

practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

## 2. Does Executive Order 12898 Apply to This Rule?

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, tribal or local governments, this rule will neither increase nor decrease environmental protection.

### 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.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 17, 2009.

**Mathy Stanislaus,**

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

[FR Doc. E9–22936 Filed 9–22–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

[EPA–HQ–SFUND–2009–0588; FRL–8961–4]

RIN 2050–AD75

### National Priorities List, Proposed Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA” or “the Act”), as amended, 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. These further investigations will allow EPA 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 the Newtown Creek site in Brooklyn/Queens, New York, to the General Superfund Section of the NPL.

**DATES:** Comments regarding this proposed listing must be submitted (postmarked) on or before November 23, 2009.

**ADDRESSES:** Submit your comments, identified by docket number EPA–HQ–SFUND–2009–0588, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.

- *E-mail:* [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).

- *Mail:* Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency, CERCLA Docket Office (Mail Code 5305T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand Delivery or Express Mail:* Send comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue, NW., EPA West, Room 3334, Washington, DC 20004. Such deliveries are only accepted during the docket’s normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

*Instructions:* Direct your comments to docket number EPA–HQ–SFUND–2009–0588. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system; that means EPA will not know your identity

or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional docket addresses and further details on their contents, see section II, “Public Review/Public Comment,” of the Supplementary Information portion of this preamble.

### FOR FURTHER INFORMATION CONTACT:

Terry Jeng, *phone:* (703) 603–8852, *e-mail:* [jeng.terry@epa.gov](mailto:jeng.terry@epa.gov), Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mail Code 5204P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., 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. Does the NPL Define the Boundaries of Sites?
  - G. How Are Sites Removed From the NPL?
  - H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?
  - I. What Is the Construction Completion List (CCL)?
  - J. What Is the Sitewide Ready for Anticipated Use Measure?
- II. Public Review/Public Comment
  - A. May 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 Region 2 Docket?
  - E. How Do I Submit My Comments?
  - F. What Happens to My Comments?

- G. What Should I Consider When Preparing My Comments?
- H. May I Submit Comments After the Public Comment Period is Over?
- I. May I View Public Comments Submitted by Others?
- J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?
- III. Contents of This Proposed Rule
- A. Proposed Addition to the NPL
- IV. Statutory and Executive Order Reviews
- A. Executive Order 12866: Regulatory Planning and Review
1. What Is Executive Order 12866?
  2. Is This Proposed Rule Subject to Executive Order 12866 Review?
- B. Paperwork Reduction Act
1. What Is the Paperwork Reduction Act?
  2. Does the Paperwork Reduction Act Apply to This Proposed Rule?
- C. Regulatory Flexibility Act
1. What Is the Regulatory Flexibility Act?
  2. How Has EPA Complied With the Regulatory Flexibility Act?
- D. Unfunded Mandates Reform Act
1. What Is the Unfunded Mandates Reform Act (UMRA)?
  2. Does UMRA Apply to This Proposed Rule?
- E. Executive Order 13132: Federalism
1. What Is Executive Order 13132?
  2. Is Executive Order 13132 Applicable to This Proposed Rule?
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
1. What Is Executive Order 13175?
  2. Does Executive Order 13175 Apply to This Proposed Rule?
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
1. What Is Executive Order 13045?
  2. Does Executive Order 13045 Apply to This Proposed Rule?
- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage
- Is This Rule Subject to Executive Order 13211?
- I. National Technology Transfer and Advancement Act
1. What Is the National Technology Transfer and Advancement Act?
  2. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
1. What Is Executive Order 12898?
  2. Does Executive Order 12898 Apply to This Proposed Rule?

## I. Background

### A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (“CERCLA” or “the Act”), in response to the dangers of uncontrolled releases or threatened releases of hazardous substances, and releases or substantial threats of releases

into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (“SARA”), Public Law 99–499, 100 Stat. 1613 *et seq.*

### 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, or releases or substantial threats of releases into the environment of any pollutant or contaminant that may present an imminent or substantial danger to the public health or welfare. 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 of hazardous substances, pollutants or contaminants (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. Section 105(a)(8)(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, pollutants or contaminants. 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. Also, placing a site on the NPL does not mean that any remedial or removal action necessarily need be taken.

