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Special Accommodations: For information on access or accommodations for individuals with disabilities, please contact Jini Mohanty at (202) 564-5269 or by email at mohanty.jini@epa.gov. Please allow at least five business days prior to the meeting to give EPA time to process your request.

This meeting will be open to the public. EPA encourages public input and will allocate time on the agenda to receive verbal statements. EPA requests that participants limit statements to the topics described in the agenda and in the **SUMMARY** section of this notice. Participants will be provided with a set time frame for their statements. EPA also requests that only one person present a statement on behalf of a group or organization. Individuals or organizations interested in presenting a statement should notify Cesar Cordero by email at cordero.cesar@epa.gov no later than November 9, 2012. Individuals that have scientific data that they would like EPA to consider during the regulatory review of the LT2 rule are encouraged to email their data to Cesar Cordero at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section by December 31, 2012.

The LT2 Rule: The purpose of the LT2 rule, promulgated in 2006 (71 FR 654; January 5, 2006), is to reduce disease incidence associated with *Cryptosporidium* and other disease-causing microorganisms in drinking water. The rule includes requirements for PWSs that provide filtration to be classified in one of four categories (bins) for additional *Cryptosporidium* treatment that may be needed based on the occurrence of *Cryptosporidium* or *E. coli* in their source waters. Systems that are placed into the first bin require no additional treatment, while systems that are placed into bins 2, 3 or 4 will need to conduct additional treatment but will be able to select from a range of treatment and management strategies (i.e. microbial toolbox options) to meet their treatment requirements.

EPA Reviews: The Safe Drinking Water Act (SDWA) requires EPA to review each existing national primary drinking water regulation (NPDWR) every six years and revise the regulation if appropriate (see SDWA Section 1412(b)(9)). Section 1412(b)(9) of SDWA specifies that any revision to a NPDWR “shall maintain, or provide for greater, protection of the health of persons.” In addition to reviewing the LT2 rule under the third Six-Year Review, EPA announced in the August 2011 document, *Improving Our Regulations: Final Plan for Periodic Review Retrospective Reviews of Existing Regulations*, that the agency would review the LT2 rule in response to E.O. 13563, which requires agencies to review regulations to determine where the agencies could streamline or eliminate ineffective, overly burdensome, and outdated rules. As part of these reviews, EPA plans to assess and analyze information and data regarding occurrence, analytical methods, and treatment to evaluate whether there are new or additional ways to manage risk.

The public meeting announced in this notice will be the third meeting hosted by the agency for the purpose of reviewing the LT2 rule in response to SDWA Section 1412(b)(9) and E.O. 13563. The first meeting occurred on December 7, 2011, and focused on the analytical methods for *Cryptosporidium* and the preliminary drinking water source monitoring results from samples collected under the LT2 rule. The second meeting occurred on April 24, 2012, and focused on the uncovered finished water reservoirs requirement of the LT2 rule.

Dated: September 6, 2012.

Pamela Barr,
Acting Director, Office of Ground Water and Drinking Water.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-1998-0010, EPA-HQ-SFUND-2012-0598, 0599, 0600, 0601, 0602, 0603, 0604, 0606, 0607 and 0647; FRL-9722-7]

National Priorities List, Proposed Rule No. 57

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 the 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: (1) Add seven sites to the General Superfund section of the NPL; (2) add one site to the Federal Facilities section of the NPL; (3) correct an error in the Appendix B footnote description; and (4) correct an error in the state location for Five Points PCE Plume site. This rule also withdraws one site from proposal to the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before November 19, 2012.

ADDRESSES: Identify the appropriate Docket Number from the table below.

DOCKET IDENTIFICATION NUMBERS BY SITE

Site name	City/county, state	Docket ID No.
Pike and Mulberry Streets PCE Plume	Martinsville, IN	EPA-HQ-SFUND-2012-0598.
Former United Zinc & Associated Smelters	Iola, KS	EPA-HQ-SFUND-2012-0599.
Creese & Cook Tannery (Former)	Danvers, MA	EPA-HQ-SFUND-2012-0600.
Walton & Lonsbury Inc	Attleboro, MA	EPA-HQ-SFUND-2012-0601.
Matlack, Inc	Woolwich Township, NJ	EPA-HQ-SFUND-2012-0602.
Riverside Industrial Park	Newark, NJ	EPA-HQ-SFUND-2012-0603.
Clinch River Corporation	Harriman, TN	EPA-HQ-SFUND-2012-0604.
700 South 1600 East PCE Plume	Salt Lake City, UT	EPA-HQ-SFUND-2012-0647.

