.

For facilities with permits that pre-date HSWA, the owner/operators are not required through the permit to perform corrective action for releases from solid waste management units, and the Agency does not have the authority to modify such pre-HSWA permits to include RCRA corrective action under RCRA section 3004(u) until the permit is renewed. Because many pre-HSWA permits are for 10 years, with the last pre-HSWA permit having been issued prior to November 8, 1984, it could be 1994 before the Agency could modify some permits to include corrective action authority. Therefore, the Agency will propose for listing, facilities with pre-HSWA permits (that have HRS scores greater than or equal to 28.50, or are otherwise eligible for listing), so that CERCLA authorities will be available to more expeditiously address any releases at such sites. However, if the permitted facility consents to the modification of its pre-HSWA permit to include corrective action requirements, the Agency will consider not adding the facility to the NPL.

The Agency does not have the authority to compel Subtitle C corrective action at facilities classified as protective filers. These facilities filed Part A permit applications as treatment, storage or disposal facilities (TSDFs) as a precautionary measure only, and are generators, transporters, or recyclers of hazardous waste, or in some cases, handlers of non-hazardous wastes. Protective filers are not subject to Subtitle C corrective action authorities, and thus, EPA will propose them for the NPL.

The Agency is also announcing a policy for a fourth category of RCRA sites that may be appropriate for listing on the NPL. This policy will apply to sites re-proposed for listing in today's **Federal Register**, and to sites newly proposed for listing on NPL Update #7, published elsewhere in today's **Federal Register**. This category of sites includes:

4. Facilities that at one time were treating or storing RCRA Subtitle C hazardous waste but have since converted to generator-only status (i.e., facilities that now store hazardous waste for 90 days or less), or any other hazardous waste activity for which interim status is not required. These facilities, the withdrawal of whose Part A application has been acknowledged by EPA or the State, are referred to as *converters*.

Converters at one time treated or stored Subtitle C hazardous waste and were required to obtain interim status. EPA believes that it has the authority under RCRA section 3008(h) to compel corrective action at such sites. However, RCRA's corrective action program currently focuses primarily on treatment, storage, and disposal facilities (due to statutory permitting deadlines in RCRA), and thus EPA has not routinely reviewed converters under RCRA Subtitle C. The Agency has decided at this time to propose that four sites previously proposed for the NPL be placed on the final NPL on the basis of their converter status, and, in a separate section of today's **Federal Register**, to propose an additional eight converters for listing on the NPL, in order to ensure that these sites are expeditiously addressed.

This is consistent with EPA's approach of listing those RCRA facilities where corrective action is not likely to be expeditiously performed (see 51 FR 21054, June 10, 1986). Although EPA has the authority to list any site not

statutorily excluded that meets the HRS scoring criterion, the Agency has, as a matter of policy, decided to defer the listing of most facilities where RCRA corrective action authorities are available. However, the Agency believes that deferral may not be appropriate for facilities like converters where prompt corrective action is unlikely under RCRA; instead, the Agency is proposing to list such sites so that cleanup action may be taken in an expeditious manner under CERCLA, if necessary.

EPA is currently engaged in an initiative to identify and prioritize RCRA facilities that are not being promptly addressed. If the Agency determines in the future that as a result of this initiative, converter sites will be addressed in an expeditious manner by RCRA authorities, then it will reconsider today's policy and may defer to RCRA for corrective action at converter sites.

The Agency seeks comment on the application of this policy to the sites being proposed and repropoed in today's **Federal Register**. In the future, there may be other situations, on a case-by-case basis, where the Agency may elect to use CERCLA authorities rather than its RCRA authorities. In those situations, the Agency will provide its rationale for pursuing CERCLA authorities in a **Federal Register** notice.

V. Contents of This Proposed Rule

This rule repropoed 13 sites to the NPL (Table 1), and proposes to drop 30 sites (Table 2) from the proposed NPL. These proposed actions are based on the application of the components of the NPL/RCRA policy announced on June 10, 1986 (51 FR 21057), and on those discussed in this notice.

All these sites were proposed to the NPL prior to the announcement of the NPL/RCRA policy and its amendments today. The Agency believes that it is appropriate to solicit comments on these proposed actions because the public was not previously afforded adequate notice and opportunity to comment on the application of the NPL/RCRA policy to these sites. Documentation supporting the Agency's proposed actions is available in the public docket.

Sites To Be Repropoed To The NPL

The 13 sites that the Agency is repropoing to the NPL fall into one of the following categories:

- Sites which are not subject to the Subtitle C corrective action authorities of RCRA. For example:
 - exempt by site-specific orders
 - sites where wastes are no longer considered hazardous because of an amendment to the list of RCRA hazardous wastes
- Sites subject to Subtitle C corrective action authorities of RCRA, but which satisfy one of the criteria of the June 10, 1986 NPL/ RCRA policy (e.g., case-by-case unwillingness);
- Sites which have converted from treatment and/or storage status to generator-only status;
- Sites which failed to file a Part A permit application in a timely fashion; and
- Sites where RCRA corrective action may not apply to all the contamination at the site.

Table 1 lists the 13 sites the Agency is repropoing to the NPL. A brief description of each follows Table 1, and a more detailed account is available in the docket.

**Table 1
Sites To Be Reproposed To The NPL**

State/Site name	Location	RCRA status	Date proposed
AZ: Motorola, Inc. (52nd Street Plant)	Phoenix	Converter	10/15/84
CA: Fairchild Semiconductor Corp. (formerly Fairchild Camera & Instrument Corp.) (South San Jose Plant)	South San Jose	Converter	10/15/84
CA: J.H. Baxter Co.	Weed	Unwilling	10/15/84
CA: Lorentz Barrel & Drum Co.	San Jose	Non-filer	10/15/84
FL: City Industries Inc.	Orlando	LOIS/unwilling	10/15/84
IN: Prestolite Battery Division	Vincennes	RCRA corrective action may not apply to all contamination	09/18/85
ME: Union Chemical Co. Inc.	South Hope	LOIS/Unwilling	04/10/85
MI: Kysor Industrial Corp.	Cadillac	Converter	09/18/85
MO: Conservation Chemical Co.	Kansas City	Unwilling	04/10/85
NE: Lindsay Manufacturing Co.	Lindsay	Amendment to waste listing	10/15/84
NC: National Starch & Chemical Corp.	Salisbury	Converter	04/10/85
VA: Culpeper Wood Preservers, Inc.	Culpeper	RCRA 3008(a) order	10/15/84
VA: Buckingham County Landfill (formerly Love's Container Service Landfill)	Buckingham	LOIS/unwilling	10/15/84

Motorola, Inc. (52nd Street Plant) - Phoenix, Arizona

This facility is a converter. It obtained interim status on November 19, 1980, when it submitted to EPA a Part A permit application for container and tank storage. On May 19, 1986, the facility requested conversion to generator status only. On July 29, 1986, EPA confirmed the facility was operating as a generator.

Fairchild Semiconductor Corp. (Formerly Fairchild Camera & Instrument Corp.) (South San Jose Plant), South San Jose, California

This facility is a converter. It obtained interim status on November 17, 1980, when it submitted to EPA a Part A permit application for container and tank storage units. On February 11, 1982, the California Department of Health Services completed a surveillance and compliance report indicating the facility should not be permitted as a treatment, storage, or disposal facility, and that the facility should be classified as a generator. On March 10, 1982, the facility requested to withdraw its permit application for hazardous waste treatment operations because the only type of treatment conducted at the facility was waste water neutralization, which is excluded from permit requirements. EPA granted the request for withdrawal of the permit application.

J.H. Baxter Co. - Weed, California

EPA is reproposing this site to the NPL based on criterion #3 of the NPL/RCRA policy and because the HRS score has been revised. Consequently, the Agency is soliciting comment on the revised score as well as application of the NPL/RCRA policy. The facility has not lost authorization to operate, but has a clear history of unwillingness.

Baxter obtained interim status on November 17, 1980, when it submitted to EPA a Part A permit application. Since 1983, it has consistently sought to withdraw that application, and has continued to dispute RCRA jurisdiction over its facility. On the basis of disputed RCRA jurisdiction, the company has been unwilling to deny with numerous State and

EPA Regional demands for cleanup and/or closure under RCRA and other statutes. The company does not comply the presence of contamination of soil and ground water at the site; rather it disputes the applicability of RCRA to those problems.

