



Deletions of Federal Facilities from the Federal Agency Hazardous Waste Compliance Docket and the National Priorities List

BACKGROUND: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires that the Environmental Protection Agency (EPA) establish a Federal Agency Hazardous Waste Compliance Docket ("docket"). The docket serves three purposes: (1) to identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities; and (3) to provide a mechanism for making the information available to the public. EPA periodically updates the docket by adding sites, deleting sites, or making corrections. EPA published the first docket in 1988 (53 *FR* 4280) and is to publish updates every six months.

For every facility listed on the docket, the responsible Federal agency must complete a preliminary assessment (PA), and if warranted, a site inspection (SI). These evaluation activities help determine whether the facility should be included on the NPL. If a facility is listed on the NPL, the responsible Federal agency must conduct a remedial investigation/ feasibility study (RI/FS), and depending on the results of the RI/FS, may be required to conduct remedial action. After certain criteria specified in the National Contingency Plan (NCP) have been met, the facility can be removed from the NPL. The Office of Environmental Policy and Assistance (OEPA), RCRA/CERCLA Division (EH-413) [formerly the Office of Environmental Guidance, RCRA/CERCLA Division (EH-231)] has prepared guidance on the purpose and content of the docket. This Information Brief updates prior EH-413 guidance and provides new information on deleting facilities from the docket and on EPA's 1996 clarification of its NPL listing policy.

STATUTES: Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) and as amended by the National Defense Authorization Act for Fiscal Year 1997; Resource Conservation and Recovery Act (RCRA) as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

REGULATIONS: 40 CFR Part 262.44 and NCP, in particular, 40 CFR 300.425(e).

- REFERENCES:**
1. "Federal Agency Hazardous Waste Compliance Docket," CERCLA Information Brief, DOE/EH-231-011/0192, January 1992.
 2. *A Guide to CERCLA Site Assessment*, DOE, Office of Environmental Guidance, RCRA/CERCLA Division, DOE/EH-0366, February 1994.
 3. "EPA Federal Agency Hazardous Waste Compliance Docket," 53 *FR* 4280, February 12, 1988, as amended and revised through April 1995.
 4. "Clarification of National Priorities List (NPL) Listing Policy," Memorandum from DOE, Office of Environmental Policy and Assistance, RCRA/CERCLA Division (EH-413), February 23, 1996.
 5. "Procedures for Partial Deletions at NPL Sites," Memorandum from DOE, Office of Environmental Policy and Assistance, RCRA/CERCLA Division (EH-413), January 29, 1997.
 6. "Site Deletion from the National Priorities List," CERCLA Information Brief, DOE/EH-231-021/1193, November 1993.
 7. *Procedures for Partial Deletions at NPL Sites*, U.S. Environmental Protection Agency, OERR Directive 9320.2-11, EPA 540/R-96/014, April 30, 1996.
 8. "Clarification of NPL Listing Policy," Memorandum from Stephen Luftig, Acting Director, Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, August 3, 1995.
 9. *Procedures for Completion and Deletion of National Priorities List Sites*, U.S. Environmental Protection Agency, OERR Directive 9320.2-3A, EPA 540/G-89/002, April 1989.
 10. "Executive Order 12580, Superfund Implementation," CERCLA Information Brief, DOE/EH-231-015/0593, May 1993.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET (“docket”)

When and why would EPA delete a facility from the docket?

The docket listing process. The docket contains information about Federal facilities that manage hazardous waste or Federal facilities from which hazardous substances have been or may be released. As explained in the DOE CERCLA Information Brief on the docket (see ref. 1), Federal agencies submit this information to EPA through several reporting mechanisms required by Sections 3005, 3010, and 3016 of RCRA and by Section 103 of CERCLA.

