

September 2000, EPA conducted a final inspection with NYSDEC and the PRPs. In December 2000, EPA issued its approval of the Remedial Action Report. The ecological assessment recognized that there were valuable wetlands and uplands located on the Site. A restoration plan was developed and implemented to account for the wetland losses incurred by the capping, and 0.17 acres of wetland were created as part of the work done at the Site. The success of the restoration effort is described in the Site Annual Monitoring Reports. Additionally, institutional controls, consisting of recording the Consent Decree and placing restrictive covenants on the real property at the Site, have been implemented by Niagara County and the Town of Wheatfield.

An Operation, Maintenance, and Monitoring (OM&M) Manual was developed and implemented. Financial assurance for OM&M activities has been provided by the PRPs in the form of demand notes as required by the Consent Decree. Annual reports are provided to EPA and NYSDEC and both EPA and NYSDEC believe that the reports for 2001 and 2002 confirm that the remedy for the Site has been successfully implemented.

The Site has been cleaned and environmentally valuable lands restored. The Site no longer poses an unacceptable risk to human health or the environment. However, hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to section 121(c) of CERCLA, EPA and/or the State will review site remedies no less often than every five years. The EPA, Region 2, conducted a Five-Year Review of the Site in November 2003. The Five-Year Review concluded that the contamination at the Niagara County Refuse site is under control and there is no exposure to human or environmental receptors from Site-related contaminants due to permanent measures in place at the Site.

Public participation activities for this Site have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and section 117, 42 U.S.C. 9617. The ROD was subject to a public review process. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories.

One of the three criteria for site deletion is when "responsible parties or other persons have implemented all appropriate response actions required" (40 CFR 300.425(e)(1)(i)). EPA, with the concurrence of the State of New York, through the NYSDEC, believes that this

criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL.

#### List of Subjects in 40 CFR Part 300

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

Dated: December 24, 2003.

**Kathleen Callahan,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 04-5874 Filed 3-16-04; 8:45 am]

**BILLING CODE 6560-50-P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[FRL-7637-4]

#### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Love Canal Superfund site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA), Region II, announces its intent to delete the Love Canal Superfund site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL is Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New York (State), through the New York State Department of Environmental Conservation (NYSDEC), have determined that all appropriate response actions under CERCLA have been implemented and that no further response action pursuant to CERCLA are appropriate.

**DATES:** Comments concerning this Action must be received by April 16, 2004.

**ADDRESSES:** Written comments should be submitted to: Damian J. Duda, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 290 Broadway, 20th Floor, New York, New York 10007-1866.

Comprehensive information on this Site is available through the EPA Region

II public docket contained at: U.S. Environmental Protection Agency, Region II, Superfund Records Center, 290 Broadway, Room 1828, New York, NY 10007-1866, (212) 637-4308.

Hours: 9 a.m. to 5 p.m., Monday through Friday.

Information on the Site is also available for viewing at the following information repository: U.S. Environmental Protection Agency, 530 Third Street, Niagara Falls, New York 10460, (716) 285-8842.

#### FOR FURTHER INFORMATION CONTACT:

Damian Duda, at the address provided above, by telephone at (212) 637-4269, by electronic mail at [duda.damian@epa.gov](mailto:duda.damian@epa.gov) or by FAX at (212) 637-3966.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion

#### I. Introduction

EPA Region II announces its intent to delete the Love Canal Superfund site, located in the City of Niagara Falls, Niagara County, New York from the NPL and requests public comment on this action. The NPL is Appendix B of the NCP, which EPA promulgated, pursuant to Section 105 of CERCLA. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL can have remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). As described in 40 CFR 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions, if conditions at the site warrant such action.

The Site is located in the southeast corner of the City of Niagara Falls, approximately ¼ mile north of the Niagara River in Niagara County, New York.

EPA will accept comments concerning the deletion of this Site from the NPL for thirty days after publication of this notice in the **Federal Register**.

#### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State of New York, shall

consider whether any of the following criteria have been met:

(i) Responsible or other parties have implemented all appropriate response actions required; or,

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response actions by responsible parties is appropriate; or,

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, implementing remedial measures is not appropriate. 40 CFR 300.425(e)(1).

### III. Deletion Procedures

The following procedures are being used for the intended deletion of the Site:

(1) EPA Region II issued the following decision documents: a Decision memorandum in July 1982; three Records of Decision (RODs) in March 1985, September 1987 and September 1988; three Explanations of Significant Differences (ESDs) in June 1989, November 1996 and December 1998; and, a ROD Amendment in May 1991, all of which describe the selected remedies at the Site.

(2) EPA, NYSDEC and the Potentially Responsible Party (PRP) designed and constructed the various remedies at the Site. EPA and NYSDEC monitored the design and construction activities. EPA prepared a Final Closeout Report (available upon request), which describes the remedial activities that were implemented and which finds that all areas of concern described in the NPL listing and the various decision documents have been adequately addressed.

(3) EPA Region II recommends deletion and has made all relevant documents available in the Regional office and local information repository.

(4) The State of New York, through the NYSDEC, has concurred with the deletion decision in a letter dated September 30, 2003.

(5) Concurrent with the publication of this Notice of Intent to Delete, a notice has been published in two local newspapers and has been distributed to appropriate Federal, State and local officials and any other interested parties, announcing a thirty (30)-day public comment period on the deletion package.

The NCP provides that EPA shall not delete a site from the NPL until the public has been afforded an opportunity to comment on the proposed deletion. EPA Region II will accept and evaluate public comments before making a final decision to delete. If a decision is made

to delete this Site, the decision will be made in a final Notice of Deletion in the **Federal Register**. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

### IV. Basis for Intended Site Deletion

Between 1942 and 1952, the Hooker Chemicals & Plastics Corporation (now Occidental Chemical Corporation (OCC)) disposed of approximately 22,000 tons of drummed and liquid chemical wastes, including polycyclic aromatic hydrocarbons, halogenated organics, pesticides, chlorobenzenes and dioxin into the abandoned Love Canal Landfill (LCL).

Problems with odors and residues in the basements and backyards of properties abutting the LCL were first reported in the 1970's. Also, during the 1970's, unusually high precipitation in the region caused the water table within the LCL to rise, which allowed contaminants to spread laterally in surficial soils and along utility bedding, eventually seeping into the basements of nearby homes. Dioxin and other contaminants also migrated from the LCL to the sanitary and storm sewers which extended outside the LCL boundaries, some with outfalls into nearby creeks which are tributaries to the Niagara River. In 1978, the New York State Department of Health (NYSDOH) identified more than 80 chemicals in the LCL and adjacent soils.

In August 1978, President Carter issued the first of two Emergency Declarations at the Site which provided Federal funding for remedial work to contain the chemical wastes at the Site and for the relocation of the residents in the homes (239 properties) directly adjacent to the LCL; these homes were subsequently identified as Ring I and Ring II.

In May 1980, President Carter issued the second Declaration of Emergency at the Site. This emergency declaration established the Emergency Declaration Area (EDA), the approximately 350-acre neighborhood surrounding the Site, and authorized \$20 million of Federal funds for the purchase of homes. The Federal Emergency Management Agency (FEMA) disbursed these funds and, together with NYSDEC, relocated approximately 950 families, of the more than 1,050 families affected, from a 10-square-block area surrounding the LCL.

In 1981, EPA proposed the addition of the Site to the NPL, making it available for funding under CERCLA. The Site was added to the NPL in 1983.

In May 1982, EPA's Office of Research and Development issued the *Environmental Monitoring at Love Canal Study* (May 1982) (EMS) which evaluated the nature and extent of contamination throughout the EDA, including air, soils, surface water, sediments and biota sampling.