Baxter has evidenced a clear unwillingness to submit in any way to RCRA authorities, and thus it appears unlikely that corrective action may be achieved under RCRA. Therefore, the site should be repropose to the NPL so that the contamination may be addressed under CERCLA.

Lorentz Barrel & Drum Co. - San Jose, California

This facility is now considered a non-filer. On August 18, 1980, Lorentz, a reconditioner of steel drums, notified EPA that it was a generator and transporter of hazardous waste, as well as a treatment, storage, and disposal facility. On March 25, 1981, EPA deleted the facility as a treatment, storage and disposal facility based on the company's representations that it had filed the TSD notification as a precaution, believing that ambiguities in the hazardous waste regulations could lead to an interpretation that would include the reconditioning of steel drums.

In 1983, the State determined that the facility was in fact managing hazardous wastes without a permit; the facility has been shut down until compliance procedures are developed. The facility is now considered a non-filer.

City Industries, Inc. - Orlando, Florida

This site is being proposed for the NPL based on criterion #2 of the NPL/RCRA policy. Although this facility is subject to the Subtitle C corrective action authorities of RCRA, it has lost authorization to operate, and the owner/operator has been unwilling to address contamination at the site.

City Industries obtained interim status on November 19, 1980, when it submitted to EPA a Part A permit application for storage. On July 27, 1983, EPA terminated the facility's interim status for failure to submit an acceptable Part B permit application to EPA.

The owner/operator demonstrated an unwillingness to address contamination at the site by failure to submit an acceptable Part B permit application to EPA, failure to comply with Federal and State administrative orders, abandonment of the site, and statements that he was financially unable to address the contamination at the site.

Prestolite Battery Division - Vincennes, Indiana

Prestolite Battery Division received interim status on November 11, 1980, when it submitted to EPA a Part A permit application for container, tank and surface impoundment storage. Much of the contamination at the site is a result of atmospheric deposition of lead from the facility's faulty air pollution control equipment. EPA is proposing to add this site to the NPL because at this time an issue remains as to whether RCRA Subtitle C corrective action authorities apply to all of the contamination associated with the site.

Union Chemical Co., Inc. - South Hope, Maine

This site is being repropose for the NPL based on criterion #2 of the NPL/RCRA policy. Although this facility is subject to the Subtitle C corrective action authorities of RCRA, it has lost authorization to operate, and the owner/operator has been unwilling to address contamination at the site.

On July 31, 1980, Union Chemical submitted a preliminary notification of hazardous waste activity to EPA, identifying itself as a generator of RCRA hazardous waste and as a treatment and storage facility. Union Chemical obtained interim status on November 15, 1980, when it submitted a Part A permit application to EPA. The facility's interim status was terminated on June 27, 1984, when the State of Maine found that the facility had failed to comply with a May 7, 1984, consent decree it had entered into with the State. The consent decree required the reduction in the number of drums on site and financial assurances for site closure.

he owner/operator demonstrated unwillingness to address contamination at the site by failure to submit an acceptable Part B permit application, failure to comply with Federal and State administrative orders, and statements that he was financially unable to address contamination at the site.

Kysor Industrial Corp. - Cadillac, Michigan

This facility is a converter. It submitted a notification of hazardous waste activity on August 18, 1980, and obtained interim status on November 19, 1980, when it submitted to EPA a Part A permit application for container storage. On April 24, 1984, the facility submitted a closure plan, certification of closure, and request for conversion to generator status. On July 20, 1984, EPA approved Kysor's closure plan and acknowledged the facility's small quantity generator status.

Conservation Chemical Co. (CCC) - Kansas City, Missouri

EPA is reproposing this site for the NPL based upon criterion #3 of the NPL/RCRA policy. The facility has not lost authorization to operate, but has a clear history of unwillingness.

The record of compliance at the CCC site demonstrates the unwillingness of the owner/operator to submit an adequate part B permit application or closure plan; to comply with Federal and State Administrative orders; and to take cleanup action in response to a court finding of a "imminent and substantial" hazard at the site.

consent decree signed by the generator defendants and the site owner/operator has recently been approved by a U.S. district court. However, the decree merely requires the site owner/operator to pay certain monies for past EPA response costs, grant site access, and otherwise cooperate in the cleanup efforts to be performed by others at the site. CCC did *not* commit to do any portion of the site remedy.

