



DIRECTIVE NUMBER: 9320.1-03

TITLE: Promulgation of the National Priorities List

APPROVAL DATE: May 17, 1984

EFFECTIVE DATE: May 17, 1984

ORIGINATING OFFICE: OERR/HSCD

FINAL

DRAFT

STATUS:

REFERENCE (other documents):

Supplements 9320.1-02: Guidance for Establishing the
National Priorities List

OSWER OSWER OSWER
THE DIRECTIVE DIRECTIVE D

03/19/87		United States Environmental Protection Agency Washington, D.C. 20460		1. Directive Number	
EPA OSWER Directive Initiation Request				9320.1-03	
2. Originator Information					
Name of Contact Person PARRISH		Mail Code	Office OERR/HSCD	Telephone Number 382-5632	
3. Title PROMULGATION OF THE NPL					
4. Summary of Directive (Include brief statement of purpose) wefines the Region's roles and responsibilities in addressing comments and developing the final rulemaking for the NPL. (5/83, 7 pp) Supplements directive 9320.1-02. Supplemented by 9320.3-01 and 9320.3-03.					
5. Keywords SUPERUND, CERCLA, NATIONAL PRIORITIES LIST, NPL, NPL LISTING, PROCEDURE					
6a. Does this Directive Supercede Previous Directive(s)? <input type="checkbox"/> yes <input checked="" type="checkbox"/> No What directive (number, title)					
b. Does it Supplement Previous Directives(s)? <input checked="" type="checkbox"/> yes <input type="checkbox"/> No What directive (number, title) 9320.1-02					
7. Draft Level <input type="checkbox"/> A - Signed by AA/DAA <input type="checkbox"/> B - Signed by Office Director <input type="checkbox"/> C - For Review & Comment <input type="checkbox"/> In Development					
This Request Meets OSWER Directives System Format					
8. Signature of Lead Office Directives Coordinator				Date	
9. Name and Title of Approving Official W. HEDEMAN				Date 05/17/84	

OSWER OSWER OSWER
DIRECTIVE DIRECTIVE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 17 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE
OSWER Directive 9320.1-03

MEMORANDUM

SUBJECT: Promulgation of the National Priorities List

FROM: William N. Hedeman, Jr., Director
Office of Emergency and Remedial Response

Bill Hedeman

TO: Superfund Coordinators, Regions I-X

INTRODUCTION

In response to the request for comments on the proposed National Priorities List (NPL), the Agency has received a large volume of information. The Agency must consider those comments prior to promulgating the NPL. This guidance defines the Regions' roles and responsibilities in addressing comments and developing the final rulemaking for the NPL.

Recognizing that the States and Regions have identified additional potential NPL sites since the list was proposed, the Agency will update the NPL in a separate notice that would be issued shortly after the proposed NPL is promulgated. The procedures for updating the NPL will be addressed in a separate guidance memorandum. Thus, only the original 418 sites on the proposed NPL plus the Times Beach, Missouri, site will be considered for the final rulemaking.

OVERVIEW OF THE PROCESS

To develop a final rule for the NPL, EPA must carefully consider all relevant public comments. This includes both general comments (e.g., those relating to the exclusion of Federal facilities), and site-specific comments (e.g., the way the Hazard Ranking System (HRS) was applied to a particular site). The EPA must treat all parties fairly and explain the rationale for the decisions. Finally, in carrying out the work, OERR must avoid severely disrupting other Regional Superfund activities. Thus, the major technical work will be directed by OERR, even though the site-specific technical determinations will be made by the Regions.

-2-

Sorting

The first step after the close of the comment period has been for OERR to sort the comments according to Region and types: nonrelevant; general (relates to overall policy); generic HRS (e.g., toxicity values for a substance not covered in HRS instructions); and site-specific technical comments. All relevant comments should have been delivered to the appropriate Regions; however, the Regions will be expected to respond to issues raised in these comments only in the ways indicated below.