In July 1982, the EPA Region 2 Regional Administrator issued a *Decision Memorandum: Cooperative Agreement with the State of New York for Love Canal*. This memorandum was a precursor to the Superfund ROD and documented the work that had been performed by NYSDEC, approved additional Federal funding, and identified a phased approach for conducting eight additional tasks which included the following:

- Undertake Site containment via an expanded leachate collection system and/or other containment option.
- Investigate/remediate contamination in the north end storm and sanitary sewer system.
- Investigate/remediate contamination in Black and Bergholtz creeks.
- Investigate/remediate contamination in the south end storm sewers.
- Investigate/remediate contamination in the western sanitary sewers and lift stations.
- Develop long-term monitoring to ensure the effectiveness of the cleanup activities.
- Investigate/remediate 102nd Street outfall.
- Prepare summary document with conclusions.

By June 1983, the Rings I and II homes, adjacent to the LCL, as well as the 99th Street School, had been demolished.

In August 1983, in order to address concerns raised by the Office of Technology Assessment and the public regarding the 1982 EMS, EPA established the multi-agency Love Canal Technical Review Committee (TRC) to act as a management group to provide interagency coordination and oversight for further remedial and habitability activities for the Site. The TRC was comprised of senior-level representatives from EPA, U.S. Department of Health and Human Services/Centers for Disease Control, NYSDOH and NYSDEC. The principal task of the TRC was to determine the habitability of the EDA surrounding the Site.

The efforts of the TRC led to the development of the Love Canal Emergency Declaration Area Habitability Study (LCHS). A draft Habitability Criteria document was

developed, pursuant to recommendations of an independent panel, and was released for peer review. The final habitability criteria were established after this extensive peer review process of the draft habitability criteria. The development of the five-volume LCHS was based upon the final habitability criteria.

In October 1983, EPA issued the *Environmental Information Document—Site Investigations and Remedial Action Alternatives—Love Canal* which evaluated contamination in the creeks and sewers surrounding the LCL and provided treatment alternatives for their remediation.

In 1984, NYSDEC installed a 40-acre cap over the LCL, consisting of a high-density polyethylene liner, which was then covered by 18 inches of clean soil and seeded for grass. In addition, NYSDEC performed high-pressure cleaning of the leachate collection system in February 1983 to improve its performance. The permanent leachate treatment plant began operation in December 1979. Modifications were made to the leachate treatment plant in December 1984.

In March 1985, EPA issued the *Love Canal Sewer and Creek Remedial Alternative Evaluation and Risk Assessment*, which evaluated risks posed by contamination in the creeks and sewers, further evaluated alternatives for remediating the creeks and presented a proposed remedial action plan.

In May 1985, EPA issued a ROD selecting a remedy to remediate the sewers and the creeks in the EDA. This ROD called for:

- Hydraulically cleaning the sewers;
- dredging and hydraulically cleaning the Black Creek culverts;
- removing Black and Bergholtz Creek sediments with dioxin concentrations exceeding one part per billion (ppb);
- construction of an on-site interim storage facility for the creek and sewer sediments; and,
- remediation of the 102nd Street outfall area (which was subsequently addressed under the remedial action for the 102nd Street Landfill Superfund site).

In August 1985, EPA issued the *Long-Term Monitoring Program Design for the Love Canal Remedial Project* which evaluated contamination in the area groundwater and effectiveness of the barrier drain and cap system. Hundreds of groundwater monitoring wells were installed between 1985 and 1987.

In 1986, the Superfund Amendments and Reauthorization Act (SARA) was enacted; Section 312 of SARA included

specific provisions to address the significant program aspects of the Site. These included:

- Completion of a study of the habitability of the EDA, *i.e.*, the LCHS.
- Acquisition of those properties within the EDA which were not eligible for government acquisition under the FEMA acquisition program.
- Maintenance of property acquired under the FEMA and EPA's SARA acquisition programs.
- Provision of technical assistance to the Love Canal Area Revitalization Agency (LCARA) to facilitate their efforts to revitalize the EDA. LCARA was a New York State Agency that was designated as the lead agency in the rehabilitation effort of the Love Canal EDA.