Lindsay Manufacturing Co. - Lindsay, Nebraska

This facility is no longer subject to RCRA Subtitle C corrective action authorities. It obtained interim status on November 17, 1980, when it submitted a Part A permit application to EPA for disposal surface impoundment units. On May 28, 1986, (51 FR 19320), EPA published an amendment to the listing for spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062). This rulemaking confirmed that the waste generated by Lindsay Manufacturing would be considered hazardous only if it exhibited one or more of the hazardous waste characteristics. The waste did not display corrosivity characteristics; the Lindsay manufacturing unit was therefore not subject to RCRA, and not subject to RCRA Subtitle C corrective action authorities.

National Starch & Chemical Corp. - Salisbury, North Carolina

This facility is a converter. National Starch and Chemical Corp. submitted a Notification of Hazardous Waste Activity on September 24, 1980, indicating that the facility was a treatment, storage, or disposal facility as well as a generator. On October 17, 1980, the facility filed a Part A permit application for treating and storing of hazardous waste. On May 20, 1982, National Starch asked to withdraw its Part A application. On June 17, 1982, the facility was deleted as a storage facility and converted to generator only status. On July 19, 1983, EPA deleted the facility as a generator; it now has non-handler status. In 1983, National Starch merged with the adjacent Proctor Chemical facility under the National Starch & Chemical Corp. name and identification number. Proctor submitted a Notification of Hazardous Waste Activity and on August 18, 1980, submitted to EPA a Part A permit application for treatment and storage units. On June 23, 1983, EPA deleted the facility as a storer and on November 14, 1983, it was deleted as a treater, leaving the site with generator status.

Culpeper Wood Preservers, Inc. - Culpeper, Virginia

On September 10, 1981, EPA and the facility entered into a consent order and consent agreement pursuant to RCRA section 3008(a) which stated that upon satisfactory completion of a facility upgrading program, the facility would not be required to have a RCRA permit. The facility satisfied the requirements of the agreement, and thus has not been required to obtain a permit or interim status under RCRA Subtitle C. As a result, EPA is proposing to list this facility for attention under CERCLA rather than RCRA. However, if the facility agrees to address the contamination at the site

according to the Subtitle C corrective action authorities of RCRA, the Agency would consider removing the facility from consideration for the NPL.

Buckingham County Landfill (Formerly Love's Container Service Landfill) - Buckingham, Virginia

This site is being repropoed for the NPL based on criterion #2 of the NPL/RCRA policy. Although this facility is subject to the Subtitle C corrective action authorities of RCRA, it has lost authorization to operate, and the owner/operator has been unwilling to address all of the contamination at the site.

On January 8, 1981, the Love's Container Service Landfill obtained interim status for the disposal of type D001 wastes (ignitable waste) pursuant to RCRA Section 3005. Records indicate that the landfill continued to accept waste until February 1982.

In April 1982, Buckingham County purchased the site and the hazardous waste disposal permit from the site owner, Mr. Love. The landfill was never operated by the county.

In February 1985, the landfill was closed as a solid waste disposal facility by the county. The closure was consistent with State regulations, but was inconsistent with RCRA Subtitle C requirements.

On November 8, 1985, the landfill lost its interim status under RCRA section 3005(e)(2) because the county had failed to submit a Part B permit application for post-closure monitoring, and did not certify compliance with applicable ground water monitoring and financial responsibility requirements.

In a letter to EPA, dated November 30, 1987, from the county, the county stated that it was unable and unwilling to address all of the contamination at the site.

Sites To Be Dropped From the NPL

The Agency is proposing to drop 30 sites (Table 2) from the proposed NPL because they are subject to the Subtitle C corrective action authorities of RCRA, and do not satisfy any of the criteria in the NPL/RCRA policy of June 10, 1986 (51 FR 21057) or those discussed in this notice. The Agency believes that the sites will be adequately addressed using the corrective action authorities of RCRA Subtitle C alone or in conjunction with other authorities (a more detailed description of each site is available in the public docket). The Agency will continue to examine these sites in the context of the NPL/RCRA policy and may, in the future, consider these sites for addition to the NPL, if necessary.

