



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-2014-0620; FRL-9924-66-OSWER]

RIN 2050-AG76

National Oil and Hazardous Substances Pollution Contingency Plan (NCP);

Amending the NCP for Public Notices for Specific Superfund Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is adding language to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to broaden the methods by which the EPA can notify the public about certain Superfund activities.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-SFUND-2014-0620. All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Superfund Docket (Docket ID No. EPA-HQ-SFUND-2014-0620). This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744 and the telephone number for the Superfund Docket is (202) 566-0276. The EPA Docket Center (EPA/DC) is located at WJC West Building, Room 3334, 1301 Constitution Ave., NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

General Information: Superfund, Toxics Release Inventory (TRI), Emergency Planning and Community Right-to-Know Act (EPCRA), Risk Management Program (RMP) and Oil Information Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323.

Technical information: Suzanne Wells at (703) 603-8863, (wells.suzanne@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460-0002, Mail Code 5204P.

SUPPLEMENTARY INFORMATION:

I. Why is EPA publishing this final rule?

On October 1, 2014, EPA published a proposed rule entitled *National Oil and Hazardous Substances Pollution Contingency Plan (NCP); Amending the NCP*

for Public Notices for Specific Superfund Activities (79 FR 59179) (hereafter the proposed rule). The EPA proposed to amend the NCP to expand the methods by which the EPA can notify the public about certain Superfund activities.

The NCP requires the lead Agency to publish a notice “in a major local newspaper of general circulation” when certain Superfund site-related activities occur. Many of these requirements were established in 1990 or earlier versions of the NCP when it was common practice for government agencies to publish notices of planned actions in newspapers. Today, multiple ways are used to notify the public about Superfund site-related activities that may be as or more effective than publishing notices in newspapers. For example, the public may be notified of certain actions the lead agency takes by distributing flyers door-to-door, mailing notices to homes, sending email notifications, making telephone calls or posting on Web sites. In certain cases, publishing a notice in a major newspaper of general circulation may not be the most effective way of notifying a community about a specific Superfund action, and may be less cost effective than other notification methods. EPA received seven comments on the proposed rule. EPA is addressing the comments and finalizing the amendment.

II. Background

A. What Does This Amendment Do?

In the October 1, 2014, proposed rule, six sections of the NCP were proposed to be amended to change the public notice language in the NCP to allow

adequate notice to a community via a major local newspaper of general circulation or by using one or more other mechanisms. Specifically, this amendment will add language to:

- §300.415(n)(2)(i) that requires a notice of the availability of the administrative record file for CERCLA actions where, based on a site evaluation, the lead agency determines that a removal action is appropriate, and that less than six months exists before on-site removal action must begin.
- §300.415(n)(4)(ii) that requires notification of the engineering evaluation/cost analysis (EE/CA) where the lead agency determines that a CERCLA removal action is appropriate and that a planning period of at least six months exists prior to initiation of the on-site removal activities.
- §300.425(e)(4)(ii) that requires notification of releases that may be deleted from the National Priorities List (NPL).
- §300.815(a) that requires notification of the availability of the administrative record file for the selection of a remedial action at the commencement of the remedial investigation.
- §300.820(a)(1) that requires notification of the availability of the administrative record file when an EE/CA is made available for public comment, if the lead agency determines that a removal action

is appropriate and that a planning period of at least six months exists before on-site removal activities must be initiated.

- §300.820(b)(1) that requires notification of the availability of the administrative record file for all other removal actions not included in §300.820(a).

B. What Comments Did EPA Receive and How Are They Addressed?

EPA received seven comments on the proposed rule. Four of the commenters fully supported the proposed rule to add language to the NCP to broaden the methods by which the EPA can notify the public about certain Superfund activities. One commenter wrote “It is difficult even for organized groups to constantly scan the local newspaper for publication notices. To have our rights for participation denied because we do not have time to peruse the local newspaper each and every day seems contrary to EPA’s mission to inform and protect the public.” Another commenter wrote “The currently required method of publishing notices in ‘major local newspapers of general circulation’ is antiquated and frequently ineffective. By broadening the permitted methods of notification, linked when possible to Community Involvement Plans, EPA can better reach populations affected by the Superfund process.” A third commenter wrote “The proposed rule would broaden the notification methods the lead agency will be able to use in order to adopt a notification approach that is most effective at informing a community....We fully support an expanded approach to notification that might

include door to door flyers, mailing notices to homes, sending e-mails or making telephone calls.”