For purposes of listing, 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”). With respect to 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 a Hazard Ranking System (“HRS”) score and determining whether the facility is placed on the NPL.

### 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 HRS, which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening tool to evaluate the relative potential of uncontrolled hazardous substances, pollutants or contaminants 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) Pursuant to 42 U.S.C. 9605(a)(8)(B), each State may designate a single site as its top priority to be listed on the NPL, without any HRS score. This provision of CERCLA requires that, to the extent practicable, the NPL include one facility designated by each State as the greatest danger to public health, welfare, or the environment among known facilities in the State. This mechanism for listing is set out in the NCP at 40 CFR 300.425(c)(2). (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed without any 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) and generally has updated it at least annually.

#### *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 respond to the releases, including enforcement action under CERCLA and other laws.

#### *F. Does the NPL Define the Boundaries of Sites?*

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. Indeed, the precise nature and extent of the site are typically not known at the time of listing.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. 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. However, the NPL site is not necessarily coextensive with the boundaries of the installation or plant, and the boundaries of the installation or plant are not necessarily 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 where that contamination has come to be located, or from where 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 boundary of the installation or plant. In addition, the site name is merely used to help identify the geographic location of the contamination and is not meant to constitute any determination of liability at a site. For example, the name "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 Remedial Investigation ("RI") "is a process undertaken \* \* \* to determine the nature and extent of the problem presented by the release" as more information is developed on site contamination, and which is generally performed in an interactive fashion with the Feasibility Study ("FS") (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, the HRS inquiry focuses on an evaluation of the threat posed and therefore the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known 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, it can submit supporting information to the Agency at any time

after it 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:

- Responsible parties or other persons have implemented all appropriate response actions required;
- All appropriate Superfund-financed response has been implemented and no further response action is required; or
- 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.

#### *H. May EPA Delete Portions of Sites 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 portions of the site may have been cleaned up and made available for productive use.

#### *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; (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. For the most up-to-date information on the CCL, see EPA's Internet site at <http://www.epa.gov/superfund/cleanup/ccl.htm>.

### *J. What Is the Sitewide Ready for Anticipated Use Measure?*

The Sitewide Ready for Anticipated Use measure (formerly called Sitewide Ready-for-Reuse) represents important Superfund accomplishments and the measure reflects the high priority EPA places on considering anticipated future land use as part of our remedy selection process. See Guidance for Implementing the Sitewide Ready-for-Reuse Measure, May 24, 2006, OSWER 9365.0-36. This measure applies to final and deleted sites where construction is complete, all cleanup goals have been achieved, and all institutional or other controls are in place. EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment, including current and future land users, in a manner that allows contaminated properties to be restored to environmental and economic vitality while ensuring protectiveness for current and future land users. For further information, please go to <http://www.epa.gov/superfund/programs/recycle/tools/index.html>.

## **II. Public Review/Public Comment**

### *A. May I Review the Documents Relevant to This Proposed Rule?*

Yes, documents that form the basis for EPA's evaluation and scoring of the site in this rule are contained in public dockets located both at EPA Headquarters in Washington, DC, in the Region 2 office and by electronic access at <http://www.regulations.gov> (see instructions in the **ADDRESSES** section above).

### *B. How Do I Access the Documents?*

You may view the documents, by appointment only, in the Headquarters or the Region 2 dockets after the publication of this proposed rule. The hours of operation for the Headquarters docket are from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays. Please contact the Region 2 docket for hours.

The following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue NW.; EPA West, Room 3334, Washington, DC 20004; 202/566-0276. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional 2 docket is as follows: Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S.

EPA, 290 Broadway, New York, NY 10007-1866; 212/637-4343.

You may also request copies from EPA Headquarters or the Region 2 dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents. Please note that due to the difficulty of reproducing oversized maps, oversized maps may only be viewed in-person; however, EPA dockets are not equipped to either copy and mail out such maps or scan them and send them out electronically.

You may use the docket at <http://www.regulations.gov> to access documents in the Headquarters docket (see instructions included in the **ADDRESSES** section above). Please note that there are differences between the Headquarters docket and the Regional dockets and those differences are outlined below.

### *C. What Documents Are Available for Public Review at the Headquarters Docket?*

The Headquarters docket for this rule contains the following for the site proposed in this rule: HRS score sheets; Documentation Record describing the information used to compute the score; and a list of documents referenced in the Documentation Record.