DOCKET IDENTIFICATION NUMBERS BY SITE—Continued

Site name	City/county, state	Docket ID No.
Evergreen Manor Ground Water Contamination	Winnebago County, IL	EPA-HQ-SFUND-1998-0010.

Submit your comments, identified by the appropriate Docket number, by one of the following methods:

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

- *Email: superfund.docket@epa.gov.*
- *Mail*: Mail comments (no facsimiles or tapes) to Docket Coordinator, Headquarters, U.S. Environmental Protection Agency, CERCLA Docket Office, (Mailcode 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 accepted only 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 the appropriate Docket number (see table above). The EPA's policy is that all comments received will be included in the public Docket without change and may be made available online at *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 *www.regulations.gov* or email. The *www.regulations.gov* Web site is an "anonymous access" system; that means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov*, your email 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, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the 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, email: *jeng.terry@epa.gov*, Site Assessment and Remedy Decisions Branch, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation (Mailcode 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.

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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, the 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. The 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 the 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 the 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 the 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 the 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), the 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.

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

- The 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. The 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.” The 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.

The 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?

The 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 the 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.

H. May the EPA delete portions of sites from the NPL as they are cleaned up?

In November 1995, the EPA initiated a 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)?

The 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) the 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 the 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 the EPA places on considering anticipated future land use as part of the 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. The EPA has been successful on many occasions in carrying out remedial actions that ensure protectiveness of human health and the environment for current and future land uses, in a manner that allows contaminated properties to be restored to environmental and economic vitality. For further information, please go to http://www.epa.gov/superfund/programs/recycle/pdf/sitewide_a.pdf

K. What is State/tribal correspondence concerning NPL listing?

In order to maintain close coordination with states and tribes in the NPL listing decision process, the EPA's policy is to determine the position of the states and tribes regarding sites that the EPA is considering for listing. This consultation process is outlined in two memoranda that can be found at the following web site: <http://www.epa.gov/superfund/sites/npl/hrsres/policy/govlet.pdf>. The EPA is improving the transparency of the process by which state and tribal input is solicited. The EPA will be using the web and where appropriate more structured state and tribal correspondence that (1) explains the concerns at the site and the EPA's rationale for proceeding; (2) requests an explanation of how the state intends to address the site if placement on the NPL is not favored; and (3) emphasizes the transparent nature of the process by informing states that information on their responses will be publicly available.

A model letter and correspondence from this point forward between the EPA and states and tribes where applicable, will be added to the EPA's web site at <http://www.epa.gov/superfund/sites/query/queryhtm/nplstcor.htm>

II. Public Review/Public Comment

A. May I review the documents relevant to this proposed rule?

Yes, documents that form the basis for the EPA's evaluation and scoring of the sites in this proposed rule are contained in public Dockets located both at the EPA Headquarters in Washington, DC, and in the Regional offices. These documents are also available by electronic access at 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 Regional 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 Regional Dockets 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 the EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the relevant Regional Dockets is as follows:

- Joan Berggren, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109-3912; 617/918-1417.
- Ildefonso Acosta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007-1866; 212/637-4344.
- Debbie Jourdan, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW., Mailcode 9T25, Atlanta, GA 30303; 404/562-8862.
- Todd Quesada, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Librarian/SFD Records Manager SRC-7J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886-4465.
- Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Mailcode SUPRERNB, Kansas City, KS 66101; 913/551-7335.
- Sabrina Forrest, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mailcode 8EPR-B, Denver, CO 80202-1129; 303/312-6484.

You may also request copies from the EPA Headquarters or the Regional 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 be viewed only in-person; since the 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 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 proposed rule contains the following for the sites proposed in this rule: HRS score sheets; Documentation Records describing the information used to compute the score; information for any sites affected by particular statutory requirements or the EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What documents are available for public review at the Regional Dockets?

The Regional Dockets for this proposed rule contain all of the information in the Headquarters Docket plus the actual reference documents containing the data principally relied upon and cited by the EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional Dockets.

E. How do I submit my comments?

Comments must be submitted to the 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?