Analysis and Response

After completing the sorting, OERR will analyze the general comments and generic HRS issues and respond to them. The contractor staff who previously conducted quality assurance (QA) reviews of the NPL submissions will evaluate the site-specific technical issues. They are reviewing all relevant materials in the Regional files and, where necessary, State files. The QA staff will recommend a score for the site based upon all available information and present it to the Region for review. If the Region agrees, the QA staff will forward the recommendation to OERR. If the Region does not accept the QA staff recommendation then the Region should notify OERR (Steve Caldwell, FTS-382-3999) to resolve issues. The Regions will determine final scores for sites (see below), and OERR will draft the response to comments.

REGIONAL REPORTS

The Regions will be responsible for five reports described in the following sections: final scores for sites; updated HRS worksheets and Documentation Record forms; updated narrative summaries; updated status reports; and site inspection reports. Deadlines for these reports are given in the attached schedule.

Final Scores

The key Regional report will be the final HRS scores. OERR is responsible for analyzing information submitted by the public and for developing recommendations on how that information should be reflected in site scores. However, the Regions are ultimately responsible for determining the scores and for reporting them. Send scores, including total score and all five pathway scores, in writing to:

Steve Caldwell
U.S. Environmental Protection Agency
401 M Street, SW (WH-548E)
Washington, DC 20460

The deadline for submitting these final scores is May 24, 1983.

-3-

Clearly note where changes have been made since the NPL was proposed in order to ensure that all changes are correctly recorded. A copy of the computerized listing used to develop the proposal for your Region is enclosed so you can check your final scores against it and note changes. You may simply correct the printout and return it as your submission. You must follow all instructions on submission of final scores carefully so that the correct scores are used to assemble the list.

The question arises as to how the Regions should incorporate new information developed by EPA or State investigations since the NPL proposal at sites not addressed by public comments. The Preamble to the proposed NPL states:

Scores used to support promulgation of the NPL will be based on the best information available at the time, including public comments and State and EPA investigatory data.

Thus, if the Regions have information that would lead to a change in score, it should be reflected in the reported scores. In such cases, the Regions should request the QA staff to review the scoring and incorporate the rationale for score changes in the QA staff reports to OERR. Those QA staff reports will form the basis for the NPL Support Document which explains the rationale for the response to comments and changes between the proposed NPL and the promulgated rule.

Revised HRS Worksheets and Documentation Records

Where the Region reports a final score different from the scores used to develop the proposed NPL, revised HRS worksheets and Documentation Record forms must be submitted to support those changes. You should send 3 copies of each to Steve Caldwell at the address given on page 2. Revised worksheets and documentation records are due by May 23, 1983. Instructions on including these forms in the Regional docket will be provided in a later memo.

Status Reports - Classification of Actions

For promulgation of the NPL, the Agency will update the status reports for all 419 sites included on the proposed NPL. Just as we did for the NPL proposal, each site will be classified according to the following categories: Voluntary or Negotiated Response; Federal and State Enforcement; Federal or State Response; and Actions to be Determined. You may indicate the status on your reports of final scores. The definition for each category is given below.

Voluntary or Negotiated Response

Release are included in this category if response actions are currently being taken by potentially responsible parties or private parties. This category includes response actions that are sanctioned under consent agreements, consent orders, or consent decrees to which the Federal Government is a party. Voluntary or negotiated cleanup may include actions taken pursuant to agreements reached after enforcement action had commenced. Currently, this category does not include sites undergoing response actions if the actions are not governed by such an arrangement with the Federal Government.

This category does not include actions mandated under Federal and State regulatory programs to update operational pollution control systems or waste disposal operations (e.g., upgrading surface impoundments operated pursuant to an NPDES permit). This category of response may include remedial investigations, feasibility studies, and other preliminary work, as well as actual cleanup.

Federal and State Response

The Federal and State response category includes sites where EPA or State agencies have commenced or completed removal or remedial actions under CERCLA. If the State is primarily responsible for managing the response action, the site is included in this category when EPA has obligated funds for response. If EPA is managing the response action, the release is included when the State has signed a contract to meet its responsibilities and EPA has obligated funds for response. For removal actions, response has begun when EPA has obligated funds.