**Table 2
Sites Proposed To Be Dropped From The NPL**

State/Site name	Location	Date proposed
CA: Fairchild Semiconductor Corp. (formerly Fairchild Camera & Instrument Corp.) (Mountain View Plant)	Mountain View	10/15/84
CA: FMC Corp. (Fresno Plant)	Fresno	10/15/84
CA: Hewlett-Packard	Palo Alto	10/15/84
CA: IBM Corp. (San Jose Plant)	San Jose	10/15/84
CA: Marley Cooling Tower Co.	Stockton	10/15/84
CA: Rhone-Poulenc, Inc./Zoecon Corp.	East Palo Alto	10/15/84
CA: Signetics, Inc.	Sunnyvale	10/15/84
CA: Southern Pacific Transportation Co.	Roseville	10/15/84
CA: Van Waters & Rogers Inc.	San Jose	10/15/84

State/Site name	Location	Date proposed
CO: Martin Marietta (Denver Aerospace)	Waterton	09/18/85
FL: Pratt & Whitney Aircraft/United Technologies Corp.	West Palm Beach	09/18/85
GA: Olin Corp. (Areas 1, 2 & 4)	Augusta	09/08/83
IA: A.Y. McDonald Industries, Inc.	Dubuque	09/18/85
IA: Chemplex Co.	Clinton/Camanche	10/15/84
IA: Frit Industries (Humboldt Plant)	Humboldt	04/10/85
IA: John Deere (Dubuque Works)	Dubuque	09/18/85
IA: U.S. Nameplate Co.	Mount Vernon	10/15/84
IL: Sheffield (U.S. Ecology, Inc.)	Sheffield	10/15/84
IN: Firestone Industrial Products Co.	Noblesville	09/18/85
KS: National Industrial Environmental Services	Furley	10/15/84
MI: Hooker (Montague Plant)	Montague	09/18/85
MI: Lacks Industries, Inc.	Grand Rapids	10/15/84
MO: Findett Corp.	St. Charles	10/15/84
MT: Burlington Northern Railroad (Somers Tie-Treating Plant)	Somers	10/15/84
NE: Monroe Auto Equipment Co.	Cozad	09/18/85
NJ: Matlack, Inc.	Woolwich Township	09/18/85
OH: General Electric Co. (Coshocton Plant)	Coshocton	10/15/84
PA: Rohm & Haas Co. Landfill	Bristol Township	04/10/85
VA: IBM Corp. (Manassas Plant Spill)	Manassas	10/15/84
WV: Mobay Chemical Corp. (New Martinsville Plant)	New Martinsville	10/15/84

VI. Regulatory Impact Analysis

The costs of cleanup actions that may be taken at sites are not directly attributable to listing on the NPL, as explained below. Therefore, the Agency has determined that this rulemaking is not a "major" regulation under Executive Order 12291. EPA has conducted a preliminary analysis of the economic implications of today's proposal to add new sites. EPA believes that the kinds of economic effects associated with this revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for the revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) and the economic analysis prepared when the amendments to the NCP were proposed (50 FR 5882, February 12, 1985). The Agency believes that the anticipated economic effects related to proposing the addition of these sites to the NPL can be characterized in terms of the conclusions of the earlier RIA and the most recent economic analysis. As required by Executive Order No. 12291, this rule was submitted to the Office of Management and Budget (OMB) for review.

Costs

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

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. In addition, since these sites were previously proposed for the NPL, no additional costs are incurred in today's rulemaking.

The major events that generally follow the proposed listing of a site on the NPL are a search for 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. It should be noted that a site must be on the final NPL in order for construction and operation and maintenance (O&M) to occur. O&M activities may continue after construction has been completed.

Costs associated with responsible party searches are initially 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.

The State cost share for cleanup activities has been amended by section 104 of SARA. For privately-owned 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. At publicly-owned but not publicly-operated sites, however, the States cost share is at least 50% of all response costs. This includes the RI/FS, remedial design and construction, and O&M. For cleanup activities other than ground water or surface water, EPA will share, for up to 1 year, in the cost of that portion of O&M that is necessary to assure that a remedy is operational and functional. After that time, the State assumes full responsibility for O&M. SARA provides that EPA will share in the operational costs associated with ground water/surface water restoration for up to 10 years.