RCRA Section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal facilities (TSDFs). RCRA Section 3010 requires waste generators and transporters and TSDFs to notify EPA of their hazardous waste activities. RCRA Section 3016 requires Federal agencies to submit to EPA biennial inventories of hazardous waste sites owned or operated by those Federal agencies. CERCLA Section 103(a) requires the reporting to EPA of facilities at which hazardous substances have been released. CERCLA Section 103(c) requires the reporting to EPA of known, suspected, or likely releases of hazardous substances at TSDFs. Information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional Office of the Region in which the facility is located.

Docket updating process. EPA published the first docket in February 1988 (53 FR 4280, February 12, 1988). CERCLA Section 120(c) requires that EPA publish in the *Federal Register* a list of the Federal facilities that have been included in the docket during the immediately preceding six-month period. The updates contain additions to, corrections of, and deletions from the docket. Each of these is described below.

- ❑ **Additions** are newly identified facilities that have been reported to EPA since the previous update. They are added primarily because EPA has obtained new information, such as recent reporting of a facility pursuant to RCRA Sections 3005, 3010, or 3016 or CERCLA Section 103. CERCLA Section 120(d), Assessment and Evaluation, as implemented by Executive Order 12580, (see ref. 10) requires that for each DOE facility listed on the docket, DOE must conduct a preliminary assessment (PA), and if appropriate, further investigations necessary for evaluation for inclusion on the NPL. Prior to September 1996, Section 120(d) contained specific time frames for these activities (e.g., evaluation and listing were to be completed within 30 months of enactment of SARA). In 1996, Congress, in Section 330 (Authority to Withhold Listing of Federal Facilities on National Priorities List) of the National Defense Authorization Act for Fiscal Year 1997, amended Section 120(d) of CERCLA, in part, by removing the specific timing requirements. As a result, the PA and evaluation and listing now must be “completed

according to a reasonable schedule established by the Administrator.”

- ❑ **Corrections** are changes in information about facilities already listed on the docket. Corrections include simple changes in addresses and spelling, corrections for the recorded name and ownership of a facility, changes in the names of facilities to establish consistency in the docket, and simple corrections of typographical errors.
- ❑ **Deletions** are facilities that EPA is deleting from the docket. Common reasons for a deletion include previously incorrect reporting of hazardous waste activity, change in ownership, and exemption as a Small Quantity Generator (SQG) under RCRA (40 CFR Part 262.44).

The docket does not include the following categories of facilities, even though they may be listed on the NPL:

- ❑ Facilities formerly owned by a Federal agency and now privately owned;
- ❑ SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA Section 103 or other hazardous waste activities under RCRA Section 3016; and
- ❑ facilities that are solely transporters, as reported under RCRA Section 3010.

As part of the docket updating process, EPA also identifies facilities for which it has determined that no further response action under CERCLA is appropriate. EPA lists such sites in the no-further-remedial-action-planned (NFRAP) section of each update. (At one time, the term “site evaluation accomplished,” or SEA, was used to designate this status.) NFRAP status does not mean that no further environmental response action of any kind is necessary; it means only that EPA anticipates no further involvement in site assessment or cleanup at the facility. The NFRAP status of a facility may change at any time because of any number of factors, including new site information or changing EPA policies.

Docket deletions. EPA lists the following as categories of facilities that are eligible for deletion from the docket:

- ❑ SQG
- ❑ Not federally owned
- ❑ Formerly federally owned
- ❑ No hazardous waste generated
- ❑ Redundant listing/site on facility
- ❑ Combining sites into one facility/entries combined
- ❑ Does not fit facility definition (all are vessels)
- ❑ No hazardous waste (responsible Federal agency changed)

- ❑ SQG (responsible Federal agency changed)
- ❑ No hazardous waste (temporary storage only)
- ❑ Not federally owned (SQG)
- ❑ Redundant listing/site on facility (Federal agencies will coordinate)
- ❑ SQG (never actually built)

A facility may be deleted from the docket only if it was placed on the docket incorrectly or if a change in fact has occurred (e.g., it is no longer federally owned and any hazardous substances on the site have been cleaned up to the satisfaction of the responsible EPA Regional Office).