Federal or State Enforcement

This category includes sites where the United States Government or the State has filed a civil or criminal complaint or issued an administrative order. It also includes sites where a Federal or State court has mandated some form of non-consensual remedial action following a judicial proceeding.

Actions to be Determined

The category of actions to be determined includes all sites not otherwise listed.

Be sure to note that a site may be assigned more than one category and you should list all appropriate categories except that "Action to be Determined" is exclusive of all other categories.

Narrative Summaries

The Regions should review and revise the narrative summaries accompanying the proposed NPL. OERR continues to use these for management and Congressional briefings and press packages. Thus, the narrative summaries must reflect the most recent and accurate information. Instructions and examples for revising the summaries are enclosed. Summaries are due by May 31, 1983. OERR will review and edit them and return them for Regional review prior to release to the public. However, summaries received after the May 23 deadline will probably not be returned to the Regions after editing.

Inspection Forms

In a number of instances, the Regions did not submit the site inspection forms (EPA Form 2070-13), as required prior to the NPL proposal. These forms are the cornerstone for a standardized NPL data base that OERR is developing. That data base then will be used to develop mandated reports to Congress, respond to Congressional inquiries (e.g., "which sites contain PCB's"), develop regulations, and generally understand the nature and scope of the problems CERCLA was designed to address. Such a data base will greatly reduce the frequency of ad hoc requests to Regions for basic information. Thus, it is essential that the Regions submit the missing inspection forms. An attachment lists the information in the forms that is critical for the NPL data base and indicates where the critical information was missing from the site inspection forms previously submitted. Your cooperation in helping to establish this technical data base will be appreciated.

DOCKETS

The primary purpose for the NPL docket is to document the Agency's rationale for the rulemaking and make that information available to the public. In addition, the docket presents other information to the public such as comments by interested persons and summary descriptions of conditions at the sites. If EPA gains new information about a site or changes a decision (e.g., revises a score), new documents such as HRS worksheets and Documentation Record forms must be inserted into the docket to show our rationale. Two basic rules for updating the docket are given below:

1. The Headquarters docket and Regional docket for a site must be identical. If you add anything to a docket file, you must send a copy to the Headquarters docket.

-6-

2. Do not remove any documents from the docket, even if they contain errors. You may insert explanatory memos or notes to correct such errors.

Since the Agency must open public dockets for the NPL updates, maintenance of the dockets will be a continuing responsibility. You will receive further instructions and, as necessary, training in maintaining the docket.

PUBLIC CONTACTS DURING RULEMAKING

To articulate the procedures for this rulemaking and to provide guidance for EPA's periodic updates of the NPL, it is important to review our policy regarding public contacts during rulemaking. Statutory and case law on the rulemaking process requires, once a rulemaking proposal has been issued, that the Agency consider any additional information in a fair and open manner. The formal process for doing this is the comment period noticed in the proposal. Once this comment period has ended, as is the case with the proposed NPL, the Agency should try to limit its contacts with the public regarding the substantive issues of the rulemaking. Such contacts may take place, however, as long as they are consistent with the principles of openness and fairness. This requires that any Agency employee who discusses the substance of the proposed NPL with a member of the public prepare and place in the docket a written memorandum describing the conversation. Such memoranda should contain sufficient detail to reflect all substantive issues, facts, or data, although a verbatim transcript is not required. Where the contact is simply an informational description of EPA's schedule or procedures, or where EPA relates information that already is contained in the current docket, the contact need not be recorded. If you have any questions regarding the principles and procedures outlined above, you should contact Todd Gulick of the Office of General Counsel, FTS 382-7709.

NPL Promulgation Schedule

April 29 QA recommendations to Regions completed.

May 24 Regions report final scores.

May 31 Regions submit revised HRS worksheets, documentation records, and narrative summaries

June 1 Draft final NPL: preamble and list (HQ responsibility)

June 6 After HQ edit, narrative summaries returned to Regions for review.

June 13 Regions submit final narrative summaries to HQ.

June 27 NPL rulemaking announced.