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

H. May I submit comments after the public comment period is over?

Generally, the EPA will not respond to late comments. The EPA can guarantee only that it will consider those comments postmarked by the close of the formal comment period. The 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 Regional Dockets approximately one week after the formal comment period closes.

All public comments, whether submitted electronically or in paper form, will be made available for public viewing in the electronic public Docket at www.regulations.gov <http://www.epa.gov/edocket> as the 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 the 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 Additions to the NPL

In today’s proposed rule, the EPA is proposing to add seven sites to the General Superfund section and one site to the Federal Facilities section of the

NPL. All of the sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above.

The sites are presented in the table below.

General Superfund section:

State	Site name	City/county
IN	Pike and Mulberry Streets PCE Plume	Martinsville.
KS	Former United Zinc & Associated Smelters	Iola.
MA	Creese & Cook Tannery (Former)	Danvers.
MA	Walton & Lonsbury Inc.	Attleboro.
NJ	Matlack, Inc.	Woolwich Township.
NJ	Riverside Industrial Park	Newark.
TN	Clinch River Corporation	Harriman.

Federal Facilities section:

State	Site name	City/county
UT	700 South 1600 East PCE Plume	Salt Lake City.

B. Withdrawal of Site From Proposal to the NPL

The EPA is withdrawing its previous proposal to add the Evergreen Manor Ground Water Contamination site in Winnebago County, Illinois to the NPL because remedial action has been completed. Affected residences have been connected to the public water supply; a county ordinance is in place which restricts the installation of private wells in the affected area; and contaminants of concern have remained below cleanup standards since 2006. The proposed rule can be found at 63 FR 40247 (July 28, 1998). Refer to the Docket ID Number EPA–HQ–SFUND–1998–0010 for supporting documentation regarding this action.

C. Proposed Correction of Appendix B Footnote “A” Description

The EPA is proposing to correct an error in the footnote “A” description in Appendix B to CFR Part 300. In Table 1, the incorrect portion of the footnote currently reads “(if scored, HRS score need not be ≤ 28.50)”. In Table 2, the incorrect portion of the footnote currently reads “(if scored, HRS score need not be > 28.50)”. The EPA is proposing to correct both footnote “A” descriptions by changing them to “A = Based on issuance of health advisory by Agency for Toxic Substances and Disease Registry (if scored, HRS score need not be greater than or equal to 28.50)”. Comments may be submitted to Docket number EPA–HQ–SFUND–2012–0606.

D. Proposed Correction of State Location for Five Points PCE Plume Site

The EPA is proposing to correct an error in Table 1 of Appendix B to CFR Part 300 in which the location of the Five Points PCE Plume site is incorrectly listed as being in state of Washington. The correct location of the Five Points PCE Plume is the state of Utah. Comments may be submitted to Docket number EPA–HQ–SFUND–2012–0607.

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 the 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.* The 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 the 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 the EPA complied with the Regulatory Flexibility Act?

This proposed rule listing sites 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, the 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 the EPA promulgates a rule where a written statement is needed, section 205 of the UMRA generally requires the 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 the 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 the 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 proposed 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 the 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 the 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" are 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. Does Executive Order 13132 apply 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.

The 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 the EPA policy to promote communications between the EPA and state and local governments, the 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. All sites included in this proposed rule were referred to the EPA by states for listing. For all sites in this rule, the EPA received letters of support either from the governor or a state official who was delegated the authority by the governor to speak on their 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 the 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" are 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. 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 the 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 Use

1. What is Executive Order 13211?

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use," (66 FR 28355, May 22, 2001) requires federal agencies to prepare a "Statement of Energy Effects" when undertaking certain regulatory actions. A Statement of Energy Effects describes the adverse effects of a "significant energy action" on energy supply, distribution and use, reasonable alternatives to the action and the expected effects of the alternatives on energy supply, distribution and use.

2. Does Executive Order 13211 apply to this proposed rule?

This action is not a "significant energy action" as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, the agency has 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 13211 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 the 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 the 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, the 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 proposed rule?

The 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 10, 2012.

Mathy Stanislaus,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 2012-22837 Filed 9-17-12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648-XT37

Endangered and Threatened Species; Reopening of Public Comment Period on Proposed Endangered Status for the Hawaiian Insular False Killer Whale Distinct Population Segment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reopening of comment period; notice of availability of new information.

