

Federal Register Notice

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL-3566-6]

National Priorities List for Uncontrolled Hazardous Waste Sites; Proposed Update No. 8

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY:

The Environmental Protection Agency ("EPA") is proposing the eighth update to the National Priorities List ("NPL"). This update proposes to add 10 new sites to the NPL. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan ("NCP"), which was promulgated on July 16, 1982 pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA")) and 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 NPL, initially promulgated on September 8, 1983 (48 FR 40658), constitutes this list.

These sites are being proposed because they meet the listing requirements of the NPL. This notice provides the public with an opportunity to comment on placing these sites on the NPL.

This proposed rule brings the number of proposed NPL sites to 283, 22 of them in the Federal section; 890 are on the final NPL, 41 of them in the Federal section. Final and proposed sites now total 1,173.

DATES:

Comments must be submitted on or before July 5, 1989.

ADDRESSES:

Comments may be mailed to:

Larry Reed
Acting Director, Hazardous Site Evaluation Division (Attn: NPL Staff)
Office of Superfund Remediation Technology Innovation (OS-230)
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 the Public Comment Section, Section I, of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

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U.S. EPA CERCLA Docket Office
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FOR FURTHER INFORMATION CONTACT:

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Office of Superfund Remediation Technology Innovation (OS-230)
U.S. Environmental Protection Agency
401 M Street, SW.
Washington, DC 20460
or the Superfund Hotline, Phone (800) 424-9346 (382-3000 in the Washington, DC metropolitan area).

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. 9601-9657 ("CERCLA" or the "Act") in response to the dangers of uncontrolled or abandoned 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 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 December 21, 1988 (53 FR 51394), EPA proposed revisions to 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, take into account the potential urgency of such action for the purpose of taking removal action. Removal action involves cleanup or other actions that are taken in response to releases or threats of releases on a short-term or temporary basis (CERCLA section 101(23)). Remedial action tends to be long-term in nature and involves response actions that are consistent with a permanent remedy for a release (CERCLA section 101(24)). Criteria for determining priorities for possible remedial actions financed by the Trust Fund established under CERCLA are included in the Hazard Ranking System ("HRS"), which EPA promulgated as Appendix A of the NCP (47 FR 31219, July 16, 1982). On December 23, 1988 (53 FR 51962), EPA proposed revisions to the HRS in response to SARA. EPA intends to issue the revised HRS as soon as possible. However, until the proposed revisions have been subject to public comment and put into effect, EPA will continue to propose and promulgate sites using the current HRS, in accordance with CERCLA section 105(c)(1) and Congressional intent, as explained on March 31, 1989 (54 FR 13296).

Section 105(a)(8)(B) of CERCLA, as amended by SARA, requires that the statutory criteria provided by the HRS be used to prepare a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. 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. A site can undergo CERCLA-financed remedial action only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.66(c)(2) and 300.68(a).

An original NPL of 406 sites was promulgated on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on March 31, 1989 (54 FR 13296). The Agency also has published a number of proposed rulemakings to add sites to the NPL, most recently Update #7 on June 24, 1988 (53 FR 23988).

EPA may delete sites from the NPL where no further response is appropriate, as explained in the NCP at 40 CFR 300.66(c)(7). To date, the Agency has deleted 26 sites from the final NPL.

This notice proposes to add 10 sites to the NPL. Adding these 10 sites to the 273 sites previously proposed brings the total number of proposed sites to 283. The final NPL contains 890 sites, for a total of 1,173 final and proposed sites.

EPA is proposing to include on the NPL sites at which there are or have been releases or threatened releases of hazardous substances, pollutants, or contaminants. The discussion below may refer to "releases or threatened releases" simply as "releases," "facilities," or "sites."

