While not dismissing concerns for chemicals in the drinking water caused by sources not listed as part of the site, EPA has determined that any risks from the drinking water would not be associated with the releases from the site. This is because none of the volatile inorganic compounds found in the drinking water wellfield, with the exception of carbon disulfide, were detected at the 21st Manor site, either in the temporary wells or in subsurface soils (which could affect groundwater). Carbon disulfide was detected at low levels or levels below background. Also, no inorganic chemicals detected in dump site subsurface soils were detected above naturally occurring levels.

Consequently, only soil exposure at the 21st Manor dump site was quantitatively evaluated in the risk assessment. This risk assessment considered the maximally exposed individual for each exposure pathway addressed, by using the maximum concentrations measured in environmental media at the site as the exposure point concentrations, along with reasonable maximum exposure (RME) case exposure assumptions. Thus, the greatest single chemical risk in the cancer risk assessment-that for benzo(a)pyrene—was based on a single surface soil measurement of 130 parts per billion (ppb) out of sixteen samples and a single subsurface soil measurement of 720 ppb out of 31 samples. (All other samples found no detectable levels of the chemical.) Each of these levels are within, or lower than, natural background measurements of the chemical reported in various literature sources. Contributions of all other chemicals to the cancer risk assessment were considerably lower, even for the most exposed individual, and risk calculations are in most cases based on one or two samples that detected any levels when all others resulted in no detectable levels.

Even with these extremely conservative assumptions as to the levels of toxic chemicals at the site, the risk assessment concluded that there were no significant current risks from site releases. Only potential exposure pathways assuming future residential land use had excess lifetime cancer risks greater than 10^{-6} , that is 1 in 1,000,000. The cumulative upper bound excess lifetime cancer risk to a young child resident was estimated to be 2×10-The risk was based on incidental ingestion and dermal contact with soil contaminated with benzo(a)pyrene, the main chemical of concern at the level measured in one sample, when all others were not even detected. The site

posed a similar risk to adults exposed via the same pathways.

The total hazard index values for both a young child resident and an adult resident were less than one, indicating that adverse noncarcinogenic effects are unlikely to occur. EPA also performed an ecological risk assessment. The Agency concluded that the urban setting of the site, combined with the distribution and concentration of the chemicals of concern were not likely to result in adverse environmental impacts.

The cancer risk numbers are at the lower end of the range of generally acceptable exposure levels for carcinogens in the NCP. The Agency's decision is further supported by the fact that the data supporting these cancer risk levels are obtained from the maximum exposure levels in circumstances where almost all other analyzed samples found no detectable levels of the carcinogenic chemicals. Indeed, the cancer risk for this site from exposure to soil could just as likely be zero.

The Agency intentionally performed the risk assessment for the 21st Manor Dump Site employing unusually conservative values (e.g., EPA used maximum measured soil concentrations). Moreover, the only exposure pathway that presented a risk greater than 10^{-6} assumed that a residence would be built directly on the dump area, which is unrealistic.

III. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

IV. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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 to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When a written statement is needed for an EPA rule, 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, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (within the meaning of Title II of the UMRA) for State, local, or tribal governments or the private sector. Nor does it contain any regulatory requirements that might significantly or uniquely affect small governments. This is because today's listing decision does not impose any enforceable duties upon any of these governmental entities or the private sector. Inclusion of a site on the NPL does not itself impose any costs. It does not establish that EPA necessarily will undertake remedial action, nor does it require any action by a private party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Therefore, today's rulemaking is not subject to the requirements of sections 202, 203 or 205 of the Unfunded Mandates Act.

V. Governor's Concurrence

On July 27, 1995, Congress enacted Public Law (P.L.) 104–19, which made emergency supplemental appropriations and rescissions for the fiscal year ending September 30, 1995. Section 1006 of P.L. 104–19 provides that EPA may not use funds made available for fiscal year 1995

for listing or to list any additional facilities on the National Priorities List . . . unless the Administrator receives a written request to propose for listing or to list a facility from the Governor of the State in which the facility is located. . . .

EPA has received letters from the appropriate governors requesting that the Agency propose for listing on the NPL all the facilities in this final rule. These letters are available in the docket