In previous NPL rulemakings, the Agency has provided estimates of the costs associated with these activities (RI/FS, remedial design, remedial action, and O&M) on an average per site and total cost basis. At this time, however, there is insufficient information to determine what these costs will be as a result of the new requirements under SARA. As EPA gains more experience with the effects that SARA requirements will have on response costs, EPA will once again provide cost estimates.

Listing a hazardous waste site on the final NPL does not itself cause firms responsible for the site to bear costs. Nonetheless, a listing may induce firms to clean up the site 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: The volume and nature of the wastes at the site, the parties' ability to pay, and other factors when deciding whether and how to proceed against potentially responsible parties.

The economic effects of this proposed 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 benefits associated with today's proposed amendment to place 13 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, this proposed expansion of the NPL could accelerate voluntary privately-financed cleanup efforts to avoid potential adverse publicity, private lawsuits, and/or Federal or State enforcement actions.

As a result of additional CERCLA remedies, there will be lower human exposure to contaminants, 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 particular sites.

Associated with the costs of remedial actions are significant potential benefits and cost offsets. The distributional costs to firms of financing NPL remedies have corresponding "benefits" in that funds expended for a response generate employment, directly or indirectly.

The benefit associated with today's proposed action to remove 30 sites from the proposed NPL is that CERCLA resources and monies available for cleanup of NPL sites will be preserved for sites for which there is no other authority to pursue site cleanup. The Agency believes that these sites can be addressed by the Subtitle C corrective action authorities of RCRA alone or in conjunction with other authorities, and therefore should not be on the NPL.

VII. 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 jurisdictions, and nonprofit organizations.

While proposed modifications to the NPL are considered revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites for the NPL does not in itself require any action by any private party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, it is hard to predict impacts on any group. A site's proposed inclusion on the NPL could increase the likelihood that adverse impacts to responsible parties (in the form of cleanup costs) will occur, but EPA cannot identify the potentially affected businesses at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the proposed listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would only occur through enforcement and cost-recovery actions, which are taken at EPA's discretion on a site-by-site basis. EPA considers many factors when determining what enforcement actions to take, including the firm's contribution to the problem and 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, Chemicals, Hazardous materials, Intergovernmental relations, Natural resources, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Date: June 16, 1998.

Jack W. McGraw,
Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

It is supposed to amend 40 CFR part 300, Appendix B, as follows:

PART 300 — [AMENDED]

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

Authority: 42 U.S.C. 9605(a)(8)(B).

2. It is proposed to add the following sites, by group, to Appendix B of Part 300:

**National Priorities List
RCRA Sites To Be Reopposed To The NPL (By Group) - May 1988**

NPL Gr ¹	St	Site name	City/County	Response category ²	Cleanup status ³
5	NE	Lindsay Manufacturing Co.	Lindsay	V,S	O
6	VA	Culpeper Wood Preservers, Inc.	Culpepper	V,H	
8	AZ	Motorola, Inc. (52nd Street Plant)	Phoenix	D	
8	VA	Buckingham County Landfill	Buckingham	D	
9	CA	Fairchild Semiconduct (S San Jose)	South San Jose	D	O
10	IN	Prestolite Battery Division	Vincennes	D	
11	CA	J.H. Baxter & Co.	Weed		
12	CA	Lorentz Barrel & Drum Co.	San Jose	R,S	
12	MI	Kysor Industrial Corp.	Cadillac	R	
13	ME	Union Chemical Co., Inc.	South Hope	V,R,F,S	O
14	FL	City Industries, Inc.	Orlando	R,F,S	O
14	NC	National Starch & Chemical Co.	Salisbury	D	
15	MO	Conservation Chemical Co.	Kansas City	R,F	

Number of Sites Proposed for Listing: 13

1. Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.
2. V-Voluntary or negotiated response; F-Federal enforcement; D-Category to be determined; R-Federal and State response; S-State enforcement.
3. I-Implementation activity underway, one or more operable units; O-One or more operable units completed, others may be underway; C-Implementation activity completed for all operable units.

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