Public Comment Period

This **Federal Register** notice opens the formal 60-day comment period for NPL Update #8. Comments may be mailed to:

Larry Reed
Acting Director, Hazardous Site Evaluation Division (Attn: NPL staff)
Office of Superfund Remediation Technology Innovation (OS-230)
U.S. Environmental Protection Agency
401 M Street, SW.
Washington, DC 20460

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

The Headquarters docket for NPL Update #8 contains HRS score sheets for each proposed site, a Documentation Record for each site describing the information used to compute the score, a list of documents referenced in the Documentation Record, and pertinent information for any site affected by statutory requirements and listing policies.

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 EPA relied upon 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.

EPA considers all comments received during the formal comment period. During the comment period, comments 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 docket approximately one week after the formal comment period closes. Comments received after the comment period closes will be available in the Headquarters docket and in the appropriate Regional Office docket on an "as received" basis. An informal written request, rather than a formal request, should be the ordinary procedure for obtaining copies of any comments. After considering the relevant comments received during the comment period, EPA will add to the NPL all proposed sites that meet EPA's requirements. In past NPL rulemakings, EPA has considered, to the extent practicable, comments received after the close of the comment period. EPA will attempt to do so in this rulemaking as well.

Early Comments

In certain instances, interested parties have written to EPA concerning sites that were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if they still consider them appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to formal proposal generally will not be included in the docket.

Comments Lacking Specificity

EPA anticipates that some comments will consist of or include additional studies or supporting documentation, e.g., hydrogeology reports, lab data, and previous site studies. Where commenters do not indicate what specific scoring issues the supporting documentation addresses, or what they want EPA to evaluate in the supporting documentation, EPA can only attempt to respond to such documents as best it can. Any commenter submitting additional documentation to EPA should indicate what specific points in that documentation EPA is to consider. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Northside Sanitary Landfill v. Thomas & EPA*, 849 F. 2d 1516, 1520 (D.C. Cir. 1988) cert. pending No. 88-1035, during notice-and-comment rulemaking a commenter must explain with some specificity how any documents submitted are relevant to issues in the rulemaking.

Availability of Information

EPA has published a statement describing what background information (resulting from the initial investigation of potential CERCLA sites) the Agency discloses in response to Freedom of Information Act requests (52 FR 5578, February 25, 1987).

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 Committee on Environment and Public Works, Senate Report No. 96-848, 96th Cong., 2d Sess; 60 (1980)):

The priority lists serves 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 300.66(c)(2). However, section 111(e)(3) of CERCLA, as amended by SARA, limits the expenditure of CERCLA monies at federally-owned facilities. Federal facility sites are also subject to the requirements of CERCLA section 120, added by SARA.

Implementation

A site can undergo remedial action financed by the Trust Fund only after it is placed on the final NPL as outlined in the NCP at 40 CFR 300.66(c)(2) and 300.68(a). 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 300.65-67.

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 type and extent of contamination. 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 to be taken at these sites are made in accordance with the criteria contained in Subpart F of the NCP. After conducting these additional studies, EPA may conclude that it is not desirable to 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.

RI/FS at Proposed Sites

An RI/FS can be performed at proposed sites (or even non-NPL sites) pursuant to the Agency's removal authority under CERCLA, as outlined in the NCP at 40 CFR 300.68(a)(1). (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 is generally 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

A "facility" is defined under CERCLA section 101(9) and the NCP at 40 CFR 300.6 as "(A) any building, structure, well, pit, pond, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located." (The term "site" is frequently used interchangeably with facility.) The "come to be located" language implements the broad remedial purposes of CERCLA, giving EPA authority to clean up contamination when it has spread from the original source. In *U.S. v. Bliss*, 667 F. Supp. 1298, 1305 (E.D. Mo. 1987), the courts have affirmed this interpretation:

As the Special Master noted succinctly in *United States v. Conservation Chemical Co.*, 619 F. Supp. [162,] at 185 [(W.D. Mo. 1985)], "simply put, the term 'facility' includes any place where hazardous substances come to be located." Thus, to show that an area is a "facility", the plaintiff need only show that a hazardous substance has been placed there or has "otherwise come to be located" there.