One commenter questioned why the proposed rule did not extend additional methods of public notification to the activities included under:

(1) section 117 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) including:

- section 117(a) notification of the proposed plan (40 CFR 300.430(f)(3)(i)(A)),
- section 117(b) notification of the final remedial action plan adopted (40 CFR 300.430(f)(6)(i)), and
- section 117(c) notification of an explanation of significant differences after adoption of a final remedial action plan (40 CFR 300.435(c)(2)(i)(B));

(2) notice of availability of the amended Record of Decision (40 CFR 300.435(c)(2)(ii)(G));

(3) notices after EPA receives a letter of intent to apply for Technical Assistance Grant (40 CFR 35.4110); and

(4) notices of the starts and completions of five-year reviews or availability of draft or final five-year review reports.

EPA is required to follow the statutory public notice requirements associated with CERCLA section 117. Publication in a major local newspaper of

general circulation will continue to be required for 1) notice of availability of the proposed plan (40 CFR 300.430(f)(3)(i)(A)), 2) notice of availability of the Record of Decision (40 CFR 300.430(f)(6)(i)), 3) notice that briefly summarizes the explanation of significant differences (40 CFR 300.435(c)(2)(i)(B)), 4) notice of availability and a brief description of the proposed amendment to the Record of Decision (40 CFR 300.435(c)(2)(ii)(A)), and 5) notice of availability of the amended Record of Decision (40 CFR 300.435(c)(2)(ii)(G)).

EPA did not propose revisions to 40 CFR 35.4110 that requires the Agency to publish a notice in a major local newspaper of general circulation when it receives a letter of intent to apply for a Technical Assistance Grant (TAG). EPA will consider whether revisions to 40 CFR 35.4110 are necessary to expand the methods by which it notifies the public of the receipt of a letter of intent to apply for a TAG. If EPA decides revisions are necessary, a proposed rule will be published.

Finally, there are no regulatory requirements to publish a notice in a major local newspaper of general circulation about the start and completion of a five-year review or the availability of a draft or final five-year review report. The Comprehensive Five-Year Review Guidance (EPA 540-R-01-007, OSWER No. 9355.7-03B-P, June 2001) says “[a]t a minimum, community involvement activities during the five-year review should include notifying the community that the five-year review will be conducted and notifying the community when the five-year review is completed.” The Comprehensive Five-Year Review Guidance

goes on to say the site team should determine the best means for notifying the community about the five-year review. Therefore, no revisions are necessary regarding public notification of the start and completion of five-year reviews or availability of draft or final five-year review reports.

One commenter suggested that while it need not be included in the new NCP language, EPA staff responsible for public notification should continuously evaluate the effectiveness of the public notice vehicles they use because “[i]n this world of new media the best way to reach people varies by group and is continuously changing.” The Agency agrees it is important to receive feedback from the community on a regular basis on the best ways to communicate with them. During the interviews conducted with community members as part of the development of a Community Involvement Plan, EPA staff receive feedback on the best methods to communicate with the public. EPA staff also take advantage of opportunities at public meetings and through informal ongoing discussions with community members about the ways they would like to receive information about site activities. Based on this feedback, the Agency adjusts its notification methods, if necessary.

Two commenters wrote the Agency ought to provide public notifications in English and in other prominent languages spoken in a community. The Agency agrees with these commenters. In communities where languages other than

English are spoken, the Agency does seek to translate site-related information into the languages spoken in the communities. When appropriate, the Agency can provide translators at public meetings to communicate site-related information to community members who do not speak English. Some Agency staff are bilingual and are able to help communicate site-related information in prominent languages spoken in a community.

