ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300
[FRL−6220−5]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 27

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 11 new sites to the NPL, all to the General Superfund section. In addition, the rule withdraws one site from proposal to the NPL, from the General Superfund section.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before March 22, 1999.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; Mail Code 5204G; 401 M Street, SW, Washington, DC 20460, or the Superfund Hotline, Phone (800) 424−9346 or (703) 412−9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
   A. What are CERCLA and SARA?
   B. What is the NCP?
   C. What is the National Priorities List (NPL)?
   D. How are Sites Listed on the NPL?
   E. What Happens to Sites on the NPL?
   F. How Are Site Boundaries Defined?
   G. How Are Sites Removed From the NPL?
   H. Can Portions of Sites Be Deleted from the NPL as They Are Cleaned Up?
   I. What Is the Construction Completion List (CCL)?

II. Public Review/Public Comment
   A. Can I Review the Documents Relevant to This Proposed Rule?
   B. How do I Access the Documents?
   C. What Documents Are Available for Public Review at the Headquarters Docket?
   D. What Documents Are Available for Public Review at the Regional Dockets?
   E. How Do I Submit My Comments?
   F. What Happens to My Comments?
   G. What Should I Consider When Preparing My Comments?
   H. Can I Submit Comments After the Public Comment Period Is Over?
   I. Can I View Public Comments Submitted by Others?
   J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

III. Contents of This Proposed Rule
   A. Proposed Additions to the NPL
   B. Status of NPL
   C. Withdrawal of Site from Proposal to the NPL

IV. Executive Order 12866
   A. What is Executive Order 12866?
   B. Is This Proposed Rule Subject to Executive Order 12866 Review?

V. Unfunded Mandates
   A. What is the Unfunded Mandates Reform Act (UMRA)?
   B. Does UMRA Apply to This Proposed Rule?

VI. Effect on Small Businesses
   A. What is the Regulatory Flexibility Act?
   B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

VII. National Technology Transfer and Advancement Act
   A. What is the National Technology Transfer and Advancement Act?
   B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

VIII. Executive Order 13045
   A. What is Executive Order 13045?
   B. Does Executive Order 13045 Apply to This Proposed Rule?

IX. Paperwork Reduction Act
   A. What is the Paperwork Reduction Act?
   B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

X. Executive Order 12875
   A. What is Executive Order 12875 and Is It Applicable to This Proposed Rule?

XI. Executive Order 13084
   A. What is Executive Order 13084 and Is It Applicable to This Proposed Rule?

I. Background

   A. What Are CERCLA and SARA?


   B. What is the NCP?

   To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

   As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

   C. What is the National Priorities List (NPL)?

   The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. section
105(a)(9)(B) defines the NPL as a list of “releases” and the highest priority “facilities” and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

The NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the “General Superfund section”), and one of sites that are owned or operated by other Federal agencies (the “Federal Facilities section”). Sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency for Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (“HRS”), which EPA promulgated as an appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) 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 (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met: the Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

• EPA determines that the release poses a significant threat to public health.

• EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

• EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 29, 1998 (63 FR 51882).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the “Superfund”) only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (“Remedial actions” are those “consistent with permanent remedy, taken instead of or in addition to removal actions.” * * * “42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL “does not imply that monies will be expended.” EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA “facility” is broadly defined to include any area where a hazardous substance release has “come to be located” (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the “boundaries” of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the “Jones Co. plant site”) in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the “site”). The “site” is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundaries of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the “Jones Co. plant site,” does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the “nature and extent of the threat presented by a release” will be determined by a Remedial Investigation/Feasibility Study (“RI/FS”) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of the contamination “has come to be located” before all necessary studies and
remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of January 4, 1999, the Agency has deleted 181 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while the contamination or release.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (“CCL”) to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when:

(1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; or
(2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or
(3) The site qualifies for deletion from the NPL.

Of the 181 sites that have been deleted from the NPL, 172 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 413 sites also on the NPL CCL. Thus, as of January 4, 1999, the CCL consists of 585 sites. For the most up-to-date information on the CCL, see EPA’s Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA’s evaluation and scoring of sites in this rule are located both at EPA Headquarters in Washington, DC and in the appropriate Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional 3 dockets. Contact information for the Regional dockets is available from EPA in calculating or evaluating the economic impacts of NPL listing.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble, beginning of this section. EPA may delete sites from the NPL, 172 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 413 sites also on the NPL CCL. Thus, as of January 4, 1999, the CCL consists of 585 sites. For the most up-to-date information on the CCL, see EPA’s Internet site at http://www.epa.gov/superfund.
F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the Federal Register document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific voluminous reports, or materials preparing my comments?

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific voluminous reports, or materials preparing my comments?

Docket.

Preparing My Comments?

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific voluminous reports, or materials preparing my comments?

Docket.

Preparing My Comments?

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific voluminous reports, or materials preparing my comments?

Docket.

Preparing My Comments?

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific voluminous reports, or materials preparing my comments?
remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses
A. What Is the Regulatory Flexibility Act?
Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the rule on small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?
No. Under section 605(b) of the RFA, EPA is not required to prepare a regulatory flexibility analysis if the Agency certifies that the rule will not have a substantial economic impact on a substantial number of small entities.

While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any 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, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act
A. What Is the National Technology Transfer and Advancement Act?
Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?
No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 13045
A. What Is Executive Order 13045?
Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Proposed Rule?
This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

IX. Paperwork Reduction Act
A. What Is the Paperwork Reduction Act?
According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9.

The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070-0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?
No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

X. Executive Order 12875
What Is Executive Order 12875 and Is It Applicable to This Proposed Rule?
Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA’s prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected
officials and other representatives of State, local and tribal governments “to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.”

This proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XI. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

<table>
<thead>
<tr>
<th>State</th>
<th>Site name</th>
<th>City/county</th>
</tr>
</thead>
<tbody>
<tr>
<td>AL</td>
<td>American Brass, Inc</td>
<td>Headland.</td>
</tr>
<tr>
<td>CO</td>
<td>Vasquez Boulevard and I-70</td>
<td>Denver.</td>
</tr>
<tr>
<td>LA</td>
<td>Central Wood Preserving Co</td>
<td>Slaughter.</td>
</tr>
<tr>
<td>LA</td>
<td>Ruston Foundry</td>
<td>Alexandria.</td>
</tr>
<tr>
<td>MD</td>
<td>68th Street Dump/Industrial Enterprises</td>
<td>Rosedale.</td>
</tr>
<tr>
<td>MO</td>
<td>Armour Road</td>
<td>North Kansas City.</td>
</tr>
<tr>
<td>MO</td>
<td>Newton County Wells</td>
<td>Newton County.</td>
</tr>
<tr>
<td>MO</td>
<td>Pools Prairie</td>
<td>Neosho.</td>
</tr>
<tr>
<td>NC</td>
<td>Georgia-Pacific Corporation Hardwood Sawmill</td>
<td>Plymouth.</td>
</tr>
<tr>
<td>NY</td>
<td>Stanton Cleaners Area Ground Water Contamination</td>
<td>Great Neck.</td>
</tr>
<tr>
<td>VA</td>
<td>Former Nansemond Ordnance Depot</td>
<td>Suffolk.</td>
</tr>
</tbody>
</table>

Number of Sites Proposed to General Superfund Section: 11.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.


Timothy Fields, Jr.,
Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–1021 Filed 1–15–99; 8:45 am]
BILLING CODE 6560–50–P