During 1986 and 1987, the remediation of the contaminated sewers was performed; this included the clean-out of 68,000 linear feet of storm and sanitary sewers. An on-site facility was constructed to dewater sewer contaminants. This remedial action conformed with the 1985 ROD, requiring the removal of dioxin-contaminated sediments from the creeks and sewers. Additional sewer cleanup was performed pursuant to the 1987 ROD (discussed below); the 1987 ROD also documented earlier elements of the sewer cleanup.

From 1987 until 1989, Black and Bergholtz Creeks were dredged of approximately 14,000 cubic yards of sediments. Clean riprap was placed in the creek beds, and the banks were replanted with grass. This remedial action conformed with the 1985 ROD, requiring the removal of dioxin-contaminated sediments from the creeks and sewers.

In June 1987, EPA issued the *Alternatives for Destruction/Disposal of Love Canal Creek and Sewer Sediments* report which provided various alternatives for the ultimate disposal of the sediments, described below in more detail.

In 1987, EPA entered into the first of two cooperative agreements with LCARA to implement the mandates of Section 312 of SARA/CERCLA. This first agreement dealt with EDA property acquisition. Under EPA's and other acquisition programs, including FEMA's, LCARA purchased over 600 properties in the EDA.

In October 1987, EPA issued a second ROD selecting a remedy to address the destruction and disposal of the dioxin-contaminated sediments from the sewers and creeks. The ROD called for:

- construction of an on-site facility to dewater the sewer and creek sediments and to contain the dewatered sediments;

- construction of a separate on-site facility to treat the dewatered sediments through high temperature thermal destruction;

- on-site thermal treatment of the residuals stored at the Site from the leachate treatment facility and other associated Love Canal waste materials; and,
- on-site disposal of any nonhazardous residuals from the thermal treatment or incineration process.

From 1987 until 1988, the LCHS sampling and evaluation were performed to evaluate air and soil contamination in the EDA and other comparison neighborhoods, using specific habitability criteria, as discussed above. *Volume I—Final Report of the LCHS, Introduction and Decision-Making Documentation* was issued in May 1988. The subsequent four volumes of data documentation were issued later. Volumes II and III presented the results of the assessment for the Love Canal indicator chemicals for air and soil. Volume IV presented the assessment of the dioxin soil assessment. Volume V summarizes the subsequent peer review of Volumes II–IV and the response to that peer review.

In September 1988, using the results of the LCHS, the New York State Commissioner of Health issued a Decision on Habitability, which identified appropriate land uses for the seven designated areas of the EDA. Areas 1–3 were declared not suitable for residential use, *i.e.*, uninhabitable, but were suitable for commercial/industrial use. Areas 4–7 were deemed habitable, *i.e.*, suitable for residential use.

In March 1988, EPA issued the *93rd St. School Remedial Investigation and Feasibility Study* which evaluated the nature and extent of contamination at the 93rd St. School and provided alternatives for the remediation of the contamination.

In September 1988, EPA issued a third ROD which selected a remedy for contaminated soils at the 93rd Street School. The selected remedy included the following actions:

- excavation of approximately 7,500 cubic yards of contaminated soil adjacent to the school;
- on-site solidification and stabilization of the contaminated soils; and,
- return of the stabilized soils to the excavated area.

Prior to 1989, EPA, through its cooperative agreement with NYSDEC, provided funds for the maintenance of the abandoned properties in the EDA. Subsequently, in 1989, NYSDEC passed the responsibility for home maintenance

to LCARA. At this time, EPA then entered into a second cooperative agreement with LCARA to implement the maintenance and technical assistance (MATA) mandates of Section 312 of CERCLA. Under this MATA agreement, EPA provided LCARA with funding to maintain improved and unimproved properties in the EDA and also to demolish EDA homes that had deteriorated to the extent that they presented safety concerns or a net loss to the overall value of the property. Over 250 homes were demolished under the MATA program.

EPA's technical assistance has supported LCARA's efforts to revitalize the EDA (EPA did not provide Federal funds for the actual repair or reconstruction of buildings within the EDA). LCARA sold approximately 260 homes in the EDA areas designated for residential use and prepared a master plan for the areas designated for commercial/industrial use.