The extent of the contamination, and thus the "facility", is first described when a release or threatened release is scored using the HRS. However, HRS scoring and the subsequent listing of a release merely represent the initial determination that a certain area may need to be addressed under CERCLA. Accordingly, EPA contemplates that the preliminary description of facility boundaries at the time of scoring will need to be refined and improved as more information is developed as to where the contamination has come to be located; this refining step generally comes during the RI/FS stage. As the NCP provides at 40 CFR 300.68(d):

An RI/FS shall determine the nature and extent of the threat presented by the release and evaluate proposed remedies. This includes the gathering of sufficient information to determine the necessity for and proposed extent of remedial action.

The preliminary description of a facility when it is listed does not preclude the Agency, during the RI/FS, from following the contamination as far as it goes, and then considering the facility, for response purposes, as the entire area where hazardous substances have come to be located, even if that area extends beyond the boundary for which the site was named.

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 300.66(b)(4) (50 FR 37624, September 16, 1985), 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 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 remedial authority than 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, sampling, monitoring, and scoring sites. Regional Offices may also 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 the eligibility criteria (and EPA's additional listing requirements) 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 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. 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 the NRC has the authority and expertise to clean up releases from those facilities (48 FR 40661, September 8, 1983). 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 sites from the NPL even though CERCLA may provide authority to respond. If, however, the Agency later determines that sites not listed as a matter of policy are not being properly responded to, the Agency may place them on the NPL. The listing policies and statutory requirements of particular relevance to this proposed rule cover sites involving Subtitle C of the Resource Conservation and Recovery Act (RCRA) and sites with "special study wastes." They are discussed below. These and other listing policies and statutory requirements have been explained in greater detail in previous rulemakings, the latest being June 24, 1988 (53 FR 23978 and 53 FR 23988).

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 or the deferral from 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 site include:

- Facilities that ceased treating, storing, or disposing of hazardous waste prior to November 19, 1980 (the effective date of Phase I of the Subtitle C regulations) and to which the RCRA corrective action or other authorities of Subtitle C cannot be applied.
- Sites at which only materials exempted from the statutory or regulatory definition of solid waste or hazardous waste are managed.

- Contamination areas resulting from the activities of RCRA hazardous waste handlers to which RCRA Subtitle C corrective action authorities do not apply, such as hazardous waste generators or transporters, which are not required to have Interim Status or a final RCRA permit.

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

- Facilities owned by persons who have demonstrated an inability to finance a cleanup 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.
- Sites, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake correction action.

On August 9, 1988 (53 FR 30005), EPA published 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 published a policy statement requesting comment on a policy for determining when an owner/operator should be considered unable to pay for addressing the contamination at a RCRA-regulated site.

On June 24, 1988 (53 FR 23978), EPA proposed to list RCRA sites in several other categories which the Agency considers appropriate for placement on the NPL. These categories are non- or late filers, converters, protective filers, and sites holding permits issued before enactment of the Hazardous and Solid Waste Amendments of 1984.

This update proposes a RCRA site in the converter category:

- Tri-Cities Barrel Co., Inc., Port Crane, New York.

Documents supporting the RCRA determination for this site are available for review in both the headquarters and appropriate Regional docket. Commenters are encouraged to provide documentation where they believe EPA's RCRA determination is in error.

Releases of Special Study Wastes

Section 105(g) of CERCLA, as amended by SARA, requires additional information before sites involving RCRA "special study wastes" can be proposed for the NPL (until revisions to the HRS are effected). Section 105(g) applies to sites that (1) were not on or proposed for the NPL as of October 17, 1986 and (2) contain sufficient 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 dust). Before these sites can be added to the NPL, SARA 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.

Update #8 proposes three sites containing or potentially containing special study wastes. EPA has placed in the dockets addenda that evaluate for each proposed 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 proposed to the NPL. The sites are:

- Eastern Michaud Flats Contamination, Pocatello, Idaho.
- Kerr-McGee Chemical Corp. (Soda Springs Plant), Soda Springs, Idaho.
- Monsanto Chemical Co. (Soda Springs Plant), Soda Springs, Idaho.

CERCLA section 125, as amended by SARA, addresses 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 the provisions of section 125.