What responsibilities does the responsible Federal agency have under CERCLA regarding a facility that has been deleted from the docket?

In the docket update (60 *FR* 18474, April 11, 1995), EPA deleted six DOE facilities from the docket. The West Valley Demonstration Project in New York was deleted because it is not federally owned. EPA also deleted five Bonneville Power Administration sites either because they were SQGs or because they generated no hazardous waste.

A facility that is deleted from the docket will no longer be subject to the requirements of CERCLA Section 120(d), Assessment and Evaluation. Thus, DOE would no longer need to conduct a PA for the facility. However, if a PA has been started, the process will most likely be completed so that it can be tracked in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database. Decisions regarding further DOE responsibilities with respect to a site that has been deleted from the docket will be made by the responsible EPA Region. Thus, DOE environmental restoration program managers (ERPMS) should consult with the responsible EPA Regional Office to determine what addi-

tional work, if any, must be conducted for sites deleted from the docket.

How can DOE influence EPA's removal of facilities from the docket?

In compiling newly reported facilities for updating the docket, EPA extracts the names, addresses, and identification numbers of facilities from four EPA databases. These databases, which are the Emergency Response Notification System (ERNS), the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and CERCLIS, contain information about Federal facilities submitted under the provisions listed in CERCLA Section 120(c).

Despite extensive computer checks to determine which facilities are in fact newly reported and qualify for inclusion on an update, state-owned or privately owned facilities that are not operated by the Federal government may be included. If a DOE ERPM believes that any sites are included on the docket incorrectly, he/she should contact the Federal Agency Hazardous Waste Compliance Docket Coordinator, at the Federal Facilities Enforcement Office, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; phone, 202-564-2468; fax, 202-501-0069.

DOE can also influence the removal of facilities from the docket by ensuring that EPA has correct information on DOE sites. For example, if a DOE facility is sold, if hazardous waste activities cease at the site, if the site becomes a SQG, or other changes occur that would cause a site to qualify for deletion, the responsible DOE ERPM should notify the EPA Regional Office in which the facility is located. The Regional Office will then notify the docket coordinator, and the docket coordinator will notify DOE whether the facility will be deleted from the docket.

NATIONAL PRIORITIES LIST (NPL)

When a DOE facility is listed on the NPL, does the listing encompass all property within the facility boundary?

No, not necessarily. However, prior to August 3, 1995, NPL site listings were interpreted to include all property within the facility boundary. Consistent with this previous EPA policy, early DOE guidance reported that the term Federal facility was based on the RCRA definition of facility (see ref. 1). This definition of facility is property-based and encompasses all contiguous land owned by a department, agency, or instrumentality of the United States. However, in August 1995, EPA's Office of Emergency and Remedial Response issued a memo that restated EPA's NPL listing policy (see ref. 8).

The purpose of that memo was to address "the perception that Federal facilities are listed on a fenceline-to-fenceline basis." In the memo, EPA explained that "this

perception of fenceline-to-fenceline listing has created a negative impact on the Superfund program, which this restatement should ameliorate." Following that memo, EH-413 issued a memorandum to DOE Program Offices and Field Organizations providing information on EPA's restated NPL listing policy (see ref. 4). Both the DOE and EPA memos explain that although a CERCLA site is broadly defined to include the area(s) where a hazardous substance(s) has "come to be located," the listing process itself is not intended to define or reflect the boundaries of such facilities or releases.

For NPL listing purposes, the "CERCLA site" is not defined by the geographic boundaries of a particular facility. Rather, the site encompasses all areas of contamination and is not limited to the property boundary. As a result, a site listed on the NPL may encompass only a small area within the property boundary, or conversely, the site may extend outside the boundary due to contaminant mi-

gration. Further, because the full nature and extent of contamination typically is not known at the time of NPL listing, the size of the site may expand or contract as data are collected during the remedial investigation.

Since most DOE facility listings encompass property that includes multiple contaminated areas, as well as clean areas, should facilities seek changes to their listings as a result of EPA's August 1995 Clarification of NPL Listing Policy?