In 1989, EPA issued an ESD to the 1985 and 1987 RODs, which specified that creek sediments were to be dewatered at creek side, placed in polyethylene bags and then transported to and stored at OCC's Resource Conservation and Recovery Act-permitted storage buildings at its Niagara Falls Main Plant, rather than at the Site, pending high temperature thermal destruction at OCC's Niagara Falls Main Plant. In addition, other Love Canal wastes, including the sewer sediments and other remedial wastes originally targeted for thermal treatment at the Site, were also to be thermally treated at OCC's Niagara Falls Main Plant rather than at the Site. OCC, the United States and the State of New York entered into an agreement, *i.e.*, a partial consent decree, filed in U.S. District Court, to implement this modification to the 1985 and 1987 RODs.

In May 1991, EPA issued an amendment to the 1988 ROD for the 93rd Street School, which modified the selected remedy and called for excavation and off-site disposal of the contaminated soils, rather than disposal at the 93rd Street School site.

In September 1992, the contaminated soils at the 93rd Street School were excavated; these materials were used for alternate grading material for the 102nd Street Landfill Superfund site Remedial Action, *i.e.*, subgrade material for the capping remedy.

In November 1996, EPA issued a second ESD for the 1987 ROD. This ESD authorized thermal treatment and/or land disposal of the stored Love Canal waste materials at an off-site commercial incinerator and landfill

rather than at OCC's Niagara Falls Main Plant.

In February 1998, OCC began shipping the bagged Love Canal wastes from its storage facilities for disposal (thermal destruction or landfilling).

In December 1998, EPA issued a third ESD which provided notice that EPA granted a treatability variance to OCC to eliminate the requirement that the stored Love Canal waste materials containing dioxin at concentrations between 1 and 10 ppb be incinerated. As a result of this variance, these materials could be disposed at a commercial hazardous waste landfill without treatment.

In August 1999, this remedial action was completed and the remaining bags of wastes were shipped off-site for disposal. A total of 10,262 bags were land disposed in a Subtitle C facility and 5,234 bags were incinerated, with the resulting residues being landfilled at Subtitle C facilities.

LCARA completed its charge to revitalize the EDA and, in 2003, was subsequently dissolved by an act of the State legislature. At the present time, all residential and commercial properties in Areas 4–7 have been rehabilitated, sold by LCARA and restored to active use. LCARA rehabilitated and sold approximately 260 homes in the areas identified for residential use and prepared a master plan for the areas designated for commercial/industrial use. Certain parcels in EDA Areas 2–3 remain vacant, and these vacant properties are properly zoned and have deed restrictions which comply with the original Decision on Habitability, limiting use to commercial/industrial purposes only, unless remediated. These parcels were subsequently sold to real estate developers.

EPA, NYSDEC and the PRP used engineering consultants and contractors to perform the remedial design and/or construction for the Site. EPA and NYSDEC also performed oversight for activities conducted by the PRPs and their contractors, as well as EPA and NYSDEC contractors.

In 1982, EPA established a Public Information Office in downtown Niagara Falls to handle the Site, as well as other EPA Superfund sites in the Niagara Falls and Buffalo, New York area. All decisions made about the Site were conducted in a public forum, especially during the development of the LCHS, which included the monthly TRC meetings, as well as expert panel meetings, which were all open to the public. Residents of the EDA were informed of each meeting and were encouraged to attend. All associated minutes, reports and other documents

generated during the more than 70 TRC meetings, as well as each expert panel meeting, *et al.*, were made available to the public for review at the EPA offices in Niagara Falls. The final TRC meeting was held in 1991.