V. Contents of Proposed NPL Update #8

Table 1 following this preamble lists 10 sites proposed for the NPL in Update #8. Each entry contains the name of the facility and the State and city or county in which it is located. All sites received HRS scores of 28.50 or above.

Each proposed site is placed by score in a group corresponding to groups of 50 sites presented within the final NPL. For example, a site in Group 8 of the proposed update has a score that falls within the range of scores covered by a the eighth group of 50 sites on the final NPL. The NPL is arranged by HRS scores and is presented in groups of 50 to emphasize that minor differences in scores do not necessarily represent significantly different levels of risk.

In the past, each entry was accompanied by one or more notations reflecting the status of response and cleanup activities at the site at the time this list was prepared. EPA is developing a report summarizing response activities at NPL sites. The report will be available shortly. In the interim, information on activities at the new proposed sites is available in the site summaries or upon request to the appropriate Regional Office.

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 economic implications of today's proposal to add new sites. EPA believes that the kinds of economic effects associated with this proposed revision are generally similar to those identified in the regulatory impact analysis (RIA) prepared in 1982 for revisions to the NCP pursuant to section 105 of CERCLA (47 FR 31180, July 16, 1982) 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 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. 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 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. Nonetheless, it is useful to consider the costs associated with responding to all sites included in this proposed 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 at 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.

Cost category	Average total cost per site ¹
RI/FS	1,100,000
Remedial Design	750,000
Remedial Action	13,500,000 ²
Net present value of O&M ³	3,770,000 ²

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

² Includes State cost-share.

³ 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 proposed 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 which 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 10 sites proposed for the NPL in this rule will be privately-owned and 10% will be State- or locally-operated. Therefore, using the budget projections presented above, the cost to States of undertaking Federal remedial planning and actions, but excluding O&M costs, would be approximately \$20 million. State O&M costs cannot be accurately determined because EPA, as noted above, will share O&M costs for up to 10 years for restoration of ground water and surface water, and it is not known how many sites will require this treatment and for how long. However, based on past experience, EPA believes a reasonable estimate is that it will share startup costs for up to 10 years at 25% of sites. Using this estimate, State O&M costs would be approximately \$32 million.

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

Economy-wide effects of this proposed amendment to the NCP are aggregations of effects of firms and State and local governments. Although effects could be felt by some individual firms and States, the total impact of this proposal 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 proposal to place 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. Proposing sites as national priority targets may also 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.

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

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 government jurisdictions, and nonprofit organizations.

While this rule proposes revisions to the NCP, they are not typical regulatory changes since the revisions do not automatically impose costs. Proposing sites on 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 business at this time nor estimate the number of small businesses that might be affected.

The Agency does expect that certain industries and firms within industries that have caused a proportionately high percentage of waste site problems could be significantly affected by CERCLA actions. However, EPA does not expect the impacts from the listing of these 10 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 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.

Date: April 27, 1989.

Jonathan Z. Cannon,
Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

It is proposed to amend 40 CFR Part 300 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).

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

Table 1
National Priorities List - Proposed Update 8 Sites (By Group)
May 1989

NPL Gr ¹	St/Site name	City/county
1	PA Publiker Industries Inc.	Philadelphia
2	ID Eastern Michaud Flats Contamin.	Pocatello
3	ID Monsanto Chemical (Soda Springs)	Soda Springs
4	ID Kerr-McGee Chemical (Soda Springs)	Soda Springs
6	NY Tri-Cities Barrell Co., Inc.	Port Crane
10	MO St. Louis Airport/HIS/Fut Coatings	St. Louis County
10	UT Utah Power & Light/American Barrel	Salt Lake City
11	MI Allied Paper/Portage Ck/Kalamaz R.	Kalamazoo
12	IA Sheller-Globe Corp. Disposal	Keokuk
14	NC Hevi-Duty Electric Co.	Goldsboro

Number of sites proposed for listing: 10. ¹ Sites are placed in groups (Gr) corresponding to groups of 50 on the final NPL.

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