SUMMARY: We, NMFS, announce the availability of new information that may identify a previously unrecognized population of false killer whales in the Northwestern Hawaiian Islands (NWHI). This new information may be relevant to the final determination of whether the Hawaiian insular false killer whale (*Pseudorca crassidens*) is a distinct population segment (DPS) that qualifies for listing under the Endangered Species Act of 1973, as amended (ESA). We intend to take this new information into consideration as we make our final listing determination on the Hawaiian insular false killer whale. We are reopening the public comment period on the November 17, 2010, proposed rule to list the Hawaiian insular false killer whale DPS as endangered throughout its range under the ESA. We are reopening the comment period for an additional 15 days for the limited purpose of allowing interested parties to comment on the new information listed below and whether it affects the determination that the insular false killer whale is a DPS that is eligible for ESA listing. Please note that comments previously submitted should not be resubmitted.

DATES: We will accept public comments on the new information until October 3, 2012.

ADDRESSES: You may submit comments identified by NOAA-NMFS-2009-0272 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail or hand-delivery:* Submit written comments to Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814, Attn: Hawaiian insular false killer whale proposed listing.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. Comments will be posted for public viewing after the comment period has closed. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. The petition, status review report, and other reference materials regarding the proposed listing determination can be obtained via the NMFS Pacific Islands Regional Office Web site: http://www.fpir.noaa.gov/PRD/prd_false_killer_whale.html or by submitting a request to the Regulatory Branch Chief, Protected Resources Division, National Marine Fisheries Service, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, Attn: Hawaiian insular false killer whale proposed listing.

FOR FURTHER INFORMATION CONTACT: Krista Graham, NMFS, Pacific Islands Regional Office, 808-944-2238; Lance Smith, NMFS, Pacific Islands Regional Office, 808-944-2258; or Dwayne Meadows, NMFS, Office of Protected Resources, Silver Spring, MD, 301-427-8403.

SUPPLEMENTARY INFORMATION: On November 17, 2010 (75 FR 70169), we published a proposed rule to list the Hawaiian insular false killer whale DPS (*Pseudorca crassidens*) as endangered throughout its range under the ESA. The document announced a 90-day public comment period on the proposed rule, which closed on February 15, 2011. We also held a public hearing during the proposed rule's public comment period,

as announced in the November 17, 2011, **Federal Register** (75 FR 70169).

NMFS has received new information about a previously unrecognized NWHI population of false killer whales, as well as updated satellite tagging information of the insular population. In August 2012, the false killer whale biological review team was reconvened to consider this new information. All of this information may be relevant to the final determination of whether the Hawaiian insular false killer whale is a DPS that qualifies for listing as endangered under the ESA. These reports and journal articles are:

(1) Preliminary Results from Photo-identification and Satellite-tagging of False Killer Whales off the Island of Kauai, by Robin Baird (2012).

(2) Photo-identification and Satellite Tagging of False Killer Whales Provides Evidence of an Island-associated Population in the Northwestern Hawaiian Islands, by Robin Baird *et al.* (2012).

(3) Range and Primary Habitats of Hawaiian Insular False Killer Whales: Informing Determination of Critical Habitat, by Robin Baird *et al.* (2012).

(4) Line-transect Abundance Estimates of False Killer Whales in the Pelagic Region of the Hawaiian Exclusive Economic Zone and in the Insular Waters of the Northwestern Hawaiian Islands, by Amanda Bradford *et al.* (2012).

(5) Genetic Differentiation of Hawaii Insular False Killer Whales: Analyses Updated with New Samples from the Northwest Hawaiian Islands, by Susan Chivers *et al.* (2011).

(6) Population Structure and Mechanisms of Gene Flow within Island-associated False Killer Whales around the Hawaiian Archipelago, by Karen Martien *et al.* (2011).

We are notifying the public of the availability of these reports and our intent to consider them in making our final listing determination. We also are reopening the comment period for 15 days to provide the public the opportunity to provide comments or information on this new information. We are asking for public comments on this new information and a review of the extent to which they add to the knowledge base for making the final decision. This comment period is open only for comments on the documents listed above as they relate to the DPS and listing determination of the Hawaiian insular false killer whale. Comments submitted during the prior comment period have been incorporated into the public record and will be fully considered during preparation of our final determination. The issuance of a