Institutional controls are in place in both the containment area of the Site and the EDA. New York State (NYS) has a permanent easement on the Site property, providing for the exclusive use and occupancy of the Site property. By Consent Decree, NYS granted OCC exclusive use and occupancy of the Site property for the purpose of providing continued O&M for the Site remedy. OCC retains exclusive use and occupancy, as long as the Consent Decree is in effect. The institutional controls on the vacant parcels in the non-habitable sections of the EDA (Areas 1–3) are maintained by zoning and deed restrictions. The deeds for these properties require that NYSDEC be notified both when these properties are sold and when these properties are being considered for any other use than commercial and/or light industrial. The deeds also state that all identified use limitations and restrictions of the property shall run with the land and bind the current owner and any successors in perpetuity or until such time as NYSDEC shall determine that such institutional controls are no longer necessary for the protection of public health and the environment. The deed also identifies that some soil remediation is required prior to any potential residential use.

Under the direction of NYSDEC, OCC, through its contractor Miller Springs Remediation Management, performs O&M of the Site remedy and maintains day-to-day operations at the Site, as identified in two separate consent decrees with NYS and the United States, respectively. The continued effectiveness of the remedy is monitored, pursuant to both consent decrees, as well as through the performance of EPA's five-year reviews.

A five-year review of Site remedies was completed on September 30, 2003. The five-year review ensures that the implemented remedies protect human health and the environment and that they function as intended by the decision documents.

EPA, in consultation with the State of New York, through the NYSDEC, has determined that all appropriate response actions, under CERCLA, have been implemented at the Site and no further response actions, other than monitoring, operation, maintenance and compliance with institutional controls, are necessary.

Hazardous substances remain at the Site above levels that would be allowed for unlimited use without restrictions. It is the policy of EPA to conduct five-year reviews of pre-SARA remedies which leave hazardous substances on-site. EPA completed a five-year review of this Site on September 30, 2003. The next five-year review should be completed by EPA and/or NYSDEC before September 30, 2008.

#### List of Subjects in 40 CFR Part 300

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

Dated: March 4, 2004.

**Kathleen C. Callahan,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 04-5875 Filed 3-16-04; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 15

[ET Docket No. 03-104 and ET Docket No. 04-37; FCC 04-29]

#### Broadband Power Line Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Commission's rules to adopt new requirements and measurement guidelines for a new type of carrier current system that provides access to broadband services using electric utility companies' power lines. Because power lines reach virtually every home and community in the country, we believe that these new systems, known as Access broadband over power line or Access BPL, could play an important role in providing additional competition in the offering of broadband services to the American home and consumers, and in bringing Internet and high-speed broadband access to rural and underserved areas.

**DATES:** Comments must be filed on or before May 3, 2004, and reply comments must be filed on or before June 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Anh Wride, Office of Engineering and Technology, (202) 418-0577, e-mail: [Anh.Wride@fcc.gov](mailto:Anh.Wride@fcc.gov), TTY (202) 418-2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of*

*Proposed Rule Making*, ET Docket No. 03-104 and ET Docket No. 04-37, FCC 04-29, adopted February 12, 2004, and released February 23, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY-B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 3, 2004, and reply comments on or before June 1, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal

Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

#### Summary of Notice of Proposed Rulemaking

1. The Notice of Proposed Rulemaking ("NPRM") proposes to amend part 15 of the Commission's rules to adopt new requirements and measurement guidelines for a new type of carrier current system that provides access to broadband services using electric utility companies' power lines. Because power lines reach virtually every home and community in the country, we believe that these new systems, known as Access broadband over power line or Access BPL, could play an important role in providing additional competition in the offering of broadband services to the American home and consumers, and in bringing Internet and high-speed broadband access to rural and underserved areas. At the same time, we are cognizant that the possibility of widespread operation of Access BPL raises interference concerns and that we must protect licensed radio services from any harmful interference that might occur. In this regard, we are proposing to require that BPL systems and devices incorporate capabilities to mitigate harmful interference should it occur. We are also proposing to adopt administrative requirements to aid in the identification and resolution of harmful interference from Access BPL systems. Finally, we are proposing to clarify certain measurement guidelines for all types of carrier current systems that use electric wiring and electrical outlets within homes and buildings to transfer information between computers and other electronic devices. With these proposals, we take an important step towards promoting the deployment of new broadband networks that are expected to enhance the economic, educational and social well-being of all Americans. Specifically, we believe that