One commenter wrote that some communities are not knowledgeable about the Superfund process, and that it is important to provide training for community members in order to help them understand the Superfund process, and how they can be involved in the process. The Agency agrees with this commenter. EPA staff frequently provide presentations in communities about the Superfund process and how community members can be involved in the process. In addition, through programs like Technical Assistance Services for Communities (TASC), EPA works closely with communities to make sure they have the technical help they need. Sometimes, a community may need additional help to fully understand local environmental issues and participate in decision-making. The purpose of the TASC program is to meet this need.

Finally, one commenter supported continuing to publish notices in major local newspapers because some communities continue to rely on local newspapers to get their information. This final rule allows the Agency to publish notices in “major local newspapers of general circulation,” if the local newspaper is

determined to be the most effective vehicle for informing a community about certain Superfund activities.

Thus, the amendment being promulgated is a useful and important change that will give the Agency the ability to determine the best method to notify the public about certain Superfund activities. EPA is promulgating the change to add language to 40 CFR Part 300 as was proposed.

III. Statutory and Executive Order Reviews

As explained previously, this rule takes final action on an amendment for which we received comments in response to our October 1, 2014, *National Oil and Hazardous Substances Pollution Contingency Plan (NCP); Amending the NCP for Public Notices for Specific Superfund Activities*.

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a “significant regulatory action” and is therefore not subject to OMB review. This action merely adds language to 40 CFR 300.415(n)(2)(i), 300.415(n)(4)(ii), 300.425(e)(4)(ii), 300.815(a), 300.820(a)(1), and 300.820(b)(1) to expand the methods by which the lead agency can notify the public about certain Superfund activities. This action will enable the lead agency to identify effective methods to notify the public. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), after considering the economic impacts of this action on small

entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub.L. 104-4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 19, 2015.

Mathy Stanislaus,
Assistant Administrator,
Office of Solid Waste and Emergency Response.

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations

is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES
POLLUTION CONTINGENCY PLAN

1. The authority citation for part 300 is revised to read as follows:

AUTHORITY: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

2. Section 300.415 is amended by revising paragraphs (n)(2)(i) and (n)(4)(ii) to read as follows:

§300.415 Removal action.

* * * * *

(n) * * *

(2) * * *

(i) Publish a notice of availability of the administrative record file established pursuant to § 300.820 in a major local newspaper of general circulation or use one or more other mechanisms to give adequate notice to a community within 60 days of initiation of on-site removal activity;

* * * * *

(4) * * *

(ii) Publish a notice of availability and brief description of the EE/CA in a major local newspaper of general circulation or use one or more other

mechanisms to give adequate notice to a community pursuant to
§ 300.820;

* * * * *

3. Section 300.425 is amended by revising paragraph (e)(4)(ii) to read as follows:

§300.425 Establishing remedial priorities.

* * * * *

(e) * * *

(4) * * *

(ii) In a major local newspaper of general circulation at or near the release that is proposed for deletion, publish a notice of availability or use one or more other mechanisms to give adequate notice to a community of the intent to delete;

* * * * *

4. Section 300.815 is amended by revising paragraph (a) to read as follows:

§300.815 Administrative record file for a remedial action.

(a) The administrative record file for the selection of a remedial action shall be made available for public inspection at the commencement of the remedial investigation phase. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of

the administrative record file.

* * * * *

5. Section 300.820 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§300.820 Administrative record file for a removal action.

(a) * * *

(1) The administrative record file shall be made available for public inspection when the engineering evaluation/cost analysis (EE/CA) is made available for public comment. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

* * * * *

(b) * * *

(1) Documents included in the administrative record file shall be made available for public inspection no later than 60 days after initiation of on-site removal activity. At such time, the lead agency shall publish in a major local newspaper of general circulation a notice or use one or more other mechanisms to give adequate notice to a community of the availability of the administrative record file.

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[FR Doc. 2015-07474 Filed: 4/1/2015 08:45 am; Publication Date: 4/2/2015]