No. DOE facilities need not seek changes to their NPL listings as a result of EPA's August 1995, NPL site listing policy. If EPA's only policy change had been the 1995 clarification, facilities may have considered seeking changes to the listings to ensure that only the contaminated portions of a site were listed. However, EPA also has changed its policy regarding the deletion of sites listed on the NPL. As of November 1, 1995, EPA will delete portions of sites, if that property qualifies for deletion (60 FR 55466). Previously, EPA policy was to delete property only after evaluation of the entire site.

How can contaminated areas covered by a single NPL listing be deleted individually?

As described in the EH-413 memorandum that addresses EPA's November 1995 partial deletions rule, EPA will delete releases of hazardous substances at portions of sites, provided that deletion criteria are met (see ref. 5). Thus, DOE may petition EPA to delete a release from a portion of an NPL-listed site for which no further response is appropriate under the NCP [40 CFR 300.425(e)]. The regulatory criteria and procedures for deleting part of a site are the same as those for deleting an entire site. These procedures are described in DOE's CERCLA Information Brief, "Site Deletion from the National Priorities List" (see ref. 6), which is based largely on the 1989 EPA OSWER Directive, "Procedures for Completion and Deletion of National Priorities List Sites" (see ref. 9). On August 15, 1996, the first DOE NPL site was deleted at the Hanford 1,100 Area Site (61 FR 42402).

In determining whether no further response is appropriate for a DOE contaminated area or site, EPA typically considers three factors. These are: (1) whether DOE has implemented all appropriate and required response actions; (2) whether the release of hazardous substances poses no significant threat to public health, welfare or the environment, thereby eliminating the need for remedial action; or (3) whether all appropriate Fund-financed response actions have been implemented and EPA has determined that no further cleanup by DOE is appropriate. If one of these conditions has been met for the site (or for a portion of the site), the DOE-ERPM may petition the responsible EPA Regional Office to delete the site (or portion of the site) from the NPL. Depending on the nature and extent of the release(s), a portion of a site may be a defined geographic unit of the site or a specific environmental medium (e.g., groundwater, soil) at the site.

Once the DOE-ERPM and the responsible EPA Regional Office have determined that no further response is appropriate and a release can be deleted from the NPL, the EPA Regional Office must submit a partial deletion package to EPA Headquarters, Office of Emergency and Remedial Response. Although the EPA Regional Office submits the package to EPA Headquarters, the DOE-ERPM should assist the EPA Regional Office in preparing the necessary documentation. The partial deletion package includes (in both hard and electronic copy):

- The Notice of Intent to Delete (NOID);
- a map clearly showing the entire site and that portion to be deleted;
- site coordinates for at least three reference points on the map;
- landmarks such as roads, water bodies, waste operations;
- contacts for both the partial deletion decision and the electronic data; and
- a completed "Partial NPL Site Deletion Data Collection Form."

The Partial NPL Site Deletion Data Collection Form, which requires basic site identifying information, a description of the location and extent of the release to be deleted, and reason for the partial deletion, is included in the EPA Office of Emergency and Remedial Response Directive, "Procedures for Partial Delistings at NPL Sites" (see ref. 7).

The NCP [40 CFR 300.425(e)] also requires that the decision to delete be subject to a public comment period of at least 30 days, and that the State in which the site is located concur with the decision. The deletion occurs when the EPA Regional Administrator places a notice of final action in the *Federal Register*.

If a facility is deleted from the NPL, will it also be deleted from the docket?

No. Once a facility is listed on the docket, it remains on the docket unless EPA removes it due to incorrect information or changes in fact. However, facilities deleted from the NPL will be designated as NFRAP on the docket.

Questions of policy or questions requiring policy decisions will not be dealt with in EH-413 Information Briefs unless that policy has already been established through appropriate documentation. Please refer any questions concerning the subject material covered in this Information Brief to Katherine Nakata, RCRA/CERCLA Division, EH-413, (202) 586-0801.