### *D. What Documents Are Available for Public Review at the Region 2 Docket?*

The Region 2 docket for this rule contains all of the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the Region 2 docket.

### *E. How Do I Submit My Comments?*

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the mailing addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

### *F. What Happens to My Comments?*

EPA considers all comments received during the comment period. Significant comments are typically 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 information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill v. Thomas*, 849 F.2d 1516 (DC Cir. 1988)). EPA will not address voluminous comments that are not referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

### *H. May I Submit Comments After the Public Comment Period Is Over?*

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of generally not delaying a final listing decision solely to accommodate consideration of late comments.

### *I. May I View Public Comments Submitted by Others?*

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Region 2 docket approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper, will be made available for public viewing in the electronic public docket at <http://www.regulations.gov> as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Once in the public dockets system, select "search," then key in the appropriate docket ID number.

### *J. May I Submit Comments Regarding Sites Not Currently Proposed to the NPL?*

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 still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment

will not generally be included in the docket.

### III. Contents of This Proposed Rule

#### A. Proposed Addition to the NPL

In today's proposed rule, EPA is proposing to add the Newtown Creek site in Brooklyn/Queens, New York, to the General Superfund section of the NPL. This site is being proposed based on an HRS score of 28.50 or above.

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

##### 1. What Is Executive Order 12866?

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

##### 2. Is This Proposed Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Paperwork Reduction Act

##### 1. 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.

##### 2. Does the Paperwork Reduction Act Apply to This Proposed Rule?

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* 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.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

##### 1. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small

entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

##### 2. How Has EPA Complied With the Regulatory Flexibility Act?

This proposed rule listing a site on the NPL, if promulgated, would not impose any obligations on any group, including small entities. This proposed rule, if promulgated, also would establish no standards or requirements that any small entity must meet, and would impose no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of hazardous substances depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this proposed rule, if promulgated, would not impose any requirements on any small entities. For the foregoing reasons, I certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

#### D. Unfunded Mandates Reform Act

##### 1. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative

was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small-government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

## 2. Does UMRA Apply to This Proposed Rule?

This rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Proposing a site on the NPL does not itself impose any costs. Proposal does not mean that EPA necessarily will undertake remedial action. Nor does proposal 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 proposing a site to be placed on the NPL. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. As is mentioned above, site proposal does not impose any costs and would not require any action of a small government.

### *E. Executive Order 13132: Federalism*

#### 1. What Is Executive Order 13132?

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

#### 2. Is Executive Order 13132 Applicable to This Proposed Rule?

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not contain any requirements applicable to States or other levels of government. Thus, the requirements of the Executive Order do not apply to this proposed rule.

EPA believes, however, that this proposed rule may be of significant interest to State governments. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA therefore consulted with State officials and/or representatives of State governments early in the process of developing the rule to permit them to have meaningful and timely input into its development. The site included in this proposed rule was referred to EPA by the State for listing. EPA received a letter of support from the State official who was delegated the authority by the Governor to speak on his behalf regarding NPL listing decisions.

### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

#### 1. What Is Executive Order 13175?

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

#### 2. Does Executive Order 13175 Apply to This Proposed Rule?

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Proposing a site to the NPL does not impose any costs on a Tribe or require a Tribe to take remedial action.

Thus, Executive Order 13175 does not apply to this proposed rule.

### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

#### 1. 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 Executive Order 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.

#### 2. Does Executive Order 13045 Apply to This Proposed Rule?

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

### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Usage*

#### Is This Rule Subject to Executive Order 13211?

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy impacts because proposing a site to the NPL does not require an entity to conduct any action that would require energy use, let alone that which would significantly affect energy supply, distribution, or usage. Thus, Executive Order 13175 does not apply to this action.

### *I. National Technology Transfer and Advancement Act*

#### 1. 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.

**2. 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.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

**1. What Is Executive Order 12898?**

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

**2. Does Executive Order 12898 Apply to This Rule?**

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of

protection provided to human health or the environment. As this rule does not impose any enforceable duty upon State, Tribal or local governments, this rule will neither increase nor decrease environmental protection.

**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.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: September 17, 2009.

**Barry N. Breen,**

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

[FR Doc. E9–22935 Filed 9–22–09; 8:45 am]

**BILLING CODE 6560–50–P**