

May 31, 2002 **Federal Register** (67 FR 38102).

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which 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

With today's proposed rule, EPA is proposing to add 14 new sites to the NPL; all to the General Superfund Section of the NPL. (Please note that the 68th Street Dump site in Maryland is being repropoed to the NPL. With this reproposal, EPA is withdrawing the January 19, 1999 (64 FR 2950), proposal of the site. Commenters will need to re-submit comments based on today's reproposal.) 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 Table 1 which follows this preamble.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 7 sites to the NPL; resulting in an NPL of 1,237 final sites; 1,079 in the General Superfund Section and 158 in the Federal Facilities Section. With this proposal of 14 new sites, there are now 66 sites proposed and awaiting final agency action, 60 in the General Superfund Section and 6 in the Federal Facilities Section. Final and proposed sites now total 1,303. (These numbers reflect the status of sites as of April 1, 2003. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. Withdrawal of Site from Proposal to the NPL

EPA is withdrawing its proposal to list the Triumph Mine Tailing Piles site on the NPL. The site, located in Triumph, Idaho, was proposed to the NPL on May 10, 1993 (58 FR 27507). Documentation requesting withdrawal of the site was submitted by the State and EPA Region 10 and is available in the Docket for today's proposed rule.

EPA does not believe that further response under Superfund is

appropriate at this time. All major sources of risk have been mitigated. All contaminated yards, gardens, roads, waste rock, tailings, and other soil areas have either been excavated and replaced with clean soil, or capped with clean soil and a vegetative cover. The State has indicated that it will enforce the consent order requiring ASARCO to address mine water discharge from the mine portal, and if those efforts fail, seek alternative sources to do the work. The State and community strongly support withdrawing the site from the proposed NPL, and EPA does not believe the mine water discharge warrants retaining the proposal to list the site on the NPL.

IV. Executive Order 12866

A. 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 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.

B. 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.

V. Unfunded Mandates

A. 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 for which 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.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that 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 by the private sector in any one year. This rule will not impose any Federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake