OVERSIGHT OF FEDERAL FACILITY CLEANUP UNDER CERCLA

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

SEPTEMBER 11 & 16, 2015

Serial No. 114–73

Printed for the use of the Committee on Energy and Commerce
energycommerce.house.gov

U.S. GOVERNMENT PUBLISHING OFFICE
98–219 WASHINGTON : 2016

For sale by the Superintendent of Documents, U.S. Government Publishing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

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OVERSIGHT OF FEDERAL FACILITY CLEANUP UNDER CERCLA, DAY 1

FRIDAY, SEPTEMBER 11, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,
COMMITTEE ON ENERGY AND COMMERCE
Washington, DC.

The subcommittee met, pursuant to call, at 9:02 a.m., in room 2123, Rayburn House Office Building, Hon. John Shimkus, (chairman of the subcommittee) presiding.

Present: Representatives Shimkus, Harper, Murphy, Latta, Johnson, Bucshon, Hudson, Upton (ex officio), Tonko, Schrader, Green, DeGette, and Pallone (ex officio).

Also Present: Representative Luj AE1an.

Staff Present: Will Batson, Legislative Clerk; David McCarthy, Chief Counsel, Environment/Economy; Tina Richards, Counsel, Environment; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Oversight; Christine Brennan, Minority Press Secretary; Jacqueline Cohen, Minority Senior Counsel; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; and Alexander Ratner, Minority Policy Analyst.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. We are going to call the hearing to order.

I want to thank everyone for the early start time, both from the agencies and my colleagues. As we know, Friday fly-out days are challenging for Members, so it is good to get started.

Just, also, a point of notice is that there are really two panels. This is the first panel of our hearing, and then we will have other stakeholders later on.

So, with that, I will recognize myself for an opening statement, 5 minutes.

I welcome today's witnesses, and thank you all for appearing to discuss protection from and cleanup of hazardous waste at Federal Government facilities. Today we will hear perspectives of the Department of Defense, the Department of Energy, the Environmental Protection Agency, and the Government Accountability Office.

Thousands of ordinary citizens in private-sector companies face the daily challenge of controlling costs and making a profit without

leaving behind a trail of hazardous waste. The same citizens and companies must meet both Federal and State prevention and cleanup standards.

In meeting all these challenges, they face distinct disadvantages when compared with their Federal agency counterparts. One, they can't rely on the U.S. taxpayer to cover either their compliance or their cleanup costs. They also can't always choose their own remediation options. And they can't fall back on the defense of sovereign immunity when they are taken to court.

While those private-sector companies focus on making a profit while complying with the Environmental Protection Agency standards, the Defense and Energy Departments focus on national security. And national security can be a messy business, involving everything from motor oil to munitions waste. And even national security is no excuse for leaving a mess in your neighbor's backyard.

As we drill down into specifics on an agency-by-agency basis, we will learn that some of our Federal partners are more successful than others in juggling these dual responsibilities to their core mission and to protecting land and water. The agencies' challenges are not uniform, and neither are their budgets.

We have four objectives today. The first one is to get a detailed update on where agencies stand on meeting their good-neighbor obligations. The second one is to find out what the challenges are and how those challenges vary from agency to agency. The third one is to understand what the resource management relationship is between each of these agencies and the EPA. And, finally, to get GAO's perspective on who is doing a good job, who is not, and what they can do to improve.

Next week, a second panel for this hearing will provide the state perspective. Under our system of government, states have primary responsibility for protecting their own natural resources, including land and water, from environment degradation. But a state's challenge is made more difficult, if not impossible, to meet if the entity responsible for the environmental mess is a Federal agency, with all the power that status implies.

After the episode last month in Colorado with the release of contaminated water into the Animas River, I wouldn't be surprised if some in our audience thought first of EPA when they heard the phrase "Federal agency responsible for an environmental mess," but the Colorado mine release is not the focus of this hearing.

Since we first got the news of the blowout, our committee has been looking into the Colorado mine incident on a separate track from this hearing. At the beginning, we had lots of questions and almost no answers. Gradually, we have been piecing together the facts as best we can. We are not finished yet. I trust our friend Mr. Stanislaus and everyone in the administration will cooperate with our committee as we pursue that inquiry.

Correct, Mr. Stanislaus?

And he shakes his head "yes."

Thank you.

Today I hope that we can focus on the Federal facilities issue and whether important agencies such as the Department of Defense and the Department of Energy are good neighbors and good stew-

ards of the land and water that they touch wherever they have a presence.

I will now just end with—my background is also as a military officer, understanding national security and the challenges that face us. So the balancing of that and also being a good neighbor toward folks is very important to me, but I would also want to say I appreciate the work that the DOE and the Department of Defense does in protecting our citizens.

With that, I yield back my time and yield 5 minutes to the ranking member, Mr. Tonko.

[The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

I welcome today's witnesses and thank you all for appearing to discuss protection from, and clean-up of, hazardous wastes at Federal government facilities. Today we'll hear perspectives of the Department of Defense, the Department of Energy, the Environmental Protection Agency, and the Government Accountability Office.

Thousands of ordinary citizens and private sector companies face the daily challenge of controlling costs and making a profit without leaving behind a trail of hazardous waste. The same citizens and companies must meet both Federal and state prevention and clean-up standards.

In meeting all these challenges they face distinct disadvantages when compared with their Federal agency counterparts:

- they can't rely on the U.S. taxpayer to cover either their compliance or their clean-up costs.
- they can't always choose their own remediation options. and
- they can't fall back on the defense of sovereign immunity when they are taken to court.

While those private sector companies focus on making a profit while complying with environmental protection standards, the Defense and Energy Departments focus on national security. And national security can be a messy business involving everything from motor oil to munitions waste. But even national security is no excuse for leaving a mess in your neighbor's back yard.

As we drill down into the specifics on an agency-by-agency basis, we'll learn that some of our Federal partners are more successful than others at juggling these duel responsibilities, to their core mission and to protecting land and water. The agencies' challenges are not uniform and neither are their budgets.

We have four objectives today:

- to get a detailed update on where agencies stand meeting their good- neighbor obligations;
- to find out what the challenges are and how those challenges vary from agency to agency;
- to understand what the resource management relationship is between each of these agencies and theEPA; and
- to get GAO's perspective on who's doing a good job, who's not, and what they can do to improve.

Next week a second panel for this hearing will provide the State perspective. Under our system of government States have primary responsibility for protecting their own natural resources, including land and water, from environmental degradation. But a State's challenge is made difficult if not impossible to meet if the entity responsible for the environmental mess is a Federal agency with all the power that status implies.

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Since we first got the news of the blow-out, our Committee has been looking into the Colorado mine incident on a separate track from this hearing. At the beginning we had lots of questions and almost no answers. Gradually, we've been piecing together the facts, as best we can. We are not finished yet. I trust our friend, Mr. Stanislaus, and everyone in the Administration, will cooperate with our Committee as we pursue that inquiry. —Mr. Stanislaus?

Thank you. Today, I hope that we can focus on the Federal facilities issue and whether important agencies such as DOD and DOE are good neighbors and good stewards of the land and water that they touch wherever they have a presence.

OPENING STATEMENT OF HON. PAUL TONKO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. TONKO. Thank you, Mr. Chair.

And good morning, and thank you to our witnesses for participating this morning.

And I thank the chair for holding a hearing on this very important topic.

Congress enacted the Comprehensive Environmental Response Compensation and Liability Act, commonly known as Superfund, some 35 years ago, but communities across the country are still dealing with the legacy of toxic waste. After a rough start, the Superfund program has had success in containing and cleaning up serious contamination problems in many of our communities, but there is still much work to do and too few dollars available to do it.

The good news is that sites are being cleaned up. When sites are cleaned up, the surrounding community benefits from a cleaner, healthier environment, and returning abandoned, contaminated land to productive use improves the local economy.

In addition to the sites on private or State land, there are many Superfund sites on Federal land. The Federal Government operates facilities across our country on millions of acres of land. Some of the Federal site contamination is due to the government's activities, but there are also many areas where mining, drilling, and industrial activities by private parties took place decades ago, leaving a legacy of contamination.

The Federal Government is subject to the Superfund law, and the government spends billions of dollars annually to clean up hazardous contamination at Federal facilities.

A few years ago, I asked the Government Accountability Office to look at the status of cleanup activities on Federal lands and to focus on the agencies and departments other than the Departments of Defense and Energy. These department sites are generally well known and have received considerable oversight and attention. The situation for the United States Department of Agriculture, the Department of the Interior, and other Federal agencies was less clear.

Under the Superfund law, Federal agencies are required to identify, assess, and clean up contamination on the properties that they administer, but cleanups cannot begin if sites have not been identified and characterized. As Mr. Gomez and his team found, this first crucial step has not been completed in the case of these other departments. And because of the nature of the sites on Department of Interior and Department of Agriculture lands and the limited budgets for these activities, it does not appear we will have a complete, reliable inventory in the near future.

We spend a lot of time these days worrying about how much the government is spending. I worry about that, as well, but I also worry about how we are distributing these dollars that we do spend. Across-the-board cuts and arbitrary caps are preventing us from doing some of our most important and difficult tasks: setting

priorities and ensuring that we are providing funds to programs that deliver sustained benefits to our citizens. And returning contaminated land to productive use, preventing pollution migration, and reducing people's exposure to dangerous toxins certainly is a sustained benefit.

With the passage of Superfund, we made a commitment to identify and clean up contaminated properties. We should fulfill that commitment. I don't know that new legislation is required to do this. I do believe that additional oversight of this program, however, would be very useful. This hearing makes an important contribution to that effort.

Mr. Gomez, thank you and your team for your work on this issue. You have given us a lot to consider and provide some constructive recommendations.

I do appreciate the opportunity for the subcommittee to examine our Superfund program. The citizens living in communities with these sites are anxious, and they are anxious to have them cleaned up and returned to safe, productive use. The responsible parties, whether public or private, want to accomplish those cleanups in a cost-effective manner. These are goals that we can all support, so I do hope to work with you, Chairman Shimkus, and the other members of the subcommittee to achieve these goals.

And I thank all for participating in the hearing this morning and next week, and I look forward to your testimony on what is a very important issue.

With that, I yield back.

Mr. SHIMKUS. The gentleman yields back his time.

I would like to submit, with unanimous consent, a statement for the record from Chairman Upton for his opening statement.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Today's hearing examines the important role federal agencies play in protecting our land and water resources through cleanups at federally owned and operated facilities.

Federal officials in all branches, but particularly at EPA, want to exert leadership in environmental protection. As most successful coaches know, inspiring leadership comes first by setting a good example. Federal agencies must set a good example in how they assess contamination and conduct cleanups if they expect the American people to take their efforts to prevent and clean up hazardous materials seriously. We know that federal agencies do many things well but there is room for improvement. Not all agencies have the same level of success at conducting environmental cleanups and today's hearing will examine what works and what doesn't with respect to Federal remediation under CERCLA. We should work to figure out what can be done to improve cleanups to better protect our nation's land and water.

EPA may have room to improve how it conducts response activities under CERCLA too. Last month we learned that an EPA contractor working at a mine in Colorado somehow triggered a release of contaminated water into the Animas River. This is unacceptable and we are still investigating the incident to find out:

What exactly went wrong? Who was responsible? What were the standards of care the personnel at the site were operating under and did they breach those standards? What can be done to prevent future such incidents?

I hope that lessons we learn from this incident can help us make good, corrective policy choices. No one ever wants to see headlines like that again.

But today I thank witnesses from the Department of Defense, Department of Energy, EPA, and GAO to compare their perspectives on CERCLA cleanups. And next week we will welcome back the Environmental Council of States and the Association of State and Territorial Solid Waste Management Officials who will be sharing with us the State perspective on federal facility cleanups.

I commend all my committee colleagues for working together on these issues.

Mr. SHIMKUS. Is there anyone on the majority side wishing to seek time?

Seeing none, the chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman and our ranking member, for calling this hearing on the Superfund program.

Superfund has been an incredibly important tool for protecting public health and the economy in my home State of New Jersey and throughout the country, and thousands of contaminated sites have been cleaned up and revitalized, including many former Federal sites.

As successful as Superfund has been, there is still so much important cleanup work to be done. I expect we will hear from today's panel about the staggering number of abandoned mine sites—just a subset of Federal sites and even smaller subset of contaminated sites nationwide. And I hope that my colleagues on this subcommittee will join me in working to ensure that EPA, other Federal agencies, state and local communities, have the resources needed to get these cleanups done.

Superfund sites are contaminated with toxic substances that can make their way into drinking-water wells, creeks and rivers, backyards, playgrounds, and streets. Communities impacted by these sites can face restrictions on water use and recreational activities as well as economic losses as property values decline due to contaminated land. In the worst cases, residents of these communities can face health problems such as cardiacimpacts, infertility, low birth weight, birth defects, leukemia, and respiratory difficulties.

The major environmental laws that are truly the powerful legacy of this committee have consistently held that polluters must pay for environmental harms. The principle is the heart of the Superfund program and should be preserved. For Federal facility cleanups, that means that we in Congress have a duty to ensure funds are appropriated to cover cleanup needs. For private facilities, that means we have a duty to reinstate the Superfund tax and stop charging taxpayers for cleanups.

In 1995, despite opposition from myself and other Democrats, a Republican Congress allowed the Superfund tax to expire. Before its expiration, the collected taxes were placed into a Superfund trust fund that was used for the cleanups of so-called orphan sites, where the party responsible for the pollution either no longer existed or could not afford the cost of the cleanup. The thousands of abandoned mines across the Western United States are examples of such sites. Without those revenues, important Superfund cleanups have been delayed, the backlog of sites needing cleanup has grown, and the costs have shifted to the taxpayers.

As many of you know, I have routinely introduced legislation, the Superfund Polluter Pays Act, which would replenish the Superfund trust fund by reinstituting the taxes that the oil and gas companies

paid between 1980 and 1996. The legislation reinstates a 9.7-cents-a-barrel tax on petroleum, a tax on 42 chemicals, and a corporate environmental income tax of 12 percent on taxable income in excess of $2 million. This would help ensure that the EPA has sufficient funds available for the costs of investigation and cleanups of these toxic sites.

Reinstating this tax should be a part of any conversation we have in Congress about Superfund, but the tax itself is not enough. We need higher appropriations for Federal agencies with responsibility for cleanups, and we need financial responsibility requirements to stop the proliferation of abandoned mines and other orphan sites.

Under section 108 of Superfund, EPA has been working to establish such requirements for hard-rock mining and eventually for other polluting industries. Financial responsibility requirements would ensure that any company undertaking the dangerous practice has the resources necessary to cover the costs of anticipated cleanup needs.

Republicans have blocked these requirements in recent years through appropriation riders, a practice that I hope will stop in the wake of the Gold King Mine spill last month.

Removing public health hazards by cleaning up contaminated sites is incredibly important for the surrounding communities. Cleaning up toxic Superfund sites not only reduces human health risks, it helps create jobs during the cleanup and, through newly uncontaminated and productive land, makes it ready for redevelopment. So we should all support cleanup efforts and should ensure that those efforts are funded.

Again, I look forward to today's testimony. I thank both the chairman and Mr. Tonko for calling this hearing.

I yield back.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Today's hearing examines the important role federal agencies play in protecting our land and water resources through cleanups at federally owned and operated facilities.

Federal officials in all branches, but particularly at EPA, want to exert leadership in environmental protection. As most successful coaches know, inspiring leadership comes first by setting a good example. Federal agencies must set a good example in how they assess contamination and conduct cleanups if they expect the American people to take their efforts to prevent and clean up hazardous materials seriously. We know that federal agencies do many things well but there is room for improvement. Not all agencies have the same level of success at conducting environmental cleanups and today's hearing will examine what works and what doesn't with respect to Federal remediation under CERCLA. We should work to figure out what can be done to improve cleanups to better protect our nation's land and water.

EPA may have room to improve how it conducts response activities under CERCLA too. Last month we learned that an EPA contractor working at a mine in Colorado somehow triggered a release of contaminated water into the Animas River. This is unacceptable and we are still investigating the incident to find out:

What exactly went wrong? Who was responsible? What were the standards of care the personnel at the site were operating under and did they breach those standards? What can be done to prevent future such incidents?

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week we will welcome back the Environmental Council of States and the Association of State and Territorial Solid Waste Management Officials who will be sharing with us the State perspective on federal facility cleanups.

I commend all my committee colleagues for working together on these issues.

Mr. SHIMKUS. The gentleman yields back his time.

I would now like to recognize—and I will introduce you when your time comes to speak.

First would be the Honorable Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response at the U.S. Environmental Protection Agency.

Your full statement is in the record. You have 5 minutes. And welcome back.

STATEMENTS OF MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY; MARK WHITNEY, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR ENVIRONMENTAL MANAGEMENT, U.S. DEPARTMENT OF ENERGY; JOHN CONGER, PERFORMING THE DUTIES OF THE ASSISTANT SECRETARY OF DEFENSE FOR ENERGY, INSTALLATIONS, AND ENVIRONMENT, U.S. DEPARTMENT OF DEFENSE; AND ALFREDO GOMEZ, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

STATEMENT OF MATHY STANISLAUS

Mr. STANISLAUS. OK. Thank you.

Chairman Shimkus, Ranking Member Tonko, Congressman Pallone, and members of the subcommittee, I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response. And, again, thank you for inviting me here to talk about the Superfund program.

Specifically, I want to talk about the Federal facilities component of it, which is the focus of this hearing. The cleanup of Federal facilities is led by the Federal agencies who have delegated authority with properties under their responsibility, with the EPA having a discrete role, which I will get into in a second.

CERCLA section 120 provides a framework for identifying contaminated Federal facility sites, assessing actual or potential environmental risks from these sites, and assuring cleanup and other actions to protect public health and the environment. Under section 120, Federal facilities are required to comply with CERCLA in the same manner and to the same extent, both substantively and procedurally, as private entities.

Section 120 includes provisions and timetables that apply to Federal facilities only, including requiring the EPA to establish a Federal agency hazardous waste docket, requiring completion of a preliminary assessment by a Federal facility after docket listing, requiring a Federal agency to commence a remedial investigation and feasibility study within 6 months of that facility being placed on the National Priorities List, and requiring that the EPA and the Federal facility agency enter into an interagency agreement referred to as a Federal facility agreement at all NPL sites. Also,

there are specific provisions that govern the transfer of Federal facilities to private entities.

Under Executive Order 12580, Federal agencies are designated as the lead agency for carrying out many of CERCLA's statutory requirements at their facilities. However, EPA retains the final decision authority over a small subset of these. These are National Priorities List sites. If the Federal agency and department and EPA are unable to reach agreement on the selection of remedial action at these NPL sites, the EPA's Administrator makes the final decision.

The shared responsibility of program implementation under CERCLA has unique challenges for EPA and other Federal agencies but has generally worked effectively. Currently, there are 157 final Federal facility sites on the NPL, and another 17 Federal sites have been deleted from the NPL. Approximately 80 percent of these 174 sites are DOD component sites.

The CERCLA framework has worked effectively for helping to ensure appropriate cleanup for more than 20 years. Moreover, because States are often parties to a Federal facility agreement and State laws and regulations may apply to State site cleanups, States and EPA work together to ensure that the NPL cleanups meet statutory requirements, protective of public health and the environment, and incorporate pertinent State requirements.

The EPA is engaging with other Federal departments and agencies on a range of activities to maintain and accelerate cleanup progress at Federal facilities. For example, we are working collaboratively with DOD on tools for advancing geophysical classification to allow for more accurate and efficient cleanup of munitions sites, a fairly significant issue; improving site-level data quality; and resolving technical issues associated with emerging contaminants.

Ensuring that people have environmental information about their communities is a top priority of my office. In 2010 and 2011 as part of ongoing efforts to enhance community engagement, my office reached out to diverse stakeholders through the Federal Facility Dialogue, as well as the Federal agencies represented here today. What we heard from stakeholders is that there is a need for more transparent and easily accessible information on cleanup progress and long-term protectiveness.

We have begun to move forward on some of these issues. For example, for the past 5 years, the EPA has led an interagency working group to make improvements to the 5-year review process that would force a greater transparency and participation from impacted communities. When wastes are left in place, EPA assesses whether remedies continue to be protective of public health and the environment through a 5-year review. And we are continuing to modernize the Federal Agency Hazardous Waste Compliance Docket and exploring ways to make the program data more accessible to communities and other stakeholders, as required by CERCLA.

In 2012, the EPA, in collaboration with other Federal agencies and departments, completed a Federal facilities site evaluation project. This project evaluated the disposition of 514 federally owned sites that EPA identified as potentially stalled in their progress. Through this process, EPA has been able to make an activity determination on 491 of the 514 sites on this list. Initiatives

like this allow EPA to ensure the Federal facility information is up to date and communities have the most pertinent information on that site.

I will close, and look forward to your questions.

[The prepared statement of Mr. Stanislaus follows:]

TESTIMONY OF
MATHY STANISLAUS
ASSISTANT ADMINISTRATOR
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON
ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

SEPTEMBER 11, 2015

Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) at the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear today to discuss the EPA's role in the cleanup and restoration of contaminated federal facilities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

CLEAN UP PROGRESS UNDER CERCLA

Protection and restoration of our land is an important component in the EPA's mission to protect human health and the environment. The EPA leads the federal effort to reduce risks posed by contaminated land, undertaking cleanup and other activities that allow land to be returned to beneficial use. Since the enactment of CERCLA (or "Superfund"), the EPA, along with federal agencies, as well as states and tribes, have made significant progress toward this goal. Under the Superfund program, the EPA and its state, tribal, and federal partners have assessed more than 50,000 sites; the removal program has conducted more than 15,000 removals at over 9,000 sites; and 1,760 sites have either

been proposed to, listed on, or deleted from the Superfund National Priorities List (NPL). Of the 1,709 final or deleted sites, more than 90 percent have undergone construction activity, have been completed, or have been deleted from the NPL.

FEDERAL FACILITY CLEANUP AND REUSE

CERCLA Section 120 provides a framework for identifying contaminated federal facility sites, assessing actual or potential environmental risks from these sites, and assuring cleanup and other actions to protect human health and the environment. Under CERCLA, the EPA and its federal and state partners address releases of hazardous substances that pose or may pose current or future threats to human health and the environment. The federal facility restoration and reuse program is an important component of the broader Superfund program. Under CERCLA Section 120, federal facilities are required to comply with CERCLA in the same manner and to the same extent, both substantively and procedurally, as private entities.

Section 120 includes some unique provisions and timetables that apply to federal facilities only, including requiring the EPA to establish a federal agency hazardous waste docket, requiring completion of a preliminary assessment by a federal facility after docket listing, requiring a federal agency to commence a remedial investigation/feasibility study of a facility it owns or operates within six months of that facility being placed on the NPL, and requiring the EPA and the federal facility enter into an Interagency Agreement (IAG) (commonly referred to as a "Federal Facility Agreement", or FFA) at NPL sites. Also, specific provisions govern the transfer of federal property to private entities. Finally, CERCLA restricts the use of Superfund Trust Fund monies to carry out remedial

actions at federal facilities. Instead, federal departments and agencies pay for the assessment and cleanup of facilities under their jurisdiction, custody or control, while the EPA uses its Superfund resources to provide technical assistance, oversight.

Under Executive Order 12580, federal agencies are designated as the "lead agency" for carrying out many CERCLA statutory requirements at their facilities. However, consistent with the requirements in CERCLA, the EPA retains the final decision authority over selection of a remedial action at sites listed on the NPL. CERCLA Section 120(e)(4) specifies that an IAG must include the review of alternative remedial actions, with the selection of remedial action by the head of the federal agency *and* the EPA. The Administrator of the EPA makes the final selection of the remedial action if the federal agency/department and the EPA are unable to reach agreement on the selection of a remedial action. Thus, in some respects, the Department of Defense (DoD), Department of Energy (DOE), and other federal agencies are both the EPA's partners, as well as regulated entities, under the CERCLA framework.

At federal facilities on the NPL, unlike non-federal Superfund sites, the federal agencies responsible for cleanup generally write Records of Decision (RODs), with EPA review and concurrence. In addition, federal agencies assume the lead responsibility for carrying out CERCLA section 121(c) 5-year reviews to determine if the remedy remains protective at federal facility NPL sites, again with EPA review and concurrence.

The shared responsibility for program implementation under CERCLA has posed unique challenges for the EPA and other federal agencies, but has generally worked effectively.

At most federal facility NPL sites, field staff relationships are strong, and the program has made significant progress since the 1990s. Currently there are 157 final federal facility sites on the NPL with another 17 federal sites having been deleted from the NPL. Approximately, 80% of the 174 sites are DoD Component sites.

The FFAs negotiated with DoD, DOE and other agencies are enforceable agreements that govern the cleanup at federal Superfund sites, and are comparable to consent decrees which govern cleanups at private sites. FFAs often include a state as a signatory, and provide a formal mechanism for state involvement in the remedial action. Tribal governments also are often involved in the cleanup process and participate in the decision making process.

Often, the EPA and the other federal agencies implementing the remedies face unique challenges due to the types of contamination present, the size of the facility, the extent of contamination, ongoing facility operation needs, and complexities related to the redevelopment plans for the facilities

PROGRESS THROUGH EFFECTIVE PARTNERSHIPS

The CERCLA framework has worked effectively for helping to ensure appropriate oversight of clean ups for more than 25 years, with a proven track record for achieving consistent, protective cleanups at the nation's federal facility NPL sites. CERCLA has provided a consistent foundation for the EPA and federal agencies to cooperate in the field. Moreover, because states are most often parties to the agreements and state Applicable or Relevant and Appropriate Requirements apply to site cleanups, states and

the EPA work together to help ensure NPL cleanups meet statutory requirements and are protective of human health and the environment.

In the last five years, construction completion has been reached at eight federal sites, including seven DoD sites and one U.S. Coast Guard site. Construction completion of a site is an important milestone as it means the construction of all cleanup actions is finished at a site, including actions to address all immediate threats and to bring all long-term threats under control. Since the Superfund program's inception, construction completion has been reached at 76 of the 174 federal sites on the NPL, including 60 (out of 141) military sites, and 10 (out of 21) DOE sites.

However, some of the most complex work remains, such as addressing groundwater and munitions. This means that the cleanup work we are doing today is often more difficult, is more technically demanding, and consumes considerable resources. Additionally, even after remedies are in place, significant resources will be needed well into the future for continued maintenance, oversight and ensuring remedy protectiveness when waste is left in place. Further, the EPA's Federal Facilities program requires a steady and robust annual appropriation to effectively implement its technical assistance and oversight role to help other federal departments and agencies meet their cleanup goals. The EPA requested $26.3 million in the FY 2016 President's Budget to perform this function.

BASE REALIGNMENT AND CLOSURE ACT (BRAC) SITES

The EPA also works in close partnership with DoD to address contamination on properties slated for transfer and conversion to other purposes under the Base

Realignment and Closure Act (BRAC). For the past twenty years, the EPA has supported the military's cleanup and transfer of property under the first four BRAC rounds through a long-standing Memorandum of Understanding (MOU). Through this MOU, DoD provided funding to the EPA to support the accelerated environmental restoration and cleanup decisions needed to support the reuse at selected DoD BRAC installations. The EPA has been involved at 107 BRAC installations associated with the first four BRAC rounds but that involvement has steadily been ramping down over the past five years. The current BRAC MOU is scheduled to expire on September 30, 2016. This change will impact EPA's involvement at non-NPL BRAC sites, but the EPA will continue to provide oversight at NPL BRAC sites.

RECENT INITIATIVES

The EPA is engaging with other federal departments and agencies on a range of activities to maintain and accelerate cleanup progress at federal facilities. For example, we are working collaboratively with DoD on tools for advanced geophysical classification to allow for more accurate and efficient cleanup of munitions sites, improving site level data quality, and resolving technical issues associated with emerging contaminants. We are continuing to modernize the Federal Agency Hazardous Waste Compliance Docket and are exploring ways to make the program data more accessible to communities and other stakeholders as required by CERCLA.

The EPA is co-chairing the Munitions Response Dialogue with DoD and states to discuss national level policy issues affecting munitions cleanups. These new initiatives build

upon a range of long-standing partnerships for exchanging information and training on remediation technologies, monitoring and chemical methods and data quality practices. Contaminated sites and cleanup activities have a significant impact on the surrounding communities. Ensuring that people have environmental information about their communities is a top priority for my office because information enables communities to participate more fully in the environmental cleanup process. In 2010 and 2011, as part of ongoing efforts to enhance community engagement, OSWER reached out to diverse stakeholders through several Federal Facility Dialogue meetings to discuss the federal facility cleanup program. During these discussions, stakeholders identified ways to make information on federal facility cleanups more accessible and useful for communities.

For the past five years, OSWER has been responsive to the stakeholder input we received. In particular, we heard the need for easily accessible information on cleanup progress and long-term protectiveness. We will soon complete the Five-Year Review streamlining initiative, deploying tools to assist both project managers and community members. We also published guiding principles and best practices in a fact sheet on "Sharing Information Effectively."

In 2012, the EPA, in collaboration with other federal agencies and departments, completed the Federal Facilities Site Evaluation Project (FFSEP). This project evaluated the disposition of 514 federally owned sites that the EPA identified as potentially stalled in their progress. At the FFSEP's inception, these sites had not been fully assessed with regard to whether they should be included on the NPL, were eligible for cleanup under one of the EPA's other cleanup authorities (e.g., Resource Conservation and Recovery

Act), other agency's cleanup authorities (e.g., state, federal) or did not warrant further action. Through this process the EPA had been able to make an activity determination on 491 of the 514 sites on the FFSEP list. Initiatives like FFSEP, is how the EPA is ensuring that legacy federal facility sites are continuing to make progress and are protective of human health and the environment.

CONCLUSION

I appreciate the Subcommittee's interest in the cleanup of NPL federal facility sites. In partnership with other federal departments and agencies, states, tribes and local communities, we will continue our efforts to ensure that the cleanup of contaminated federal facility sites is performed in a manner that protects human health and the environment.

Mr. SHIMKUS. Thank you.

The chair now recognizes Mr. Mark Whitney, Principal Deputy Assistant Secretary for Environmental Management with the U.S. Department of Energy.

Sir, you are welcome. You are recognized for 5 minutes.

STATEMENT OF MARK WHITNEY

Mr. WHITNEY. Thank you, and good morning, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. I am pleased to be here today to represent the Department of Energy's Office of Environmental Management and to discuss the Comprehensive Environmental Response, Compensation, and Liability Act.

The Environmental Management program was established in 1989 with the mission to clean up the largest and most complex nuclear waste sites in the world as safely, effectively, and quickly as possible. This involves some of the most dangerous materials known to humankind, and it is no simple task. But the EM has completed cleanup activities at the 91 sites across 30 States since their inception, leaving the remaining cleanup work at 16 sites in 11 States. That is approximately $150 billion worth of cleanup work completed since the inception of the program.

Sites like Fernald in Ohio and Rocky Flats in Colorado have been cleaned up and are now wildlife preserves. We have decommissioned and demolished more than 2 million square feet of excess facilities and removed all EM special nuclear material from the Idaho National Laboratory. We produced nearly 4,200 cannisters of vitrified high-level waste at Savannah River site and the West Valley sites combined, and we have closed 6 underground storage tanks at the Savannah River site. We demolished the K–25 building at the Oak Ridge site, which was once the largest building under a single roof in the would.

The Federal Government's investment in EM is resulting in safe and secure nuclear waste and reduced risk to the American people and environment.

One of the great success stories of the program is the cleanup of the Rocky Flats site, which is listed on the National Priorities List, and cleanup was guided by a tri-party interagency agreement. In October 2005, EM completed the cleanup significantly under estimated cost and schedule.

A number of factors were important contributors to the success of the Rocky Flats cleanup, including a collaborative working relationship with the regulators, both the State regulators and Environmental Protection Agency; an incentivized and motivated management and operations contractor; consistent and reliable budget appropriations; a closure managed as a finite project; involved stakeholders; and engaged workers and public.

The Department has a balanced approach under the regulatory frameworks of the applicable environmental regulations, including CERCLA, also the Resource Conservation Recovery Act, or RCRA, the Atomic Energy Act, and the National Environmental Policy Act. And this guides and directs our cleanup actions.

EM continues to pursue its cleanup objectives safely within a framework of regulatory compliance, and the Department has 19

sites currently listed on the EPA's National Priorities List. EM is responsible for the cleanup of 11 DOE NPL sites which are located across 7 states.

Under CERCLA, EPA oversees the Department's cleanup actions at NPL sites, and, although States are not a delegated authority for oversight of DOE's NPL site cleanup under CERCLA, State regulators are active participants in the CERCLA process. We work with EPA in the States to determine site priorities, evaluate cleanup approaches, develop a schedule for cleanup activities, and specify the requirements the site cleanup actions and activity must meet.

These collaborative decisions are memorialized as binding commitments in a Federal Facility Agreement or a tri-party agreement between the state, EPA, and DOE. And these regulatory frameworks set cleanup standards and govern our cleanup activities. Generally, cleanup levels are directly tied to the expected future land uses of our sites. We have nearly 40 agreements at the 16 sites where we are working.

Largely EM has had success working with state regulators when it comes to negotiating, updating, and improving compliance agreements. Our site office have weekly, often daily, interactions with our regulators, state and EPA, to keep them apprised of site activities.

We also currently have one Federal Advisory Committee Act-chartered Site-Specific Advisory Board, with eight local advisory boards organized under that umbrella. Members of these advisory boards include people directly affected by site cleanup activities, such as stakeholders from local governments, tribal nations, environmental and civic groups, labor organizations, universities, industries, and other interested parties and citizens.

A collaborative relationship with state and Federal regulators and the public is essential to successfully completing our cleanup at our sites.

In addition to the collaborative relationships with regulators and stakeholders, there is also a need for continued investment in research and development for our program. We believe through strengthening the scientific basis for decisionmaking, the improvement in the effectiveness of cleanup technologies, as well as development of new technologies that address difficult and one-of-a-kind, unique issues and challenges, it is our hope that costs and project timelines can be reduced.

Mr. Chairman, Ranking Member Tonko, and members of the subcommittee, I am again honored to be here today representing the Office of Environmental Management. I appreciate your interest in our work, and I appreciate the funding provided by Congress for EM each year.

We are committed to achieving our mission within a framework of regulatory compliance and will continue to comply innovative environmental cleanup strategies and to complete our work safely and efficiently, thereby demonstrating value to the American taxpayers.

Mr. Chairman, I know you have had the opportunity in the past to visit the Savannah River site fairly recently and get a firsthand

look at the magnitude and the challenges that we face on a day-to-day basis in implementing our cleanup work at our sites.

I would invite and encourage every member of the subcommittee to visit our sites and would be happy to assist in arranging tours and those visits as appropriate.

With that, I am pleased to answer any questions as we move forward that you may have. Thank you.

[The prepared statement of Mr. Whitney follows:]

Testimony of Mark Whitney

Principal Deputy Assistant Secretary for Environmental Management

United States Department of Energy

Before the

House Committee on Energy and Commerce

Subcommittee on Environment and Economy

September 11, 2015

Good morning Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee. I am pleased to be here today to represent the Department of Energy's (DOE) Office of Environmental Management (EM) to discuss the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Overview of the Environmental Management Mission

The federal government's nuclear weapons production programs made significant contributions to our Nation's defense for decades – helping end World War II and the Cold War. A byproduct of these programs is millions of gallons of liquid radioactive waste, thousands of tons of spent nuclear fuel and special nuclear material, large volumes of transuranic and mixed and low level waste, huge quantities of contaminated soil and water, and thousands of excess facilities that must be cleaned up by the federal government.

The Environmental Management (EM) program was established in 1989 with the mission to clean up the largest and most complex nuclear waste sites in the world as safely, effectively and quickly as possible. This involves some of the most dangerous materials known to humankind – it is no simple task. The Department is leveraging past experiences, applying best practices and lessons learned; identifying, developing, and deploying practical technological solutions derived from scientific research; and looking for innovative and sustainable practices that make cleanup safer and more efficient.

The federal government's investment in EM is resulting in safe and secure nuclear waste and reduced risks to the American people and the environment. EM has completed cleanup activities at 91 sites across 30 states – leaving remaining cleanup work at 16 sites across 11 states. Sites like Fernald in Ohio and Rocky Flats in Colorado, have been cleaned up and are now wildlife preserves. At the Idaho National Laboratory, EM has decommissioned and demolished more than

two million square feet of excess facilities, and removed all EM special nuclear material (e.g., enriched uranium) from the state. At Savannah River Site in South Carolina, EM has produced almost 4,000 canisters of vitrified high-level waste transforming it into safe, stable glass and closed six of the site's underground storage tanks.

EM Complex Cleanup History

The first few years of the EM program were focused on defining the scope and the magnitude of the cleanup challenges and corrective actions to bring facilities into safety and regulatory compliance. Due to the nature of the work during the Manhattan Project, where the priority for our Nation was ending the war as quickly as possible, there was a lack of organized documentation regarding inventories, past practices, waste discharges and contaminated areas. Many legacy facilities dating back to the Manhattan Project contain radioactive and hazardous materials, and/or have residual contamination. EM was therefore responsible for a massive and uncharacterized risk and needed to first define the scope, depth and breadth of its challenging work before it could tackle cleanup.

Since the Openness Initiative launched in 1993, which opened many files to the public for the first time, the Department shifted from self-regulation to a process by which stakeholders have been invited to participate in the regulatory process of establishing frameworks for cleanup and closure activities.

The Department has a balanced approach using the regulatory frameworks of the applicable environmental laws, including CERCLA, Resource Conservation and Recovery Act (RCRA), Atomic Energy Act (AEA), and National Environmental Policy Act, to guide and direct cleanup actions.

How Cleanup Gets Done

EM continues to pursue its cleanup objectives safely within a framework of regulatory compliance. The Department has 19 sites currently listed on EPA's National Priorities List (NPL). EM is responsible for the cleanup of 11 DOE NPL sites, which are located across 7 states. Those sites are:

- Brookhaven National Laboratory
- Hanford (4 NPL sites)
- Idaho National Laboratory
- Lawrence Livermore National Laboratory (2 NPL sites)
- Oak Ridge
- Paducah

- Savannah River

Seven of the DOE NPL sites, including Rocky Flats, Fernald, Weldon Spring, Monticello and Mound, have been transferred to the Department's Office of Legacy Management, which provides long-term surveillance and maintenance and beneficial reuse of these sites. One DOE NPL site, Pantex, is in the National Nuclear Security Administration's jurisdiction.

Cleanup at EM sites typically takes place under the Department's AEA, CERCLA and RCRA authorities. These regulatory frameworks are similar and work performed under one is often considered to satisfy the requirements of the other when both statutes apply to a specific cleanup activity. Under CERCLA, EPA oversees the Department's cleanup actions at National Priorities List (NPL) sites. Although states are not a delegated authority for oversight of DOE's NPL site cleanup under CERCLA, state regulators are active participants in the CERCLA process. EM works with EPA and the states to determine site priorities, evaluate cleanup approaches, develop a schedule for cleanup activities, and specify the requirements that site cleanup actions and activities must meet. These jointly arrived decisions are typically memorialized as binding commitments in a Federal Facility Agreement (FFA). Accordingly, the FFA details the cleanup tasks that have been agreed to and will be undertaken at the site. These regulatory frameworks inform our processes and cleanup standards, including defining "how clean is clean" and driving EM's end-term goals. Generally, established cleanup levels will be directly tied to the expected future land uses of our sites. Both CERCLA and RCRA rely on the site-specific balancing of evaluation criteria (effectiveness, implementability, and costs) to select among the particular remedial alternatives being considered at a given site.

Compliance agreements are developed individually at each of the sites; some include requirements for restoration and protection of natural resources, such as groundwater and endangered species, and may include additional requirements beyond protection of human health. Management of the 40 compliance agreements across the EM complex can be challenging.

Generally, EM has had success working with state and Federal regulators when it comes to negotiating, updating and improving compliance agreements. The staff at our sites have weekly, sometimes daily contact, with the state and Federal regulators to keep them up to date. We also have a great working relationship with the public. EM currently has one Federal Advisory Committee Act chartered Site Specific Advisory Board with eight local advisory boards organized under its umbrella charter. Members of these advisory boards include people who are directly affected by site cleanup activities such as stakeholders from local governments, Tribal Nations, environmental and civic groups, labor organizations, universities, industry, and other interested citizens. EM believes it is imperative to maintain a collaborative relationship with state regulators and the public to successfully complete cleanups at the remaining sites. Maximizing every cleanup dollar requires focusing on the projects that are most likely to cause harm to people and

the environment if left untreated, as well as developing workable solutions with regulators and stakeholders on all remaining cleanup deadlines to ensure accountability.

Reducing the EM Complex Footprint

Across the EM complex, the program has succeeded in reducing the active cleanup footprint by approximately 90 percent, with less than 250 square miles remaining. One of the greatest success stories of the EM program is the cleanup of the Rocky Flats Site, which is listed on the NPL and cleanup was guided by a tri-party interagency agreement. In October 2005, EM completed cleanup significantly under estimated cost and schedule. A number of factors were important contributors to the Rocky Flats success, including: a collaborative working relationship with the state regulators and EPA; an incentivized and motivated management and operations contractor; consistent and reliable budget appropriations; a closure managed as a finite project; involved stakeholders; and engaged workers. It was through unparalleled cooperation among the interested parties that a conservative and compliant cleanup and closure of Rocky Flats was enabled, ahead of schedule, under cost, and without a fatality or serious injury. Rocky Flats closure was successful because the stakeholders (in the broadest sense of the word) were engaged in the process, and supportive of the ultimate goal. The interests of key figures, including members of Congress, senior DOE management, state and local elected officials, and state and federal regulators, were also essential to the success.

Environmental Cleanup Challenges

There are technical challenges when it comes to cleaning up EM legacy sites, as many of these cleanup projects are first-of-a-kind. At times, schedules can slip when technical challenges occur during cleanup. For example, prior to the scheduled demolition of the 324 Building within the river corridor at the Hanford Site, high levels of contamination was discovered underneath the building which has caused DOE to delay demolition for safety reasons until completion of a design and mock-up for the cleanup of the contaminated site under the building can be accomplished.

Technology Development

As the EM program continues cleanup, we continue to invest in research and development to strengthen the scientific basis for decision-making with regard to environmental impacts, improve the effectiveness of cleanup technologies, and develop new technologies that address the difficult and one-of-a-kind challenges. We deployed a new chemical solvent to more effectively remove radioactive cesium from the highly radioactive liquid waste. The new technology is called the Next Generation Solvent and is in use at the Savannah River Site. It is a chemical additive that

improves the effectiveness of cesium removal (decontamination) from a factor of 12 to 40,000. The new solvent will enable SRS to process a much wider range of wastes as well as extend the operational life of its radioactive waste processing facilities. With investment in technology development, EM hopes that the costs and project timelines are reduced.

Conclusion

Mr. Chairman, Ranking Member Tonko, and Members of the Subcommittee, I am honored to be here today representing the Office of Environmental Management. I appreciate your interest in our work and I appreciate the funding provided by Congress for EM each year. We are committed to achieving our mission within a framework of regulatory compliance commitments and best business practices, and will continue to apply innovative environmental cleanup strategies to complete work safely and efficiently, thereby demonstrating value to the American taxpayers.

Mr. SHIMKUS. Thank you very much.

Next, I would like to recognize Mr. John Conger, performing the duties of the Assistant Secretary of Defense, Energy, Installations, and Environment, U.S. Department of Defense.

You are recognized for 5 minutes, and welcome.

STATEMENT OF JOHN CONGER

Mr. CONGER. Thank you, Mr. Chairman. Good morning.

Chairman Shimkus, Ranking Member Tonko, distinguished members of the subcommittee, thank you for the opportunity to discuss the Department of Defense's cleanup activities and the progress we have made to date.

The Department has long made it a priority to protect the environment. From a mission perspective, we want to ensure that we have the land, water, and air space that we need for military readiness. Moreover, we must protect the health of the military and civilian personnel and their families who live and work on our bases, to ensure our operations don't affect the health and environment of surrounding communities, and to preserve resources for future generations.

While we are here to talk about cleanup of past contamination, I want to emphasize that we are committed to rigorously complying with current laws to minimize new contamination. Our funding requests, our strong relationships with Federal, state, and local stakeholders, and our continued progress reflect that commitment.

The Department of Defense is responsible for approximately 39,000 cleanup sites across hundreds of active and closed bases. And, if I could, I have heard the term "site" used by other witnesses, and I think they use it differently than I do. I am talking about specific instances of pollution. Multiple sites can occur on a single installation. So I think the numbers that I have heard earlier reflect that an entire installation would be a single site, and we break it out differently. But, in any case, 39,000 cleanup sites across hundreds of installations.

In order to make the most impact, we continually reassess DOD's cleanup program to ensure that we address the highest-risk sites first, a process we conduct in collaboration with EPA and with the States. At the same time, we are committed to completing cleanup or achieving "response complete" and "no further action required" at all of our sites.

We appreciate Congress' support for the roughly billion-and-a-half dollars a year we spend on cleanup. At this point, more than 80 percent of our 39,000 sites have reached "response complete." I am proud to say that we remain on track to meet our internally set goals of 90 percent "response complete" by the end of 2018 and 95 percent by the end of 2021.

None of our successes would have been possible without investments in groundbreaking research and development in environmental technology. These are aimed at tackling our most difficult cleanups. Recent successes include bioremediation techniques for groundwater cleanup and detection technology to help find buried munitions. We are beginning to focus our R&D on capabilities needed to accelerate cleanup of the complex sites that will remain after we achieve our 2021 goals.

Finally, I would like to highlight the contributions of our state, local, and Federal partners. State and local stakeholders help us to develop site management plans, play an active role in remedy selection, and have important oversight responsibilities. To that end, we have established three high-level working groups and approximately 200 restoration advisory boards for local input to provide forums for local communities, state regulators, and other Federal regulators to discuss cleanup issues and concerns with us.

We are also committed to interagency efforts. For example, my staff and senior leaders from the three military components meet with EPA headquarters staff quarterly to ensure our programs are on track and moving forward.

In conclusion, our focus remains on continuous improvement in the restoration program. We have been identifying cleanup sites since the 1970s and have come a long way. Still, we are fully aware of the magnitude of our mission, and we look forward to continuing our partnerships and making smart investments in technology to meet our outlined goals.

Thank you again for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Mr. Conger follows:]

HOLD UNTIL RELEASED
BY THE COMMITTEE

Statement of

Mr. John Conger

Performing the Duties of Assistant Secretary of Defense

(Energy, Installations and Environment)

Before the House Energy and Commerce Committee

Subcommittee on Environment and the Economy

September 11, 2015

Introduction

Chairman Shimkus, Ranking Member Tonko and distinguished members of the Subcommittee: Thank you for the opportunity to discuss Department of Defense's (DoD) cleanup activities and the progress we've made to date.

The Department has long made it a priority to protect the environment for several reasons: to ensure that we have the land, water and airspace we need for military readiness, to protect the health of the military and civilian personnel and their families who live and work on our bases, to ensure our operations do not affect the health or environment of surrounding communities, and to preserve resources for future generations.

The Department of Defense is responsible for approximately 39,000 cleanup sites. In order to make the most impact, we continually reassess DoD's cleanup program to ensure that we address the highest risk sites first. At the same time, we are committed to completing cleanup, or achieving "Response Complete[1]," at all of our sites. A stable and consistent budget has given us the financial certainty to make significant progress in cleanup over the last 8 years, so that 80 percent of our 39,000 sites have now reached Response Complete. I am proud to say we remain on track to meet our goals of 90 percent Response Complete by the end of FY 2018, and 95 percent by the end of FY 2021 for almost all of our cleanup sites

None of our successes would have been possible without investment in groundbreaking environmental technology that is used throughout DoD and shared with the Environmental Protection Agency (EPA) and Department of Energy other agencies and the private sector, saving taxpayer funding. Nor would we be where we are without the expertise of our state, local and federal partners. Our focus remains on continuous improvement in the restoration program.

In my testimony I will outline DoD's cleanup program, report on our progress, our investments, technology developments, and the federal and state partnerships we have established to ensure we are able to operate our cleanup program as efficiently and effectively as possible.

Department of Defense Environmental Programs: History and Overview

As far back as the 1970s the Department of Defense began identifying sites requiring environmental cleanup. Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in 1980, which provided a national framework for cleanup of contaminated sites. In 1986, the Superfund Amendments and Reauthorization Act (SARA) established the Defense Environmental Restoration Program (DERP).[2] DERP identifies how DoD will fund and implement cleanup using the CERCLA cleanup framework.

DoD Components execute DERP at Active Installations, Formerly Used Defense Sites (FUDS) Properties and bases closed through the BRAC process. Of note, the FUDS program only includes sites that left DoD control before October 1986, and do not overlap with BRAC sites.

[1] Response Complete is when active cleanup actions are complete and only monitoring remains.
[2] Title 10 of the United States Code (10 USC §§2700et. seq.).

Our cleanup sites are broken into three categories: the Installations Restoration Program (IRP) which addresses the cleanup of hazardous substances; the Military Munitions Response Program (MMRP) which addresses unexploded ordnance (UXO), i.e., things that might explode; and the Building Demolition and Debris Removal (BD/DR) program that removes unsafe buildings and structures.

Defense Environmental Restoration Program (DERP): Cleanup Progress to Date

As stated earlier, the Department is responsible for cleaning over 39,000 sites. This is an important responsibility, and we have made significant progress. The Department determines the priority of all of the cleanup sites, nation-wide, on the basis of risk to human health and the environment. Then, working together with our federal and state environmental regulatory partners, DoD refines the sequence in which the cleanups will be conducted. By cleaning up the "worst first," we reduce the risks to human health and expedite the return of properties to productive reuse. By the end of FY 2014 the Department, in cooperation with state agencies and the Environmental Protection Agency (EPA), has completed cleanup activities at 82 percent of Active and BRAC IRP and MMRP sites and FUDS IRP sites, and is now monitoring the results. During FY 2014 alone, the Department completed cleanup at over 1,000 sites. Of the roughly 39,000 restoration sites, almost 31,500 are now either closed out or in monitoring status.

Our cleanup program is mature enough that we can envision completion. We have established goals to complete cleanup activities at 90 percent of our Active and BRAC IRP and MMRP sites and FUDS IRP sites by the end of FY 2018 and at 95 percent by the end of FY 2021. We are currently on track to meet and exceed these program goals, as we anticipate complete cleanup at 96 percent of these sites by the end of FY 2021. These program goals do not include FUDS MMRP sites. Due to the large number (approximately 2,000 sites) of FUDS MMRP sites and, therefore, lengthy schedule for completion, as of the end of FY 2014, we have only achieved response complete at 41 percent of these sites. However, the Department is investing in technology to shorten the estimated timeframe for completing cleanup activities on these sites. In the meantime, the Department, in partnership with state environmental regulators, established an interim risk management goal which requires well-planned, coordinated actions to increase awareness of the potential risk posed by these FUDS MMRP sites until cleanup activities begin.

While the Department is proud of our successes, cleanup at many of the remaining sites is more complex and requires additional time or a remedy based on more advanced technology. To that end, DoD is investing in technology and partnering with fellow federal agencies, state regulators and industry stakeholders to cut costs and increase efficiency in our cleanup efforts.

Table 1: Progress Toward Cleanup Goals

Goal: Achieve Response Complete at 90% and 95% of Active and BRAC IRP and MMRP sites, and FUDS IRP sites, by FY2018 and FY2021, respectively				
	Status as of the end of FY 2008	Status as of the end of FY 2014	Projected Status at the end of FY 2018	Projected Status at the end of FY 2021
Army	89%	89%	96%	97%
Navy	53%	78%	88%	94%
Air Force	71%	76%	90%	95%
DLA	95%	88%	96%	96%
FUDS	70%	79%	90%	96%
Total	**76%**	**82%**	**92%**	**96%**

Note in particular that we are cleaning up sites on our active installations in parallel with those on bases closed in previous BRAC rounds, some of which are from as far back as 1988. Cleanup is not something that DoD pursues only when a base is closed. In fact, the significant progress we have made over the last 20 years cleaning up contaminated sites on active DoD installations is expected to reduce environmental cleanup costs if our property is transferred in the future through another BRAC round or by other means.

Our total estimated cleanup financial liability for the life of the DoD cleanup program, in constant FY 2014 dollars, decreased by $7.3 billion between FY 2008 and FY 2014, which represents a 21% reduction across the program. In FY 2014 alone, our cost-to-complete (CTC) projection decreased by over $400 million despite the addition of approximately $300 million of new requirements as the result of newly discovered contamination. Our program costs may fluctuate annually as we: discover new contamination; identify additional cleanup requirements such as a new cleanup standard; update our cost models to reflect new technology, inflation, and labor rates; and, when we look to optimize our cleanup strategy.

Table 2: Progress Toward Cleanup Liability Goals^

($Billions)	FY08 CTC	FY09 CTC	FY10 CTC	FY11 CTC	FY12 CTC	FY13 CTC	FY14 CTC	Change from FY08-14 ($B)	Change from FY08-14 (%)
Active Installations	$12.5	$11.4	$12.5	$12.5	$12.7	$12.1	$11.6	($0.9)	(7%)
BRAC Installations	$4.1	$4.1	$3.7	$3.7	$3.3	$3.2	$3.0	($1.1)	(27%)
FUDS Properties	$17.9	$16.8	$13.8	$12.8	$13.0	$12.3	$12.6	($5.3)	(30%)
DoD Total	**$34.5**	**$32.3**	**$30.0**	**$29.0**	**$29.0**	**$27.6**	**$27.2**	**($7.3)**	**(21%)**

*CTC—Cost to Complete; includes installation funding allocated to individual sites and does not include program management and other support costs.
^ The CTC estimates from FY 2008 through FY 2013 are in constant FY 2014 dollars based on the deflators published in the FY 2014 Green Book.

Fiscal Year 2016 Budget – Environmental Restoration

In 1993, DoD and state regulators participated on the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) established by the EPA. The Committee developed consensus principles for cleanups on federal lands. One of the principles addressed the fact that future budget constraints could hinder timely cleanup progress and suggested DoD advocate for stable funding. Therefore, we appreciate Congress continued support in providing stable funding which allows the Department, in partnership with the states, to effectively plan and sequence cleanup projects. Such funding has attributed to 80 percent of our 39,000 sites have reached Response Complete.

Table 3: Environmental Program Budget Request, FY 2016 versus FY 2015

			Change from FY 2015	
Program	**FY 2015 Request ($Millions)**	**FY 2016 Request ($Millions)**	**Funding ($Millions)**	**Percent**
Environmental Restoration	1,105	1,108	3	0.3%
BRAC Environmental	264	217	(47)	(17.8%)
TOTAL	**1,369**	**1,325**	**(44)**	**(1.3%)**

In FY 2016, we requested $1.3 billion to continue cleanup efforts at remaining Installation Restoration Program and Military Munitions Response Program sites. This includes $1.1 billion for "Environmental Restoration," which encompasses active installations and FUDS properties and $217 million for "BRAC Environmental." While the amount of BRAC Environmental funds requested is nearly 18 percent less than the 2015 request, this amount will be augmented by $135 million of land sale revenue and prior year, unobligated funds. These funds, coupled with the $217 million request, bring the total amount of BRAC Environmental funding in FY 2016 to $352 million. A stable and consistent budget gives DoD the financial certainty to continue significant cleanup progress.

Environmental Technology

In the early 1990s, the scientific community realized that the government had been conducting a 15 year experiment to clean up our nation's groundwater, mainly using pump and treat technology that was inefficient and largely ineffective. In response to the complexity of

groundwater cleanups, DoD developed two key programs to conduct and coordinate research and development: the Strategic Environmental Research and Development Program (SERDP), which focuses on basic cleanup research, and the Environmental Security Technology Certification Program (ESTCP), which validates more mature technologies to transition them to widespread use. SERDP and ESTCP were tasked with initiating new research, development, and demonstrations to obtain the technologies needed for cost-effective cleanup of groundwater sites across the DoD and are leading the national effort to find effective technologies.

Over the last 20 years SERDP and ESTCP have been able to target research to address significant and wide-spread groundwater contamination. For example, the national use of chlorinated solvents, such as TCE and PCE, have caused wide-spread groundwater contamination and addressing those contaminants represented a sizable fraction of DoD's cleanup costs . In response, the Department developed the application of bioremediation techniques that has now become the most cost effective and commonly applied technology at contaminated groundwater sites. These techniques are now the industry standard and they have been applied at thousands of sites across both military and non-military lands alike. These research efforts have saved the U.S. billions of dollars by promoting more efficient and effective clean up technologies.

We then moved onto tackling our next challenge, munition cleanup. More than 90 percent of munitions cleanup excavation turns up harmless debris. This year we expect to use our advanced munitions classification program to complete demonstrations of the new technology that will allow us to better discriminate between hazardous unexploded ordnance and harmless scrap metal without the need to dig up every object. We are moving out aggressively to transition the technology to commercial use in the private sector by partnering with the EPA, state regulators and industry stakeholders.

A majority of the sites that still remain are complex groundwater sites. DoD is continuing to pursue solutions to these high-cost, long-term cleanups by investing in environmental technology. We appreciate the Administration has consistently supported SERDP and ESTCP with annual funding at $22 million or more for environmental cleanup technologies, including $22.5 million in the President's FY 2016 budget proposal.

Partnerships in Achieving Cleanup Goals

DoD is committed to working with state regulators, the EPA and other Federal Agencies on cleanup issues.

DoD recognizes the benefit of these partnerships and established three working groups to communicate and collaborate with Federal and State regulators on important issues at a national level. One of the working groups works with our State regulatory partners and focuses on overarching issues at sites where they are providing oversight of our cleanups. A second working group, called the FUDS Forum, also focuses on our partnership with State regulators, but concentrates on topics specifically related to the FUDS program. Since FUDS properties are no longer under DoD control, many unique challenges can arise during the cleanup process. This FUDS Forum workgroup provides an opportunity to discuss and develop solutions in concert

with our regulatory partners. The third workgroup, referred to as the Munitions Response Dialogue, centers its discussions on the difficulties related to munitions cleanup. DoD recognizes that the cleanup of munitions does not easily fit into the standard cleanup framework, so we established a munitions response dialogue to give Federal and State regulators and Federal Land Mangers a forum to discuss these issues.

My staff and the senior level staff from the three military Departments meet with EPA Headquarters staff quarterly to discuss issues and progress of our cleanup programs. These partnerships are a priority for the Department and my office and are critical to reaching our goals.

DoD also values local community input. Based on recommendations from the FFERDC, DoD first established restoration advisory boards (RABs) in 1994. DoD recognizes the importance of public involvement at military installations that require environmental restoration. RABs provide the local communities surrounding these installations forums to discuss cleanup issues or concerns with DoD and State and Federal regulators. RABs should be composed of members from the local community and representatives from DoD, the state, and EPA, as appropriate. Community members selected for RAB membership reflect the diverse interests within the local community, and its members live or work in the affected community or are impacted by the restoration program. DoD currently has approximately 200 RABs that meet regularly, although the frequency of individual RAB meetings depends on the type and pace of cleanup, with the intent of timely and effective communication.

Conclusion

Thank you for the opportunity to present the Department of Defense's environmental cleanup program. We are committed to addressing the contamination resulting from our past activities even as we rigorously comply with current laws to minimize new contamination. Our funding requests, our strong relationships with federal, state and local stakeholders, and our continued progress reflect that commitment.

We appreciate Congress support of our efforts and I look forward to working with you to continue DoD's cleanup efforts.

Mr. SHIMKUS. Thank you very much. And, again, we welcome you here.

Now, Mr. Alfredo Gomez, no stranger to this committee, Director of Natural Resources and the Environment at the U.S. Government Accountability Office.

Welcome. You have 5 minutes.

STATEMENT OF ALFREDO GOMEZ

Mr. GOMEZ. Thank you, Mr. Chairman.

Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, good morning. I am pleased to be here today to discuss our work on hazardous waste cleanup at Federal facilities.

The Federal Government owns over 700 million acres of land. Some of this land is managed by the Departments of Agriculture, Interior, Defense, and Energy and is contaminated with hazardous waste that poses serious risks to human health and the environment. The cleanup of these sites can require substantial time and expense, as you have heard already.

In response, Congress passed CERCLA, also known as Superfund, which requires owners and operators of hazardous waste to notify the Environmental Protection Agency of the existence of their potentially contaminated facilities. Based on the risks a site poses, EPA may place the site on the National Priorities List, a list that includes some of the Nation's most seriously contaminated sites. As of September this year, there are 158 Federal sites on the list.

My statement today summarizes the results of several reports on the topic. I will talk about three key points: first, the number of contaminated and potentially contaminated Federal sites for the four departments; two, spending on and estimates of future costs for cleanup at these sites; and three, EPA's role in maintaining the list of contaminated and potentially contaminated Federal sites and ensuring that preliminary assessments of such sites are complete.

The first point is that, while the four departments have identified thousands of contaminated and potentially contaminated sites, they do not have a complete inventory of sites, in particular for abandoned mines.

Specifically, while the U.S. Department of Agriculture had identified over 1,400 contaminated sites and many potentially contaminated sites, the Department did not have a reliable centralized site inventory for abandoned mines. The Department's Forest Service estimated that there were from 27,000 to 39,000 abandoned mines on its land. The Department of the Interior had an inventory of 4,722 sites with confirmed or likely contamination. However the Department's Bureau of Land Management had identified over 30,000 abandoned mines that were not yet assessed for contamination, and this inventory was not complete.

The Department of Defense reported to Congress in June of 2014 that it had 38,804 sites in its inventory of sites with contamination. The Department had the greatest number of sites on the National Priorities List. The Department of Energy reported that it had 16 sites in 11 States with contamination, and, as you have heard already, the Department is responsible for one of the world's largest environmental cleanup programs.

Second, with regards to the cost of cleanup at these sites, the four departments reported allocating and spending millions of dollars annually on environmental cleanup, and an estimated future cost in the hundreds of millions of dollars or more in environmental liabilities.

For example, the Department of the Interior allocated for fiscal year 2013 about $13 million for environmental cleanup efforts and reported $192 million in environmental liabilities. The Department of Energy received an annual appropriation of about $5.9 billion in fiscal year 2015 to support cleanup activities, and, in 2014, the Department estimated its total liability for environmental cleanup at almost $300 billion.

Third, as of August 2015, EPA had compiled a docket of over 2,300 Federal sites that may pose a risk to human health and the environment. EPA has noted that it is difficult to know about a site if the agencies have not reported it. EPA is also responsible for ensuring that Federal agencies assess the sites for contamination and has established 18 months as a reasonable timeframe for agencies to complete preliminary assessments. However, some agencies may take 2 or 3 years to complete an assessment.

So, in summary, there are thousands of contaminated sites, and the list is not complete. The four departments have spent millions annually for cleanup and have estimated future costs in the billions of dollars. And, lastly, EPA has compiled a docket of over 2,300 Federal sites that may pose a risk to human health and the environment.

Mr. Chairman, Ranking Member Tonko, members of the subcommittee, that concludes my statement, and I would be happy to respond to questions.

[The prepared statement of Mr. Gomez follows:]

United States Government Accountability Office

GAO

Testimony

Before the Subcommittee on Environment and the Economy, Committee on Energy and Commerce, House of Representatives

For Release on Delivery
Expected at 9:00 a.m. ET
Friday, September 11, 2015

HAZARDOUS WASTE CLEANUP

Numbers of Contaminated Federal Sites, Estimated Costs, and EPA's Oversight Role

Statement of J. Alfredo Gómez
Director, Natural Resources and Environment

GAO Highlights

Highlights of GAO-15-830T, a testimony before the Subcommittee on Environment and the Economy, Committee on Energy and Commerce, House of Representatives

Why GAO Did This Study

The federal government owns over 700 million acres of land. Some of this land—which is primarily managed by USDA, Interior, DOD, and DOE—is contaminated with hazardous waste from prior uses, such as landfills and mining.

To respond to problems caused by improper disposal of hazardous substances in the past, in 1980, Congress passed CERCLA, also known as Superfund. Among other things, CERCLA requires owners and operators of hazardous waste sites to notify the federal EPA—which manages the Superfund program—of the existence of their facilities, as well as known, suspected, or likely releases of hazardous substances.

This testimony focuses on (1) numbers of contaminated and potentially contaminated federal sites for four departments; (2) spending and estimates of future costs for cleanup at these federal sites; and (3) EPA's role in maintaining the list of contaminated and potentially contaminated federal sites and ensuring that preliminary assessments of such sites are complete. This testimony is based on prior GAO reports issued from March 2009 through March 2015.

What GAO Recommends

GAO is making no new recommendations. Previously, GAO made numerous recommendations to ensure that contaminated sites were identified and assessed, and some of these recommendations have not been fully implemented. GAO will continue to monitor implementation.

View GAO-15-830T. For more information, contact J. Alfredo Gómez, (202)-512-3841 or gomezj@gao.gov

September 11, 2015

HAZARDOUS WASTE CLEANUP

Numbers of Contaminated Federal Sites, Estimated Costs, and EPA's Oversight Role

What GAO Found

The Departments of Agriculture (USDA), the Interior, Defense (DOD), and Energy (DOE) have identified thousands of contaminated and potentially contaminated sites on land they manage but do not have a complete inventory of sites, in particular, for abandoned mines. GAO reported in January 2015 that USDA had identified 1,491 contaminated sites and many potentially contaminated sites. However, USDA did not have a reliable, centralized site inventory or plans and procedures for completing one, in particular, for abandoned mines. For example, officials at USDA's Forest Service estimated that there were from 27,000 to 39,000 abandoned mines on its lands—approximately 20 percent of which may pose some level of risk to human health or the environment. GAO also reported that Interior had an inventory of 4,722 sites with confirmed or likely contamination. However, Interior's Bureau of Land Management had identified over 30,000 abandoned mines that were not yet assessed for contamination, and this inventory was not complete. DOD reported to Congress in June 2014 that it had 38,804 sites in its inventory of sites with contamination. DOE reported that it has 16 sites in 11 states with contamination.

These four departments reported allocating and spending millions of dollars annually on environmental cleanup and estimated future costs in the hundreds of millions of dollars or more in environmental liabilities. Specifically:

- GAO reported in January 2015 that, in fiscal year 2013, USDA allocated over $22 million to environmental cleanup efforts and reported in its financial statements $176 million in environmental liabilities to address 100 sites.
- GAO reported in January 2015 that Interior in fiscal year 2013 allocated about $13 million for environmental cleanup efforts and reported $192 million in environmental liabilities in its financial statements to address 434 sites.
- In July 2010, GAO reported that DOD spent almost $30 billion from 1986 to 2008 across all environmental cleanup and restoration activities at its installations. In its fiscal year 2014 *Agency Financial Report*, DOD reported $58.6 billion in total environmental liabilities.
- DOE reported receiving an annual appropriation of almost $5.9 billion in fiscal year 2015 to support cleanup activities. In 2014, DOE estimated its total liability for environmental cleanup at almost $300 billion.

As part of maintaining the list of contaminated and potentially contaminated federal sites, the Environmental Protection Agency (EPA) compiled 2,323 federal sites that may pose a risk to human health and the environment, as of August 2015, according to EPA officials. EPA is responsible for ensuring that federal agencies assess these sites for contamination and has established 18 months as a reasonable time frame for agencies to complete a preliminary assessment. However, in March 2009, GAO reported that according to EPA officials, some agencies, such as DOD, may take 2 to 3 years to complete an assessment and that EPA does not have independent authority under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to enforce a timeline for completing the preliminary assessment. In March 2009, GAO suggested that Congress consider amending CERCLA section 120 to authorize EPA to require agencies to complete preliminary assessments within specified time frames.

Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee:

Thank you for the opportunity to discuss our work on hazardous waste cleanup at federal facilities. As you know, the federal government owns over 700 million acres of land, which includes national parks, national forests, research centers, defense installations, and laboratories. This land is primarily managed by the following four departments: Agriculture (USDA), Interior, Defense (DOD), and Energy (DOE). Some of this land may be contaminated with hazardous waste from prior uses,[1] such as landfills and mining. Many hazardous waste sites pose serious risks to human health and the environment, and their cleanup can require substantial time and expense. Abandoned mines from private mining activities on Interior and USDA lands also can present major environmental cleanup challenges and expenses for the federal government.

To respond to problems caused by improper disposal of hazardous substances in the past, in 1980, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), which created the Superfund program to protect human health and the environment from the effects of hazardous waste.[2] Under CERCLA, potentially responsible parties, such as owners and operators of a site, are liable for conducting or paying for site cleanup of hazardous waste, or for reimbursing others who conduct cleanups on their behalf, including federal agencies.[3] By June 1981, all such facility owners and operators were required to notify the federal Environmental Protection Agency (EPA)—which manages the Superfund program—of the existence of their

[1]In this testimony, we use the term "hazardous waste" to refer generally to material that is or may be harmful to human health or the environment, although the term has specific meaning under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Under RCRA, "hazardous waste" generally refers to materials specifically listed by the Environmental Protection Agency or which demonstrate certain hazardous characteristics. A "hazardous waste" under RCRA is also among the substances defined as a "hazardous substance" under CERCLA.

[2]The Superfund program is the federal government's principal program to clean up hazardous waste sites.

[3]Under CERCLA, potentially responsible parties include current or former owners or operators of a site or the generators and transporters of hazardous substances.

facilities, as well as known, suspected, or likely releases of hazardous substances. These notification and liability provisions apply to the federal government and its contractors and lessees as well.

My testimony today focuses on (1) numbers of contaminated and potentially contaminated federal sites for the four departments; (2) spending on and estimates of future costs for cleanup at federal sites by the four departments; and (3) EPA's role in maintaining the list of contaminated and potentially contaminated federal sites and ensuring that preliminary assessments of such sites are complete. This testimony is based on reports we issued from March 2009 through March 2015 and, where possible, updates to numbers of contaminated and potentially contaminated sites since our reports were issued.[4] In particular, I will be highlighting our January 2015 report that we conducted on USDA and Interior's inventory of contaminated and potentially contaminated federal sites, as well as summarizing work that we have conducted on DOD and DOE hazardous waste sites. For this work, we reviewed relevant inventory data from September 2013 to June 2014 for 10 sources within USDA and Interior and budget data related to environmental cleanup projects for fiscal years 2003 through 2013 for those agencies.[5] In that report, we also reviewed documents, government accounting standards, and laws, and we interviewed EPA, USDA, and Interior officials. Detailed information on the scope and methods used for the January 2015 report, as well as the other reports cited throughout this statement, can be found

[4]GAO, *DOE Facilities: Better Prioritization and Life Cycle Cost Analysis Would Improve Disposition Planning*, GAO-15-272 (Washington, D.C.: Mar. 19, 2015); *Hazardous Waste: Agencies Should Take Steps to Improve Information on USDA's and Interior's Potentially Contaminated Sites*, GAO-15-35 (Washington, D.C.: Jan. 16, 2015); *Hazardous Waste Cleanup: Observations on States' Role, Liabilities at DOD and Hardrock Mining Sites, and Litigation Issues*, GAO-13-633T (Washington, D.C.: May 22, 2013); *Nuclear Waste: DOE Needs a Comprehensive Strategy and Guidance on Computer Models that Support Environmental Cleanup Decisions*, GAO-11-143 (Washington: D.C.: Feb. 10, 2011); *Recovery Act: Most DOE Cleanup Projects Appear to Be Meeting Cost and Schedule Targets, but Assessing Impact of Spending Remains a Challenge*, GAO-10-784 (Washington, D.C.: July 29, 2010); *Superfund: Interagency Agreements and Improved Project Management Needed to Achieve Cleanup Progress at Key Defense Installations*, GAO-10-348 (Washington, D.C.: July 15, 2010); *Department of Energy: Actions Needed to Develop High-Quality Cost Estimates for Construction and Environmental Cleanup Projects*, GAO-10-199 (Washington, D.C.: Jan. 14, 2010); and *Superfund: Greater EPA Enforcement and Reporting Are Needed to Enhance Cleanup at DOD Sites*, GAO-09-278 (Washington, D.C.: Mar. 13, 2009).

[5]GAO-15-35.

in each of the issued products. The work upon which this statement is based was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

CERCLA requires EPA to compile a list of contaminated and potentially contaminated federal facilities. This list, known as the Federal Agency Hazardous Waste Compliance Docket (docket), is based on information that agencies are required to report to EPA. EPA compiled the first docket in 1988 and, under CERCLA, EPA is to publish a list of any new sites added to the docket in the Federal Register every 6 months. Under section 120(c) of CERCLA, EPA is to update the docket after receiving and reviewing notices from federal agencies concerning the generation, transportation, treatment, storage, or disposal of hazardous wastes or release of hazardous substances.

After a site is listed on the docket, CERCLA requires EPA to take steps to ensure that a preliminary assessment is conducted. EPA has established 18 months as a reasonable time frame for agencies to complete the preliminary assessment. After the agency conducts the preliminary assessment, EPA reviews it to determine whether the information is sufficient to assess the likelihood of a hazardous substance release, a contamination pathway, and potential receptors. EPA may determine that the site does not pose a significant threat and requires no further action. If it determines that further investigation is needed, EPA may request that the agency conduct a site inspection to gather more detailed information. If, on the basis of the site inspection, EPA determines that hazardous substances, pollutants, or contaminants have been released at the site, EPA will use the information from the preliminary assessment and site inspection to calculate and document a site's preliminary Hazard Ranking System (HRS) score, which indicates a site's relative threat to human health and the environment based on potential pathways of contamination.[6] Sites with an HRS score of 28.50 or greater become

[6]The HRS scores sites on four possible pathways: groundwater migration, surface water migration, soil exposure, and air migration.

eligible for listing on the National Priorities List (NPL), a list that includes some of the nation's most seriously contaminated sites.[7] Based on the risk a site poses, EPA may place the site on the NPL. According to an EPA official, 158 federal sites are on the NPL, as of September 2015.

Once a site is on the NPL, EPA is to oversee the cleanup. As part of its oversight responsibility, EPA works with the responsible federal agency to evaluate the nature and extent of contamination at a site. The agency must then enter into an interagency agreement with EPA that includes: (1) a review of remedial alternatives and the selection of the remedy; (2) schedules for completion of each remedy; and (3) arrangements for the long-term operation and maintenance of the site. According to EPA, the agreements also provide a process for EPA and the federal agency to resolve any disagreements related to implementing the cleanup remedy, with EPA being the final arbiter of such disputes. Once the agency and EPA agree on a cleanup remedy, the agency implements the remedy at the site. Afterwards, the agency must conduct long-term monitoring to ensure the remedy remains protective of human health and the environment.[8] For federal sites not included on the NPL, CERCLA provides that state cleanup and enforcement laws apply, and most states have their own cleanup programs to address hazardous waste sites.

Four Departments Have Identified Thousands of Contaminated and Potentially Contaminated Sites

USDA, Interior, DOD, and DOE have identified thousands of contaminated and potentially contaminated sites on land they manage, but there is not a complete inventory of sites, in particular, for abandoned mines.

[7]According to EPA, in order to maintain close coordination with the states and tribes in the NPL listing decision process, EPA's policy since 1996 has been to determine the position of the states and tribes on sites that EPA is considering for listing.

[8]For sites where hazardous substances, pollutants, or contaminants were left in place above levels that do not allow for unlimited use and unrestricted exposure, every 5 years following the initiation of the remedy, the agency must conduct a formal review of the site and provide it to EPA. EPA then determines whether the selected remedy is still protective of human health and the environment.

USDA

We found in our January 2015 report that there were at least 1,491 contaminated sites on land managed by USDA.[9] These sites include 1,422 Forest Service sites,[10] which are primarily abandoned mines; 2 Animal and Plant Health Inspection Service (APHIS) sites; 3 Agricultural Research Service (ARS) sites; 61 former grain storage sites once managed by the Commodity Credit Corporation (CCC);[11] and 3 foreclosure properties belonging to the Farm Service Agency (FSA).

In addition to sites with confirmed contamination, we found that USDA agencies have also identified some potentially contaminated sites. ARS had identified 3 sites that are potentially contaminated. Forest Service regions maintain inventories of potentially contaminated sites that include landfills, shooting ranges, and cattle dip vats, but there was no centralized database of these sites and no plans or procedures for developing one. These various inventories did not provide a complete picture of the extent of USDA's potentially contaminated sites. For example, there were an unknown number of potentially contaminated former grain storage sites in the 29 states where the CCC previously used carbon tetrachloride. This number was unknown because the CCC relies on the states to notify them of potential contamination, and 25 of the 29 states had not yet reported whether there was suspected contamination at their former CCC grain storage sites. The Forest Service also deals with various other types of hazardous waste sites, such as methamphetamine laboratories, roadside spills, and waste dumps. Forest Service officials said that, since these types of sites may involve illegal activities and are, therefore, not routinely reported, it is not possible to develop a comprehensive inventory of these types of sites.[12]

[9]GAO-15-35.

[10]However, Forest Service officials said that some landfills and underground storage tanks may not be captured by this number.

[11]The CCC is a government-owned and operated entity within USDA that was created to stabilize, support, and protect farm income and prices. The CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.

[12]Forest Service officials said that these types of sites are typically treated as time-critical removal actions and are cleaned up shortly after their discovery.

In addition, in January 2015, we reported that the Forest Service had not developed a complete, consistent, or usable inventory of abandoned mines and had no plans and procedures for developing such an inventory because, according to Forest Service officials, they did not have the resources to complete a comprehensive inventory of all potentially contaminated abandoned mines on the agency's lands. The Forest Service estimated that there were from 27,000 to 39,000 abandoned mines on their lands[13]—approximately 20 percent of which may pose some level of risk to human health or the environment, based on the professional knowledge and experience of agency staff. Such risks may include chemicals and explosives, acid mine drainage, and heavy metal contamination in mine waste rock. However, we concluded that because the Forest Service did not have a complete inventory of abandoned mine sites, the actual number of abandoned mines on National Forest System (NFS) lands was unknown.[14]

According to a USDA official, USDA first attempted to create a national inventory of mines on NFS lands in 2003. Then, in 2008, the Forest Service established the Abandoned Mine Lands (AML) database to aggregate all available data on abandoned mines on NFS lands. The AML database drew data on pending abandoned mine sites from the 2003 database and Forest Service regional inventories, as well as from the U.S. Geological Survey and various other federal, state, and local databases. USDA officials said that, once the AML database was established, the purpose of the earlier database shifted away from maintaining an AML inventory to tracking sites that entered into the CERCLA process.

However, as we reported in January 2015, the AML database has a number of shortcomings. For example, the data migration from multiple inventories led to data redundancy issues, such as some mine sites being listed multiple times under the same or different names. In addition, USDA officials told us that there was a lot of variation in the accuracy and

[13]According to USDA officials, this estimate was derived from a 1995 USDA report that acknowledged uncertainties associated with the data used to generate the estimate. For some states, the data were fairly accurate but, in other cases, the data were incomplete or missing.

[14]NFS is a national system of federally owned units of forest, range, and related land that are administered by the Forest Service or designated for administration through the Forest Service.

completeness of the data on these mine sites, but a quality assurance review had not yet been performed. One Forest Service official said that, because of these problems, the data in the AML database were unusable for purposes of compiling a complete and accurate inventory of abandoned mines. In 2012, the Forest Service tried to obtain the agency resources necessary to clean up the database. Even though the Forest Service rated this project as "critical," the project did not receive any resources because other projects were deemed more important, according to a Forest Service official.

Similarly, in our January 2015 report, we found several problems with the Forest Service's regional abandoned mine inventories.[15] First, some regional inventories were incomplete. For example, officials in Forest Service Region 10, which is composed solely of the State of Alaska, said they believed there may be some abandoned mines scattered throughout Tongass and Chugach National Forests that had not yet been inventoried. They said that Forest Service Region 10 did not have enough staff to assess all abandoned mines across such a large area.[16] Second, several Forest Service regional inventories contained inaccurate data. Third, the Forest Service's regional offices maintained their inventories differently. Some regional offices maintained their own inventories of potentially contaminated sites, whereas other regional offices utilized state or local agencies' inventories. Finally, the type of data on abandoned mines varied from region to region, making it difficult to consolidate into a coherent national database. Some regional offices tracked mines at the site level, some by their features—such as mine shafts, pits, ore piles, or machinery—and some used both approaches.[17] For example, officials in Forest Service Region 3 told us that they had identified over 3,000 abandoned mine sites, and officials in Forest Service Region 4 told us that they had identified approximately 2,000 mine features but had not yet consolidated these features into mine sites. We

[15]According to Forest Service officials, the Forest Service regional offices conducted inventory efforts in the 1980s and 1990s. Officials noted, however, that each regional office inventoried its sites differently, and some inventory efforts were more comprehensive than others.

[16]Officials in Forest Service Region 10 said that their region's focus has been on cleanup of known priority sites rather than completing their inventory of potentially contaminated sites.

[17]A mine feature is a single human-made object or disturbance associated with mining. A mine site can be composed of one or more features.

reported in January 2015 that, without a comprehensive inventory of such sites or plans and procedures for developing one, USDA and the Forest Service will not have reasonable assurance that they are prioritizing and addressing the sites that pose the greatest risk to human health or the environment.

Consequently, in January 2015, we recommended that the Secretary of Agriculture direct the heads of the department's land management agencies to develop plans and procedures for completing their inventories of potentially contaminated sites. USDA disagreed with our recommendation and stated that it had a centralized inventory and that this inventory was in a transition phase as a result of reduced funding levels. USDA also stated that it had taken a number of actions to manage its inventory in a more cost-effective manner, reduce operating costs, and eliminate data collection redundancies across the USDA agencies. Subsequently, in a June 2015 letter to GAO, USDA described three corrective actions that the department planned to take in response to our recommendation. We believe that these actions are needed.

Interior

We found in our January 2015 report that Interior had identified 4,722 sites with confirmed or likely contamination. These include 4,098 Bureau of Land Management (BLM) sites that the agency reported had confirmed contamination or required further investigation to determine whether remediation was warranted. The majority of these sites were abandoned mines. Interior's National Park Service (NPS) identified 417 sites with likely or confirmed contamination; the Bureau of Indian Affairs, 160 sites; the Fish and Wildlife Service, 32 sites; and the Bureau of Reclamation, 15 sites. These Interior agencies identified additional locations of concern that would require verification or initial assessment to determine if there were environmental hazards at the sites. Officials we interviewed from Interior agencies, except BLM, told us that they believed they had identified all sites with likely environmental contamination. We also found that the total number of sites BLM may potentially have to address is unknown, due primarily to incomplete and inaccurate data on abandoned mines on land managed by the agency.

BLM accounts for the largest number of contaminated sites and sites that need further investigation in Interior's inventory. Table 1 shows the number of contaminated or potentially contaminated sites in BLM's inventory as of April 2014, and the extent to which remediation measures had been undertaken or were completed.

Table 1: BLM's Contaminated or Potentially Contaminated Sites Identified as of April 2014

	Hazardous materials sites	Abandoned mines with potential environmental contamination	Total sites
Requires further investigation and/or remediation	346	2,853	**3,199**
Has remediation measures planned or under way	546	353	**899**
Has been remediated	1373	886	**2,259**
Requires no further action	88	568	**656**
Total	**2,353**	**4,660**	**7,013**

Source: Bureau of Land Management's (BLM) Abandoned Mine Lands/Site Cleanup Inventory database. | GAO-15-830T

Note: According to BLM, the Abandoned Mine Lands/Site Cleanup Inventory database is the agency's source of information regarding the inventory and status of abandoned mine and hazardous materials sites. BLM has not yet assessed all the sites on the ground, and the agency is constantly reviewing and updating the data.

We reported in January 2015 that BLM had also identified 30,553 abandoned mine sites that posed physical safety hazards but needed verification or a preliminary assessment to determine whether environmental hazards were present.[18] However, the number of potentially contaminated mines may be larger than these identified sites because BLM had not identified all of the abandoned mines on the land it manages. We reported that BLM estimated that there may be approximately 100,000 abandoned mines that had not yet been inventoried in California, Nevada, and Utah, and that it would take 2 to 3 years to complete the estimates for the other nine BLM states.[19] BLM estimated that it will take decades to complete the inventory. To inventory a site, BLM field staff must visit the site to collect data, research the land ownership and extent of mining activity that occurred, and record the information in BLM databases.

In January 2015, we reported that BLM has an ongoing effort to estimate the number of abandoned mines and mine features that have not yet been inventoried on BLM lands and the approximate cost to complete the

[18]GAO-15-35.

[19]GAO-15-35.

inventory. BLM established inventory teams in several states to go out and identify sites.[20] In addition, BLM began an initiative in California to determine the number of sites that need to be inventoried after the state provided the agency with digitized maps of potential mine sites and verified a sample of the sites. For California, BLM estimated that 22,728 sites and 79,757 features needed to be inventoried. BLM estimated that approximately 69,000 and 4,000 sites remained to be inventoried in Nevada and Utah, respectively, on BLM land. BLM officials told us that they expect to provide a report to Congress on the inventory work remaining in these three states in 2015. The nine remaining states with BLM land do not have the digital geographic data available that BLM used for California, Nevada, and Utah, according to BLM officials, making it difficult for BLM to develop similar estimates for these states.[21] BLM officials told us that the U.S. Geological Survey was working on an effort to develop datasets similar to those used to estimate the number of abandoned mines on BLM land in California, Nevada, and Utah.

We found that Interior's Bureau of Indian Affairs, Bureau of Reclamation, Fish and Wildlife Service, and NPS also have sites with environmental contamination. Officials from each of these agencies told us that they believed their inventories of sites with environmental contamination were complete. Both Fish and Wildlife Service and NPS had identified locations of concern, where contamination is suspected based on known past activities or on observed and reported physical indicators requiring further assessment. For NPS, nearly half of these sites are old dump sites.

NPS also has abandoned mines on the lands it manages. In 2013, NPS completed a system-wide inventory and assessment project to identify abandoned mines on lands it manages. NPS's inventory identified 37,050 mine features at 3,421 sites on NPS land. In January 2015, we reported that, of the total inventory, NPS officials said they believed that 3,841 features at 1,270 sites still required some level of effort to address human health and safety and/or environmental concerns. As a result of NPS' system-wide inventory, officials with the agency's Abandoned Mineral

[20]In May 2013, BLM published a report that summarizes recent inventory efforts titled *Abandoned Mine Lands: A New Legacy*.

[21]BLM has 12 state offices located in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Wyoming, and an eastern states office.

Lands Program told us that they believed that their inventory of all potentially contaminated sites was largely complete.

DOD

As we reported in our July 2010 report,[22] before federal environmental legislation was enacted in the 1970s and 1980s regulating the generation, storage, treatment, and disposal of hazardous waste, DOD activities and industrial facilities contaminated millions of acres of soil and water on and near DOD properties in the United States and its territories. DOD activities released hazardous substances into the environment primarily through industrial operations to repair and maintain military equipment, as well as the manufacturing and testing of weapons at ammunition plants and proving grounds.

In June 2014, DOD reported to Congress that it had 38,804 sites in its inventory of sites with contamination from hazardous substances or pollutants or contaminants at active installations, formerly used defense sites, and Base Realignment and Closure (BRAC) locations in the United States, as well as munition response sites that were known or suspected to contain unexploded ordnance, discarded military munitions, or munitions constituents.[23],[24] Of these 38,804 sites, DOD's report shows that 8,865 have not reached the department's response complete milestone—which occurs when a remedy is in place and required remedial action operations, if any, are complete.

In May 2013, we reported that in addition to having a large number of contaminated and potentially contaminated sites in its inventory, of all federal agencies, DOD had the greatest number of sites listed on the NPL.[25] We reported that, as of April 2013, DOD was responsible for 129

[22]GAO-10-348.

[23]Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, *Defense Environmental Programs Annual Report to Congress for FY 2013* (June 2014).

[24]Formerly used defense sites are defined as properties that were under the jurisdiction of DOD and owned by, leased to, or otherwise possessed by the United States at the time of actions leading to contamination by hazardous substances or other hazards prior to October 17, 1986, but have since been transferred to states, local governments, federal entities, and private parties.

[25]GAO-13-633T.

of the 156 federal facilities on the NPL at the time (83 percent). Also, we reported in March 2009 that the majority of DOD sites were not on the NPL and that most DOD site cleanups were overseen by state agencies rather than EPA, as allowed by CERCLA.[26]

Our work has found that the lack of interagency agreements between EPA and DOD has historically contributed to delays in cleaning up military installations. For example, we reported in July 2010 that, as of February 2009, 11 DOD installations did not have an interagency agreement, even with CERCLA's requirement that federal agencies enter into interagency agreements with EPA within a certain time frame to clean up sites on the NPL, and even though the department had reached agreement with EPA on the basic terms.[27] Without an interagency agreement, EPA does not have the mechanisms to ensure that cleanup by an installation proceeds expeditiously, is properly done, and has public input, as required by CERCLA. We found one DOD installation that, after 13 years on the NPL and receipt of EPA administrative cleanup orders for sitewide cleanup, had not signed an interagency agreement. We recommended that the Administrator of EPA take action to ensure that outstanding CERCLA section 120 interagency agreements are negotiated expeditiously. In May 2013, we reported that DOD had made progress on this issue by decreasing the number of installations without an interagency agreement from 11 to 2, but both of those sites still posed significant risks.[28] According to an EPA official, as of September 2015, one of these two installations now has an interagency agreement. However, according to this official, there is no interagency agreement at the other installation—Redstone Arsenal in Alabama. We recommended that EPA pursue changes to a key executive order that would increase its authority to hasten cleanup at sites without an interagency agreement. EPA agreed but has not taken action to have the executive order amended. We also suggested in July 2010 that Congress consider amending CERCLA section 120 to authorize EPA to impose administrative penalties at federal facilities placed on the NPL that lack interagency agreements within the CERCLA-imposed deadline of 6 months after completion of the remedial investigation and feasibility study.[29] We believe that this leverage could

[26]GAO-09-278.

[27]GAO-10-348.

[28]GAO-13-633T.

[29]GAO-10-348.

help EPA better satisfy its statutory responsibilities with agencies that are unwilling to enter into agreements where required under CERCLA section 120.

DOE

As we reported in March 2015,[30] 70 years of nuclear weapons production and energy research by DOE and its predecessor agencies generated large amounts of radioactive waste, spent nuclear fuel, excess plutonium and uranium, contaminated soil and groundwater, and thousands of contaminated facilities, including land, buildings, and other structures and their systems and equipment. DOE's Office of Environmental Management (EM) is responsible for one of the world's largest environmental cleanup programs, the treatment and disposal of radioactive and hazardous waste created as a by-product of producing nuclear weapons and energy research.[31] The largest component of the cleanup mission is the treatment and disposal of millions of gallons of highly radioactive waste stored in aging and leak-prone underground tanks. In addition, radioactive and hazardous contamination has migrated through the soil into the groundwater, posing a significant threat to human health and the environment.

According to DOE's fiscal year 2016 congressional budget request, EM has completed cleanup activities at 91 sites in 30 states and in the Commonwealth of Puerto Rico, and EM has remaining cleanup responsibilities at 16 sites in 11 states.[32] EM cleanup work activities are carried out by contractors, such as Washington River Protection

[30]GAO-15-272.

[31]GAO-11-143.

[32]Department of Energy, Office of Chief Financial Officer, *Department of Energy FY 2016 Congressional Budget Request, Environmental Management*, DOE/CF-0111 Volume 5 (February 2015).

Solutions, for the operation of nuclear waste tanks at the Hanford Site in Washington State. [33]

In March 2015,[34] we reported that the National Nuclear Security Administration (NNSA), a separately organized agency within DOE,[35] also manages many contaminated facilities. Some of these facilities are no longer in use, others are still operational. Once NNSA considers these facilities to be nonoperational, they may be eligible for NNSA to transfer to EM. We found that NNSA had identified 83 contaminated facilities at six sites for potential transfer to EM for disposition over a 25-year period, 56 of which were currently nonoperational. Until the sites are transferred to EM, however, NNSA is responsible for maintaining its facilities and incurring associated maintenance costs to protect human health and the environment from the risk of contamination. NNSA's responsibilities may last for several years, or even decades, depending on when EM is able to accept the facilities. We found that as NNSA maintains contaminated nonoperational facilities, the facilities' condition continues to worsen, resulting in increased costs to maintain them.

As we reported in March 2015, EM has not accepted any facilities from NNSA for cleanup in over a decade. EM does not accept facilities for transfer until funding is available to carry out the decontamination and decommissioning work. In addition, EM officials told us that they also do not include facilities maintained by NNSA in their planning until they have available funding to begin cleanup work. We concluded that without integrating NNSA's inventory of nonoperation facilities into its process for prioritizing facilities for disposition, EM may be putting lower-risk facilities under its responsibility ahead of deteriorating facilities managed by NNSA

[33]In November 2014, we reported on DOE's ability to respond to leaks and intrusions at the Hanford site. GAO, *Hanford Cleanup: Condition of Tanks May Further Limit DOE's Ability to Respond to Leaks and Intrusions*, GAO-15-40 (Washington, D.C.: Nov. 25, 2014). In addition, we have ongoing work reviewing the factors that contributed to two separate accidents in 2014 at DOE's Waste Isolation Pilot Plant near Carlsbad, New Mexico. This plant is designed to safely dispose of a specific type of nuclear waste, referred to as transuranic waste, that is generated by DOE's nuclear weapons research, production, and cleanup activities at sites across the country.

[34]GAO-15-272.

[35]Congress created NNSA as a semiautonomous agency within DOE under title 32 of the National Defense Authorization Act for Fiscal Year 2000. Pub. L. No. 106-65, § 3211 (1999).

that are of greater risk to human health and the environment. We therefore recommended that EM integrate its lists of facilities prioritized for disposition with all NNSA facilities that meet EM's transfer requirements and that EM should also include this integrated list as part of the Congressional Budget Justification for DOE. We also recommended that EM analyze and consider life cycle costs for NNSA facilities that meet its transfer requirements and incorporate the information into its prioritization process. Analyzing life cycle costs of nonoperational facilities shows that accelerating cleanup of some facilities, while others are maintained in their current states, could offer significant cost savings. DOE stated that it concurred with the issues identified in our report and described actions it plans to implement to address them. For example, DOE stated that it has formed a working group that may address GAO's findings.

Four Departments Have Reported Spending Millions Annually for Cleanup at Federal Sites and Have Estimated Future Costs from Hundreds of Millions to Billions of Dollars

The four departments reported allocating and spending millions of dollars annually on environmental cleanup. They also estimated future costs in the hundreds of millions of dollars or billions to clean up sites and address their environmental liabilities.

USDA

We reported in January 2015 that the majority of USDA's environmental cleanup funds are spent cleaning up ARS's Beltsville NPL facility and abandoned mines and landfills on NFS lands, as well as mitigating potential groundwater contamination from activities at former CCC grain storage sites.[36] In fiscal year 2013, USDA allocated over $22 million to environmental cleanup efforts. Specifically, USDA allocated (1) $3.7

[36]GAO-15-35.

million for department-wide cleanup projects, the majority of which were for cleanup at USDA's Beltsville site and to cover legal expenses; (2) approximately $14 million for the Forest Service to conduct environmental assessments and cleanup activities; and (3) $4.3 million in funds to mitigate contamination at former grain storage sites. The Forest Service also allocated approximately $20 million in one-time Recovery Act funds in fiscal year 2009 to cleanup activities at 14 sites located on, or directly impacting, land managed by the Forest Service.[37]

In addition, USDA seeks cost recovery of cleanup costs and natural resource damages under CERCLA from potentially responsible parties, such as owners and operators of a site, to help offset cleanup costs at sites where they caused or contributed to contamination.[38] Cost recovery amounts vary from year to year. We found that for fiscal years 2003 to 2013, USDA typically recovered $30 million or less annually. However, according to department documents, USDA successfully recovered over $170 million from a single mining company as part of a bankruptcy case in 2009. These funds were used to conduct cleanup activities at 13 mine sites located on NFS lands. In fiscal year 2011, USDA recovered $65 million from another mining company for restoration of injured natural resources in the Coeur d'Alene River Basin NPL site in Idaho.

In its fiscal year 2013 financial statements, USDA reported a total of $176 million in environmental liabilities. These liabilities represent what USDA determined to be the probable and reasonably estimable future costs to address 100 USDA sites, as required by federal accounting standards. The $176 million amount included: $165 million to address asbestos contamination,[39] $8 million for up to 76 CCC former grain storage sites in

[37]American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115.The purposes of the act, among other aims, are to preserve and create jobs, to promote economic recovery, and to provide investments to increase economic efficiency by spurring technological advances in science and health.

[38]USDA's cost recovery amounts include (1) costs already incurred by USDA and reimbursed by a potentially responsible party (PRP), (2) funds that a PRP has agreed to provide for future cleanup work, and (3) the value of cleanup work directly performed by the PRP.

[39]USDA did not report asbestos cleanup liabilities prior to fiscal year 2013. As a result, USDA only reported $10 million in environmental and disposal liabilities in fiscal year 2012.

the Midwest that are contaminated with carbon tetrachloride,[40] and $3 million for 24 Forest Service sites, including guard stations, work centers, and warehouses, among others.[41] In addition, USDA reported $120 million in contingent liabilities in its fiscal year 2013 financial statements.[42] Of this amount, $40 million was for environmental cleanup at four phosphate mine sites in southeast Idaho.[43]

Interior

We reported in January 2015 that Interior allocated about $13 million for environmental cleanup efforts in fiscal year 2013. Specifically, Interior allocated $10 million for cleanup projects department-wide; NPS allocated an additional $2.7 million, and the Fish and Wildlife Service allocated over $800,000 for environmental assessment and cleanup projects. In addition, BLM allocated more than $34 million to its hazardous management and abandoned mine programs. BLM provided over $18 million to its state offices; however, the amount specifically used for environmental cleanup projects was not readily available. BLM also spent over $27 million in one-time Recovery Act funds on physical safety and/or environmental remediation projects at 76 locations. According to BLM, there were 31 projects for environmental activities.

For fiscal years 2003 through 2013, Interior allocated over $148 million in Central Hazardous Materials Fund (CHF) resources to its agencies to support response actions undertaken at contaminated sites under

[40]CCC reported a cost range of $8 million to $55 million on its agency financial statements.

[41]These 24 Forest Service sites do not include any abandoned mines.

[42]A contingent liability is an existing condition, situation, or set of circumstances involving uncertainty as to possible loss to an entity that will ultimately be resolved when one or more future events occur or fail to occur.

[43]The $40 million represents the lower end of a range of cleanup costs for these four mine sites. The mining company that leases these sites sued the U.S. government to recover its response costs incurred in connection with the remediation of the four mines, which are located on federal land. The court ultimately approved a settlement under which the mining company would pay 67 percent, and the government would pay 33 percent of all past and future costs. In court documents, the United States noted that the total cleanup costs for the sites are unknown, but preliminary estimates are in the hundreds of millions of dollars. Nu-West Mining, Inc. v. United States, 2013 U.S. Dist. LEXIS 32747, D. Idaho (2013). Forest Service officials noted that, absent the completion of feasibility studies and the development of remediation cost estimates on these sites, any cost estimates are highly speculative.

CERCLA. This amount includes over $49 million in CHF cost recoveries. Interior's agencies undertook 101 projects with CHF funding during fiscal years 2003 through 2013. These projects supported a range of activities, from project oversight to advanced studies (e.g., remedial investigations, feasibility studies, engineering evaluations, and cost analyses) to removal and remedial actions. The majority of sites receiving CHF funding were abandoned mines, landfills, and former industrial facilities. In fiscal year 2013, Interior allocated $10 million to the CHF.

During our work for the January 2015 report, BLM officials told us that the current funding levels were not sufficient to complete the inventory and address the physical and environmental hazards at abandoned mines. In its 2014 and 2015 budget justifications, Interior described proposals to charge the hardrock mining industry fees and use the funds to address abandoned mines. Similarly, an NPS official told us that the agency has inadequate funding to address its over 400 potentially contaminated and contaminated sites. According to an NPS official, the agency had been able to address its highest risk sites. If there is a very significant risk, NPS can usually obtain funds to address the portion of the site that has the highest risk, if not the site as a whole. According to NPS officials, NPS has not selected response actions for almost 300 sites because current funding levels are not sufficient to address them.

As we found in our January 2015 report,[44] Interior reported $192 million in environmental liabilities in its fiscal year 2013 financial statements. These liabilities represent what the agency has determined to be the probably and reasonably estimable future cost for completing cleanup activities at 434 sites, as required by federal accounting standards.[45] These activities include studies or removal and remedial actions at sites where Interior has already conducted an environmental assessment and where Interior caused or contributed to the contamination or has recognized its legal obligation for addressing the site. Interior also disclosed in the notes to its financial statements the estimated cost range for completing cleanup

[44]GAO-15-35.

[45]This number reflects the low end of a range of probable future costs for completing cleanup activities at these sites.

activities at these sites. The cost range disclosed was approximately $192 million to $1.3 billion.[46]

Interior also disclosed the estimated costs for government-acknowledged sites—sites that are of financial consequence to the federal government with damage caused by nonfederal entities—where it was reasonably probable that cleanup costs would be incurred. In fiscal year 2013, Interior disclosed in the notes to its fiscal year 2013 financial statements a cost range for these activities to be approximately $62 million to $139 million. The majority of this cost range was related to addressing 85 abandoned mine sites. As we have previously reported,[47] cleanup costs for abandoned mines vary by type and size of the operation. For example, the cost of plugging holes is usually small, but reclamation costs for large mining operations can reach tens of millions of dollars.

DOD

Historically, we have found that DOD has spent billions on environmental cleanup and restoration at its installations. For example, in July 2010, we reported that DOD spent almost $30 billion from 1986 to 2008 across all environmental cleanup and restoration activities at its installations, including NPL and non-NPL sites.[48] In March 2010, we reported that since the Defense Environmental Restoration Program (DERP) was established, approximately $18.4 billion had been obligated for environmental cleanup at individual sites on active military bases, $7.7 billion for cleanup at sites located on installations designated for closure under BRAC, and about $3.7 billion to clean up formerly used defense sites.[49] In June 2014, DOD reported to Congress that, in fiscal year 2013, DOD obligated approximately $1.8 billion for its environmental restoration activities.

In its *Agency Financial Report* for fiscal year 2014, DOD reported $58.6 billion in total environmental liabilities.[50] These liabilities include, but are

[46]The difference between the upper and lower ends of the range ($1.1 billion) reflects the additional potential cost for addressing these sites.

[47]GAO-13-633T.

[48]GAO-10-348.

[49]GAO-10-547T.

[50]Department of Defense, *Agency Financial Report Fiscal Year 2014*, 2-73362DA (Nov. 13, 2014).

not limited to, cleanup requirements for DERP for active installations, BRAC installations, and formerly used defense sites.

DOE

According to DOE's fiscal year 2016 Congressional budget request,[51] DOE received an annual appropriation of almost $5.9 billion in fiscal year 2015 to support the cleanup of radioactive and hazardous wastes resulting from decades of nuclear weapons research and production.[52] DOE has estimated that the cost of this cleanup may approach $300 billion over the next several decades. As we reported in May 2015,[53] DOE spent more than $19 billion since 1989 on the treatment and disposition of 56 million gallons of radioactive and hazardous waste at its Hanford site in Washington State. In July 2010, we reported that four large DOE cleanup sites received the bulk of the $6 billion in Recovery Act funding for environmental cleanup.[54] We previously reported that those sites have had problems with rising costs, schedule delays, and contract and project management.[55]

In 2014, DOE estimated that its total liability for environmental cleanup,[56] the largest component of which is managed by EM, is almost $300 billion and includes responsibilities that could continue beyond the year 2089.[57] We are beginning work at the request of the Senate Armed Services Committee to examine DOE's long-term cleanup strategy, what is known

[51]*Department of Energy FY 2016 Congressional Budget Request, Environmental Management*, DOE/CF-0111 Volume 5 (February 2015).

[52]GAO-10-784.

[53]GAO-15-354.

[54]GAO-10-784.

[55]GAO, *Department of Energy: Contract and Project Management Concerns at the National Nuclear Security Administration and Office of Environmental Management*, GAO-09-406T (Washington, D.C.: Mar. 4, 2009); *Hanford Waste Treatment Plant: Department of Energy Needs to Strengthen Controls over Contractor Payments and Project Assets*, GAO-07-888 (Washington, D.C.: July 20, 2007); and *Nuclear Waste: Better Performance Reporting Needed to Assess DOE's Ability to Achieve Goals of the Accelerated Cleanup Program*, GAO-05-764 (Washington, D.C.: July 29, 2005).

[56]These liabilities include total environmental cleanup and disposal liabilities.

[57]Department of Energy, *Fiscal Year 2014 Agency Financial Report*, DOE/CF-0106 (Nov. 14, 2014).

about the potential cost and timeframes to address DOE's environmental liabilities, what factors does DOE consider when prioritizing cleanup activities across its sites, and how DOE's long-term cleanup strategy address the various risks that long-term cleanup activities encounter.

EPA's Oversight Role Includes Maintaining a List of Potentially Hazardous Sites and Ensuring that Preliminary Assessments Are Completed

As part of its oversight role in maintaining the list of contaminated and potentially contaminated federal sites and ensuring that preliminary assessments of such sites are complete, EPA has compiled a docket of over 2,300 federal sites that may pose a risk to human health and the environment.[58] EPA is responsible for ensuring that the federal agencies assess these sites for contamination. Our January 2015 report focused on reviewing the extent to which USDA and Interior have assessed the majority of sites listed on the docket.

Federal Agency Hazardous Waste Compliance Docket

As of August 2015, the agency's docket listing consisted of 2,323 sites that may pose a risk to human health and the environment, which EPA compiled largely from information provided by federal agencies.[59] We found in January 2015 that EPA has published many updates of the docket, but the agency has not consistently met the 6-month reporting requirement.[60] Prior to 2014, the effort to compile and monitor the docket listings was a manual process. However, in 2014, EPA implemented revised docket procedures with a computer-based process that is to compile potential docket listings from agency notices by searching electronic records. EPA officials said that they expect the new system to allow them to update the docket in a more timely way in the future. EPA

[58]It is EPA's policy to exclude certain categories of sites from its docket listing. For instance, small quantity generators of hazardous waste (less than 1,000 kilograms in any month) are excluded from docket listing unless they have reported releases. According to EPA, the agency also does not include previously owned federal facilities or sole transporters of hazardous waste.

[59]The docket represents the universe of federal sites to be considered for possible inclusion on the NPL.

[60]GAO-15-35.

has published two docket updates with this new system, in December 2014 and August of 2015.

As we reported in January 2015, EPA officials told us that it is difficult for EPA to know about a site to list if agencies have not reported it. However, if EPA learns about a site that has had a release or threat of a release of hazardous substances through other means, EPA will list the site on the docket. It is important to note that the docket is a historical record of potentially contaminated sites that typically have been reported to EPA by agencies. Because it is a historical record, sites that subsequently were found to not be contaminated, and sites that the agencies may have addressed, are still included on the docket.

In our January 2015 report on USDA and Interior potentially contaminated sites, we discussed the docket with officials from these two departments. We found that Interior and USDA officials disagreed with EPA officials over whether some of these sites should have been listed on the docket. Interior officials believed that CERCLA does not give EPA the discretion to list Interior sites unless Interior reports them to EPA and that EPA should limit its listing of sites on the docket to those reported by an agency under one of the provisions specifically noted in CERCLA. Interior and USDA officials also believed that abandoned mines should not be listed on EPA's docket because the agencies did not cause the contamination and, therefore, the sites should not be considered federal sites. However, EPA officials believed that, regardless of whether USDA and Interior are legally liable for addressing these sites, they have an independent responsibility under Executive Order 12,580 and CERCLA as land management agencies owning the sites to address them.[61]

Preliminary Assessments

As I stated earlier, EPA established 18 months as a reasonable time frame for agencies to complete a preliminary assessment. However, in March 2009, we reported that EPA officials from two regions told us that some agencies such as DOD may take 2 to 3 years to complete a preliminary assessment because EPA does not have independent authority under CERCLA to enforce a timeline for completion of a preliminary assessment.[62] In March 2009, we suggested that Congress

[61]Exec. Order No. 12,580, Superfund Implementation, 52 Fed. Reg. 2,923 (Jan. 29, 1987).

[62]GAO-09-278.

consider amending CERCLA section 120 to authorize EPA to require agencies to complete preliminary assessments within specified time frames.

For USDA and Interior, we found in our January 2015 report that as of February 2014, both Interior and USDA had conducted a preliminary assessment of the majority of their sites on EPA's docket.[63] However, EPA, Interior, and USDA have differing information on the status of preliminary assessments for the remaining docket sites. Our analysis of data in in EPA's Comprehensive Environmental Response, Compensation, and Liability Information System for our January 2015 report found that USDA still needed to conduct a preliminary assessment at 50 docket sites, and Interior needed to conduct a preliminary assessment at 79 docket sites. When we reviewed the status of these sites with USDA and Interior officials, the officials told us that they believed their agencies had met the preliminary assessment requirement for many of these sites.

To help resolve disagreements between EPA and USDA and Interior regarding which remaining docket sites require preliminary assessments, we recommended, in January 2015, that EPA take three actions. First, EPA should review available information on USDA and Interior sites where EPA's Superfund Enterprise Management System indicates that a preliminary assessment has not occurred to determine the accuracy of this information, and update the information, as needed. After completing this review, EPA should inform USDA and Interior whether the requirement to conduct a preliminary assessment at the identified sites has been met or if additional work is needed to meet this requirement. Finally, EPA should work with the relevant USDA and Interior offices to obtain any additional information needed to assist EPA in determining the accuracy of the agency's data on the status of preliminary assessments for these sites. EPA agreed with these recommendations and, according to EPA officials, the agency has started taking steps to address them.

[63]GAO-15-35.

Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee, this concludes my prepared statement. I would be pleased to answer any questions you may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff members have any questions about this testimony, please contact me at (202) 512-3841 or gomezj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Other individuals who made key contributions include: Barbara Patterson (Assistant Director), Antoinette Capaccio, Rich Johnson, Kiki Theodoropoulos, and Leigh White.

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Mr. SHIMKUS. Thank you very much.

Before I start with my questions, we are going to have two panels. The second panel is going to have the states represented, along with another person, who we don't know who that is yet. But it was the intent to maybe have it all on one panel so you could hear the concerns posed by the states. And it is my hope that you all will follow up and at least listen to the second panel.

There are always 10 legislative or business days with followup questions, so a lot of the followup questions that we will present in writing will be based on the second panel testimony. I think it is going to be instructive and educational, and I hope you pay attention to that also.

Having said that, let me start with my questions.

Mr. Stanislaus, do you think that Executive Order 12580, in delegating lead cleanup status to agencies that may have caused contamination at a Federal facility and which are responsible for paying for cleanups, creates a potential conflict?

Mr. STANISLAUS. So all I can really speak about is those sites within our responsibility. So, of those sites within our responsibility, we do have an ability, EPA, to oversee that subset of sites. Those are sites on the National Priorities List. Other sites, we don't have that ability. It has been delegated directly to the other Federal agencies.

Mr. SHIMKUS. So let me ask this again. Do you think that the funding mechanism—OK, so you have a Federal agency; they have a contaminated site. They are, because of the Executive order, given the authority for remediation, but the funding also comes out of their own budget.

Does that cause a conflict? Does that make it difficult? Do they then make up—are they making a cost-benefit analysis based upon budgetary outlays?

Mr. STANISLAUS. Well, with respect to how the other agencies make that decision, I don't really know. But I can tell you from where EPA is involved in overseeing sites by the various Federal agencies, there is a real value to have independent review of everything from the scope of work and the implementation of the work.

Mr. SHIMKUS. So let me go to Mr. Whitney.

This is really the genesis of the questions that I am going to have for all the panelists. In the situation where DOE is both the primary responsible party and the lead agency making remedial decisions, can you understand the potential conflict, concern about conflict, and the worry that remedial decisions may be based on budgetary considerations?

Mr. WHITNEY. Thank you, Chairman.

So, for the Department of Energy sites, while we are the lead agency for the cleanup, we do not have a regulatory role. That regulatory role is by the EPA and the states. And so, sir, I don't see a conflict of interest. We work very closely and——

Mr. SHIMKUS. But you are still the lead agency, whether there is an oversight role or not?

Mr. WHITNEY. Yes, sir.

Mr. SHIMKUS. OK.

And, really, Mr. Conger, same question.

Mr. CONGER. Yes, no, I don't see a conflict. Most of the contamination that we are cleaning up, it dates from a long time ago, and it is not like there is a conflict at a particular location between the person cleaning something up and whoever had made the spill or whatever.

We are pretty successful in getting appropriations for this cleanup. We have a very stable roughly billion-and-a-half dollars a year that we get into this program. We have schedules that have been fairly stable over the years worked out with the EPA and the states. I don't see any conflict or any problems on this.

Mr. SHIMKUS. Let me go back to Mr. Whitney.

What happens if two different Federal agencies assert lead agency authority?

And, Mr. Conger, you can address it too.

For example, if one agency currently owns the property but another agency caused the contamination, which agency, in fact, has the lead agency authority?

Mr. WHITNEY. Sir, I am not aware of that with respect to DOE sites.

Mr. SHIMKUS. Mr. Conger, are you aware of that?

Mr. CONGER. I can think of an example or two. So here is the dynamic. Where we cause the contamination and then transfer a property, through BRAC or whatever other mechanism—we have a responsibility for cleaning up all the contamination that we know about. That is the dynamic that we are dealing with. We have CERCLA responsibilities, and we uphold them.

Mr. SHIMKUS. And we are not trying to play gotcha. A lot of this stuff is way before we were better environmental stewards, more focused on it. And so this is not an attempt at gotcha. It is just clarifying the record, trying to get answers for our questions.

I want to make sure I get to Mr. Gomez for my last question.

In your written testimony, you recommend that Congress should change section 120 of CERCLA to add a deadline for Federal agencies to complete their preliminary assessments. Can you explain that? Please explain that.

Mr. GOMEZ. Certainly. Yes, we did note that in the report.

EPA has essentially set 18 months as a reasonable timeframe for agencies to complete preliminary assessments. And what we found was that some agencies were taking 2 to 3 years to complete them. So we suggested that Congress consider giving EPA the authority to actually enforce that requirement. And we don't specifically set what that requirement should be, but we do note that EPA has already set a reasonable timeframe of 18 months.

Mr. SHIMKUS. So your recommendation is that the EPA have an enforceable deadline, and in your analysis you don't really choose what that is.

Mr. WHITNEY. Correct.

Mr. SHIMKUS. OK. Great. Thank you very much. I appreciate it.

My time has expired, and I yield to the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you. And, again, I thank the chair for convening this panel to provide us with a progress report on Federal facility cleanups under Superfund.

Last Congress, this committee considered legislation to change the treatment of Federal facility cleanups under Superfund. That bill was not based on an oversight record and included several misguided provisions. I did indeed oppose that legislation, as did all of my Democratic colleagues on the committee. So I welcome this opportunity to build the committee's record on these issues and hear from some of our agencies involved in Federal facility cleanups.

I would like to start by asking about Federal responsibilities under current law.

Mr. Conger and Mr. Whitney, under current law, are you subject to the liability and cleanup requirements of Superfund at sites where you are a responsible party?

Mr. WHITNEY. Maybe I will go first, if that is OK.

Yes, sir. The Department of Energy is subject to the same requirements as private entities under CERCLA.

Mr. TONKO. Thank you. And——

Mr. CONGER. Yes.

Mr. TONKO [continuing]. Mr. Conger, you are in agreement.

Mr. Stanislaus, under current law, are all Federal agencies subject to the liability and cleanup requirements in Superfund?

Mr. STANISLAUS. Yes.

Mr. TONKO. In fact, section 120 of Superfund imposes additional requirements on Federal agencies that private parties do not face, I believe.

Mr. Conger, what obligations does Superfund place on the Department of Defense and other agencies before you can transfer land?

Mr. CONGER. Before we transfer—so it is a little complicated. We can transfer land that is contaminated with a guarantee to clean it up after the transfer; we can have that set up in the agreement. We have a responsibility for cleanup regardless of when the transfer occurs.

Mr. TONKO. OK. And is that true also in regard to the BRAC process where we are addressing the realignment and closure of bases?

Mr. CONGER. Yes, that is generally true.

I want to be careful not to—I am not going to pretend to be an attorney here. And so, as we go into the finer points of the law—I will double check for the record the answers to your questions.

But, in a broad sense, we have responsibilities to perform the cleanup at BRAC sites or whatever other transferred sites we have. We have on occasion not let that hold up the transfer of property, but rather, you know, with eyes open to whoever is receiving the property either agreed to clean it up after the fact or made an agreement or arrangement to have it cleaned up after transfer.

Mr. TONKO. And, Mr. Gomez, do private parties face these given obligations?

Mr. GOMEZ. That is something I would have to get back to you, Mr. Tonko. I have to get back to you on that.

Mr. TONKO. OK.

I am sure that our ranker, Mr. Pallone, and others on the subcommittee will delve into the details more. But it is clear that there are a lot of potentially contaminated sites on Federal land

that still need to be assessed and cleaned up, but a good deal already has been done, as I indicated earlier.

Mr. Conger, can you describe the progress that DOD has made in cleaning up its inventory of Superfund sites?

Mr. CONGER. Certainly. And I won't just limit it to Superfund, because we track all of our cleanup sites together in a fairly large—it is 39,000 sites together in a single database. And I could probably break it out, but I don't have that available. I can get that for the record.

But, frankly, we are complete with cleanup at 80 percent of our sites. We set fairly aggressive goals a few years ago to get to 90 percent by 2018. We are on track for that. We are looking at getting 95 percent of our sites cleaned up by 2021.

We will have some complex sites that are left over at that point. I am not going to pretend that it is going to be done in a few years at that point, those last 5 percent. But that is why we use R&D. We attack the difficult problems with some our research funding to try and figure out how we are going to be able to accelerate timelines or to clean it up better.

And when we do come up with something, like the bioremediation techniques that we came up for cleaning up groundwater, that is applicable to the private sector, as well, and they use those techniques, as well, once we figure it out for our own purposes.

Mr. TONKO. Yes.

And, Mr. Whitney, can you describe the progress with DOE?

Mr. WHITNEY. Yes, sir. As I mentioned, we have cleaned up 91 of our sites across 20 states, and we have 16 sites remaining.

We have reduced the footprint, the cleanup footprint, in Environmental Management, the DOE complex, by 90 percent. And when we talk about our sites, we talk about square miles and not square acres. And we are down to about 250 square miles, and we were previously around 3,000 square miles when we started with the program.

So we have had significant accomplishments across the complex. Now, as my colleague here has stated for DOD, we have some complex challenges remaining ahead of us. And probably the most difficult challenges remain ahead of us.

Mr. TONKO. Yes.

I see my time is up, so I will yield back, Mr. Chairman.

Mr. SHIMKUS. Thank you.

The chair now recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman.

And thanks to each of you for being here.

And I am just curious, Mr. Stanislaus, how many times have you now testified before a committee or subcommittee?

Mr. STANISLAUS. I think I should get an honor of some type.

Mr. HARPER. Surely.

Mr. SHIMKUS. Oh, you are going to get one.

Mr. HARPER. Have you kept up with the number of times that——

Mr. STANISLAUS. I have to get back to you.

Mr. HARPER. Yes, yes. That was the answer I was looking for. Thank you very much.

I am going to remember that one, Mr. Stanislaus.

Mr. Gomez, you just testified, and, obviously, your 2015 report noted that, while Interior and USDA have identified thousands of contaminated and potentially contaminated sites, they don't have a complete inventory of sites. Can you elaborate on that a little bit? And then tell me, how do you remedy that?

Mr. GOMEZ. Sure.

So, as I noted in the opening statement and also in our report, Interior and Agriculture have identified thousands of contaminated sites, but their inventory, particularly for abandoned mines, is incomplete, and in some cases not reliable. In the case of the Forest Service, the different regional offices have different ways of gathering information.

And just one example on the Interior side is, for example, the Bureau of Land Management estimated an additional 100,000 mines that have yet to be inventoried in three States. And those are the States of California, Nevada, and Utah. So they have, we believe, quite a bit of work to do when it comes to abandoned mines.

Mr. HARPER. And, also, Interior and USDA disagree over some of the docket listings that exist now. Tell us what the disagreement is about or if that is significant.

Mr. GOMEZ. Sure.

One disagreement is between EPA and Interior with regards to the overall approach to listing sites on the docket that are not reported to EPA by the agencies. Interior believes that CERCLA does not give EPA the discretion to list sites unless Interior reports those sites to EPA and that EPA should limit listing only sites that agencies report to it.

Now, both Interior and USDA also believe that abandoned mines should not be listed on the docket. And the idea there is that these sites have contamination that wasn't caused by the agencies. EPA's view on that is, regardless of whether the contamination was caused by someone else or the Federal agency, these sites are now under the ownership of the Federal Government, and the Federal Government needs to take responsibility for it.

Mr. HARPER. So how do we get one list? How do we ever get to one list?

Mr. GOMEZ. It is a work in progress at the moment. And that is why we call attention to it, the inventories are not complete, and there is disagreement about what should be added to the docket.

Mr. HARPER. And assuming we had a uniform list, it is not necessarily static, because you can have new sites that develop or become——

Mr. GOMEZ. Correct.

And, also, for example, the docket includes sites that no longer need to be addressed. So it has sites that are contaminated sites, that are potentially contaminated, and then sites that don't need to be addressed. There is no method currently to remove those sites from the docket.

Mr. HARPER. Gotcha.

Mr. GOMEZ. The docket is more of a historical record.

Mr. HARPER. In your written testimony, you had mentioned that there is a lack of interagency agreements between DOD and EPA.

Can you elaborate on that and explain why this could be a problem or is a problem?

Mr. GOMEZ. So we did work a number of years ago where we looked at 11 DOD installations, those installations had yet to enter into interagency agreements with the EPA, even though they had already been listed on the National Priorities List, in some cases for years. And we found that the lack of these interagency agreements resulted in delays of cleaning up those sites.

Now, as of March 2013, when we looked into the issue again, most of those sites had interagency agreements. There were only two that did not. And, currently, there is only one site that doesn't have an interagency agreement.

Mr. HARPER. OK.

Are there similar problems with other Federal agencies conducting cleanups under CERCLA?

Mr. GOMEZ. So the work that we did had focused on the Department of Defense because they have the majority of National Priorities List sites. We didn't look at the other agencies, so we don't know if that problem also exists there. Perhaps our witness from EPA might be able to shed some light on that.

Mr. HARPER. Thank you, Mr. Gomez.

And thank you, Mr. Chairman, and I yield back.

Mr. SHIMKUS. Thank you.

The chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

Superfund cleanups are essential for public health, the environment, and the economic vitality of communities around these sites. And, unfortunately, in many of these communities, the wait for a cleanup drags on because funds and resources are limited, and the backlog of potentially contaminated sites is huge.

So I wanted to ask Mr. Gomez, with that in mind, can you share some recent estimates of the number of potentially contaminated sites with regard to USDA and Department of Interior?

Mr. GOMEZ. Sure. Thank you.

So, with regards to the Department of Agriculture, they have identified almost 1,500 sites that are contaminated or potentially contaminated. Also, the Forest Service estimates that from 27,000 to 39,000 abandoned mines on its land, and approximately 20 percent of those may pose some level of risk to public health or the environment.

Now, on the Interior side, Interior has identified over 4,700 sites with confirmed or likely contamination. And the Bureau of Land Management has also identified over 30,000 abandoned mines that were not yet assessed for contamination.

And I would also mention that, in addition to that, there was those additional 100,000 mines that need to be inventoried in three states.

Mr. PALLONE. What about the number of sites under control of Defense or Department of Energy?

Mr. GOMEZ. Sure. So the work that we did, which was issued in January of this year, focused on the Department of Agriculture or the Department of the Interior. We have not looked at what the

Department of Energy or Department of Defense have in its inventory.

Mr. PALLONE. OK.

Are there additional Federal sites controlled by other agencies?

Mr. GOMEZ. Yes. There are some, for example, NASA sites that are out there. There was some work that the NASA IG was doing. So we didn't look at NASA in our work.

Mr. PALLONE. These numbers are staggering themselves, not to mention the departments that you haven't looked at, but I think they are only part of the story.

Can you share recent estimates of the cost to clean up these Federal sites?

Mr. GOMEZ. Sure. So the estimates, as I noted also, are in the hundreds of millions of dollars.

And just to give you some examples, maybe some examples that I didn't mention, is the U.S. Department of Agriculture, for example, allocated in fiscal year 2013 over $22 million to do environmental cleanup and then also reported $176 million in environmental liabilities.

The Department of Defense spent almost $30 billion from 1986 to 2008 across all environmental cleanup and restoration activities at its installations. And then in its fiscal year 2014 financial report, DOD reported $58.6 billion in environmental liabilities.

Mr. PALLONE. So if you look at the amount of money that is being spent versus what is needed, there is a huge gap, obviously.

Let me turn to the three agencies on the panel.

Are consistent and reliable appropriations important for completing cleanups in a timely manner, in your opinion?

Mr. CONGER. I will start.

Mr. PALLONE. Sure.

Mr. CONGER. I think they are, and I think that is what we have had. As I have noted before, we spend about a billion-and-a-half dollars a year. That is a very stable amount of money. And we have the ability to plan with that amount of money, where we work out schedules with the EPA and the states. Everybody knows the pace of the work that is going to be going on, and I think there is a comfort level with that.

And just a clarification point on the environmental liabilities that were mentioned earlier. The cleanup liability is smaller than the number that was cited. That is the entirety of all of our liabilities that include all of our nuclear ships and the eventual cleanup for those and a variety of other items. But the cleanup liability is closer to $27 billion.

Mr. PALLONE. Let me just ask quickly "yes" or "no," because then I want to ask one last question, could more cleanups be completed with greater resources? Just yes/no.

Mr. CONGER. I think that there are also possibilities, but we have a stable program right now, and I think——

Mr. PALLONE. How about the other two guys? Yes or no?

Mr. WHITNEY. Yes, sir. I think it could be—we know what our cleanup lifecycle is. So I don't know if more cleanups could be completed, but the cleanups that we have could be completed quicker.

Mr. PALLONE. And your——

Mr. STANISLAUS. Well, I would say yes. And we have been subject to about a 20-percent cut of our resources to oversee the subset of sites that we have direct responsibility for, so that has, in fact, impeded the pace of work.

Mr. PALLONE. All right.

Let me just ask quickly, because I know my time is up. I just wanted to know if more investment in—I will ask Mr. Stanislaus.

Could more invest in Federal cleanup efforts lead to the development of new technologies and best practices that can improve the cleanups nationwide? Quickly.

Mr. STANISLAUS. I would say generally the answer is yes. And I think, as Mr. Conger noted, there are unique issues at the DOD and DOE sites. So, clearly, some technologies would help in some cases.

Mr. PALLONE. All right.

Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time has expired.

The chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Well, thank you, Mr. Chairman.

And to our panel, thanks very much for being here.

If I could start with you, Mr. Stanislaus, since I guess you have won the record as being here the most, so I will start with the questions.

Do you believe that current and formerly owned Federal facilities should have to comply with the same state requirements as a private entity conducting a cleanup under CERCLA?

Mr. STANISLAUS. Well, I think CERCLA does, in fact, provide for that.

Mr. LATTA. How often do you—let me just follow up. How often do Federal facilities comply with state laws and regulations? Is it all the time?

Mr. STANISLAUS. Well, yes, I could only speak about those that we have direct responsibility for. So we do, in fact, engage the states continuously with respect to their role throughout the process of the investigation, the application of state requirements. So, with respect to those sites, the states play a partnership role.

Mr. LATTA. When you say that it depends on what your role is, what is the percentage that you would be involved in those sites then?

Mr. STANISLAUS. I will get you the exact percentage. It is relatively small, because we only have direct oversight responsibility on those sites that are listed on the National Priorities List, which, as I described earlier, there are lots of other sites under the responsibility of DOD, DOE, and the Department of Interior and Forest Service and——

Mr. LATTA. OK.

Let me ask this. Is sovereign immunity often invoked by Federal agencies?

Mr. STANISLAUS. Well, we have not found—from our role in oversight, that has not been an issue, from our perspective, but that is as much as I know.

Mr. LATTA. OK.

And, also, do you believe that section 120 of CERCLA is evidence that Congress intended to waive sovereign immunity under CERCLA and to require Federal entities to comply with state cleanup laws?

Mr. STANISLAUS. I may have to get back to that. I don't know the answer to that question. Let me get back to you on that.

Mr. LATTA. OK.

Let me ask this then. Do you think that section 120 of CERCLA needs to be amended to make sure that Federal agencies do comply with state regulations and laws dealing with cleanup?

Mr. STANISLAUS. Well, again, just within the sliver of sites within our responsibility, we largely have the states as a party to Federal facility agreements so they have equal rights as the EPA. And, at least from where we are involved in Federal facility sites, we view the states as a partner. And I really can't speak to those sites that we don't have a role in.

Mr. LATTA. OK. Thank you.

Mr. Conger, if I could turn to you, if I could ask, does DOD recognize and comply with state land use control laws and regulations related to environmental cleanups?

Mr. CONGER. So the answer is it depends. It is complicated, and my lawyers will, I am sure, hope that I don't give a simple answer to your question. So I will take that for the record formally, but let me give a sort of first-level answer to the question.

Yes, of course, on those sites that we no longer own—on BRAC sites. Those are not Federal property, generally, and so those controls would apply. Where it is Federal property, it gets more complicated. And, again, not being a lawyer, I will take that specific instance for the record.

Mr. LATTA. Do you all look at, when you are doing your reviews, do you look at the state land use laws and how that deals with the environmental cleanup?

Mr. CONGER. Yes. And we are partners with the states when we do our cleanups. And, as Mathy indicated, most of the sites that we have, or at least a significant number, are regulated by the state regulators. We work with them. We work schedules out together, we work remedies out together. This is something we do in partnership. I am unaware of significant discontent in the states with how we are doing our program.

Mr. LATTA. OK.

Let me follow up with another question, if I may. Would you please describe in detail how DOD measures success or, to the use of the term you used in your written testimony, achieves "response complete"?

Mr. CONGER. Yes.

So, in every cleanup, there is a process, as you well know. There is an investigation, which includes the preliminary assessment, the site inspection, the RI, the FS, et cetera, et cetera. The actual remediation, once we have a remedy in place and once have conducted all of the operations, all the remedial operations, and satisfied the regulators at a particular site, then we have achieved "response complete."

We will have some long-term monitoring in some places so that we go back and double check that the contamination hasn't re-

curred. But once we have taken all of the actions that we are supposed to take at the site, we achieve "response complete."

Mr. LATTA. One last real quick question. Do you measure that cleanup, then, with respect to the acres you clean up? Or how do you do that on——

Mr. CONGER. With respect to—I am sorry.

Mr. LATTA. On the amount of acres you have cleaned?

Mr. CONGER. No. Because not everything is about acres. Sometimes it is about groundwater. There are a whole variety of ways to measure, so we don't normally think of it just in terms of acres.

Mr. LATTA. Thank you, Mr. Chairman. My time has expired, and I yield back.

Mr. SHIMKUS. The gentleman's time has expired.

The chair now recognizes the gentleman from Oregon, Mr. Schrader, for 5 minutes.

Mr. SCHRADER. Thank you, Mr. Chairman.

Mr. Stanislaus, I would like to kind of move—in our area, one of the biggest sites we have to deal with is the Portland Harbor as a Superfund site. And defense industry, big partner in contaminating that during World War II and now not so much of a partner in cleaning the thing up at the end of the day, for a lot of the reasons that have been mentioned here.

But I am concerned about EPA's approach to that harbor. You have a number of businesses that have stepped up, formed this Lower Willamette Group, trying to figure out a way to actually clean this up or be a partner in cleaning it up without the Federal Government, frankly, at this stage of the game. And I am worried about the science that is involved in this.

And, particularly, I guess I wanted to know from you, is it common practice to a qualitative and not a quantitative analysis of the cleanup alternatives?

Mr. STANISLAUS. Well, I think we have, in fact, done a quantitative analysis of——

Mr. SCHRADER. See, I would disagree with that. There is not a quantitative analysis done. In the report I saw on the feasibility study, there is no evaluation of what the concentrations of various contaminants would be, after different remedial actions have been taken.

I think most of the businesses that are going to be funding this, anybody that is doing any scientific analysis, you are supposed to do a cost-effectiveness analysis. Once you have determined the health risk, then what are the most cost-effective ways to take care of this stuff? And that is not what I am seeing in the report.

I guess I would like you to get back to me with that information, where there is a quantitative analysis of that.

The other question I had is regarding natural recovery. Is it common for natural recovery to be ignored by EPA when they do remedial action analyses?

Mr. STANISLAUS. No, if I can give a broad answer. So we have conducted a remedial investigation that identifies——

Mr. SCHRADER. I am asking about natural recovery. What——

Mr. STANISLAUS. Yes. So as part of the alternative analysis, we would look at the various alternatives, including that kind of alternative——

Mr. SCHRADER. Well, I appreciate you saying that, because that is not what is done in this particular feasibility study on the Portland Harbor. The natural recovery aspects, the quantitative aspects of what natural recovery are, are not being included at all.

As a matter of fact, you can't, I would argue respectfully, scientifically evaluate how a particular remedial action, capping dredging, is going to work, what benefit you are going to get from that, unless you know what the natural recovery benefit is going forward.

As a matter of fact, just up the river, at Willamette Falls, there is a site that was grossly contaminated. It was a paper mill. And environmental agencies have determined that it does not pose any real contamination risk because natural recovery has completely wiped that out. Admittedly, it is a higher-flowing river at that particular point.

So I am not seeing that going forward.

The other thing I am worried about is, in this particular case, is how they have evaluated these alternatives. Is it normal for EPA to assume that dredging is going to go on 24 hours a day, 6 days a week, in a water work window? Is that the normal way you would evaluate?

Mr. STANISLAUS. Well, it would depend on the facts of the particular circumstance. So we evaluate alternatives, be it——

Mr. SCHRADER. Would you assume that the dredging operation would go 24 hours a day, 6 days a week, in a recovery action?

Mr. STANISLAUS. Well, I can't say a generalized rule. It would depend——

Mr. SCHRADER. I think most people—I apologize for interrupting you, but I would think most people would say that is unrealistic. That is not the way any operation works, at the end of the day. And what happens with that is then you are underestimating the costs of some particular remedial actions. And I see that in this particular feasibility study. I think that is unfair and unrealistic, and you end up skewing the results of your feasibility study and the effectiveness of different remedial actions when you do that.

Question, also, on principal threat waste. How do you determine the levels of different contaminants so that they constitute a principal threat waste? What procedure do you use?

Mr. STANISLAUS. Let me get back to you regarding that. But the whole purpose of the draft feasibility is actually to entertain——

Mr. SCHRADER. The reason I ask that particular question—again, sorry to interrupt; I only have a limited amount of time—is that, I think that is important. What we are seeing here now is that there are low and unprecedented levels, I would argue, of determining these principal threat waste levels in this feasibility study for the Portland Harbor, and, as a result, you are doing treatments in addition to removal, in addition to capping, I mean, without any analysis as to is that treatment of this so-called principal threat waste going to give you any additional benefit.

Again, the science that I see EPA not using in this group, with this willing set of businesses wanting to step up and do the right thing without any Federal largesse, and they are being cast aside. I think it is a terrible reputation that the EPA is developing, unfortunately, in our region.

And it could drive the cost—we have heard costs of hundreds of millions of dollars. The whole defense industry, maybe a billion dollars a year. They are talking billions of dollars for this one little Superfund site. And I think that there are estimates by others that it could be in the millions to maybe hundreds of millions of dollars.

So there is a big difference, respectfully, between what EPA is looking at and the assumptions they are using that their reasonable business and scientific experts would get to to do the same amount of cleanup at the end of the day. So I appreciate you getting back to me on some of that information.

And I yield back.

Mr. STANISLAUS. Yes, I will get back to you. And I can assure you that we have discussed the science with all the stakeholders. And, in fact, we really appreciate the responsible parties stepping up. From the very beginning of the process, we looked at the scope of the science, conducted the science in an open and inclusive way, and we will continue to do so.

Mr. SHIMKUS. The gentleman's time has expired.

The chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

And I want to thank the panel for being here.

Mr. Stanislaus, I was thinking earlier, as we were talking about how many times you have testified, if this were baseball, your number of at-bats and your own base percentage would be one of the highest in the league. So I commend you for continuing to step into the batter's box. I know these are tough issues.

Mr. Whitney, I represent many of the hardworking people that are helping to clean up the former Portsmouth Gaseous Diffusion Plant in Piketon, Ohio, and many others who are dependent upon that work getting done so that they can reindustrialize that site and make it a productive, job-creating site for the people that live there.

I am shocked that the Department of Energy has now extended the deadline or the timeline for completing that cleanup approximately another 30 years. It makes absolutely no sense to me. The people who the commitments were made to, many of them could possibly be dead by the time the Department of Energy gets done doing what they committed to do.

And it is very unfortunate that, for the third year in a row, jobs are at risk because the administration has failed to request adequate funding to complete this work. The Ohio delegation has repeatedly urged the administration to present a fully funded, comprehensive plan for decontamination and decommissioning activities at the site.

Unfortunately, financial instability continues year after year. Back in May, the House of Representatives approved full funding, $213 million, for D&D operations, which surpassed the administration's request by $48 million, and yet we see this dragging-out process again.

We are ready to work with the administration and you folks again this year on funding, but we got to have a willing partner here and a commitment on the part of DOE to move this project

forward and meet the commitment, stand up and honor the promises that were made to the people of southern Ohio.

So, with that said, what are DOE's plans to address this issue?

Mr. WHITNEY. Thank you, sir.

Yes, and we are committed to the cleanup of Portsmouth, and it is unfortunate that WARN notices had to be issued at the end of August.

Our request for 2016 is actually a little bit more than the President's request for 2015 for Portsmouth, and it is about $227 million for 2016 in our request.

Unfortunately, the request, as well as the House—even though the House mark was a very large increase over the President's request—and the Senate mark did put us in a position where we had to provide funding guidance that was lower than the 2015 request.

Now, as you know, sir, on top of the $227 million request, we were able to take advantage of barter of uranium, which probably the proceeds, depending on the price of uranium at the time, is another $160 million approximately. So that is almost a $400 million investment in the——

Mr. JOHNSON. I get that. I get that. But, see, the citizens of southern Ohio, they were not party to developing the formula that determined how this was going to be funded. They were the recipient of a promise by the Federal Government and the Department of Energy. I think the Department of Energy has a responsibility, as does Congress, to work together to figure out a formula.

And I understand that the sale of uranium has caused a wrinkle, but we need to resolve the wrinkle and develop a new formula, if we have to, and not make it at the expense of the workers and the folks that live there.

So, I would urge you to take back to your leadership, at least from my perspective—and I can't speak for all of the Ohio delegation, but I feel very, very certain that they would agree—this is unacceptable, to think and ask the people of southern Ohio to wait another 30 years to trickle this process along. It is just not right.

Mr. Conger, in your written testimony, you state that DOD works together with Federal and state environmental regulatory partners to prioritize sites for cleanup based on worst first.

Would you please explain the process that DOD uses to determine which sites are the worst?

Mr. CONGER. So, generally, it is a risk-based process that is looking at the risk to human health and the environment.

Well, I say "generally." I have heard the term "risk plus." And what that means is there are other factors that we take into account, as well. If there is a low-risk site that happens to be collocated with a high-risk site, we might do them both because it is economical to do them both at the same time. So that low-risk site might be lumped in and done earlier.

But, generally, as we rack and stack this list, it is based on risk to human health and the environment.

Mr. JOHNSON. OK.

Mr. SHIMKUS. The gentleman's——

Mr. JOHNSON. Mr. Chairman, I have a lot more I could ask, and I appreciate the committee's indulgence to ask that first question, but I yield back.

Mr. SHIMKUS. And the gentleman knows that you can submit questions for the record in written form.

Mr. JOHNSON. And I will.

Mr. SHIMKUS. Thank you.

The chair now recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman.

Thanks, everybody, for coming today.

As you know, in Colorado, we not only have contaminated Federal munitions and chemical sites, but we also have legacy mines on Federal lands. And there are often questions of liability regarding the abandoned mine lands since many companies might have had those properties over the course of decades.

Of course, a prime example of this is the Gold King Mine, which we saw this summer. And you all saw this on the national news. This is what the Gold King Mine looked—this is what the Animas River looked like. Why those people are kayaking there I don't know. But the Animas River was orange as it flowed down through Durango and down into New Mexico, and Cement Creek was also turned orange.

So this is kind of the backdrop for the questions that I am going to be asking today.

I want to ask you, Mr. Stanislaus, if the EPA is going to be pursuing reimbursement from the companies that left these millions of gallons of contaminated water at Gold King Mine to pay for the remediation of the site.

Mr. STANISLAUS. Yes.

Ms. DEGETTE. That is good news to hear.

I would like to know, if there were private owners, which there were, of that site and the adjoining mine, why was the EPA cleaning up the site in the first place?

Mr. STANISLAUS. Because there was a risk identified by the State of Colorado and the stakeholders that risk be addressed immediately. Roughly about 330 million gallons on a yearly basis was going into the Animas River.

Ms. DEGETTE. And that is before it all came——

Mr. STANISLAUS. That is right.

Ms. DEGETTE [continuing]. Rushing out and turned the river orange.

Now, that site was not listed on the Superfund National Priorities List, correct?

Mr. STANISLAUS. That is right.

Ms. DEGETTE. What the National Priorities List does, it targets the cleanup of sites without viable responsibility orders, and it puts it in priority for funding. Is that right?

Mr. STANISLAUS. That is correct. It identifies those sites that have the most risk in the country. It also makes that site eligible for Superfund resources.

Ms. DEGETTE. And do you think the Gold King Mine would be a candidate for the National Priorities List?

Mr. STANISLAUS. Well, there have been discussions, and I was just in Silverton last week at the invitation of local stakeholders to continue that conversation.

Ms. DEGETTE. So the decision has not yet been made?

Mr. STANISLAUS. No. We are continuing to have those conversations.

Ms. DEGETTE. When do you think you will make that decision?

Mr. STANISLAUS. Well, again, we are engaged in that conversation. There is also kind of a technical evaluation of data, so we are in the process of evaluating that right now——

Ms. DEGETTE. Right. So would that, like, 6 months? Twelve months?

Mr. STANISLAUS. I will get back to you on the timeframe.

Ms. DEGETTE. That would be really fabulous. And what would be even better is if we had a very short timeframe to get that on the list.

There are thousands and thousands of mines, as all of you have said, that are similar to the Gold King Mine across the West.

Mr. Gomez, in your testimony, you note that both the USDA and DOI have significant inventories of abandoned mines that could potentially pose threats to health and the environment. Do either of these agencies have a system for prioritizing their most contaminated mines?

Mr. GOMEZ. Yes. They go through the process of identifying the mines, and they are making their own assessments of it. But we didn't look specifically at that process. We were looking mainly at identification. Those are good questions that we can follow up with.

Ms. DEGETTE. I would appreciate that, because it is my understanding that they actually don't have a priority list, and that would be really helpful.

Gold King is the perfect example of a mine where everybody knew it needed to be cleaned up. But I think everybody could now stipulate that, in hindsight, the preparation for the cleanup, the recognition of the seriousness of the problem was grossly underestimated.

Now, based on GAO's analysis of contaminated sites on USDA and DOI properties, do each of the agencies have sufficient environmental expertise of their own to plan and oversee cleanup of the sites?

Mr. GOMEZ. So, for those cases that do end up on the National Priorities List, EPA does oversee those sites——

Ms. DEGETTE. Right.

Mr. GOMEZ [continuing]. And so EPA does provide that expertise.

Ms. DEGETTE. To USDA and DOI?

Mr. GOMEZ. Do they have that expertise?

Ms. DEGETTE. Right.

Mr. GOMEZ. Again, we weren't looking at the workforce of the agencies to see if they have the expertise or not. But, as I said, for those sites that end up on the National Priorities List, EPA is doing the oversight.

Ms. DEGETTE. OK.

Now, I want to ask you, Mr. Stanislaus, it is my understanding that USDA and DOI don't want mines that were Superfund cleanup to be listed on the National Priorities List. Does that impede the EPA's ability to oversee and ensure proper cleanup at the sites?

Mr. STANISLAUS. Our only ability to oversee sites is for those sites that are on the National Priorities List.

Ms. DEGETTE. OK. So if they are not on that list, then we can't clean them up.

Mr. STANISLAUS. That is right.

Ms. DEGETTE. So I guess, Mr. Gomez, I would like you to supplement your testimony to see what, in fact, the position of those two agencies is of putting their mine sites on that list.

Mr. SHIMKUS. Would the gentlelady yield for a second?

Ms. DEGETTE. I would be happy to.

Mr. SHIMKUS. So we invited——

Ms. DEGETTE. I am out of time.

Mr. SHIMKUS. That is right. I am the chairman.

Ms. DEGETTE. Yes. Seize control.

Mr. SHIMKUS. We invited Department of Interior to testify. They, in essence, said they wouldn't. They did say they would submit a statement. They only sent it when we reminded them that they said they would send a statement. So maybe some followup on the Department of Interior might be appropriate.

Ms. DEGETTE. Yes, Mr. Chairman, I think that is a great idea. Because if you can't list these on the list, then the agency with the expertise to clean it up won't be able to do it.

Thank you.

Mr. SHIMKUS. And maybe they will reconsider coming back next time we ask them.

So thank you.

Now I would like to recognize my colleague from North Carolina, Mr. Hudson, for 5 minutes.

Mr. HUDSON. Thank you, Mr. Chairman.

And I would like to thank the witnesses for being here today. Really appreciate your testimony. It has been very informative and helpful for me to understand this process.

I would like to start with Mr. Conger.

What percentage of DOD's hazardous waste facilities have been identified on the Federal Facilities Hazardous Waste Compliance Docket as required in CERCLA?

Mr. CONGER. So I can't tell you what percentage of our sites are actually on the docket because we track all of them as a larger group. The 39,000 sites that I have talked about during my testimony include those on the docket, but we have far more sites than those that are on the docket.

A couple years ago, we did a docket scrub. We went and looked at our database and EPA's database, the docket, to make sure that everything that needed to be on the docket was on there. And so we have done that reconciliation. But I couldn't tell you, out of all the sites we have, exactly how many are on the docket.

Mr. HUDSON. Would you mind following up with us with that number?

Mr. CONGER. Sure.

Mr. HUDSON. I would appreciate it.

What percentage of DOD sites that you have identified have the required preliminary assessments been completed on?

Mr. CONGER. Well, out of the 39,000 sites that we have, I think only 4 percent of them are still at the preliminary assessment and site inspection phase. The breakout between PA and SI we can get

you, but it is—so I would say, by definition, it is less than 4 percent are still in that phase.

Mr. HUDSON. Great.

For those that you have completed the required assessment, have copies of those assessments and other relevant information been provided to the State and the EPA?

Mr. CONGER. Absolutely.

Mr. HUDSON. Great.

What is the typical, on average, length of time it takes for DOD to complete one of these initial assessments?

Mr. CONGER. So I actually pulled the data out of the database because I saw that question coming. We have an average of 1.6 years for a preliminary assessment out of all the sites that we have cataloged.

Mr. HUDSON. So you would disagree with the assessment from GAO that it takes 2 to 3 years typically for——

Mr. CONGER. It can. So that is an average, 1.6 years. There are sites that are longer, without a doubt. It depends on the complexity of the analysis that you are doing. So some are shorter, some are much shorter; some are longer.

Mr. HUDSON. Gotcha.

If Congress were to establish a deadline, as has been recommended, for completion of these assessments, would that help DOD complete these in a more timely fashion? Or do you think it is more just a factor of the complexity of——

Mr. CONGER. I think it is a factor of the complexity. I don't have a lot of folks coming back to us and saying that we are dragging our heels. We work out these schedules with the regulators, and so I think everybody is comfortable with the pace at which we are doing the assessments.

Mr. HUDSON. Well, thank you for that.

Mr. CONGER. But if there are specific cases, we can look into it.

Mr. HUDSON. Thank you.

Mr. Whitney, I will sort of go down the same line of questioning with you. What percentage of DOE hazardous sites are actually on the list?

Mr. WHITNEY. Yes, sir. I think it is a little easier for DOE because we do know the universe of our facilities, and, while the sites are large, the number of sites are not. And so all of our sites have been through that preliminary assessment process, the site evaluation process, and they either ended up on the National Priorities List or they did not.

Mr. HUDSON. Great.

Well, for those that have gone through and completed the assessments, have copies of those been passed on to the relevant agencies—state, EPA, others?

Mr. WHITNEY. Yes, sir.

Mr. HUDSON. Great.

And how many of the sites that have been assessed required some level of cleanup?

Mr. WHITNEY. Well, the 21 sites that were on the National Priorities List, all of those sites required some level of cleanup—has 11 of those sites remaining.

Mr. HUDSON. OK. I appreciate that.

Mr. Stanislaus, going back to the issue of abandoned mines on Federal properties, how does EPA oversee the cleanup of these if they are on Federal property?

Mr. STANISLAUS. Only those sites that rise to the level of being Superfund sites. So we have 130 on the National Priorities List that are abandoned mine sites, but, clearly, there are a lot more, as other individuals talked about it. So we would only have oversight of just that small number.

Mr. HUDSON. OK. Well, of those, does EPA have a sense of how much contaminated mine drainage discharges from these mines on a daily, weekly, monthly, yearly basis?

Mr. STANISLAUS. I don't have that information in front of me, but I can see what I can pull together.

Mr. HUDSON. OK. Thank you.

What steps do the various Federal agencies routinely take to prevent and stop these types of discharges?

Mr. STANISLAUS. Yes, I really can't speak for the other agencies. When we get involved, we would do what are called removal actions, which are shorter-term actions, to abate some of the most immediate risks and, when there are longer-term risks, looking at listing on the National Priorities List for a more permanent solution.

Mr. HUDSON. Gotcha.

What are the impacts on stream water quality from these discharges?

Mr. STANISLAUS. Well, tremendous. In the Gold King Mine, about 330 million gallons were being emitted into the Animas River on a yearly basis. Basically, for a 10-mile distance on the Animas River, you basically have severely degraded water quality. Basically, fish survival was seriously compromised.

Mr. HUDSON. So who is legally responsible for cleaning up when you have these discharges on these sites that you have the jurisdiction over?

Mr. STANISLAUS. Well, when we have jurisdiction over that, we oversee the work. Sometimes it is by responsible parties, sometimes through Superfund resources. And the complexity of these sites makes it quite challenging.

Mr. HUDSON. So who is legally responsible?

Mr. STANISLAUS. Oh, who is legally responsible? I am sorry. If there is a responsible party, meaning the owner or operator, that party would be responsible for doing the cleanup.

Mr. HUDSON. Great. Thank you.

And, Mr. Chairman, I believe I have exceeded my time.

Mr. SHIMKUS. Your time has expired.

Just a point of clarification. This Executive Order 12580 is an answer to why we have—and Mathy is talking about items on the National Priorities List, but there are many that aren't on there. And then the question is, who is responsible for those? That is part of the hearing.

Now I recognize the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman and Ranking Member, for holding the hearing on Superfund today.

I represent a district in Houston, and, up until recent redistricting, my district bordered in east Harris County one of the more

significant Superfund sites, on the San Jacinto waste pits bordering our district. At that time, Congressman Poe had the site, but I got the downstream.

And EPA was very quick in putting it on the Superfund site. The site has been polluted since the mid-1960s. It was a dumping ground for paper mill waste, and it was left undetected for over 40 years. The local community is very concerned about the fears it may negatively be impacting human health and the environment.

My questions are, Mr. Stanislaus, what opportunities will communities in east Harris County have to give input on the proposed cleanup plans?

Mr. STANISLAUS. Opportunity throughout the process.

Mr. GREEN. OK.

Dioxins are the primary hazard at the waste pits, which were used during the paper production process 50 years ago. Mr. Stanislaus, has the EPA taken any action to limit the use of dioxins and similar dangerous chemicals in paper production?

Mr. STANISLAUS. Limit the use of dioxin in paper?

Mr. GREEN. Yes.

Mr. STANISLAUS. Well, that is outside of my office. I will get back to you on that.

Mr. GREEN. OK.

Does the EPA have a timetable for when the feasibility study report would be released?

Mr. STANISLAUS. Yes, I don't have that timetable, but I should note that we put in place certain measures to abate the release of dioxin from the site itself.

Mr. GREEN. And I have been there; it is encapsulating. And what happened, because of subsidence in our area over the last 50 years, those containment facilities may have been great in 1965, but the subsidence, we actually have some of those containment facilities that are below water level in the San Jacinto River. And, so far, there is different evidence that the encapping of it is working. I think the last test I showed, it is doing well.

What are the primary factors for EPA in its determination for the cleanup of waste?

Mr. STANISLAUS. The exposure and the various options to address that exposure. In some cases, we would completely clean it up. In other cases, they put a barrier to prevent further—it all depends on the factors at the site.

Mr. GREEN. Is the EPA taking under consideration the vulnerability? The site actually can be flooded because it is a tidal river, but, over my lifetime, we have also had floods coming down the river, and so it can dislodge it. Is that part of the EPA study also, the danger of a hurricane coming in or floodings upstream?

Mr. STANISLAUS. Well, typically, we would look at all those factors, but let me get back to you specifically on how we would consider that at this site.

Mr. GREEN. OK. I appreciate it. The site is now in Congressman Babin's district. It is a neighbor of mine. And we are getting him the information that we have been working on for a number of years.

These are questions for all the agencies on the panel.

How does your agency ensure that states and local communities are involved in every stage of the cleanup under your control?

Mr. CONGER. I can start.

We work closely with the state regulators. As Mathy had pointed out, a lot of our sites are overseen directly by the state regulators, so we work with them on remedies and on timetables.

We also have restoration advisory boards that we set up with local communities to make sure that everything is transparent so that they know what is going on.

It is very important for us to work with local and state stakeholders.

Mr. WHITNEY. Yes, and we have a variety of avenues to achieve that type of involvement, as well, first and foremost, the states of course being regulators on the cleanup that we do at our sites. But that relationship with the local communities and other folks in the state is also very important to us, and we have site-specific advisory boards made up of citizens of the surrounding communities around our sites.

We also provide grants to many organizations, such as ECOS, the Environmental Council of States, such as National Governors Association, the State and Tribal Government Working Group——

Mr. GREEN. I only have a few seconds. I need to get one more question in, though.

If a state preferred one cleanup remedy over another, how would the preference influence the decision over the cleanups? Would the Federal Government defer to the state agency?

Mr. WHITNEY. It truly is a tri-party. For us, it is tri-party.

Mr. GREEN. So it is a cooperative issue?

Mr. WHITNEY. Yes, sir.

Mr. GREEN. OK.

I appreciate it, Mr. Chairman. Thank you.

Mr. SHIMKUS. Let me just chime in with your last 10 seconds.

I think what we have heard is everyone views the States as a partner, but no one is required to treat the State as a partner. And that is part of what our hearing is trying to get to.

So, with that, now we would like to welcome a member of the full committee, not on the subcommittee. We welcome here to the subcommittee Mr. Luj AE1an from New Mexico.

And you are recognized for 5 minutes.

Mr. LUJ AE1AN. Thank you, Mr. Chairman, and thank the ranking member for holding this important hearing today.

As you all know, where this breach ran into was in the Third Congressional District of New Mexico, into San Juan County, into the Animas River, which flows from Colorado to New Mexico, as well as to the Navajo Nation and to our brothers and sisters out in Utah and Arizona, as well as Colorado, that were all impacted.

One of the concerns that I had as we began to learn about this issue, it wasn't through an alert from law enforcement officials, from officials that work for the Federal agencies; it was through a news feed, may have even been a Twitter feed, that our office was alerted to.

And so we need to figure this out, to make sure that when there are disasters like this that are created, created by people as op-

posed to a natural disaster, that everyone is alerted promptly and timely.

Since this incident, it appears that the State of Colorado is working to improve their communication systems to local governments, but I am not certain that we have seen what we are going to do with the EPA and, for that matter, for every Federal agency that there could be a system like this that sadly could hurt communities with a mistake that is made.

So, Mr. Stanislaus, according to an EPA memorandum, the release occurred on August 5 at 10:51 a.m. However, EPA headquarters, Region 6, and Region 9 were not notified until 11 a.m. The next morning. I just shared that my office found out through news accounts. San Juan County officials, Navajo Nation leaders, and the New Mexico Environment Department were not notified. They found out the same way that we did, is my understanding.

So that is unacceptable, and we need to fix this and learn from this. So what are we doing to improve notification procedures down to downstream communities as well as impacted communities?

One of the suggestions that I shared with Administrator McCarthy yesterday was looking to see what we could do to piggyback off of the AMBER Alert system for abducted children or to the national natural disaster alert system and weather disaster system, which notifies everyone with their mobile phones, on billboards, as everything happens. There is no reason that when something like this that tells people you can't drink water, you can't get in the water, you can't water your animals, you can't irrigate, that we can't use something like this.

So can you share a little bit with what we can do and how we might be able to work with you, with the committee, to see what we could do to work with a system like that for alerts in the future?

Mr. STANISLAUS. Sure. Immediately after the event, I issued a directive to all the regions to work with states and local communities to make sure the notification is broad.

So we currently have a notification system in place. And in the State of Colorado we had a plan in place where the State of Colorado took leadership of notifying. They in fact notified Durango and other folks, and those decisions were made to close off the water intakes.

And you are entirely correct that the notification for New Mexico, for the Navajo Nation did not occur simultaneously, and we agree we need to do a better job of that.

Mr. LUJ AE1AN. It didn't occur for days.

Mr. STANISLAUS. It occurred the next day. Yes.

And just to be clear, all the notification occurred before the spill impacted any of those areas. In fact, we were able to do pre-incident sampling before any of the impact of the spill occurred in any of those areas.

Mr. LUJ AE1AN. Ute Mountain tribal officials are the ones that reached out to their neighbors in San Juan County to say, this spill is passing us, you need to get ready for it, it is coming our way. That wasn't on the alert system that was put in place. That was one group of neighbors caring about another group of neighbors and doing their due diligence.

This was a dismal failure from a communication perspective, and we have to fix it. I hope that the urgency for this—not just here but in any other part of the country. We need to just get this right so that people know what is coming their way.

The other urgency that I would suggest is we need to make sure that we are working with all of the impacted communities to the utmost degree: both of the Ute tribes that were impacted, the Navajo Nation, the County of San Juan in New Mexico, the State of New Mexico, as well as our brothers and sisters in the other impacted States.

There has been a frustration by the leadership of the Navajo Nation, and we need to make sure that we are working closely with them, that someone is appointed to work directly with them, whether it is from Region 9 or from headquarters, so we can make sure that all of their concerns are addressed.

One of the other concerns that I have, Mr. Chairman, is, it is my understanding that the EPA's work order at the Gold King Mine site called for the construction of a holding pond to capture and treat contaminated water but that the pond was not completed before the accident. In addition, EPA Deputy Administrator Meiburg said that provisions for a worst-case scenario were not included in the work plan.

I think it is important that we understand that, that we make sure that anytime work will be done in the future that we get to the bottom of that.

And then lastly, Mr. Chairman, as we get an assessment of all of the abandoned mines that we have in the United States and especially those that are in a condition like the Gold King Mine, where a breach or an accident can impact the water supply for millions of people in surrounding communities, we need to have a real conversation in the Congress to make sure that we are working to fix this.

Because this devastated not just the irrigators and water users in the district that I represent and in Colorado but entire water drinking supplies in the States of Nevada and Arizona that could be impacted depending on the kind of a breach that we see.

So just, Mr. Chairman, I look forward to working with you. Thank you for the time today. And I look forward to submitting some additional questions to the record and getting some responses.

Thank you, sir.

Mr. STANISLAUS. I would just add, I share those concerns. And we did an internal review, and the pond, in fact, was constructed, from my internal review team. But again, we were there because of the very risk that was identified in the work plan, that the State of Colorado and local stakeholders identified that risk. That is the reason that EPA was brought in to address that risk.

Mr. LUJ AE1AN. But, Mr. Chairman, if I may just there, if the pond was built, why didn't it work? Something didn't work. With the amount of stuff that came out of that, which was originally estimated at 1 million gallons and then it turned out to be 3 million gallons, someone didn't do their job. If something was built, then it wasn't built the right way, because the breach still went and all this garbage still went into the river.

So those are questions that we do need to get to the bottom of. If something was constructed, clearly it did not meet the means of what should have been done with an assessment of what was being held behind there. It didn't work. So, according to that mitigation plan, something needs to get better here, and that is what we are just trying to get to the bottom of.

Thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman's time has expired. And we thank him for his attendance, look forward to working with him.

Again, the open question submissions for the record for about 10 business days, if you could get back to us. And I think there will probably be some followups.

We appreciate it. We have a ways to go. And I do want to encourage you to stay tuned for the second panel, because I do think there is a—states are, in many cases, good partners and work well, but there are some concerns, as I think we will hear in the next panel.

So I appreciate it. And, with that, we will recess this hearing for the second panel next week.

[Whereupon, at 10:42 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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October 8, 2015

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20004

Dear Assistant Administrator Stanislaus:

Thank you for appearing before the Subcommittee on Environment and the Economy on Friday, September 11, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, October 22, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

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

DEC 1 1 2015

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable John Shimkus
Chairman
Committee on Energy and Commerce
Subcommittee on Environment and Economy
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the September 11, 2015, hearing titled "Oversight of Federal Facility Cleanup under CERCLA."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at Levine.Carolyn@epa.gov or (202) 564-1859.

Sincerely,

[redacted]

Nichole Distefano
Acting Associate Administrator

Enclosure

House Committee on Energy and Commerce
Subcommittee on Environment and Economy
Hearing on

"Oversight of Federal Cleanup under CERCLA"

September 11, 2015

Questions from Chairman John Shimkus to Assistant Administrator Mathy Stanislaus

1. Does EPA have difficulty in monitoring and evaluating individual federal agency compliance with the Federal Agency Hazardous Waste Compliance Docket requirements under CERCLA?

   A. If so, please identify the difficulties and identify what tools EPA needs, if any, to assure effective and consistent compliance among the various federal agencies in implementing the Hazardous Waste Compliance Docket requirements?

Response: Section 120(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket (Docket) which contains information reported to the EPA by federal facilities that manage hazardous waste. Those federal facilities that have submitted information under the following reporting requirements are added to the Docket:

i. All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C.A. § 6937] and subsection (b) of section 120 of CERCLA regarding any federal facility and notice of each subsequent action taken under this chapter with respect to the facility;
ii. Information submitted by each department, agency, or instrumentality of the United States under section 3005 and 3010 of such the Solid Waste Disposal Act [42 U.S.C.A § 6925, 6930];
iii. Information submitted by the department, agency, or instrumentality under section 103 of CERCLA.

The EPA relies on notifications by other federal agencies in order to maintain the Docket. If the EPA learns about a site that has had a release, or threat of a release, of hazardous substances through other means, the EPA has the authority to list the site on the Docket. Executive Order 12580, Superfund Implementation, delegated the authority to conduct federal facility assessments, and when warranted the site inspections, to the other federal agencies.

The EPA is required to assure a preliminary assessment is conducted for each facility on the Docket. Subsequently, the EPA has responsibility to evaluate the assessments and determine

the priorities among releases and, further, if the site meets the criteria for the National Priorities List (NPL). CERCLA section 120(d)(3) requires that evaluation and listing be completed in accordance with a reasonable schedule. The EPA has determined that completed federal facility assessment reports should be submitted within 18 months of inclusion on the Docket (OSWER Directive 9200.3-15-1G-Z).

2. What oversight role does EPA have with respect to cleanup at non-NPL sites where another federal agency has asserted lead agency authority under EO 12580?

Response: The EPA exercises lead agency authority pursuant to the National Contingency Plan, rather than Executive Order 12580. In general, the EPA does not have explicit oversight authority under CERCLA at non-NPL federal facilities. Typically, the states oversee cleanup at these facilities. EO 12580 gives the EPA CERCLA cleanup authorities that are not otherwise granted to other federal agencies. Consequently, consistent with section 120, the EPA exercises its CERCLA oversight authorities at federal facility cleanup sites on the NPL, and can exercise its emergency removal action authority at non-Department of Defense or non-Department of Energy facilities.

3. What authority does EPA have to compel assessment or cleanup of federal facilities that are not on the NPL?

Response: In general, the EPA does not have explicit CERCLA authority to unilaterally compel assessment or cleanup of CERCLA federal facilities that are not on the NPL where another agency has asserted lead cleanup authority. The EPA does have authority to issue a unilateral administrative order under CERCLA Section 106, but that action is limited to instances of imminent and substantial endangerment to public health, welfare, or the environment and requires concurrence from the Attorney General. The EPA may also issue emergency orders pursuant to section 7003 of the Resource Conservation and Recovery Act and section 1431 of the Safe Drinking Water Act. These orders provide the state with the ability to enforce actions against the federal agencies.

4. Is there consistent compliance with CERCLA among the federal agencies which are conducting cleanups at non-NPL sites and which have asserted lead agency authority?

   A. What tools, if any, does EPA need to assure effective and consistent compliance among the various federal agencies which have asserted lead agency to conduct cleanups at non-NPL sites?

Response: The authority to conduct cleanup of contaminated sites that are not listed on the NPL is delegated to other federal agencies pursuant to EO 12580. At non-NPL sites, where another federal agency has asserted lead agency authority, the EPA generally does not track federal agency CERCLA response actions.

5. Is there a conflict or potential conflict when a federal agency is a potentially responsible party because it caused the contamination or is the owner of the contaminated property

but that same agency is also the lead agency for making cleanup decisions? Please explain why or why not.

Response: No. The response action at federal facilities is governed by the same standards and requirements regardless of whether the lead response agency is also a potentially responsible party. Moreover, at NPL sites, the EPA jointly selects the remedy with the lead federal agency, and states have the opportunity to concur. If the EPA and the other federal agency are unable to agree on the final remedy, CERCLA gives the EPA the sole, non-delegable authority to make the final remedy selection. At non-NPL sites, the state generally exercises oversight responsibility.

6. Does EPA oversee the assessment and cleanup of abandoned mines on federal property?

   A. Does EPA oversee the assessment and cleanup of abandoned mines on non-federal property?

Response: Abandoned mine lands exist across private, federal, state, and/or tribal lands. A number of federal statutes address environmental contamination issues associated with abandoned mine lands, and federal statutory authority is spread among several agencies with no one agency having overall statutory responsibility. Six federal agencies, including the Department of the Interior's Bureau of Land Management, Fish and Wildlife Service, Office of Surface Mining Reclamation and Enforcement, and National Park Service, the Department of Agriculture's Forest Service and the Environmental Protection Agency may be authorized to fund the cleanup of some of these hardrock mine sites based upon jurisdiction, need, and state concurrence.

While the EPA has the authority to oversee the assessment and cleanup of abandoned mines on non-federal property and NPL sites, other federal agencies maintain oversight of assessment and cleanup work on federal lands. The Superfund National Priorities List (NPL) Mining and Mineral Processing website contains information about mining sites and mineral processing in general. The information can be found at: http://www2.epa.gov/superfund/abandoned-mine-lands-site-information-1.

Questions from the Honorable Frank Pallone to Assistant Administrator Mathy Stanislaus

During the second day of this hearing, state witnesses testified about potential issues related to agencies that are responsible parties asserting "Lead Agency Authority"

1. Can you explain what this authority is and why your Department makes use of this authority?

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

2. Does this authority apply differently at National Priority List sites and non-NPL sites?

According to state testimony, assertions of lead agency authority were more of a problem before 2008.

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

3. Please explain what your Department has done since 2008 to improve working relationships with states when your Department leads cleanups?

Similarly, state witnesses expressed concerns that, primarily before 2008, agency claims of sovereign immunity frustrated cleanup efforts.

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

4. When and why might your Department or employees of your Department claim sovereign immunity in the context of Superfund cleanups?

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

5. What has your Department done since 2008 to limit claims of sovereign immunity?

Lastly, state witnesses at the second day of this hearing raised the concern that priorities for cleanups are not always determined based on risk. Obviously, limitations on resources for cleanup make prioritization necessary and important.

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

6. What factors does the Department consider in making funding decisions for cleanups across your inventory of contaminated sites?

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

7. What does your Department do to ensure that contaminated sites posing serious or immediate threats to human health are cleaned up quickly and effectively?

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

8. How does your Department ensure that budget requests will be sufficient to cover pressing cleanup needs?

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

9. Did the 2013 government shutdown affect your ability to meet your cleanup obligations on schedule?

Response: The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

Questions from the Honorable Richard Hudson to Assistant Administrator Mathy Stanislaus

1. How much contaminated mine drainage discharges from abandoned mines on federal lands on:
   A daily basis?
   A weekly basis?
   A monthly basis?
   An annual basis?

Response: The EPA does not maintain this level of detailed information regarding abandoned mines listed on the NPL. The EPA defers to the federal land management departments/agencies to address this request.

Questions from the Honorable Robert Latta to Assistant Administrator Mathy Stanislaus

1. Do you believe that section 120 of CERCLA is evidence that Congress intended to waive sovereign immunity under CERCLA and to require federal agencies to comply with State cleanup laws, including state land use controls?

Response: Federal agencies must comply with CERCLA as provided in section 120(a)(1). With respect to the applicability of state laws to federal agencies, CERCLA section 120(a)(4) provides that certain state laws respecting the control or abatement of hazardous substances apply at NPL sites that are currently owned or operated by the United States. State land use controls may apply at such federal facilities if they qualify as applicable relevant and appropriate requirements (ARARs) under CERCLA section 121(d) and provided they are consistent with section 120(a)(1).

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

DEC 1 1 2015

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable Paul Tonko
Ranking Member
Committee on Energy and Commerce
Subcommittee on Environment and Economy
House of Representatives
Washington, D.C. 20515

Dear Congressman Tonko:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the September 11, 2015, hearing titled "Oversight of Federal Facility Cleanup under CERCLA."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at Levine.Carolyn@epa.gov (202) 564-1859.

Sincerely,

[redacted]

Nichole Distefano
Acting Associate Administrator

Enclosure

House Committee on Energy and Commerce
Subcommittee on Environment and Economy
Hearing on

"Oversight of Federal Cleanup under CERCLA"

September 11, 2015

Questions from Chairman John Shimkus to Assistant Administrator Mathy Stanislaus

1. Does EPA have difficulty in monitoring and evaluating individual federal agency compliance with the Federal Agency Hazardous Waste Compliance Docket requirements under CERCLA?

   A. If so, please identify the difficulties and identify what tools EPA needs, if any, to assure effective and consistent compliance among the various federal agencies in implementing the Hazardous Waste Compliance Docket requirements?

Response: Section 120(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket (Docket) which contains information reported to the EPA by federal facilities that manage hazardous waste. Those federal facilities that have submitted information under the following reporting requirements are added to the Docket:

i. All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C.A. § 6937] and subsection (b) of section 120 of CERCLA regarding any federal facility and notice of each subsequent action taken under this chapter with respect to the facility;
ii. Information submitted by each department, agency, or instrumentality of the United States under section 3005 and 3010 of such the Solid Waste Disposal Act [42 U.S.C.A § 6925, 6930];
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FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

October 8, 2015

Mr. Mark Whitney
Principal Deputy Assistant Secretary
for Environmental Management
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Whitney:

Thank you for appearing before the Subcommittee on Environment and the Economy on Friday, September 11, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, October 22, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

Department of Energy
Washington, DC 20585

December 3, 2015

The Honorable John Shimkus
Chairman
Subcommittee on Environment and Economy
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

On September 11, 2015, Mark Whitney, Principal Deputy Assistant Secretary for Energy Environment, testified regarding "Oversight of Federal Facility Cleanup under CERCLA."

Enclosed are answers to questions submitted by Representative Frank Pallone and you to complete the hearing record.

If you need any additional information or further assistance, please contact me or Fahiye Yusuf, Office of Congressional and Intergovernmental Affairs at (202) 586-5450.

Sincerely,

Janine Benner
Deputy Assistant Secretary for House Affairs
Congressional and Intergovernmental Affairs

Enclosures

cc: The Honorable Paul Tonko
Ranking Member

QUESTIONS FROM CHAIRMAN JOHN SHIMKUS

Q1. At the hearing on September 11, 2015 you testified that for Department of Energy sites, while DOE is the lead agency for cleanup, that DOE does not have a regulatory role. Will you please explain what you mean by that?

Please explain what it means when DOE asserts "lead agency authority" pursuant to E.O 12580.

A1. Executive Order (E.O.) 12580 delegates the President's response authorities to Federal agencies for releases at facilities under their jurisdiction. As provided in E.O. 12580, the President delegated to the Secretary of Energy Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) "lead agency" authority at the Department of Energy (DOE) sites to conduct removal actions, remedial actions, and "any other response measures" consistent with the National Contingency Plan (NCP).

The NCP is the set of implementing regulations for conducting CERCLA response actions. The NCP describes the steps that responsible parties (including Federal agencies) must follow in reporting and responding to situations in which hazardous substances, pollutants, or contaminants are released into the environment. The NCP, and associated guidance, establishes the criteria, methods, and procedures the Environmental Protection Agency (EPA) uses to characterize sites, evaluate response alternatives, and select and implement a remedy. The national goal described in the NCP is to select remedies that are protective of human health and the environment, that remain protective over time, comply with applicable, or relevant and appropriate requirements, and that minimize untreated waste.

There are two basic types of response actions related to environmental cleanup: remedial actions and removal actions. Removal actions may be initiated at the (DOE) sites when DOE determines the immediate or interim action will prevent, minimize, stabilize, or eliminate a risk to health or the environment. If DOE identifies a threat of exposure to or migration of hazardous substances, pollutants, or contaminants that poses a risk to health, welfare, or the environment, DOE is authorized by CERCLA and the NCP to exercise its removal action authority to implement an appropriate response to the risks posed.

As the lead cleanup agency, while DOE can implement removal actions, consistent with CERCLA requirements, without prior EPA or state approval, DOE shares its planned removal responses with the states and EPA, in accordance with the provisions of the interagency agreement where included. While removal actions address short-term, immediate risk to human health and the environment, remedial actions are long-term actions to achieve a permanent remedy. EPA (and the states in most situations) have authority to comment on and approve (jointly sign with DOE) remedial action decision documents (e.g. Records of Decisions). At National Priorities List (NPL) sites, EPA must concur in a DOE Record of Decision for remedial action.

Q1b. You noted in your testimony that the regulatory role is assumed by EPA and/or the States. Does that mean then that EPA and/or the state has control over cleanup decisions?

A1b. Cleanup assessments and decisions take place within site-specific regulatory frameworks that involve DOE, EPA, and the majority of states. At CERCLA sites listed on the NPL, DOE, EPA and most states enter into interagency agreements, otherwise known as Federal Facility Agreements (FFAs). The FFAs are multi-party agreements which govern investigation and remediation activities, the roles and responsibilities of each party, cleanup schedules, enforceable milestones, and penalties. FFAs form the basis of DOE's cleanup program for CERCLA NPL sites. As part of the cleanup decision process, EPA jointly selects remedies with DOE and the state has an opportunity to concur on remedies memorialized in Records of Decision (RODs). EPA and the state provide oversight over federal agency activities at NPL sites in accordance with the NCP and the environmental compliance agreements. Also, as noted, at NPL sites, EPA must concur in a DOE Record of Decision for remedial action. If the parties cannot agree on a remedy, CERCLA gives the EPA Administrator the authority to select the remedy.

Q1c. When DOE asserts "lead agency authority" please explain how assessment and cleanup decisions are made.

A1c. DOE is designated as the lead CERCLA agency by the President at DOE sites. As noted above, for CERCLA removal actions, although DOE can proceed without direct EPA or state approvals, the Department may share our response actions with the EPA and the state

in advance of undertaking them. Remedial actions are taken with the approval of EPA and the state.

Remedial actions involve routine collaboration with both EPA and the states throughout the entire remedy selection process, beginning with the development of work plans to characterize a site, through the evaluation of viable response alternatives to any identified problems, to final remedy selection. If differences of opinion arise between one or more of the three agencies on how best to address an identified problem (e.g., contaminated groundwater), DOE must negotiate a viable solution acceptable to all before proceeding with the remedial action (i.e., unlike removal actions, DOE is not authorized to conduct remedial actions without both EPA and state support/concurrence).

Q2. Does DOE allow EPA or a State to provide regulatory oversight over DoE cleanups at non-NPL sites when DoE invokes lead agency authority under E.O. 12580?

A2. Most non-NPL DOE sites (e.g., Los Alamos, Portsmouth) are regulated by states under their RCRA authorities. EPA involvement at non-NPL DOE sites occurs on a case-by-case basis. DOE may elect to use its CERCLA authority to address contamination at non-NPL sites. DOE also has the option of using its Atomic Energy Act (AEA) authorities to address legacy contamination at DOE sites. The latter requires DOE to follow the National Environmental Policy Act (NEPA) requirements prior to initiating a cleanup under its AEA authority.

Q3. Of the DOE sites being cleaned up under CERCLA, for what percentage of sites has DOE asserted lead agency authority under E.O. 12580?

A3. DOE has "lead agency" response authority at all DOE sites to conduct CERCLA response actions via Presidential delegation.

Q3a. What is the role of EPA at those sites?

A3a. At NPL sites, EPA generally serves as the lead oversight entity, although it may defer portions of the site eligible for RCRA corrective action to the state as part of a FFA, as was done for some portions of the Hanford site.

Q3b. What is the role of the States at those sites?

A3b. DOE coordinates with EPA and the state at NPL sites regardless if the state is a signatory to a FFA. As such, states are involved throughout the entire investigation and remedy selection process. If portions of an NPL site are subject to RCRA, states can serve as the lead authority under RCRA for those portions of the site eligible for deferral to RCRA corrective action.

Q4. Does DOE recognize and comply with State land use control laws and regulations related to environmental cleanups? Why or why not?

A4. As required by CERCLA, DOE must comply with all applicable or relevant and appropriate state and federal regulatory requirements (ARARs) unless one of the ARAR waivers provided under CERCLA or another legal restriction justify non-compliance with a requirement. CERCLA section 121(d)(4) specifies the circumstances under which a lead response agency can select a remedial action that is not equivalent to a legally applicable or relevant and appropriate requirement. The six ARAR waivers provided by CERCLA include: 1. Interim measures; 2. Equivalent Standard of Performance; 3. Greater Risk to Health and the Environment; 4. Technical Impracticability; 5. Inconsistent Application of State Standard Waiver; and 6. Fund-Balancing.

Q4a. Does DOE view State land use control laws related to environmental cleanups, such as those requiring restrictive covenants and restrictive notices, as being applicable and relevant and appropriate requirements under CERCLA? Why or why not?

A4a. To the extent that state laws are determined to constitute an ARAR, DOE must either meet the substantive portion(s) as an ARAR(s) or justify a waiver. Based on the EPA Guidance on ICs/LUCs, state Uniform Environmental Covenants Act (UECA) laws are not considered ARARS except for the state of Colorado. Even if they are not ARARs, DOE may negotiate the incorporation of environmental covenants into environmental compliance agreements on a case-by-case basis as appropriate.

Q5. How does DOE address and comply with State environmental laws that are more stringent than Federal laws?

A5. Under CERCLA, state environmental laws that are more stringent than Federal laws and meet the standards to constitute an ARAR must be complied with unless a CERCLA ARAR waiver is justified.

Q5a. Does DOE recognize a role for State environmental agencies in determining what State requirements are applicable and relevant and appropriate to DOE's environmental assessment and cleanup activities?

A5a. Yes

Q6. Does DOE invoke sovereign immunity with respect to cleanups under CERCLA:

Q6a. With respect to deciding what is an Applicable or Relevant and Appropriate Requirement (ARAR)?

A6a. Generally no, provided that the ARAR, or any other requirement based on state law, is valid and can be applied consistent with CERCLA's waiver of sovereign immunity.

Q6b. With respect to determining the appropriate cleanup standards?

A6b. Same response to Question 6.A. Generally no, provided that the ARAR, or any other requirement based on state law, is valid and can be applied consistent with CERCLA's waiver of sovereign immunity.

Q6c. With respect applying land use controls or restrictions?

A6c. Same response to Question 6.A. Generally no, provided that the ARAR, or any other requirement based on state law, is valid and can be applied consistent with CERCLA's waiver of sovereign immunity.

Q7. Explain the role State environmental agencies have in the decision-making process regarding prioritization, assessments and cleanups conducted by DOE for sites not listed on the NPL?

A7. On a case-by-case basis, states may have the lead role in the decision-making process regarding prioritization, assessments and cleanups for hazardous waste under RCRA regardless of whether the site is listed on the NPL. When the site is not listed on the NPL, authorized states take the lead for Subtitle C cleanup and waste management.

Q7a. Your written testimony noted that jointly-arrived at decisions with the States are memorialized in Federal Facilities Agreements. What is DOE's policy regarding changes to the FFAs? Are changes made unilaterally?

A7a. DOE cannot make changes to the FFAs unilaterally. Should any party to the FFA like to revisit the terms of the agreement, that party would follow the change process as articulated in the subject FFA.

Q7b. What about decisions where there is not a jointly-arrived at decision and DOE disagrees with a recommendation made by the State – what happens then?

A7b. In the event a jointly-arrived at decision cannot be achieved, any party to the interagency agreement can invoke the dispute resolution procedures stipulated in the requisite FFA. These procedures include an informal dispute process and if the matter is still not resolved, it is followed by formal dispute process that involves a sequential elevation in agency management until a resolution is reached.

Q7c. Does DOE have any non-NPL sites where EPA provides oversight or other assistance? If so, what kind of assistance does EPA provide?

A7c. Yes. EPA maintains some role at all DOE sites; however, for those not listed on the NPL EPA typically defers to the State to provide oversight support. On a case-by-case basis when a state, potentially responsible party (PRP), or community requests EPA assistance, EPA will provide guidance on interpretation of regulations or assistance in evaluating the efficacy of remediation techniques as they have been applied at other sites. In the case of the Energy Technology Engineering Center site, for example, EPA conducted a radiological survey.

Q8. DOE's written testimony identified the cleanup at Rocky Flats as a success story, what was different about that cleanup that made it successful?

A8. The Rocky Flats cleanup program benefitted from a contract structured to provide incentives for a higher level of performance, a community that did not view the site as a long-term enterprise for economic prosperity, a land use determination made by Congress, and designation as a closure site, which provided funding priority. In addition, DOE was able to find off-site recipients to take those wastes that could not be left on site for protectiveness

reasons, an atypical situation in that challenges often exist with respect to off-site waste disposition.

Q8a. Is Rocky Flats a model for other cleanups why or why not?

A8a. Creating all the aspects that made Rocky Flats a success would be challenging at other cleanup sites.

QUESTIONS FROM REPRESENTATIVE FRANK PALLONE

Q1. During the second day of this hearing, state witnesses testified about potential issues related to agencies that are responsible parties asserting "Lead Agency Authority"

Can you explain what this authority is and why your Department makes use of this authority?

A1. Executive Order 12580, among other things, delegates CERCLA response authorities to DOE and DOD subject to the requirements of CERCLA section 120, which provide for EPA oversight at NPL sites. The "lead agency" and its authorities are determined in accordance with the NCP. In the case of a release of a hazardous substance, pollutant, or contaminant, where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of Department of Defense (DOD) or Department of Energy (DOE), then DOD or DOE will be the lead agency. Where the release is on, or the sole source of the release is from, any facility or vessel under the jurisdiction, custody, or control of a federal agency other than EPA, the USCG, DOD, or DOE, then that agency will be the lead agency for remedial actions and removal actions other than emergencies. The federal agency maintains its lead agency responsibilities whether the remedy is selected by the federal agency for non-NPL sites or by EPA and the federal agency or by EPA alone under CERCLA section 120. The lead agency will consult with the support agency, if one exists, throughout the response process. DOE uses its mandated authority to effect protective cleanups at sites under its jurisdiction, custody, and control. Within the DOE's jurisdiction, the Office of Environmental Management (EM) delegates environmental authorities to field offices in accordance with the EM's Standing Operating Policies and Procedures.

DOE developed a joint policy with EPA in 1995 to use its removal authority — specifically use of the non-time critical removal action process for almost all of its decommissioning work on buildings. This policy was established primarily because the range of approaches to decommission a building are very limited and thus does not require the same level of rigor or breadth of an assessment as when addressing contaminated media (e.g., soil and ground water). Other than buildings, DOE historically has used its removal action authorities to quickly address an imminent risk (e.g., providing communities with an

alternate water supply when their drinking water has been impacted by contamination emanating from a DOE site) or expedite the removal of contamination where the need and type of action required is relatively straight forward (excavating discreet areas of surficial contamination such as removal of lead contaminated soils around a shooting range).

Q2. Does this authority apply differently at National Priority List sites and non-NPL sites?

A2. DOE's authorities among NPL and non-NPL sites are different only in the sense that at non-NPL sites, EPA does not have a formal role. Nonetheless, DOE involves both the states and EPA in these actions even though the delegated lead agency authority does not require the DOE to do so.

Q3. According to state testimony, assertions of lead agency authority were more of a problem before 2008. Please explain what your Department has done since 2008 to improve working relationships with states when your Department leads cleanups?

A3. DOE is committed to working collaboratively and constructively with its the various response action oversight authorities and local communities. We routinely engage response action oversight authorities, early and often, to discuss priorities, report progress, and find solutions to challenges faced by our program. EM posts much of its cleanup data and status on its webpage and hosts numerous public meetings with response action authorities, state and local elected officials, tribal nations, and other stakeholders to solicit feedback on cleanup decisions. We also have site specific advisory boards, established under the Federal Advisory Committee Act, that provide advice to our program.

Q4. Similarly, state witnesses expressed concerns that, primarily before 2008, agency claims of sovereign immunity frustrated cleanup efforts. When and why might your Department or employees of your Department claim sovereign immunity in the context of Superfund cleanups?

A4. This question is difficult to answer because it is highly speculative outside the context of a particular case or matter. To the best of our knowledge, in litigation on behalf of the Department of Energy, the United States Department of Justice has argued that sovereign immunity has not been waived for the cleanup of facilities that it does not currently own or operate.

Q5. What has your Department done since 2008 to limit claims of sovereign immunity?

A5. DOE has been working constructively with the states and EPA under its environmental compliance agreements to reach mutually agreed upon cleanup remedies.

Q6. What factors does the Department consider in making funding decisions for cleanups across your inventory of contaminated sites?

A6. Funding decisions take into consideration what is needed to be protective of human health, the environment, and worker safety; applicable laws (e.g., CERCLA, RCRA, NEPA); site-specific Federal Facility Agreements inclusive of enforceable cleanup milestone schedules: work program commitments (e.g. multi-year construction contracts such as Hanford's Waste Treatment Plant); risk-profiles of cleanup activities and projected reductions of risk; safety surveillance and maintenance, infrastructure, and site security needs; Congressional input; community input and technology development. When determining cleanup schedules, input from all relevant state and federal authorities plays an important role as they have a significant voice in defining enforceable milestone schedules.

Q7. What does your Department do to ensure that contaminated sites posing serious or immediate threats to human health are cleaned up quickly and effectively?

A7. DOE addressed immediate threats to human health known at the time early in our cleanup program's history. Serious hazards at sites remain (e.g., liquid wastes in tanks, residual contamination in groundwater), DOE is taking steps to address these hazards, such as implementing access controls prevent potential exposures to surrounding communities. Where immediate threats arise, DOE will work with our regulators to develop an appropriate response to mitigate the treat as quickly and effectively as possible.

Q8. How does your Department ensure that budget requests will be sufficient to cover pressing cleanup needs?

A8. EM continues to pursue its cleanup objectives safely within a framework of regulatory compliance commitments and best business practices. The rationale for cleanup prioritization is based on achieving the highest risk reduction benefit per radioactive content (activities focused on wastes that contain the highest concentrations of radionuclides and sites with the highest radionuclide contamination). When developing its budget requests,

the Department takes many variables into account, including prioritization of cleanup activities as follows:

- Activities to maintain a safe, secure, and compliant posture in the EM complex
- Radioactive tank waste stabilization, treatment, and disposal
- Spent (used) nuclear fuel storage, receipt, and disposition
- Special nuclear material consolidation, stabilization, and disposition
- Transuranic and mixed/low-level waste disposition
- Soil and groundwater remediation
- Excess facilities deactivation and decommissioning

Q9. Did the 2013 government shutdown affect your ability to meet your cleanup obligations on schedule?

A9. No, the FY 2014 government shutdown did not affect our ability to meet cleanup obligations on schedule.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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October 8, 2015

Mr. John Conger
Performing the Duties of Assistant Secretary
of Defense for Energy, Installations and Environment
U.S. Department of Defense
1000 Defense Boulevard
Washington, DC 20301

Dear Mr. Conger:

Thank you for appearing before the Subcommittee on Environment and the Economy on Friday, September 11, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, October 22, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

CHARRTS No.: HECCEE-01-001
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Shimkus
Witness: Acting ASD(EI&E) Conger
Question: #1

Executive Order 12580 Authority Sites

Question: Of the DoD sites being cleaned up under CERCLA, for what percentage of sites has DoD asserted lead agency authority under E.O. 12580? What is the role of EPA at those sites? What is the role of the States at those sites?

Answer: The Department of Defense (DoD) asserts lead agency authority under Executive Order (E.O.) 12580 at 100% of sites being cleaned up under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). CERCLA regulations define a "lead agency" as "the agency that provides the [personnel] to plan and implement response action under the NCP." (40 CFR 300.5) This section goes on to state that DoD "will be the lead agency" for releases on or from DoD facilities. DoD conducts its cleanup program with oversight from state and/or Federal environmental regulators.

The U.S. Environmental Protection Agency (EPA) is the lead regulator at those DoD sites identified on the CERCLA National Priorities List (NPL). EPA defines a lead regulator as "the primary regulatory agency (i.e., EPA or the state) that oversees cleanup work at an operable unit, an area of contamination, or an NPL site under the applicable regulatory framework."[1] As lead regulator, EPA is responsible for National Priorities List (NPL) site listings and deletion decisions, and its CERCLA oversight obligations. Additionally, pursuant to 42 U.S.C. sections 120(e)(1) and (2), EPA is responsible for entering into an Interagency Agreement (IAG) with the lead agency.

States are involved throughout the investigation and selection of cleanup action, and we engage them through Restoration Advisory Boards (RABs). CERCLA section §121 (f) summarizes the "substantial and meaningful involvement by each State" in cleanups undertaken in that state. This includes state participation in long-term planning for all cleanup activities within the state, and an opportunity for states to review and comment on investigations and planned cleanup activities. DoD seeks state involvement throughout the decision-making process.

Also, states are often a signatory to IAGs. DoD conducts its cleanup program in collaboration with state and Federal environmental regulators, and believes the regulators are fully involved in the decision-making process at DoD sites.

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[1] Office of Solid Waste and Emergency Response Memorandum, "Lead Regulator Policy for Cleanup Activities at Federal Facilities on the National Priorities List," November 6, 1997

CHARRTS No.: HECCEE-01-002
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Shimkus
Witness: Acting ASD(EI&E) Conger
Question: #2

Federal vs. State Environmental Laws

Question: How does DoD address and comply with State environmental laws that are more stringent than Federal laws? Does DoD recognize a role for State environmental agencies in determining what State requirements are applicable and relevant and appropriate to DoD's environmental assessment and cleanup activities?

Answer: As provided in CERCLA §121(d), State environmental laws that are more stringent than federal laws may be "Applicable or Relevant and Appropriate Requirements" (ARARs) that are attained during a DoD cleanup. CERCLA ARAR determinations are made on a site-specific basis, consistent with CERCLA regulations. DoD recognizes the important role the State environmental agencies play in determining what State requirements are ARARs, as identified in CERCLA §121(d).

CHARRTS No.: HECCEE-01-003
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Shimkus
Witness: Acting ASD(EI&E) Conger
Question: #3

State Environmental Agencies

Question: What role do State environmental agencies have in the decision-making process regarding environmental assessments and cleanups conducted by DoD?

Answer: CERCLA section §121(f) summarizes the "substantial and meaningful involvement by each State" in cleanups undertaken in that state. This includes state participation in long-term planning for all cleanup activities within the state, and an opportunity for states to review and comment on investigations and planned cleanup activities. States also have a key role in identifying State cleanup standards during selection of a CERCLA cleanup action, and State acceptance of the proposed cleanup action is one of the nine CERCLA remedy selection criteria. DoD seeks State involvement throughout the decision-making process at its sites under the Defense Environmental Restoration Program (10 U.S.C. 2700 et. seq). We take proactive steps to identify and address issues of concern with the States. States are offered opportunities to comment on a site's relative risk and provide vital information that DoD uses to prioritize and sequence sites for cleanup. At National Priorities List sites, States have the opportunity to be signatories on Interagency Agreements.

CHARRTS No.: HECCEE-01-004
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Shimkus
Witness: Acting ASD(EI&E) Conger
Question: #4

Sovereign Immunity

Question: Does DoD invoke sovereign immunity with respect to cleanups under CERCLA: A. With respect to deciding what is an Applicable or Relevant and Appropriate Requirement (ARAR)? B. With respect to determining the appropriate cleanup standards? C. with respect to applying land use controls or restrictions?

Answer: CERCLA §120(a)(4) directs DoD to comply with the majority of state laws concerning removal and remedial action. DoD does not "invoke" sovereign immunity, but rather complies with state laws as directed by Congress. Some state laws fall within the criteria set by Congress in CERCLA section 120, while others do not. DoD instead follows the additional criteria in CERCLA section 121 and CERCLA regulations when determining what state requirements are CERCLA cleanup standards, also called ARARs. These decisions are made on a site-specific basis, and the state has a key role in identifying what State requirements should be viewed as ARARs. DoD is not aware of an example where DoD has explained that a state requirement is not an ARAR due to the waiver of sovereign immunity in CERCLA section 120. While CERCLA ARAR decisions are made on a site-specific basis, in general, DoD does not view State land use control laws (e.g., restrictive covenants or notices) as an ARAR. CERCLA §121(d) provides the criteria used to identify ARARs and, in general, these State land use control laws do not qualify as a cleanup standard (i.e., "a level or standard of control for such hazardous substance").

CHARRTS No.: HECCEE-01-005
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Shimkus
Witness: Acting ASD(EI&E) Conger
Question: #5

Federal Facilities Agreements

Question: With respect to federal facilities agreements, what is DoD's policy with respect to making changes to the agreements? Does DoD unilaterally make changes to a federal facilities agreement? Is the length of time for completion of the cleanup something DoD would change in a federal facility agreement?

Answer: DoD does not unilaterally make changes to a federal facility agreement (FFA). DoD's policy requires any changes to the FFA should be mutually agreed to between the signatories of the FFA. The FFA establishes the framework and schedule to for conducting cleanup activities at the site and is only changed if all parties mutually agree.

CHARRTS No.: HECCEE-01-006
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Shimkus
Witness: Acting ASD(EI&E) Conger
Question: #6

Formerly Used Defense Sites

Question: How many formerly used defense sites are known to exist in the United States and its Territories? How many have been reported to the Hazardous Waste Compliance Docket? Why haven't more of these sites been added to the docket?

Answer: There are 2, 710 Formerly Used Defense Sites (FUDS) properties in the United States and its Territories.

DoD does not report or track FUDS on the Docket because FUDS properties were transferred from DoD control prior to the creation of the Docket.

While CERCLA section 120(c) creates the Federal Agency Hazardous Waste Compliance Docket, this Docket lists sites on federal facilities where a federal agency stores, treats, or disposes of hazardous waste under Resource Conservation and Recovery Act (RCRA); or a hazardous substance release has been reported under CERCLA section 103. This information is provided by the current federal property owner regarding their existing operations and activities at the site. Since FUDS properties were transferred from DoD control prior to the creation of the Docket, DoD does not report FUDS properties to the Docket. Being listed on the Federal Agency Hazardous Waste Compliance Docket is not a precondition to being addressed through DoD's cleanup program. The Defense Environmental Remediation Program (DERP), which includes FUDS, follows the CERCLA cleanup process and thus investigates and responds to DoD releases of CERCLA hazardous substances or pollutants and contaminants.

CHARRTS No.: HECCEE-01-007
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #7

Lead Agency Authority

Question: During the second day of this hearing, state witnesses testified about potential issues related to agencies that are responsible parties asserting "Lead Agency Authority". Can you explain what this authority is and why your Department makes use of this authority?

Answer: Several CERCLA provisions, such as section 104 on response actions, are vested directly with the President. The President delegated these CERCLA cleanup authorities under Executive Order 12580, Superfund Implementation (January 23, 1987, as amended) to DoD at DoD facilities. CERCLA regulations, referred to as the National Contingency Plan (NCP), define a "lead agency" as "the agency that provides the [personnel] to plan and implement response actions under the NCP. EPA, the USCG, another federal agency, or a state ...may be the lead agency for a response action." (40 CFR 300.5). This same section of the NCP states that DoD "will be the lead agency" for releases on or from DoD facilities. As the lead agent, DoD has the responsibility to investigate, fund, and implement response actions for releases on or from DoD facilities and must comply with the requirements of CERCLA, the NCP, and the Defense Environmental Restoration Program law (10 U.S.C. 2700 et.seq.). Federal and/or state environmental regulatory agencies provide oversight of DoD cleanup activities.

CHARRTS No.: HECCEE-01-008
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #8

Lead Agency Authority

Question: During the second day of this hearing, state witnesses testified about potential issues related to agencies that are responsible parties asserting "Lead Agency Authority". Does this authority apply differently at National Priority List sites and non-NPL sites?

Answer: CERCLA regulations define a "lead agency" as "the agency that provides the [personnel] to plan and implement response action under the NCP." (40 CFR 300.5) This section goes on to state that DoD "will be the lead agency" for releases on or from DoD facilities. DoD conducts its cleanup program with oversight from state and/or Federal environmental regulators. At NPL sites, the U.S. Environmental Protection Agency primarily provides the regulatory oversight of DoD response actions. At non-NPL sites, the State environmental agency primarily provides the regulatory oversight of DoD response actions.

CHARRTS No.: HECCEE-01-009
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #9

DoD Relationships with the States

Question: According to state testimony, assertions of lead agency authority were more of a problem before 2008. Please explain what your Department has done since 2008 to improve working relationships with states when your Department leads cleanups?

Answer: Since 2008 DoD has initiated and participated in the following groups to communicate and collaborate with the states and other stakeholders; provide greater transparency of the Department's cleanup program; and exchange views, information, and advice regarding important cleanup issues: Defense and State Memorandum of Agreement (DSMOA) Steering Committee, Formerly Used Defense Sites (FUDS) Forum Working Group, and Munitions Response Dialogue (MRD).

The DSMOA Steering Committee is composed of DoD representatives and state environmental regulators, and focuses on issues related to managing and implementing the DSMOA program. The Steering Committee also addresses overarching issues impacting cleanup progress, such as complex groundwater sites.

The FUDS Forum Working Group provides a mechanism for improving FUDS program-related communication between DoD representatives and state environmental regulators. Participants focus on issues impacting cleanup of FUDS (e.g., rights of entry).

The MRD includes DoD and EPA representatives, state environmental regulators, and Federal land managers. The Department established the MRD to focus on issues related to cleaning up DoD's munitions response sites.

Additionally, DoD has strengthened its cleanup policies and guidance to reinforce the importance of working with states during the cleanup process. Department representatives also participate in meetings and events with state regulatory organizations, such as the Association of State and Territorial Solid Waste Management Officials, the Environmental Council of the States, and the Interstate Technology Regulatory Council. During these meetings and events DoD listens to the states' concerns, communicates with them about the Department's cleanup initiatives and policies, and gathers information to improve its cleanup policies and procedures.

CHARRTS No.: HECCEE-01-010
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #10

DoD Relationships with the States

Question: Similarly, state witnesses expressed concerns that, primarily before 2008, agency claims of sovereign immunity frustrated cleanup efforts. When and why might your Department or employees of your Department claim sovereign immunity in the context of Superfund cleanups?

Answer: CERCLA §120(a)(4) directs DoD to comply with the majority of state laws concerning removal and remedial action. DoD does not "claim" sovereign immunity, but rather complies with state laws as directed by Congress. Some state laws fall within the criteria set by Congress in CERCLA section 120, while others do not. As an example, if a state law did not concern "removal and remedial action" but instead covered aesthetics, then it would not fall within the criteria set by Congress and therefore would not fall within the waiver of sovereign immunity.

CHARRTS No.: HECCEE-01-011
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #11

Sovereign Immunity

Question: What has your Department done since 2008 to limit claims of sovereign immunity?

Answer: DoD has issued detailed guidance to help ensure a more consistent implementation of CERCLA requirements.

CHARRTS No.: HECCEE-01-012
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #12

Cleanup Priorities

Question: Lastly, state witnesses at the second day of this hearing raised the concern that priorities for cleanups are not always determined based on risk. Obviously, limitations on resources for cleanup make prioritization necessary and important. What factors does the Department consider in making funding decisions for cleanups across your inventory of contaminated sites?

Answer: The Department of Defense (DoD) uses a "worst first" approach to making funding decisions for cleanup across our inventory of contaminated sites. This means that DoD addresses sites with the highest potential risk to safety, human health, or the environment before sites posing a lesser risk. We use the Relative Rise Site Evaluation (RRSE) methodology for hazardous waste sites and the Munitions Response Site Prioritization Protocol (MRSPP) for munitions response sites to determine a site's risk relative to other sites. We also consider site-specific information and "other factors" to determine the sequence for cleaning up sites. These "other factors" include concerns expressed by stakeholders and regulators, cultural and social factors, economic factors, future mission requirements, and community redevelopment needs at Base Realignment and Closure facilities.

CHARRTS No.: HECCEE-01-013
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #13

Quick and Effective Cleanup

Question: What does your Department do to ensure that contaminated sites posing serious or immediate threats to human health are cleaned up quickly and effectively?

Answer: The Department of Defense (DoD) eliminates serious or immediate threats to human health through containment measures, removal actions, or other risk management actions. After removing or containing the immediate threat, DoD integrates the site into the cleanup program for additional investigation and cleanup activities as necessary.

CHARRTS No.: HECCEE-01-014
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #14

Sufficient Budget

Question: How does your Department ensure that budget requests will be sufficient to cover pressing cleanup needs?

Answer: Congress has provided the Department of Defense (DoD) with stable funding, which allows us to effectively prioritize, sequence, and clean up sites. DoD established goals for the cleanup program that help the DoD Components to plan, program, and budget resources in accordance with the Department's Planning, Programming, Budgeting, and Execution (PPBE) process. Effective execution of the PPBE process is essential for the DoD Components to prioritize funding to meet legal requirements. The DoD Components work with the states to develop annual work plans and schedules to ensure DoD is cleaning up sites. We spend approximately $2 billion each year on cleanup, and continue to request adequate funding to meet our requirements.

CHARRTS No.: HECCEE-01-015
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Pallone
Witness: Acting ASD(EI&E) Conger
Question: #15

Effects of a Government Shutdown

Question: Did the 2013 government shutdown affect your ability to meet your cleanup obligations on schedule?

Answer: The 2013 government shutdown had little impact on the Department of Defense's (DoD's) ability to meet its cleanup obligations on schedule. The DoD Components experienced limited issues due to the shutdown, such as delays in getting funding on contracts and awarding contracts.

CHARRTS No.: HECCEE-01-016
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Hudson
Witness: Acting ASD(EI&E) Conger
Question: #16

Hazardous Waste Compliance Docket

Question: What percentage of DoD's hazardous waste facilities have been identified on the Federal Facilities Hazardous Waste Compliance Docket as required by CERCLA? Why would a DoD site not be listed on the Docket?

Answer: Approximately 22 percent of the Department of Defense's (DoD's) hazardous waste cleanup facilities have been identified on the Federal Agency Hazardous Waste Compliance Docket as required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). While CERCLA section 120(c) creates the Federal Agency Hazardous Waste Compliance Docket, this Docket lists sites on federal facilities where a federal agency stores, treats, or disposes of hazardous waste under RCRA; or a hazardous substance release has been reported under CERCLA section 103. DoD provides this information regarding their existing operations and activities. If a DoD facility does not meet one of these statutory requirements, it is not reported to the Docket. Being listed on the Federal Agency Hazardous Waste Compliance Docket is not a precondition to being addressed through DoD's cleanup program. DoD follows the CERCLA cleanup process and thus investigates and responds to DoD releases of CERCLA hazardous substances or pollutants and contaminants.

CHARRTS No.: HECCEE-01-017
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Latta
Witness: Acting ASD(EI&E) Conger
Question: #17

State Land Use Control Laws

Question: Does DoD recognize and comply with State land use control laws and regulations related to environmental cleanups? Why or why not?

Answer: DoD recognizes and considers State Land Use Control laws and regulations as part of cleanup implementation, and complies if they are applicable to the site circumstances at a DoD facility. Sometimes DoD is unable under Federal law to comply with a portion of a State Land Use Control laws (e.g., restrictive covenants) on an active military installation if it provides the State a real property interest or the right to enforce a specific land use on federal jurisdiction property. DoD attempts, in those relatively rare instances where it cannot comply with the letter of a state land use control law, to comply with the spirit.

CHARRTS No.: HECCEE-01-018
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Latta
Witness: Acting ASD(EI&E) Conger
Question: #18

State Land Use Control Laws

Question: Does DoD view State land use control laws related to environmental cleanups, such as those requiring restrictive covenants and restrictive notices, as being applicable and relevant and appropriate requirements under CERCLA? Why or why not?

Answer: While CERCLA "Applicable or Relevant and Appropriate Requirements" (ARARs) decisions are made on a site-specific basis, in general, DoD does not view State Land Use Control laws (e.g., restrictive covenants or notices) as an ARAR. CERCLA §121(d) provides the criteria used to identify ARARs and, in general, these State Land Use Control laws do not qualify as a cleanup standard (i.e., "a level or standard of control for such hazardous substance").

CHARRTS No.: HECCEE-01-019
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congresswoman DeGette
Witness: Acting ASD(EI&E) Conger
Question: #19

BRAC I-IV Sites

Question: For the purposes of these questions, Construction Complete is defined as any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; or EPA has determined that the response action should be limited to measures that do not involve construction. The closest equivalent terminology under DoD cleanup would be Last Remedy In Place (LRIP), as identified through the EPA-DoD Goal Harmonization Project. How many sites were closed under BRAC I-IV? Of those sites, how many have achieved construction completion of all environmental cleanup? What was the median length of time for site cleanup to be reach construction completion at BRAC I- IV sites?

Answer: As Congresswoman DeGette states, the U.S. Environmental Protection Agency's site-level Construction Complete is roughly equivalent to the Department of Defense's installation-level Last Remedy in Place (LRIP). Accordingly, DoD has closed 210 installations that were part of Base Realignment and Closure (BRAC) rounds I-IV.

One hundred forty-five (69 percent) of the installations closed under BRAC rounds I-IV have achieved Construction Complete/LRIP.

The median length of time for the 145 installations to reach Construction Complete/LRIP was 5.6 years. Additionally, the average length of time for the 145 installations to reach Construction Complete/LRIP was 8.9 years.

CHARRTS No.: HECCEE-01-020
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congresswoman DeGette
Witness: Acting ASD(EI&E) Conger
Question: #20

BRAC V Sites

Question: For the purposes of these questions, Construction Complete is defined as any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; or EPA has determined that the response action should be limited to measures that do not involve construction. The closest equivalent terminology under DoD cleanup would be Last Remedy In Place (LRIP), as identified through the EPA-DoD Goal Harmonization Project. How many sites were closed under BRAC V? Of those sites, how many have achieved construction completion of all environmental cleanup? B. What was the median length of time for cleanup to be completed at BRAC V sites completion of the cleanup?

Answer: As Congresswoman DeGette states, the U.S. Environmental Protection Agency's site-level Construction Complete is roughly equivalent to the Department of Defense's installation-level Last Remedy in Place (LRIP). Accordingly, DoD has closed 31 installations that were part of Base Realignment and Closure (BRAC) round V.

Fourteen (45 percent) of the installations closed under BRAC round V have achieved Construction Complete/LRIP.

The median length of time for the 14 installations to reach Construction Complete/LRIP was 10.8 years; this includes a median length of 4.4 years to complete the preliminary assessment and site inspection (PA/SI) phases, a median length of 4.7 years to complete the remedial investigation and feasibility study (RI/FS) phases, and a median length of 6.6 years to complete cleanup phases. Additionally, the average length of time for the 14 installations to reach Construction Complete/LRIP was 14.6 years; this includes an average length of 8.7 years to complete the PA/SI phases, an average length of 8.9 years to complete the RI/FS phases, and an average length of 8.8 years to complete cleanup phases.

CHARRTS No.: HECCEE-01-021
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congresswoman DeGette
Witness: Acting ASD(EI&E) Conger
Question: #21

BRAC Site Cleanup

Question: For the purposes of these questions, Construction Complete is defined as any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; or EPA has determined that the response action should be limited to measures that do not involve construction. The closest equivalent terminology under DoD cleanup would be Last Remedy In Place (LRIP), as identified through the EPA-DoD Goal Harmonization Project. For BRAC sites that are not cleaned up yet, what stage of the cleanup process are they at? Please provide a list of each BRAC site and stage of cleanup it is in (investigation through construction completion).

Answer: Eighty-two Base Realignment and Closure (BRAC) installations have not achieved Construction Complete/Last Remedy in Place (LRIP). The Department of Defense is in various stages of the cleanup process at the 6,944 sites on these installations: 435 sites (6 percent) are in study phases; 170 sites (2 percent) are in active cleanup phases leading up to the Remedy in Place (RIP) milestone, which occurs when the cleanup system at a site is constructed and operational; and 6,339 sites (91 percent) have achieved the RIP milestone.

Please refer to the spreadsheet "BRAC Installations that have not Achieved Construction Complete-LRIP.xlsx" for a list of the 82 BRAC installations that have not achieved Construction Complete/LRIP. This spreadsheet provides the number and percentage of sites that are in the study and cleanup phases and that have achieved RIP at each installation.

DoD Base Realignment and Closure Installations that have not Achieved Construction Complete at all Sites

DoD Component	Installation Name	BRAC Round	Number of Sites	Number of Sites in Study	Percentage of Sites in Study	Number of Sites in Cleanup	Percentage of Sites in Cleanup	Number of Sites at Construction Complete	Percentage of Sites at Construction Complete
Army	ALABAMA AAP	I	39	1	3%	0	0%	38	97%
Army	ARTHUR MACARTHUR USARC	V	1	1	100%	0	0%	0	0%
Army	CAMP BONNEVILLE	IV	24	0	0%	1	4%	23	96%
Army	DEVENS RESERVE TRAINING FACILITY	II	78	1	1%	2	3%	75	96%
Army	FORT GEORGE G MEADE	I	15	1	7%	1	7%	13	87%
Army	FORT GILLEM	V	11	5	45%	1	9%	5	45%
Army	FORT MCCLELLAN	IV	130	11	8%	14	11%	105	81%
Army	FORT MCPHERSON	V	9	4	44%	1	11%	4	44%
Army	FORT MONMOUTH	III	35	19	54%	0	0%	16	46%
Army	FORT MONROE	V	30	12	40%	13	43%	5	17%
Army	FORT ORD	II	68	13	19%	3	4%	52	76%
Army	FORT RITCHIE	IV	6	0	0%	1	17%	5	83%
Army	FORT SHERIDAN	I	71	1	1%	1	1%	69	97%
Army	FORT WINGATE DEPOT ACTIVITY	I	48	14	29%	0	0%	34	71%
Army	KANSAS ARMY AMMUNITION PLANT	V	17	0	0%	3	18%	14	82%
Army	LETTERKENNY ARMY DEPOT	IV	39	0	0%	2	5%	37	95%
Army	OAKLAND ARMY BASE	IV	15	3	20%	0	0%	12	80%
Army	PUEBLO CHEMICAL DEPOT	I	57	12	21%	9	16%	36	63%
Army	RIVERBANK ARMY AMMUNITION PLANT	V	6	0	0%	2	33%	4	67%
Army	SAVANNA DEPOT ACTIVITY	IV	142	33	23%	2	1%	107	75%
Army	SENECA ARMY DEPOT ACTIVITY	IV	85	5	6%	0	0%	80	94%
Army	SIERRA ARMY DEPOT	IV	12	0	0%	1	8%	11	92%
Army	STRATFORD ARMY ENGINE PLANT	IV	4	2	50%	0	0%	2	50%
Army	TOOELE ARMY DEPOT	III	29	0	0%	1	3%	28	97%
Army	UMATILLA CHEMICAL DEPOT	I	118	0	0%	1	1%	117	99%
Army	USARC NIAGARA FALLS (AMSA 5)	V	2	1	50%	0	0%	1	50%
Navy	ADAK NAS	IV	97	0	0%	1	1%	96	99%
Navy	AGANA NAS	III	39	1	3%	0	0%	38	97%
Navy	ALAMEDA NAS	III	43	6	14%	3	7%	34	79%
Navy	BRUNSWICK NAS	V	14	4	29%	1	7%	9	64%
Navy	CECIL FIELD NAS	III	34	1	3%	0	0%	33	97%
Navy	CONCORD NWS	V	23	11	48%	0	0%	12	52%
Navy	CROWS LANDING NALF	II	9	0	0%	1	11%	8	89%

DoD Base Realignment and Closure Installations that have not Achieved Construction Complete at all Sites

DoD Component	Installation Name	BRAC Round	Number of Sites	Number of Sites in Study	Percentage of Sites in Study	Number of Sites in Cleanup	Percentage of Sites in Cleanup	Number of Sites at Construction Complete	Percentage of Sites at Construction Complete
Navy	DAVISVILLE NCBC	II	25	1	4%	1	4%	23	92%
Navy	EL TORO MCAS	III	29	2	7%	1	3%	26	90%
Navy	MARE ISLAND NSY	III	52	16	31%	0	0%	36	69%
Navy	MOFFETT FIELD NAS	II	35	0	0%	2	6%	33	94%
Navy	PUERTO RICO NAVACT	IV	43	11	26%	6	14%	26	60%
Navy	PUGET SOUND NS	II	11	1	9%	0	0%	10	91%
Navy	SAN DIEGO NTC	III	7	1	14%	0	0%	6	86%
Navy	TREASURE ISLAND NS	III	36	7	19%	3	8%	26	72%
Navy	TREASURE ISLAND NS HUNTERS PT ANNEX	II	70	1	1%	5	7%	64	91%
Navy	WILLOW GROVE NAS	V	5	0	0%	2	40%	3	60%
Air Force	AFRL MESA	V	1	1	100%	0	0%	0	0%
Air Force	BERGSTROM AFB	II	236	1	0%	2	1%	233	99%
Air Force	BROOKS CITY-BASE	V	70	1	1%	0	0%	69	99%
Air Force	BUCKLEY ANNEX	V	6	2	33%	0	0%	4	67%
Air Force	CARSWELL AFB	II	13	1	8%	0	0%	12	92%
Air Force	CASTLE AFB	II	375	2	1%	0	0%	373	99%
Air Force	CHANUTE AFB	I	292	6	2%	10	3%	276	95%
Air Force	EAKER AFB	II	35	1	3%	0	0%	34	97%
Air Force	ENGLAND AFB	II	231	2	1%	5	2%	224	97%
Air Force	FOUR LAKES COMM AIR GUARD STATION	V	1	1	100%	0	0%	0	0%
Air Force	GALENA FOL	V	51	39	76%	0	0%	12	24%
Air Force	GEN B MITCHELL	V	15	1	7%	0	0%	14	93%
Air Force	GENTILE AFS	III	48	1	2%	0	0%	47	98%
Air Force	GEORGE AFB	I	216	21	10%	0	0%	195	90%
Air Force	GRISSOM ARB	II	26	2	8%	0	0%	24	92%
Air Force	HOMESTEAD	III	16	1	6%	0	0%	15	94%
Air Force	K.I. SAWYER AFB	III	149	2	1%	0	0%	147	99%
Air Force	KELLY AFB	IV	738	3	0%	2	0%	733	99%
Air Force	LORING AFB	II	85	1	1%	0	0%	84	99%
Air Force	LOWRY AFB	II	46	1	2%	0	0%	45	98%
Air Force	MARCH	III	58	1	2%	0	0%	57	98%
Air Force	MATHER AFB	I	125	1	1%	0	0%	124	99%
Air Force	MCCLELLAN AFB	IV	338	119	35%	58	17%	161	48%

DoD Base Realignment and Closure Installations that have not Achieved Construction Complete at all Sites

DoD Component	Installation Name	BRAC Round	Number of Sites	Number of Sites in Study	Percentage of Sites in Study	Number of Sites in Cleanup	Percentage of Sites in Cleanup	Number of Sites at Construction Complete	Percentage of Sites at Construction Complete
Air Force	MYRTLE BEACH AFB	II	194	1	1%	0	0%	193	99%
Air Force	NEWARK AFB	III	15	1	7%	0	0%	14	93%
Air Force	NORTON AFB	I	206	1	0%	0	0%	205	100%
Air Force	O'HARE IAP ARS	IV	48	1	2%	0	0%	47	98%
Air Force	ONIZUKA AS	IV	7	1	14%	0	0%	6	86%
Air Force	ONTARIO IAP AGS	IV	9	1	11%	0	0%	8	89%
Air Force	PEASE AFB	I	83	1	1%	0	0%	82	99%
Air Force	PLATTSBURGH AFB	III	322	4	1%	5	2%	313	97%
Air Force	REESE AFB	IV	78	1	1%	2	3%	75	96%
Air Force	RICHARDS-GEBAUR AFB	II	61	1	2%	0	0%	60	98%
Air Force	RICKENBACKER ANGB	II	82	1	1%	0	0%	81	99%
Air Force	ROME RESEARCH SITE	III	749	1	0%	1	0%	747	100%
Air Force	ROSLYN ANGB	IV	43	1	2%	0	0%	42	98%
Air Force	TED STEVENS INTERNATIONAL AIRPORT	V	58	1	2%	0	0%	57	98%
Air Force	WILLIAMS AFB	II	82	2	2%	0	0%	80	98%
Air Force	WURTSMITH AFB	II	73	3	4%	0	0%	70	96%
		Totals:	**6,944**	**435**	**6%**	**170**	**2%**	**6,339**	**91%**

Source: end of FY2014 KBCRS data

Print Date: 11/9/2015

CHARRTS No.: HECCEE-01-022
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Cárdenas
Witness: Acting ASD(EI&E) Conger
Question: #22

Groundwater Remediation

Question: What is the Department doing to develop new technologies for groundwater remediation?

Answer: DoD invests in groundwater remediation technologies through the Strategic Environmental Research and Development Program (SERDP) and the Environmental Security Technology Certification Program (ESTCP). Together SERDP and ESTCP conduct basic and applied research, advanced technology development, and demonstration and validation. Current efforts in groundwater remediation are focused on (1) so-called complex or recalcitrant sites for which no current technology solution exists, including large dilute plumes, fractured bedrock, and source zones in complex geological environments that cause persistent groundwater plumes, (2) long-term effects of treatment technologies, (3) long-term site management, and (4) contaminants of emerging regulatory concern.

CHARRTS No.: HECCEE-01-023
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Cárdenas
Witness: Acting ASD(EI&E) Conger
Question: #23

Remediation for Perchlorate Contamination

Question: Does the Department have any ongoing activities aimed at improving remediation for perchlorate contamination?

Answer: Strategic Environmental Research and Development Program (SERDP) and Environmental Security Technology Certification Program (ESTCP) have had extensive investments spanning more than a decade in the sampling, treatment, bioremediation, natural attenuation, and ecotoxicity of perchlorate, as well as in diagnostic technologies to trace it sources. This work is concluding and no new work is necessary. The cleanup community is already using the improved diagnostic and sampling technologies to identify sources of perchlorate as well as the treatment technologies developed.

CHARRTS No.: HECCEE-01-024
Hearing Date: September 16, 2015
Committee: HECCEE
Member: Congressman Cárdenas
Witness: Acting ASD(EI&E) Conger
Question: #24

Groundwater Remediation

Question: How can affected communities make use of the technological advancements DOD discovers?

Answer: On sites for which the DoD has management responsibility, environmental remediation is performed as a contracted service. These contracts incorporate new technology as it is demonstrated and becomes available. Beyond that, Strategic Environmental Research and Development Program (SERDP) and Environmental Security Technology Certification Program (ESTCP) make available a wide variety of training products including guidance documents, best-practices manuals, and on-line training that are available to anyone on the SERDP/ESTCP web site, www.serdp-estcp.org. Science developed in SERDP and ESTCP is published in the primary peer-reviewed literature.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

October 8, 2015

Mr. J. Alfredo Gomez
Director
Natural Resources and Environment
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Gomez:

Thank you for appearing before the Subcommittee on Environment and the Economy on Friday, September 11, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, October 22, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

September 11, 2015
House Subcommittee on Environment and the Economy Hearing:
"Oversight of Federal Facility Cleanup under CERCLA"
Questions for the Record
J. Alfredo Gómez, Director, Natural Resources and Environment

The Honorable John Shimkus

1. **Your testimony at the September 11, 2015 hearing stated that the Departments of Agriculture and Interior have identified thousands of contaminated sites but that their inventory, particularly for abandoned mines, is incomplete and unreliable. What should the Department of Agriculture and the Department of the Interior do to ensure that their inventories—especially the inventory of abandoned mines—are complete and reliable?**

   GAO Response:

   In our January 2015 report, *Hazardous Waste: Agencies Should Take Steps to Improve Information on USDA's and Interior's Potentially Contaminated Sites,* GAO-15-35, (Washington, D.C.: Jan. 16, 2015), we found that the U.S. Department of Agriculture (USDA) and the Department of the Interior (Interior) have identified many contaminated and potentially contaminated sites, but neither agency has a complete inventory. We recommended that to ensure that USDA has the information needed to better identify potentially contaminated sites--particularly abandoned mines--on properties it manages and, thereby, help minimize possible risks to human health and the environment, the Secretary of Agriculture should direct the heads of the department's land management agencies to develop plans and procedures for completing their inventories of potentially contaminated sites.

   We also reported Interior's Bureau of Land Management (BLM) had identified over 30,000 abandoned mines that were not yet assessed for contamination, and this inventory was not complete. In addition, we found that the reliability of BLM's inventory of abandoned mines has been a long-standing concern. In 2005, Interior's Office of Inspector General (OIG) reported that BLM's national inventory of abandoned mines was incomplete, inaccurate, and inconsistent. In addition, the OIG found that the BLM field office staff responsible for abandoned mines was not identifying or entering known, high-priority abandoned mine sites into the inventory database. Many of the sites listed in the database were obtained from old Bureau of Mines data that was never verified by site visits. Given the limited funds available, the OIG noted that it was important that the inventory include current and credible information needed for program management of significant sites. On this basis, the OIG recommended that BLM validate existing inventory data and develop procedures for ongoing data collection to ensure that data in the inventory is complete, accurate, and consistent. As we reported in our January 2015 report, BLM agreed with the recommendation and has made an effort to improve data quality and the inventory's completeness. For example, BLM has an ongoing effort to estimate the number of abandoned mines and mine features that have not yet been inventoried on BLM lands and the approximate cost to complete the inventory.

The Honorable Frank Pallone

During the second day of this hearing, state witnesses testified about potential issues related to agencies that are responsible parties asserting "Lead Agency Authority"

1. **Can you explain what this authority is and why your Department makes use of this authority?**

   GAO Response:

   "Lead agency authority" refers to response authorities assigned to the President by CERCLA and delegated under Executive Order 12580 to the heads of Executive departments and agencies.

2. **Does this authority apply differently at National Priority List sites and non-NPL sites?**

   GAO Response:

   For federal facilities that are not on the NPL but require a non-emergency response action, the federal agency with jurisdiction, custody, or control of the facility takes the lead on implementing the action; EPA takes the lead on emergency actions. For federal facilities that are on the NPL, agencies work with EPA under an interagency agreement to implement response actions.

According to state testimony, assertions of lead agency authority were more of a problem before 2008.

3. **Please explain what your Department has done since 2008 to improve working relationships with states when your Department leads cleanups?**

   GAO Response: NA

Similarly, state witnesses expressed concerns that, primarily before 2008, agency claims of sovereign immunity frustrated cleanup efforts.

4. **When and why might your Department or employees of your Department claim sovereign immunity in the context of Superfund cleanups?**

   GAO Response: NA

5. **What has your Department done since 2008 to limit claims of sovereign immunity?**

   GAO Response: NA

Lastly, state witnesses at the second day of this hearing raised the concern that priorities for cleanups are not always determined based on risk. Obviously, limitations on resources for cleanup make prioritization necessary and important.

6. **What factors does the Department consider in making funding decisions for cleanups across your inventory of contaminated sites?**

   GAO Response: NA

7. **What does your Department do to ensure that contaminated sites posing serious or immediate threats to human health are cleaned up quickly and effectively?**

   GAO Response:

   GAO has conducted a number of reviews on the cleanup and funding status of National Priority List sites. Most recently, in a September 2015 report, *Superfund: Trends in Federal Funding and Cleanup of EPA's Nonfederal National Priorities List Sites,* GAO-15-812, (Washington, D.C.: Sept. 25, 2015), we reported on trends in (1) the annual federal appropriations to the Superfund program and EPA expenditures for remedial cleanup activities at nonfederal sites on the NPL; and (2) the number of nonfederal sites on the NPL, the number of remedial action project completions, and the number of construction completions at nonfederal NPL sites. We found that annual federal appropriations to the Superfund program generally declined from about $2 billion to about $1.1 billion in constant 2013 dollars from fiscal years 1999 through 2013. During this same time period, the total number of nonfederal sites on the NPL annually remained relatively constant, while the number of remedial action project completions and construction completions generally declined.

8. **How does your Department ensure that budget requests will be sufficient to cover pressing cleanup needs?**

   GAO Response: NA

9. **Did the 2013 government shutdown affect your ability to meet your cleanup obligations on schedule?**

   GAO Response: NA

OVERSIGHT OF FEDERAL FACILITY CLEANUP UNDER CERCLA, DAY 2

WEDNESDAY, SEPTEMBER 16, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,
COMMITTEE ON ENERGY AND COMMERCE
Washington, DC.

The subcommittee met, pursuant to call, at 4:04 p.m., in room 2322, Rayburn House Office Building, Hon. John Shimkus, (chairman of the subcommittee) presiding.

Present: Representatives Shimkus, Harper, Pitts, Murphy, Latta, McKinley, Bucshon, Tonko, and Pallone (ex officio).

Staff Present: Will Batson, Legislative Clerk; David McCarthy, Chief Counsel, Environment and Economy; Tina Richards, Counsel, Environment; Chris Santini, Policy Coordinator, O&I; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Dylan Vorbach, Staff Assistant; Jacqueline Cohen, Minority Senior Counsel; and Alexander Ratner, Minority Policy Analyst.

Mr. SHIMKUS. We are going to call the hearing back to order. This is the second day and the second panel of a hearing that we started on Friday.

We are glad to have you here. So all the opening statements have been done, so you don't have to listen to that.

I will introduce you individually. You will have 5 minutes for your opening statement, and then your official statement is filed in the record already. And then we will go to questions. So thanks for coming.

OK. So first we have Ms. Elizabeth Dieck, director of environmental affairs for the South Carolina Department of Health and Environmental Control, on behalf of ECOS, Environmental Council of the States, who have become good friends of mine.

And we are glad that you are here. Welcome. You are recognized for 5 minutes.

STATEMENTS OF ELIZABETH DIECK, DIRECTOR OF ENVIRONMENTAL AFFAIRS, SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, ON BEHALF OF THE ENVIRONMENTAL COUNCIL OF THE STATES; BONNIE BUTHKER, CHIEF SOUTHWEST DISTRICT OFFICE, OHIO EPA, ON BEHALF OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; AND MICHAEL HOULEMARD, JR., EXECUTIVE OFFICER, FORT ORD REUSE AUTHORITY

STATEMENT OF ELIZABETH DIECK

Ms. DIECK. Thank you.

Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, good afternoon. My name is Elizabeth Dieck, and I am here today in my capacity as secretary/treasurer of ECOS, whose members are the leaders of the state and territorial environmental protection agencies. I serve as the director of environmental affairs for the South Carolina Department of Health and Environmental Control.

I appreciate the opportunity to share with you the states' views on the progress of cleanup of contaminated Federal facilities and what solutions may help address the related challenges.

ECOS commends the subcommittee for holding these hearings on the state of Federal facility cleanups in our Nation. Your attention to these sites is relevant to nearly every state and territory in our Nation where contaminated sites exist on lands managed by Federal agencies such as the U.S. Department of Defense, Department of Energy, Department of Agriculture, and the Department of the Interior.

Your oversight of these cleanups, the resources being devoted to them, and the legislative actions that can be taken to advance cleanup progress is critical, as all Americans have a collective interest in seeing the hundreds of millions of dollars we allocate to these sites annually yield the most effective results.

State environmental regulators are involved in every stage of the cleanup process, from identifying and reporting sites to staffing and overseeing cleanup efforts. We are on the front lines of answering questions from our citizens about the risks these sites may pose to their health and welfare, the scope of the contamination, the status of the cleanup progress, and the management of waste streams from building debris to more hazardous waste.

We share with you and our Federal partners a priority interest in responding to these complex sites as expeditiously as possible and, when we can, returning them to productive use.

I would first like to highlight for you where states have seen an improvement by Federal agencies in site remediation progress and in maintaining communication with us during the remediation process. This progress is due not only to thoughtful process improvements within the agencies but also in response to your oversight and legislation which passed the House last Congress and a series of GAO reports calling into question whether the Federal Government is moving expeditiously and with sufficient resources to achieve the needed results at these sites.

It is important to know that the creation of state-Federal groups has allowed states and DOD to work towards mutually acceptable cleanup solutions. In addition to these DOD sites, states have played a major role, working with DOE, in the cleanup of heavily contaminated sites affected by the nuclear weapons complex. States work closely with DOE and U.S. EPA to eliminate risks posed by these sites and oversee the cleanup of sites within the complex through Federal facility agreements, permits, and consent orders.

Collaboration between the states and Federal agencies has resulted in significant financial savings from reduced future maintenance costs that can be put towards further cleanup of sites within the complex.

ECOS commends Federal agencies on progress. However, we are concerned that there are instances where the interests of the states are not being considered as thoughtfully as needed. We have three overarching concerns.

First, the state voice in cleanup decision-making should be further strengthened.

Where States have clear regulatory and enforcement authority under legislation, much progress has been made at DOD and DOE sites across the Nation, as Mr. Whitney and Mr. Conger have testified this past week. States are concerned, however, that assertions of sovereign immunity and CERCLA-led agency authority under Executive Order 12580 by Federal agencies have led to inappropriate or inconsistent interpretations of state law and have not supported cleanup to the same standards as private parties. This hampers states' abilities to oversee effective cleanup efforts and be accountable to their citizens.

We encourage Congress to implement legislation that will acknowledge state authority and regulatory responsibility for oversight of removal and cleanup actions at current and formerly owned or operated Federal facilities and fully recognize states' regulatory roles at Federal facilities. There is no reason for Federal agency environmental cleanup activities to be subject to less oversight than private parties.

Secondly, states frequently see the Federal agencies unilaterally changing site cleanup schedules and goals, pushing ultimate completion out by years and sometimes decades and compromising the sites' ultimate usability. Federal agencies effectively change cleanup schedules by failing to seek or allocate sufficient funding for their cleanup commitments.

When a Federal agency unilaterally changes the terms of a cleanup by extending a deadline or changing other goals, the trust-based relationship breaks down, and it can lead to tension, and then it can lead to costly litigation, and that takes away from cleanup efforts. Federal agencies should consult meaningfully with states before seeking to change schedules or cleanup goals.

Third, we are concerned that the available budget determines the remedial approach at some sites, meaning we may not be implementing the most effective and appropriate cleanup approach at a given site. Due to the complexity of the contamination of these sites and the proximity of many of them to communities, states recommend that Federal agencies, in consultation with the states, determine the most appropriate remedy and then work together to

pursue sufficient and stable funding solutions to implement that remedy. Transparent statements about the actual funding necessary to achieve results are imperative.

Mr. Chairman and members of the subcommittee, I hope that my testimony today sheds some light both on the progress that has been made as well as additional areas that are in need of attention in the area of Federal facilities. I look forward to answering any questions you may have.

[The prepared statement of Ms. Dieck follows:]

E C O S

Testimony

"Oversight of Federal Facility Cleanup under CERCLA"

Subcommittee on Environment and the Economy

U.S. House of Representatives Committee on Energy and Commerce

Wednesday, September 16, 2015

by

Elizabeth A. Dieck, Secretary/Treasurer

Environmental Council of the States

Main Points

1. ECOS appreciates the Subcommittee's continued attention to the important issue of how to most effectively and expeditiously achieve cleanup of contaminated federal facilities, which are present in nearly every state and territory. State environmental agencies play a critical role in the identification, oversight, and cleanup of contaminated federal facilities.

2. While progress has been made, there is significant room for improvement in how the federal government and states work together to remediate contaminated federal facility sites and return them when possible to productive use. These include:

    a. strengthening the state voice in cleanup decisions;
    b. reducing unilateral changes to cleanup schedules by federal agencies;
    c. ensuring that the Administration and relevant federal agencies request sufficient, stable funding for site investigation, oversight, interim risk management, and clean up;
    d. establishing a baseline of all contaminated sites with risk informed prioritization for cleanup.

3. ECOS supports amendment of CERCLA to acknowledge state authority and regulatory responsibility for oversight of removal and cleanup actions at current and formerly owned or operated federal facilities, and clarification that federal facilities are subject to appropriate state regulations and not unduly shielded by sovereign immunity and lead agency authority.

Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee, good afternoon. My name is Elizabeth Dieck, and I am here today in my capacity as Secretary-Treasurer of the Environmental Council of the States (ECOS), whose members are the leaders of the state and territorial environmental protection agencies. I serve as Director of Environmental Affairs for the South Carolina Department of Health and Environmental Control. I appreciate the opportunity to share with you the states' views on the progress of the cleanup of contaminated federal facilities, and what solutions may help address the related challenges.

ECOS commends the Subcommittee for holding these hearings on the state of federal facility cleanups in our nation. Your attention to these sites is relevant to nearly every state and territory in our nation, where contaminated sites exist on lands managed by federal agencies, such as the U.S. Department of Defense (DOD), Department of Energy (DOE), Department of Agriculture (USDA), and the Department of the Interior (DOI). Your oversight of the status of these cleanups, the resources being devoted to them, and the legislative actions that can be taken to advance cleanup progress is critical – as all Americans have a collective interest in seeing the hundreds of millions of dollars we allocate to these sites annually yield the most effective results.

State environmental regulators are involved in every stage of the cleanup process, from identifying and reporting sites to staffing and oversight of cleanup efforts. We are on the front lines of answering questions from our citizens about the risks that these sites may pose to their health and welfare, the scope of contamination, the status of cleanup progress, and the management of waste streams from building debris to more hazardous material. We share with you and our federal partners a priority interest in responding to these complex sites as expeditiously as possible, and when we can, returning them to productive use.

In recent years, states have seen an improvement in the communication with us by federal agencies and in remediation progress. This progress is due not only to thoughtful process improvements within the agencies, but also in response to your oversight, legislation which passed the House of Representatives, and a series of Government Accountability Office (GAO) reports calling into question whether the federal government is moving expeditiously - and with sufficient resources - to achieve the needed results at these sites. The creation of state-federal groups, such as the Munitions Response Dialogue, the Formerly Used Defense Sites (FUDS) Forum, and the Defense State Memorandum of Agreement (DSMOA), has allowed states and DOD to work towards mutually-acceptable cleanup solutions. DSMOA allows DOD to provide funding for state oversight of cleanup activities at DOD sites.[1] Through this program, states and DOD have worked together to promote streamlined investigative techniques and implement protective remedies, saving DOD hundreds of millions of dollars and expediting remedy implementation. DOD also has made significant strides working with states to establish risk-based priorities for cleanup of contaminated sites. States support risk informed cleanups – which allows sites with higher risk and equity concerns to receive expedited attention in the face of limited human and capital resources. The FUDS Forum and Munitions Response Dialogue allow states to work with DOD to develop solutions to the unique challenges during the cleanup process of defense sites.

In addition to DOD sites, states have played a major role working with DOE in the cleanup of heavily contaminated sites affected by the "nuclear weapons complex" (the complex). State environmental administrators work closely with DOE and the U.S. Environmental Protection Agency (EPA) to eliminate the harms posed by these sites, and have overseen the cleanup of sites within the complex as established by Federal Facility Agreements (FFAs), permits, and consent orders under FFCA, CERCLA, RCRA, and other laws. Collaboration between the states and federal agencies has

[1] *See* ECOS Resolution 15-5, *On Department of Defense's Environmental Response Programs* (September 2, 2015).

created significant financial savings from reduced future maintenance costs that can be put towards further cleanup of sites within the complex.[2]

An example of how legislation has spurred cleanup is the Federal Facility Compliance Act of 1992. This legislation required DOE to inventory legacy radioactive and hazardous waste stockpiles, create a plan and schedule for treatment, and get state approval and enforcement for that plan. The Act gave states a strong voice in how these legacy waste streams would be managed. As a result, many of these stockpiles have been treated and disposed of or are on an enforceable schedule for final disposition.

While ECOS commends the federal agencies on progress, we are concerned that there are instances where the interests of the states are not being considered as thoughtfully as needed.

First, the state voice in cleanup decision making should be strengthened. Where states have clear regulatory and enforcement authority, such as under the Resource Conservation and Recovery Act cleanup process and the Federal Facility Compliance Act, much progress has been made at DOD and DOE sites across the nation, as DOD and DOE representatives have testified. States are concerned that assertions of sovereign immunity and CERCLA lead agency authority under Executive Order 12580 by federal agencies have led to inappropriate or inconsistent interpretations of state law and have not supported cleanup to the same standards as private parties. This hampers states' abilities to oversee effective cleanup efforts and be accountable to their citizens. For many years, ECOS has been seeking revision of the Executive Order to clarify that federal facilities are subject to appropriate state regulations and are not unduly shielded by sovereign immunity and lead agency authority.[3] We encourage Congress to implement legislation that will acknowledge state authority and regulatory responsibility for oversight of

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[2] *See* ECOS Resolution 10-3, *Cleanup Budgets for the Nuclear Weapons Complex* (March 24, 2010).

[3] *See* ECOS Resolution 00-9, *Clarification of CERCLA Sovereign Immunity Waiver for Federal Facilities* (April 12, 2000).

removal and cleanup actions at current and formerly owned or operated federal facilities and fully recognize states' regulatory role at federal facilities. There is no reason for federal agency environmental cleanup activities to be subject to less oversight than private parties.

Second, states frequently see the federal agencies unilaterally changing site cleanup schedules or goals, pushing ultimate completion out by years and in some cases decades and compromising the site's ultimate usability. Federal agencies unilaterally change cleanup schedules by failing to seek or allocate sufficient funding for their cleanup commitments. When a federal agency unilaterally decides to change the terms of a cleanup by extending a deadline or changing other goals, the trust-based relationship breaks down and can lead to tension and then to costly litigation, taking funds away from cleanup efforts. Federal agencies should consult meaningfully with states before seeking to change schedules or cleanup goals. This provides opportunity for states to work with our federal partners on alternatives to delay, promotes a fulsome consideration – and possible mitigation – of the impacts of delays on neighboring communities and resources, and allows evaluation of possible ultimate site uses.

Third, we are concerned that the available budget determines the remedial approach at some sites, meaning we may not be implementing the most effective and appropriate cleanup approach at a site. Due to the complexity of the contamination at these sites, and the proximity of many of them to communities, States recommend that the federal agencies, in consultation with states, determine the most appropriate remedy, and then work together to pursue sufficient and stable funding solutions to implement the remedy. Transparent statements about the actual funding necessary to achieve results are imperative.

Mr. Chairman and Members of the Subcommittee, I hope that my testimony today sheds light both on the progress that has been made, as well as additional areas that are in need of

attention in the area of federal facilities. We look forward to working with you as you study a variety of approaches to these important matters. I look forward to any questions you may have. Thank you.

* * * *

Resolution 15-5
September 2, 2015
Newport, Rhode Island

As certified by
Alexandra Dapolito Dunn
Executive Director

ON DEPARTMENT OF DEFENSE'S ENVIRONMENTAL RESPONSE PROGRAMS

WHEREAS, the U.S. Department of Defense (DOD) is responsible for thousands of contaminated sites at active facilities and on properties no longer owned by, under the control of, or managed by DOD; and

WHEREAS, many of these sites contain uncontrolled releases of hazardous substances, petroleum, radioactive and mixed wastes, historic disposal areas, and building debris that may pose threats to public health and the environment; and

WHEREAS, many of these sites contain or are suspected to contain unexploded ordnance, munitions chemical constituents, and discarded military munitions referred to as munitions and explosives of concern (MEC) and exposure to the presence of MEC poses an unacceptable risk and danger to human health, safety, and the environment; and

WHEREAS, to address the contamination at these sites, DOD needs adequate funding for its environmental restoration programs including the Formerly Used Defense Sites (FUDS) program which based on current funding levels will need to continue beyond 2050 to complete its work; and

WHEREAS, contaminated DOD sites are located in all 50 states and 6 territories so that all states have an interest in cleanup of these sites; and

WHEREAS, states, territories, and federal agencies have found regular interactions to exchange views, information, and advice to facilitate response actions at these sites to be helpful; and

WHEREAS, states have supported the creation of state-federal groups to foster communication and collaboration, to evaluate policy issues, and to work towards mutually-acceptable solutions related to cleanup of these sites such as the Munitions Response Dialogue, the FUDS Forum, and the Defense State Memorandum of Agreement (DSMOA) Steering Committee; and

WHEREAS, DOD provides funding for state oversight of cleanup activities at DOD sites through the Defense State Memorandum of Agreement (DSMOA) program and this funding may be used for state staff costs to participate in the national workgroups listed above; and

WHEREAS, DOD has determined that the DSMOA may not provide funding for other venues related to the DOD environmental restoration program, including ECOS and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) but States believe these groups support state work related to DOD's environmental restoration programs at the facilities in their states; and

WHEREAS, state-DOD cooperation and coordination through these various groups has supported the ability of states and DOD to promote streamlined investigative techniques and implement protective remedies, which has saved DOD hundreds of millions of dollars and expedited implementation of remedies; and

WHEREAS, as successful as these state-DOD cooperative activities have been, there remain issues to be addressed.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Commends DOD for their commitment to funding States' involvement in the cleanup of its sites through the DSMOA and working with states to improve the state-DOD relationship and for supporting state involvement in these groups;

Requests that U.S. EPA, DOD, and the Federal Land Managers continue to engage and communicate regularly with all states and territories regarding investigation and cleanup at all potentially contaminated current and former DOD sites, including munitions response sites and on munitions related issues;

Supports continued collaboration and cooperation between the states, territories, DOD, U.S. EPA, and the federal land managers on investigation and cleanup of the sites for which DOD is responsible through groups such as the Munitions Response Dialogue, the FUDS Forum, and the DSMOA Steering Committee;

Applauds DOD for working with states through these groups and following up on their recommendations to make progress on addressing:

- Interim risk management communication at munitions sites,
- DSMOA Eligibility
- DSMOA Dispute Resolution
- Challenges to help expedite the clean-up of FUDS;

Urges DOD to continue to work with states, territories, U.S. EPA, and the federal land managers to address outstanding issues such as:

- Continued coordination with states on investigating and treating complex groundwater contamination,
- Ensuring DSMOA and DERA funds may be used for any state association, including ASTSWMO and ECOS, to support state involvement in their work with DOD on activities related to DOD environmental cleanup activities, policy, and technology,
- Responding to emerging contaminant releases in a prompt and pro-active manner,
- Conducting interim risk management communications at FUDS munitions sites,
- Addressing underwater munitions sites that pose additional challenges with evaluation, investigation, and eventual removal,
- Developing policy and other issues around the use of advanced classification technologies at munitions response sites;

Requests DOD to seek adequate baseline funding for all environmental response programs including the FUDS program; and

Encourages the U.S. Congress to appropriate as much funding as possible for DOD environmental response programs given the current budget climate.

*Replaces Resolution 6-10 Department of Defense's Formerly Used Defense Sites Program Budget; Resolution 07-6 DSMOA and Federal-State Collaboration; and Resolution 12-7 Dialogue on Munitions Response

ECOS

Resolution Number 00-9
Approved April 12, 2000
Philadelphia, Pennsylvania

Retained April 4, 2003
By mail vote

Retained March 17, 2006
By mail vote

Revised March 23, 2009
Alexandria, Virginia

Revised March 20, 2012
Austin, Texas

Renewed March 18, 2015
Washington, DC

As certified by
Alexandra Dapolito Dunn
Executive Director

CLARIFICATION OF CERCLA SOVEREIGN IMMUNITY WAIVER FOR FEDERAL FACILITIES

WHEREAS, current and former federal facilities have some of the most pressing environmental problems, such as hazardous substances, unexploded ordnance, radioactive materials, and abandoned mines; and

WHEREAS, problems associated with some of these federal facilities pose substantial threats to public health, safety, and the environment; and

WHEREAS, ECOS believes the States' regulatory role at federal facilities should be recognized and that federal agency environmental cleanup activities are subject to and should receive the same regulatory oversight as private entities; and

WHEREAS, for many contamination actions the federal agencies assert Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) lead agency authority under Executive Order 12580; and

WHEREAS, state experience for many contamination actions has shown that assertions of sovereign immunity and CERCLA lead agency authority have led to inappropriate and/or inconsistent interpretation of state law and have not supported cleanup to the same standards as private parties; and

WHEREAS, assertions of sovereign immunity and CERCLA lead agency authority hamper consistent state regulatory oversight and responsibility to its citizens; and

WHEREAS, a clarification of Executive Order 12580 and/or federal legislation would aid states in implementing regulations which have been duly enacted by the states; and

WHEREAS, this resolution fully supports Policy NR-03 (specifically Section 3.5 on "Natural Resources") executed by the National Governors' Association.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Requests the Administration revise Executive Order 12580 to clarify that federal facilities are subject to appropriate state regulations and are not unduly shielded by sovereign immunity and lead agency authority;

Encourages the U.S. Congress act to support the States by the implementation of specific legislation which will without equivocation acknowledge state authority and regulatory responsibility for oversight of removal and cleanup actions at current and formerly owned or operated federal facilities; and

Authorizes the transmittal of this resolution to the Administration, appropriate congressional committees, federal agencies, and other interested organizations and individuals.

ECOS

Resolution Number 10-3
Approved March 24, 2010
Sausalito, California

Revised March 6, 2013
Scottsdale, Arizona

As certified by
R. Steven Brown
Executive Director

CLEANUP BUDGETS FOR THE NUCLEAR WEAPONS COMPLEX

WHEREAS, the nation's nuclear weapons production and research and development activities, conducted largely between the 1940s and 1980s, have left a legacy of hazardous, radiological, and mixed wastes scattered across sites widely referred to as the "nuclear weapons complex" (the "complex"); and

WHEREAS, proper cleanup of the complex is critical for protecting human health and to ensure that damages to natural resources are mitigated and/or compensated for; and

WHEREAS, the complex formerly consisted of over 100 sites in 33 states, thereby comprising one of the largest environmental cleanup operations being undertaken in the U.S.; and

WHEREAS, at least 11 states currently host active cleanup operations spearheaded by the U.S. Department of Energy (U.S. DOE) Office of Environmental Management (EM) and the U.S. Army Corps of Engineers (Corps); and

WHEREAS, state environmental agencies are regulators with U.S. EPA and U.S. DOE, and may oversee cleanup operations within the complex as established by Federal Facility Agreements (FFAs), permits, and consent orders under FFCA, CERCLA, RCRA, and other laws; and

WHEREAS, some sites within the complex, including the Ohio Fernald and Colorado Rocky Flats sites, have benefited from accelerated cleanups that have generated cost savings from reduced future maintenance costs that were not redirected towards other site cleanups within the complex; and

WHEREAS, in 1999 the U.S. Congress transferred the cleanup operations of over 24 radiologically contaminated sites in 10 states under the U.S. DOE's Formerly Utilized Remedial Action Program (FUSRAP) to the Corps; and

WHEREAS, the influx of funding from the American Recovery and Reinvestment Act of 2009 (ARRA) has provided for further acceleration of nuclear and hazardous waste cleanups as well as decontamination and demolition of obsolete facilities within the complex; and

WHEREAS, recently-completed cleanups have shrunk the footprint and overall size and presence of nuclear weapons complex sites within the states; and

WHEREAS, notwithstanding these recent successes, continued cleanup of the complex remains a priority issue for the States; and

WHEREAS, stable funding leads to greater efficiencies in cleanup cost and schedule for the U.S. DOE, the Corps, and the States.

NOW, THEREFORE, BE IT RESOLVED THAT:

ECOS strongly supports continued environmental cleanup of the nuclear weapons complex.

ECOS recommends that U.S. DOE continue cleaning up the nuclear weapons complex and maintain a strong forum for communication and planning with state oversight officials via ECOS.

ECOS urges U.S. DOE and Corps officials to request *annual budgets* for the EM and FUSRAP programs, as well as for the National Nuclear Security Administration (NNSA) and the U.S. DOE Office of Legacy Management (LM), to ensure enough funds are provided to all sites to achieve cleanup milestones on schedule as required by FFAs, permits, and consent orders.

ECOS urges the U.S. Congress to appropriate the levels of funding necessary to ensure EM, LM, NNSA and FUSRAP annual budgets are fully funded and fully compliant as just described.

ECOS urges U.S. DOE and the Corps to establish mechanisms whereby any cost savings that result from accelerated cleanups are recouped and redirected toward funding other site cleanups within the nuclear weapons complex, and

This resolution will be transmitted to the U.S. Congress, the White House Office of Management and Budget, the Secretary of Energy, senior Corps management, the U.S. DOE Senior Advisor for Environmental Management, the Under Secretary for Nuclear Security, the National Governors Association, and other stakeholder groups.

Mr. SHIMKUS. Thank you very much. Great to have you.

And now I would like to turn to Ms. Bonnie Buthker, chief of Southwest District Office for the Ohio Environmental Protection Agency, on behalf of ASTSWMO.

You are recognized for 5 minutes. Welcome.

STATEMENT OF BONNIE BUTHKER

Ms. BUTHKER. Thank you.

Good afternoon, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. I thank you for the opportunity to be here today to represent the Association of State and Territorial Solid Waste Management Officials and provide testimony.

Our membership includes managers from the state environmental protection programs, including those responsible for overseeing the restoration and reuse of current and former Federal facilities. While Ohio EPA is a member of ASTSWMO and I work for Ohio EPA, today I am here representing ASTSWMO.

While states do not assume primary CERCLA authority, we do play a role in implementation. States share a common goal with the Federal Government in ensuring that risks to human health and the environment are appropriately addressed. Like U.S. EPA's in NPL Federal facilities, the states' role is to ensure that remedies implemented will be protective of human health and the environment and in compliance with Federal and state law.

While states try to work in partnership with both the Federal agencies and U.S. EPA, there are times when we disagree on what cleanup standards should be used and what remedies should be implemented. For these partnerships to work, all parties must focus on the technical and practical issues rather than focusing on the legal authorities, including sovereign immunity. Discussions involving legal authorities lead to protracted posturing, no-win situations, and delayed investigation and cleanup of these facilities.

ASTSWMO has consistently supported any mechanism that encourages greater state collaboration with our Federal partners while ensuring that our voice and opinions are not diminished. ASTSWMO and our members actively engage with representatives of the U.S. EPA, DOD, DOE, and Federal land management agencies on national policy issues.

ASTSWMO has had a long history of working collaboratively with DOD that began in the 1990s. In recent years, DOD and the military components have worked closely with ASTSWMO and the states to effectively resolve issues concerning the investigation and remediation of their current and former facilities.

Since 2008, DOD and the military components have formed three different committees with states and ASTSWMO to resolve difficult challenges that were ongoing problems for several years. All three committees provide for collaboration among States and Federal agencies on several challenging cleanup issues, including remediation technologies and interim risk management, which can be especially challenging on property no longer owned by DOD.

ASTSWMO continues to support legislation that clarifies that Federal agencies, like private companies, are subject to appropriate state regulations. While ASTSWMO appreciates the leadership DOD has shown in recent years by focusing on resolving issues

with states versus their legal authorities, this has not always been the case.

Throughout the years, states have had several experiences with Federal agencies being unwilling to ensure their investigation and cleanups were done in accordance with state regulations. When states tried to use their authorities to compel Federal agencies to comply with these laws, Federal agencies invoked sovereign immunity in an attempt to prevent state oversight.

Because of this, ASTSWMO has had longstanding policy positions opposing the assertion of sovereign immunity by Federal agencies. These positions have not changed over time, because our members continue to have experiences where Federal agencies use sovereign immunity to avoid compliance with state requirements. These experiences involve all Federal agencies, including DOD, the Department of Interior, and the Department of Agriculture.

For example, in 2013, ASTSWMO did a survey of state and Federal facility managers asking if they recently experienced Federal agencies' invoking sovereign immunity during the application, implementation, and enforcement of CERCLA or state regulations. Of the 19 states that responded, the states listed 12 cases where they had had such experiences.

And though Federal agencies have accomplished a great deal of cleanup at their facilities over the last 20 years, there are still difficult issues left to address, including complicated groundwater contamination, emerging contaminants unique to Federal facilities, and sites contaminated with munitions. Sovereign immunity could still be a barrier to states in ensuring compliance with state requirements and Federal agency decisions concerning such issues.

States need funding so that they can provide necessary resources to be engaged in Federal facility investigations and cleanups. Both DOD and DOE have programs that provide funding to states for their involvement in the investigation and cleanup of their facilities. These programs have provided numerous benefits to both these agencies and the states, including cost savings, reduced litigation, expedited cleanup, and increased public trust in their investigations and cleanups. ASTSWMO, therefore, supports legislation that requires Federal agencies to reimburse states for costs associated with state involvement and oversight.

Thank you for this opportunity to offer testimony, and I would be pleased to answer any questions you may have.

[The prepared statement of Ms. Buthker follows:]

ASTSWMO, Providing Pathways to Our Nation's Environmental Stewardship Since 1974

Hearing
"Oversight of Federal Facility Cleanup under CERCLA"

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and the Economy
September 16, 2015

Testimony of
Bonnie Buthker
Vice-President
Association of State and Territorial Solid Waste Management Officials

Main Points:

- States must be involved in the critical decisions related to the environmental response and close-out actions at federal facilities, which includes input into such things as project prioritization, review and approval of proposed remedies, monitoring of remedy performance, ensuring compliance with environmental laws, and long-term stewardship.
- Legislation should be developed and supported to continue to clarify that federal facilities are subject to appropriate State regulations and are not unduly shielded by sovereign immunity and lead agency authority.
- Federal agencies should ensure that State costs for the regulation of federal facilities, including costs associated with State agency oversight, are fully reimbursed to the same extent and in the same manner as other regulated entities.

Good morning Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee. I thank you for the opportunity to be here today to represent the Association of State and Territorial Solid Waste Management Officials and provide testimony on the issues being discussed. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is an association representing the waste management and cleanup programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes managers from the State environmental protection programs, including those responsible for overseeing the restoration and reuse of current and former federal facilities. While Ohio EPA is a member of ASTSWMO and I work for Ohio EPA, today I am here representing ASTSWMO.

While States do not assume primary CERCLA authority, we do play a role in implementation. The decisions made by Congress, the United States Environmental Protection Agency, and other Federal Agencies can have a profound impact on State resources. States share a common goal with the Federal government in ensuring that risks to human health and the environment are mitigated and appropriately addressed. Our Association is committed to ensuring that this is done in an efficient, cost effective manner. ASTSWMO and our members actively engage with representatives from the U.S. Environmental Protection Agency (EPA), Department of Defense (DoD), Department of Energy (DOE), and Federal Land Management agencies (FLMs) on national policy issues. For these partnerships to work and meaningful discussions to occur, all parties must focus on the technical and practical issues rather than focusing on the legal authorities, including sovereign immunity. Discussions involving legal authorities lead to

protracted posturing, no win situations, and delayed investigation and cleanup of these facilities.

ASTSWMO has an effective working relationship with lead federal agencies, especially DoD

ASTSWMO has consistently supported any mechanism that encourages greater State collaboration with our Federal partners while ensuring that our voice and opinions are not diminished. ASTSWMO has a long history of working collaboratively with DoD that began with our efforts on the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) in the 1990s. In recent years, DoD and the DoD Military Components have worked closely with ASTSWMO and States to effectively resolve issues concerning the investigation and remediation of their current and former facilities. One such example is the Defense State Memorandum of Agreement (DSMOA) Steering Committee, where DoD, the DoD Military Components, and States have been able to resolve difficult challenges that were ongoing for several years. The DSMOA program provides funding to States for their involvement in the investigation and cleanup of current and former DoD facilities. While there are still DSMOA challenges to address, we have made real progress in improving the DSMOA program, including the release of DSMOA eligibility and dispute resolution clarification memos issued by DoD. Two other examples are the Munitions Response Forum and the Formerly Used Defense Site Steering Committee. Both committees have also provided a successful forum for collaboration among States and federal agencies on several challenging cleanup issues, including remediation technologies and interim risk management, which can be especially challenging on property no longer owned by DoD.

ASTSWMO continues to support legislation that clarifies that federal agencies, like private companies, are subject to appropriate State regulations

While ASTSWMO appreciates the leadership DoD has shown in recent years by focusing on resolving issues with States versus their legal authorities, this has not always been the case. Prior to 2008, DoD, the DoD Components, ASTSWMO, and States were not as effective in resolving disputes between the parties. Part of this was due to miscommunication, but part of this was also due to DoD leadership at the time asserting sovereign immunity and unilaterally deciding matters such as what constitutes State Applicable or Relevant and Appropriate Requirements (ARARs), when to comply with State enforcement decisions, when to remove military munitions, and what State activities are reimbursable.[1] Due to these disagreements, ASTSWMO and other State organizations have supported a legislative change to correct some of these issues, especially DoD's previous position that any enforcement action by a State could constitute a breach of the State's DSMOA. We have longstanding policy positions opposing the assertion of sovereign immunity by federal agencies. ASTSWMO's positions have not changed over time because our members continue to have experiences where federal agencies use sovereign immunity to avoid compliance with State requirements during the investigation and cleanup at federal facilities.[2,3,4] These experiences involve all federal agencies, including DoD, Department of Interior, and the Department of Agriculture. For example, in 2013, ASTSWMO did a survey of State federal facilities managers asking about their experiences since 2008 with federal agencies invoking sovereign immunity during the application, implementation, and/or enforcement of CERCLA and/or State regulations. Of the 19 States that responded, 12 stated

[1] ECOS Green Report: DSMOA Issues and Effects on States, 2007
[2] ASTSWMO Policy Position Paper on Federal Facilities, October 2013.
[3] ECOS Resolution 00-9, Clarification of Sovereign Immunity Waiver for Federal Facilities, March 2012.
[4] National Governors Association (NGA) Policy Position NR-03, Natural Resources, February 2013.

that they had had such experiences. And though federal agencies have accomplished a great deal of investigation and cleanup of their facilities over the last 20 years, there are still difficult issues left to address, including addressing complicated ground water contamination, emerging contaminants unique to federal facilities, and sites contaminated with munitions. Sovereign immunity could still be a barrier to States in ensuring compliance with State requirements in federal agency decisions concerning such issues.

Federal agencies should reimburse States for their oversight costs

States need funding so they can provide necessary resources to be engaged in federal facility investigations and cleanups. As I discussed previously, DoD has developed the DSMOA program to provide funding to States for their involvement in the investigation and cleanup of current and former DoD facilities. This program has provided numerous benefits to both DoD and the States, including cost savings, reduced litigation, expedited cleanup, reduction in the number of DoD facilities on the National Priorities List, and increased public trust in DoD's investigations and cleanups. DOE has also provided cost reimbursement to States for their oversight costs, with similar successes. ASTSWMO therefore supports legislation that requires federal agencies to reimburse States for costs associated with State involvement and oversight of the investigation and cleanup of their facilities.

Conclusion

Effective cleanup of federal facilities is critical to the health and welfare of the citizens living in the communities near these sites, as well as the environmental health of the sites. State oversight is a key component of the federal facility program. Our citizens look to their States to ensure that the contamination from past federal activities is addressed in a protective, expedited manner. We ask Congress to remove the barriers to effective State

oversight and to provide sufficient funding to meet critical or high priority needs at these sites.

Thank you for this opportunity to offer testimony. I would be pleased to answer any questions you may have.

Mr. SHIMKUS. Thank you very much.

And, finally, I will turn to Mr. Michael Houlemard, executive officer of Fort Ord Reuse Authority.

And before I ask him to begin, I think the minority staff is pretty smart or they got lucky. The Monterey area and Fort Ord is my last duty station. So I served there when it was a jewel. And there are great locations there—beautiful golf course, new housing. I was just there a couple years ago—and University of California Monterey, which is very exciting. But obviously, there is a lot of the post that still has issues and challenges.

So we are happy to have you here. Monterey is the second-most-beautiful spot on the face of the Earth, right behind the 15th District of Illinois. And so we are glad to have you here.

STATEMENT OF MICHAEL HOULEMARD, JR.

Mr. HOULEMARD. Chairman Shimkus, Ranking Member Tonko, all distinguished members of the subcommittee, I want to just thank you for that acknowledgement of how great Monterey is, but it is no better than Rantoul in Illinois.

I would also like to note that, as the executive officer at the Fort Ord Reuse Authority, I have spent quite a bit of my last 20 years spending many hours back here in Washington, D.C., representing communities across the Nation. So I want to thank the committee for its decision that it would include communities as part of the testimony on this very important committee.

I am honored to have spent those last 25 years of my career serving military communities. I served some of that time working with the Association of Defense Communities that has a Defense Communities Caucus support effort. And I know that it is important for all of you to recognize that the communities that have served this Nation by supporting military services have done it in a way that helps the Department of Defense increase its mission-effectiveness.

I also want to take the time to acknowledge our colleagues in U.S. EPA that are tasked with the regulatory oversight that is required to address the many environmental conditions between military communities and their adjacent communities, whether they be active installations or closing or closed installations.

Today I want to focus my comments on the Superfund relationship with military services and defense communities, which is at least an uphill battle given the limited resources and the potential for hazards, both recognized and emerging, to be present.

I also, Mr. Chairman and members of the committee, assert that our defense in part relies on how DOD addresses the sensitive mix of downsizing and the burden of excess infrastructure in the future and its relationship to the ongoing environmental hazards that remain in many of our military installations. Our communities suffer from the many technical, regulatory, processing, resource, and other delays that affect our ability to have access to property in a safe and reliable way.

And many communities across this Nation are provided partial or inadequate information about Federal or other agency contamination that will affect their exposure to potential catastrophic hazards. This is particularly acute with recent past property transfers from the Department of Defense to local communities after

downsizing and closing former properties and then abandoning them to local jurisdictions.

Remedial actions are often governed under the resource application decisions by and within the primary polluter's oversight. Those decisions are often determined to be under the regulatory control of the Antideficiency Act, even when DOD has determined them to be exempt from such limitations. In those cases, communities have to wait for the annual funding process, which often causes significant delays in mobilizing and demobilizing. In our case, we are looking at the possibility of another 7 to 10 years before getting full access to the Fort Ord National Monument for an installation that was announced for closure 25 years ago.

Another item is, as a Superfund site due to subsurface remediation, we at the former Fort Ord are ineligible for funding resources and other support under brownfields that would greatly assist us in addressing these aboveground issues. We think that there is a conflict of the regulatory controls here and that Congress should look at that and understand the potential for helping communities. We now have projects that cannot survive even in the great Monterey Bay, with our underlying land value, because we are left with the burden of buildings that are contaminated, with considerable cost putting them under water economically.

Another critical item—and this is not brand-new; I guess you have heard this repeatedly—but the long-term stewardship of properties that is being transferred from Federal hands to local communities is critical. In many, if not nearly every case nationwide, Federal agencies are motivated to complete cleanups that enable property transfers in a way that reduces long-term Federal obligations. And while that may be a great goal for the Federal agencies, it is real important for the communities to be able to have an economic recovery, which demands access to property and ability to manage the long-term stewardship.

This is especially important that that long-term burden be provided in a way that is a part of a remedial action and assessed economically in the remedial action what is being left to local communities.

How such responsibility transference is assessed is crucial under CERCLA. This is especially key as the EPA addresses emerging contaminants such as PFCs that may exist on properties already transferred but yet there is no current way for the Federal agency to return to take care of those problems.

Five on my item list—I just finished the fourth—community voices are often not heard. It is my assertion that communities are often only provided the minimum opportunity to participate in the process, including CERCLA. Superfund regulatory requirements read like a checkoff list to meet certain public comment requirements, but those regulations fall woefully short of meeting the intent for engaging the community in the process.

A true engagement process goes well beyond these citizen participation minimums, community involvement review timelines, or news publication requirements to encourage—that would allow for encouraging active engagement in communities in the forms and methods that solicit input in the way that communities interact.

These technical assistance programs that are currently being funded must be proactive and not responsive to just those few communities that respond. Further, the EPA and other agencies need to help communities build capacity so that they strengthen their local knowledge base and that their comments are of value.

I assert that the community engagement process is a full-contact sport, and it has to be done in the full spectrum of what 21st-century communications are all about.

Ultimately, I would like to add that this is a resource issue, as well. And given the limits of certain Federal support, U.S. EPA must be given the combination of decisionmaking power that allows flexibility between programs and supplemental authority that allows for an increase in the interface with states and local communities.

This collaborative effort would greatly enhance our interactions over the serial reviews that we have today. In fact, we are under a process of collaboration that has been extremely effective at Fort Ord that brings all the parties to the table in a concurrent manner rather than in a serial fashion.

So I assert that we have learned quite a few things: that it is difficult for citizenry to get up to speed with this complex, sophisticated effort; and it is important that we have property transfer and project delivery delays that are collaborative and use 21st-century communications. I ask that we eliminate contravening regulatory issues through focused oversight. And that is essential to community understanding. That also leads to community voices being heard that may not be heard today.

And, finally, we must move to address the long-term stewardship issues that are current a major potential unfunded mandate to local communities and states.

Chairman Shimkus, thank you for the communities' having a voice here at the table.

[The prepared statement of Mr. Houlemard follows:]

TESTIMONY

OF

MICHAEL A. HOULEMARD, JR.

EXECUTIVE OFFICER, FORT ORD REUSE AUTHORITY

BEFORE THE HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

RAYBURN OFFICE BUILDING

WEDNESDAY, SEPTEMBER 16, 2015

Chairman Shimkus, Ranking Member Tonko, and distinguished members of the subcommittee, thank you for the opportunity to appear before you today. My name is Michael A. Houlemard, Jr., and I am the Executive Officer of the Fort Ord Reuse Authority, also known as FORA. For more than 20 years, FORA has been the State of California authorized Local Reuse Authority overseeing the Monterey Bay region's economic recovery of the former Fort Ord from the impacts of its closure under the Base Realignment and Closure (BRAC) process. FORA is a regional state public agency/corporation representing more than 20 stakeholders that serve on its State authorized Board. FORA unites the diverse interests of communities, state governments, the military services, and the private sector on issues of base closure and realignment, property transfer, community redevelopment, public-private partnerships, and community-military partnerships. I have also served as President of the Association of Defense Communities from 2008 to 2011. My comments today reflect a 25 year background in working for and with communities impacted by Superfund (Comprehensive Environmental Response Coordination and Liability Act or CERCLA) remediation/cleanup process. I will focus on my observations of the community experience with respect to the property disposal process, the impact and role of community/states, funding issues, and engaging citizens in the process.

ENVIRONMENTAL CLEANUP: THE INEVITABLE CHALLENGE: LESSONS LEARNED

The environmental cleanup at Fort Ord does not involve exotic nuclear or biochemical weapons. This has made the reuse planning for the land easier in the sense that with some exceptions the environmental damage is not necessarily life threatening. The environmental cleanup at Fort Ord, which began in 1985 as part of federal Superfund legislation requires the remediation of all contaminated sites that are identified to levels that meet local, state and federal regulations. Since the downsizing/closure was announced in 1991, the US Army has undertaken a variety of efforts to remediate remnant hazards and other contamination under CERCLA. The overall cleanup efforts have been/are generally divided into two parts.

Groundwater/Soil:

The first part deals with contaminated soil and water, usually the result of toxic substances, such as petrochemical distillates. This type of contamination typically result from leaking underground storage tanks, poor management practices that allowed dumping of grease, oil and solvents,

and unlined landfills that leach contaminants into the groundwater.

After the base closure, several additional areas of soil contamination were discovered – primarily below or near vehicle maintenance and motor pool areas, a 150 +/- acre landfill, a base airport wash area/burn pit and some munitions response sites contaminated with chemicals that spilled onto the ground. In addition, soils at former beach target ranges were contaminated with lead from heavy training use for six decades.

At the former Fort Ord we have ongoing issues that pertain to groundwater contamination with volatile organic compounds (VOCs) in various locations – primary in the northern sector of the base. One of the contaminated groundwater plumes migrated off the former installation and is now in monitoring. However, there remains ongoing operational groundwater treatment systems have been constructed and managed by the US Army under CERCLA. Since the discovery of the plumes a couple of years ago, these contaminated groundwater aquifers have not been available to address the local demand for water resources. These contaminated plumes are the basis for a fence line to fence line (basewide) remediation under CERCLA.

This contamination is common both on and off military bases, and is currently regulated by the federal government through its Super-Fund management program in many cases under CERCLA procedures. Fort Ord environmental cleanup for this type of contamination is also regulated at the State level by CAL/EPA through their toxic substances control division.

Munitions and Explosives of Concern/Unexploded Ordnance:

The second part of the cleanup deals with the unexploded ordnance at Fort Ord. The US Army decided to follow its own munitions cleanup policy in areas of Fort Ord where unexploded ordnance present a constraint to reuse plan implementation.

The first major project slated for remediation was the future Fort Ord Dunes State Park, located on the beachfront. Work was completed in the summer of 1998, when the last of 7,000 truckloads of lead contaminated sand was removed from the site. Since the 1940s, the Army had used the sand dunes at Fort Ord as backstops for its small arms target ranges. The Army's October 1995 Remedial Investigation Feasibility Study identified the lead bullets as the source

of the high lead levels found in the sand, up to 46,000 parts per million (ppm). Over an 11-month period, cleanup crews excavated and sifted over 100,000 cubic yards of sand, recovering an estimated 800 tons of bullets and fragments. The $8 million cleanup plan was developed by the Army, the U.S. Environmental Protection Agency ("EPA"), California Department of Toxic Substances Control, and the Central Coast Regional Water Quality Control Board. Working under Contract with the Army, International Technology, the prime contractor, scraped two feet of sand from selected areas. Since this area was designated for public use the local community was very actively engaged in this cleanup effort. After it was complete, the remnant lead was reduced to safe levels and the Army re-contoured the dunes and contracted with CA State Parks to replant the area.

Unexploded ordnance (UXO) and munitions and explosives of concern ("MEC") on an 8,000 acre firing range/impact area and at several other munitions training areas created a substantial risk to catastrophic exposure to the adjacent community. Many of these former ranges areas now are either part of or slated to become a part of the Fort Ord National Monument that was dedicated in 2012. Over the course of the past twenty years the types of ordnance and MEC found at Fort Ord has included artillery projectiles, rockets, hand grenades, land mines, pyrotechnics, bombs and other demolition materials. The United States Army has continued its work to remediate these issues including entering into an Environmental Services Cooperative Agreement with FORA for completing the munitions removal work on approximately 330 acres. The Army and FORA have incorporated a robust site security program that includes fencing, monitoring and posting with warning signs to inhibit unauthorized access.

This UXO cleanup has proven to be the most difficult and disruptive portion of the environmental cleanup. By following its own policy of the time that munitions were not a listed contaminant under CERCLA that in this area, the Army avoided several steps under the CERCLA regulations, which were considered unnecessary. This resulted in a successful lawsuit filed by a group of local citizens who organized themselves and received an EPA grant for legal assistance.

The desire of the community to set aside large areas for open space and the need to provide ecological communities for endangered species established a Habitat Management Plan for Fort Ord. The plan reserved as managed open space large contiguous areas of the base, which in

many cases corresponded to the training areas used for open field and weapons combat training involving live firing of large and small caliber weapons. Fort Ord was used for Army training that included the storage, transport and use of many different weapons and munitions. For various reasons, a certain percentage of these munitions failed to detonate when they were fired. In addition, burials of unused munitions by soldiers sometimes occurred and have been found along roadways or near munitions training areas.

A major potential conflict has risen with the Regional Air Quality Control Board over the use of controlled burns to help remove unexploded ordnance. This problem is made more difficult by the fact that fires are a part of the natural cycle, which supports the unique ecological systems that are present. In fact, fire is a required element in the natural progression of the habitat at the Fort Ord National Monument. This conflict between resource and environmental regulatory oversight has created a very specialized demand for MEC clearance efforts.

Now that the HMP has imposed a contractual obligation to preserve this unique environment, bulldozers, which could destroy the unique habitat, cannot be used for ordnance removal. If controlled burning is not allowed, because particulate matter released into the air by burning does not meet local air quality standards, the clearing of the land to allow unexploded ordnance to be removed remains in jeopardy. This demand often creates conflict with local community as the unavoidable smoke plume may at times cause respiratory issues.

- ***Environmental Hazard Characterization/Records:***

Most military installations have developed along the lines of mission critical decisions. In that sense they are not typically developed with a civilian future in mind, and often the records of the physical improvements are wanting – primarily as they were rarely planed or processed as though they would once become civilian. Consequently, the characterization of bases in nearly all cases is insufficient and the clear records of potential past hazards or contamination incomplete or inadequate. While many efforts to improve the inventory of environmental issues have been undertaken, there are undoubtedly additional remnant hazards.

- ***Community Engagement:***

Every community has (at a minimum) the right to fully understand the remediation of suspected

and/or known hazards that have the potential for citizen exposure. It has been our experience that engaging the community at all levels has the best chance or assuring community clean up and ultimately economic recovery/reuse. Whether the issue is a state level concern, a local county/municipality or at the citizen/neighborhood level – effective engagement requires proactive and solicitous two way documented communication. In order to truly be effective leadership must fully committed to connecting at public, political, and personal levels that requires applying a range of communication modes from print/electronic/social media, to neighborhood meetings, to formal; town halls and public meetings (as may be required regulation). Absent the very highest levels of commitment to bringing multiple interests to the exchange, many voices will not be heard and citizens will be unaware of the opportunity or the need to participate.

Our experience tells us that these key levels of commitment are often not emphasized in typical Superfund activities, even though engaging community members in problem-solving issues that affect them is fundamental at the local level. I believe that the most effective way to achieve successful community participation in public environmental health issues, especially the elimination of cultural disparities in funding or enforcement, is to actively engage citizens experiencing the potential exposure or the problem in the resolution. Community engagement is most effective when the full range is from identifying the relevant risk and issues, to making decisions to remediate, to evaluating and sharing the results with the community, to creating long term stewardship programs and follow up.

The US EPA has authorization to provide grants to local organizations to assist in public involvement. These Technical Assistance Grants, while typically well meaning, do not provide capacity building or have sufficient follow up on recipient leadership. If these awards are to continue there must be provisions for capacity building and a means to secure effective leadership so that communities are served in getting technical and other support in the often confusing and the technically challenging/sophisticated remedial processes. It may be better to work with a local jurisdiction to build its capacity to engage in two way community level involvement and to access social and other media to inform the public where the seek information.

We have found the basic principles of collaborative processing and community engagement to

be at the core of our successes in completing our field work and follow up to our munitions removal work on the former Fort Ord. As well, fully collaborative o\processes have ensured that our state and local regulatory agencies work hand in hand with the US EPA to achieve the success we are proud of at the former Fort Ord.

CONCLUSION/ AREAS OF IMPROVEMENT

Some specific areas for improvement include the following:

The National Contingency Plan. This could easily be described as an example of the perfect being the enemy of the good. The NCP is complex, called "byzantine" by some, and very much process over substance oriented. The criticism that CERCLA funds are disproportionally spent on process at the expense of effective remediation seems well deserved. While the NCP is not a "bad" regulation, there is little doubt that it is process heavy, with attendant delay and serial rather than parallel undertakings/reviews.

1) When the remediation involves polychlorinated biphenols (PCBs), the interface between CERCLA and TSCA (Toxic Substance Control Act), the interface between the two statutes is difficult, owing in part to the division of labor within EPA regional offices and the imprecise language of the TSCA implementing regulations. Further, unlike CERCLA, TSCA makes no provision for a response action contractor or a responsible party, unnecessarily imposing risk on a municipal government that performs PCB removal pursuant to a cooperative agreement with the military service pursuant to 10 U.S.C. 2701(d). This is a clear example of "let no good deed go unpunished."

2) Consider "correcting" the "flaw" that prohibits Brownfields support in certain unique Superfund sites like the former Fort Ord and McClellan Air Force Base.

Lessons Learned

1) The difficulty for local citizenry to get up to speed with complex sophisticated regulatory layers often leads to legal disputes, unnecessary internecine bureaucratic "warfare," and property transfer/project delivery delays.

2) The federal government's role should be viewed as leaning heavily toward protecting communities and citizens from exposure rather than protecting the interest of the federal agencies

3) Eliminating contravening regulatory issues through focused oversight is essential to

enable community understanding – which leads to community voices being effective rather than disruptive.

4) Move to address the long-term stewardship issues that are currently a major potential unfunded mandate to local communities.

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Mr. SHIMKUS. You are welcome, and it is great to have you.

So I will now open it up for the line of questions, and I will recognize myself, 5 minutes for the first round.

And I asked this line of questions to our Federal witnesses last week, but I am guessing that I will hear different responses from the witnesses on the panel. I did talk to them and say please tune in to hear your voices when I spoke to them a couple times on Friday.

My question stems from the issue of the delegation of the present CERCLA authority under Executive Order 12580 to other Federal agencies who are also potential responsible parties. And it is really the same question to all of you, and we will just go first to Ms. Dieck.

Is there a conflict when a Federal agency is a potential responsible party because it caused the contamination or owns the contaminated property but the same agency is also the lead agency responsible for making cleanup decisions? Why or why not?

Ms. DIECK. I would have to say there is a conflict. If you have the Federal agency that has created the contamination is responsible for the cleanup and is also responsible for selecting the remedial action, that is an inherent conflict.

It has to be something that is coordinated clearly with the states so that our voice is heard and so that there is an understanding of what the appropriate remedial action would be so that the land can be protected and the proper protective measures are in place.

Mr. SHIMKUS. Ms. Buthker, same question. And I can restate it if you need it, but——

Ms. BUTHKER. No. I would say there is definitely a conflict. Because the Federal agencies, they are trying to look at the funding that they have and trying to do as much as they possibly can, and if they can put in a cheaper remedy at a facility than what maybe the state wants or the community wants, then they can use that money somewhere else. And so, definitely, there is a conflict.

Mr. SHIMKUS. Mr. Houlemard?

Mr. HOULEMARD. Thank you, Chair. I concur with my colleagues.

I would add a quick note that the former Fort Ord, we had an experience that the United States Army, which serves as the president for the cleanup at the former Fort Ord—we elected to do our own cleanup under contract. And during the course of that process, we have attempted to be collaborative, but it breaks down at certain points.

The United States Army had a certain concern about what the language was going to look like that directly related to the return of the United States Army to cover under 120(h). EPA had a difficult language issue. It took over 18 months to get that resolved, and we wound up with delays. Similar things have happened in Kansas and in Texas on similar kind of, but different, issues that create the delays.

So I concur with my colleagues.

Mr. SHIMKUS. Thank you very much.

And a followup to Ms. Dieck: Your written testimony acknowledges that States are concerned that when Federal agencies assert sovereign immunity and when they assert a CERCLA lead agency authority under Executive Order 12580 that this has led to, in

quotations here, "inappropriate or inconsistent interpretations of state law that have not supported cleanup to the same standards as private parties," close quote.

Can you explain what you mean by this?

Ms. DIECK. Sure.

Assertion of sovereign immunity or lead agency authority enables Federal agencies to bypass or partially meet state requirements that normally would apply to private parties. For example, if the lead agency does not deem that a state requirement is applicable, relevant, or appropriate, then that agency does not have to meet that particular requirement. So that is problematic.

Mr. SHIMKUS. And, in my final time, in this debate of cleanup, the cost, the agency that could have created the problem is directed to clean up, but of course they do it based upon the money available.

If you were to object—first of all, do you have a right to object? And then is that where the claim of sovereign immunity comes in, saying, well, thank you, but we can do whatever we want anyway?

Ms. DIECK. Certainly that would be the case for sites on the NPL list. And, generally, the way they are reading it with the Executive Order 12580 and the language in CERCLA, that is the way that it is being applied, and that is problematic.

Mr. SHIMKUS. Anyone else have——

Ms. BUTHKER. I would say, definitely what you see happening is, because of the cost issue, a lot of times Federal facilities will look at the state requirements and say, well, if I can whittle down these state requirements that I have to meet, then I might be able to implement a cheaper remedy.

So that definitely has that impact where you see that, and because they are lead agency and they are the final say on how that remedy is going to be implemented and what happens, then yes, the state can try to challenge that, but then that is when you have a situation with sovereign immunity. If the state says, well, I am going to sue you because you are not doing something consistent with what we would want you to do in this particular instance, they are like, OK, fine, sue me, but we have sovereign immunity.

Mr. SHIMKUS. And you would agree, Mr. Houlemard?

Mr. HOULEMARD. Yes, I would. I think the collaborative process is going to serve us all a lot better. In the case where we have—our experiences, the collaborative process treats the remediation as what is most effective rather than what is most cost-effective.

Mr. SHIMKUS. Thank you. And I apologize for going over.

Now the chair recognizes the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair. And thank you for convening this panel today so that we can hear from states and communities affected by the Superfund cleanups.

At last week's panel, we heard that a lot of progress has been made to address dangerous contamination at Federal facilities owned by the Department of Defense and Department of Energy. So I would like to start by asking the panel, have you seen that progress in your states and communities? And what do these cleanups mean for communities around those sites?

Ms. Dieck, if you want to start.

Ms. DIECK. Sure.

I would start by saying we do have a collaborative—a strong working relationship with DOE, and we have seen some tremendous successes at SRS. I think that the problems arise when, as I think I mentioned earlier in my testimony, there can be unilateral decisions that are made with regard to milestones, with regard to funding, that create a tension and make it difficult for the states to have that trust relationship.

And so, while good things are happening, we have been able to achieve a lot, specifically at SRS, I think that we could do better.

Mr. TONKO. Ms. Buthker?

Ms. BUTHKER. There has been a lot of progress made in Federal facility cleanups, not just in Ohio, but throughout all our member states have said that. And a good deal of it has to deal with the fact that we have been able to collaborate with DOD and DOE on the cleanups and work through these issues.

The problem, where it breaks down is when, whatever the Federal agency is all of a sudden decides that they don't want to collaborate anymore and they want it their way or the highway. And when that situation happens, then that is when we start having less progress. That is when we start getting into a lot more of these battles over jurisdiction.

But there has been a great deal of cleanup that has been done because states have been working collaboratively. Most Federal facilities are not on the NPL, so the state is the only regulatory agency involved.

Mr. TONKO. Thank you.

And Mr. Houlemard?

Mr. HOULEMARD. Well, yes, Ranking Member Tonko, I would agree that there has been a lot of progress made, but then there is still so much more to do. We still have 8,000 acres of property that we are seeking access at the former Fort Ord, and I could describe another dozen cases where access to property is crucial to their economic recovery.

Mr. TONKO. Thank you.

And it seems that some cleanups have progressed more smoothly than others and can offer best practices for how to work with states and engage communities. So can you cite for us observations of best practices to foster community involvement and strong cooperation amongst the stakeholders?

Mr. Houlemard?

Mr. HOULEMARD. Yes, I would give as examples McClellan Air Force Base in California; McClellan Army in Anniston, Alabama; and the Fort Ord Reuse Authority, where we as communities chose to collaborate with military services and the regulatory agencies to undertake a portion of our own cleanup and to make sure that we understood how it was happening, under effective cost working relationships, using private-sector companies to make sure that happened, with an insurance company that would assist us, and using collaborative processes. That worked for us, and we suggest that that is a formula that works many other places.

Mr. TONKO. Thank you.

Ms. Buthker?

Ms. BUTHKER. I would say that some of the successes that I have experienced—Wright-Patterson Air Force Base. And it was very much that collaboration of working with the Air Force, the state, and U.S. EPA together, focused on how do we do the cleanup quicker, easier, more efficient. And we did a lot of things there.

Several of our base closure sites in Ohio—Defense Electronic Supply Center, again, where we were working with not just U.S. EPA and the Air Force, but we were also working with the local community to ensure that, when that facility was cleaned up and transferred to them, that they could use it how they wanted to us it.

So, yes, there definitely are those experiences.

Mr. TONKO. Thank you.

And Ms. Dieck?

Ms. DIECK. I would echo what these folks have said. It is critical to have significant communication outreach efforts in place when you are dealing with contaminated sites in any area of your state. To have the education, the outreach, the understanding of what the contamination is, the status of the cleanup, what the implications are is critical. And you find that, with that collaborative approach, you can really see tremendous benefit.

Mr. TONKO. Thank you very much.

I think my time is exhausted. I was going to sneak one more question in, but thank you very much. I yield back.

Mr. SHIMKUS. The gentleman yields back his time, and we thank him.

The chair now recognizes the vice chair of the committee, Congressman Harper, from Mississippi, 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman. Appreciate it very much.

And thanks to each of you for being here to shed some light on a very important issue.

I will start with you, Ms. Buthker. Your written testimony gives an example of DOD historically asserting sovereign immunity in order to unilaterally decide issues such as what constitutes a state applicable or relevant and appropriate requirement. And we also understand that Federal agencies assert or threaten to assert sovereign immunity and thereby discourage states from enforcing otherwise applicable state laws.

Obviously, this is a problem for states, but can you please explain the issue?

Ms. BUTHKER. Well, the biggest problem with it for states is that, when states inconsistently apply their cleanup regulations from private parties to Federal facilities, then the private parties can raise the issue about, why are you picking on me? We hear a lot about Federal agencies wanting to be treated by private parties, but when it really comes down to it, they don't necessarily want to do that.

How that also creates problems with us is that, if ARAR is not consistent—applicable or relevant and appropriate regulation isn't consistently applied, then U.S. EPA can come in and say, well, since you are not consistently applying that on both your private-party cleanups and your Federal facility cleanups, we can waive that ARAR on our future cleanups because you are not consistently doing it.

So both of those ways can impact the state.

Mr. HARPER. OK.

You also mentioned that DOD previously took the position that enforcement actions taken by the state could constitute a breach of the Defense-State Memorandum of Agreement. Could you first explain what the Defense-State MOA is and then tell us why this is problem for states?

Ms. BUTHKER. The Defense-State Memorandum of Agreement is the mechanism by which DOD and a state would come to agreement on how states would be reimbursed for their costs. It outlines what particular services the state provides. It doesn't say state oversight; it says the state will provide these services to DOD. But it also outlines the agreement that the state would agree to a prioritization system for funding, making sure that the most funding goes to the worst sites.

But then it also had a provision in most DSMOAs that before the state could take an enforcement action on a facility that was listed under the DSMOA, then they were supposed to go through the dispute resolution process; it also had a dispute resolution process in it. And, initially, what states thought that that meant was that, for the cleanup part of the—because the DSMOA only covers cleanup—that that was where States needed to go through dispute resolution if they had a disagreement. Like, for number of monitoring wells or number of soil samples being collected, that is when they would use dispute resolution. But if there was something that was a violation of state law and it was even outside of the cleanup program, we felt that was off limits; we could still use our regulatory authority.

And, before 2008, where the DSMOA program really started to have problems was that DOD started to any interpret that any regulatory program that the State was involved in that dealt with those facilities under our DSMOA, that would apply.

And I can give you an example. If a base had their own drinking water system and they exceeded a contaminant level and were issued an NOV, there were concerns that states would end up jeopardizing their funding under the DSMOA and actually be a breach of DSMOA if they sent a violation letter to the facility for that.

So that was pre-2008 when that was happening.

Mr. HARPER. Does DOD ever—do they ever currently assert this position?

Ms. BUTHKER. In 2008, where the big shift in all this was, we actually formed—ASTSWMO states and DOD formed the DSMOA Steering Committee, where we worked through all these issues. And they clarified that that was not their intent, that the leadership at the time had misinterpreted what that clause was in the state's DSMOA. And it doesn't apply to any violation. It only applies to disagreements about the cleanup program itself. And they actually modified their guidance in 2011 in order to address that specific issue.

But, again, that is guidance and policy statement that is in place now. If the leadership at DOD would change, we could have something that would happen again back to that same situation.

Mr. HARPER. I know we don't have time for you to answer and explain, but are there other agencies besides DOD that are doing

the same thing in asserting sovereign immunity in order to decide what constitutes an ARAR?

Ms. BUTHKER. Yes, there are other agencies. When we——

Mr. HARPER. Just tell me which agencies they are, and maybe somebody else will follow up.

Ms. BUTHKER. Department of Interior and Department of Agriculture are two that specifically our members have cited.

Mr. HARPER. Thank you very much.

Mr. SHIMKUS. The gentleman yields back his time members.

And, for us members, DSMOA is Defense-State Memorandum of Agreement. So I am watching acronyms here.

So the chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you.

I am trying to get through these questions because I wanted to get through a bunch of them. So, first of all, I wanted to ask about the funding limitations that can delay and complicate cleanups.

Mr. Houlemard, can you describe some of the economic impacts cleanup delays have on communities around Federal facilities. And then, secondly, what about the economic impacts of successful cleanups? How do they help local communities?

Mr. HOULEMARD. Thank you, sir.

I would like to first address the second one. As we have been able to get access to the property at the former Fort Ord and the economics in our region have changed in the last several years, we have seen a boost in our activities, including the fact that, at the current time, we have about a billion dollars of construction underway, with new hotels, new residential, and many other activities. Getting access to the property is crucial. We had funding early that enabled us to get access to those properties.

On the other side, we have not been able to get access fully to all of the properties on the former Fort Ord because of annual funding restrictions under the Antideficiency Act. While that means annually Congress has to approve, I know that DOD sometimes is able to overcome that because there is a DOD allowance that requires or allows multiyear funding. When you can use that kind of funding, you don't have to lose the time in mobilization and demobilization that we have lost every single year in creating new contracts, going through the USACE, United States Army Corps of Engineers, to be able to do that oversight.

That saves time in processing, it saves time in mobilization and demobilization, and gets the properties cleaned quicker.

Mr. PALLONE. OK.

Let me move to the second question. When Congress fails to fund agencies consistently because of sequestration, shutdown, or just short-term extensions that unfortunately become the norm, it can have a significant impact on cleanup schedules.

So let me ask Ms. Buthker and Ms. Dieck: From the state perspective, are these budget fluctuations and schedule changes disruptive? Quickly, if you can.

Ms. BUTHKER. Speaking on behalf of the members of ASTSWMO, having a stable level of funding for the cleanups so that can ask plan and prioritize definitely makes things work a lot easier. States

can meet with DOD and say, these are the things we want to try to accomplish.

In addition, because our funding that we receive from DOD is based on a set work plan, the activities under that work plan, if those things do not happen, then states don't get money. So they also have the issue about potentially having to pull off staff that were assigned to work with DOD on those particular Federal facility cleanups. So it could definitely cause some disruption there.

Mr. PALLONE. And let me ask Ms. Dieck quickly, because then I have a third question.

Ms. DIECK. Well, very briefly, when Federal agencies—they don't always ask for the money that they need to meet the commitments that have been made to the states. And that becomes very problematic. That is why transparency is critical.

We work with Federal agencies to come up with a plan that has certain goals and milestones put in place, and when we miss those goals, it can have economic impacts. If we don't have the land returned to productive use, it is problematic.

So it is critical that we have reliable funding that we can count on.

Mr. PALLONE. All right. Thank you.

Let me go back to Mr. Houlemard about the brownfields program. I was one of the—myself and Congressman Gillmor put together the first brownfields authorization years ago, and I am very interested in ways to strengthen the program and make it more effective.

Could you just elaborate briefly on your suggestion that a flaw in the brownfields legislation must be fixed to allow unique sites like Fort Ord to qualify for the program?

Mr. HOULEMARD. Yes. In the case of the former Fort Ord, fence line to fence line, we are Superfund under CERCLA for reasons having to do with groundwater contamination. The United States Army has a process that they are undertaking to remove the groundwater problem. It still has 15 years to go before it is going to be complete, maybe more. As a consequence, brownfields funding to support our efforts above ground are—we are not eligible because we are fence-line-to-fence-line Superfund.

And so that is the way that the legislationhas been written. We have asked U.S. EPA about this issue in the past. They themselves recognize that there is a little bit of a conflict because our other environmental concerns of asbestos, lead, PCBs, and other things that are left to us by the United States Army cost significant amounts of dollars to remove.

In fact, California State University, Monterey Bay, is spending $30 million just to remove buildings over the coming years. We have already spent $45 million just to remove buildings, and we don't have any kind of assistance or brownfields program that can help us with that kind of problem.

Mr. PALLONE. All right.

Let me just say to the chairman and to the ranking member of the subcommittee, I hope we have an opportunity to work on potential improvements to brownfields in the coming months. When I worked with Congressman Gillmor years ago and President Bush

signed the bill, we did it in a very bipartisan way, and I would like to see if we could do that again in terms of a reauthorization.

Mr. SHIMKUS. The gentleman yields back his time.

We thank you for that suggestion. And we all mourn the passing of Paul, and that is a good memory of Paul, of successful legislation, bipartisan, that was moved and passed.

So now I would like to recognize, looks like, obviously, the member who took the seat of Paul Gillmor, Bob Latta, for 5 minutes.

Mr. LATTA. Well, thanks very much, Mr. Chairman.

And thank you very much for our witnesses for being here. I really appreciate it.

And if I could start with you, Ms. Buthker, I am going to assume from your testimony that you believe that current and formerly owned Federal facilities should have to comply with the same state requirements as a private entity conducting a cleanup under CERCLA?

Ms. BUTHKER. Yes.

Mr. LATTA. OK.

And let me ask this: With your leadership at—and I hope I am pronouncing this right—at ASTSWMO, how often do Federal facilities comply with state requirements?

Ms. BUTHKER. How often?

Mr. LATTA. How often, in your experience, at ASTSWMO do you see that the Federal Government, Federal agencies are complying with state requirements?

Ms. BUTHKER. This issue of Federal agencies complying with state requirements and not saying that—or waiving them has pretty much been a constant issue for the 20 years I have been involved at ASTSWMO.

Mr. LATTA. OK.

And do you believe that section 120 of CERCLA is evidence that Congress intended to waive sovereign immunity?

Ms. BUTHKER. I believe that it is. But I am not an attorney, so I am saying that. But I would believe it is because they were—the way that I read it when I read it is that they are supposed to, especially the non-NPL facilities, they are supposed to be meeting state requirements.

Mr. LATTA. And does the current waiver of sovereign immunity in CERCLA result in less oversight of Federal agency cleanups than in cleanups by private parties?

Ms. BUTHKER. I would say for the non-NPL sites that are under state oversight, yes, because you always have that specter of sovereign immunity in the picture.

If you have good collaboration with DOD, DOE, or the other Federal agencies, then you can work through these issues and these problems and these disagreements as you have them. But if you have a Federal facility project manager who doesn't want to listen to the state or the community, then they can basically shut down the program because they are lead agency, and if the state tries to sue, then sovereign immunity raises its head.

Mr. LATTA. OK.

One last question, with my remaining time here. Last Congress, I introduced and the House passed H.R. 2318, which was the Federal Facility Accountability Act—and kind of following up with

what you were talking about—which ensures that current and formerly owned Federal facilities will have to comply with the same State requirements as a private entity doing a cleanup under CERCLA.

And then, in your testimony, you discuss the need for this type of legislation and how your association's positions have not changed over time because your members continue to have experiences where Federal agencies use sovereign immunity to avoid compliance with state requirements during investigation and cleanup of Federal facilities.

And can you describe some of the state requirements that the Federal agencies are trying to avoid?

Ms. BUTHKER. Probably the biggest one or one of the biggest ones is land use control, state regulations that implement restrictions on property. A lot of states have developed their own environmental covenant programs, and Federal agencies do not like to use that format for restricting property. They want to use their own mechanism.

How that causes problems for the states is, when there isn't a consistent means to restrict property, there is the potential that those restrictions can fail over time. And that is a very big issue for states. That is one.

Cleanup standards. Some states have set generic standards for cleanup, and DOD may or may not or the Federal agencies may or may not want to clean up to those levels.

There is also things such as how landfills should be capped. A lot of states have their own regulations for those, and there are times when DOD says, no, those—or I shouldn't say just DOD—all the Federal agencies will say those shouldn't apply.

Mr. LATTA. Thank you.

And, Mr. Chairman, in the interest of time, I am going to yield back my time and also say it is a privilege to hold the seat that Paul held.

Mr. SHIMKUS. Yes. Thank you.

The gentleman yields back his time.

The chair now recognizes the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

I missed the first portion last week when we began, so perhaps this question has come up, but I am just curious on your perspective, because you are coming at, it looks like, from a different panel than we had before. But I am curious about some of the discussion about the Animus River out in Colorado. And I know it is about 126 miles long, and the EPA caused some problem there. They caused the issue to occur at the Gold King Mine.

Now, two things here with that is, are you hearing, from your perspective, did they solve it in a quick way? Do you think that—again, because we were talking earlier about if it is federally—if the Federal Government caused the problem, they can take a long time to get it resolved, or not, or they can find ways to cut corners, perhaps. I have heard some of this.

Do you think they did a pretty good job out there? Have you heard anything from the states, from other people talking about how they cleaned up the river? Let me just start with that. Any

comments about the—you haven't heard? You don't know anything about it?

Ms. DIECK. I have to say, I know some things about it, but I would like to refrain from commenting on that.

Mr. MCKINLEY. OK. I am just thinking, since it touched several states and it had some impact on—again, it goes back to what you were saying, sir, about individual input. With 126 miles long, there were a lot of people that were affected by that. Their farms were affected by it. I don't know whether or not they had a chance to participate in a solution of how—I know it is going to clear up themselves naturally, I understand that, but the damage has been done.

So part of my point would be—or the second question would be, who should pay for the cleanup? The taxpayers? Or should the government pay for that out of their current funding? Who would you think? It is kind of input. We are sitting around a table now where maybe you don't have an official position, but who do you think should pay for the damage the government caused by what they did? Is that something we are going to ask the taxpayers to come up with the money, or do you think maybe it should come out of their budget?

Does anyone have the courage to speak on this?

Ms. BUTHKER. I really don't know enough about the situation. It hasn't——

Mr. MCKINLEY. But just in general, if a government causes a problem, should the government clean it up on their dime, or should they pass that on to the taxpayers of the country?

Ms. BUTHKER. Well, I would say, when you are looking at Federal agencies and Federal agency cleanup and those Federal agencies caused the contamination, some of it were from practices that they didn't know were bad things to do at the time. And, in that case, the Federal agencies are cleaning it up, but that is also taxpayer money that is funding that.

Mr. MCKINLEY. Yes.

Ms. BUTHKER. So I don't know if that answers your question or not, but——

Mr. MCKINLEY. It doesn't. It doesn't. Because this one is something—they directed the work to be done; it caused a problem. And I am just questioning—if they were a private person in the mining industry—I come from the coalfields of West Virginia. When they cause a problem, the mines are fined immediately, and they have to come up with the money.

I am just curious on this, whether or not this is something that fits into some of this discussion about responsibility, where the Federal Government should be. So it is more of just a general discussion. It may be very generic rather than specific to the Gold King Mine, whether or not they should pay for it out of their budget rather than a separate appropriation to clean it up. Because it is going to be millions of dollars in damages to the farmers and the fisheries and all that are affected by that.

So I go back to your point again, do the people have a chance to speak? Because from what I can understand from reading the newspapers out there, there are a lot of people who have been damaged out there, and I am just wondering whois going to compensate

them. Is it going to be the taxpayers, or is it going to be the EPA for calling the wrong shot?

Mr. HOULEMARD. I am not aware of the circumstances, sir, but I would always encourage the EPA and all Federal agencies to engage in a very active way with the local community, and the same would be for this case.

Mr. MCKINLEY. Thank you very much.

I yield back my time.

Mr. SHIMKUS. The gentleman yields back his time.

That is all the members seeking time to ask questions. We appreciate you all being here. I think there is—with the comments from the ranking member of the full committee, there may be some issues that we can talk—on brownfields, and we will see where we go from here.

That is why we have hearings, to identify problems and maybe address solutions. And I look forward to working with my ranking member, Mr. Tonko, as we have successfully in the past, and maybe there is something we can do.

With that, I will adjourn the hearing. Thank you for coming.

[Whereupon, at 4:59 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Statement for the Record
Department of the Interior
House Energy and Commerce Subcommittee on
Environment and the Economy
On
Federal Agency Responsibilities under CERCLA

September 11, 2015

Thank you for the opportunity to present this statement for the record on the Department of the Interior's responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Department administers a wide range of lands and resources, including the public lands, mostly in the West, wilderness areas, our National Park System, lands held in trust for Native Americans, and the National Wildlife Refuge System. In total, the Department manages over 500 million acres of land, together with associated waterways and plant and animal species. Among other things, the Department is responsible for managing energy and mineral development on Interior-managed lands, including on the Outer Continental Shelf, for addressing water issues in the West, and for managing timber-related activities on our public lands

Given the significant amount of land under the Department's jurisdiction and the broad mission carried out by its bureaus, the Department maintains an active program of environmental response and restoration under CERCLA. The Department and its bureaus see and address many different types of toxic sites, from abandoned hard rock mines and properties transferred to or acquired by the Department that were contaminated by past industrial, military, or other uses.

As requested by the Subcommittee, this statement focuses in particular on the challenges the Department and its bureaus face with regard to abandoned mine lands.

General Implementation

Like most federal agencies, the Department's authority to perform response actions derives from the broad authority provided to the President under CERCLA. Thus, under CERCLA the Secretary of the Interior has the authority to address the release or threatened release of hazardous substances on or from land under the Department's jurisdiction, custody, or control. The Secretary has delegated

this authority to the bureau directors. In addition, under CERCLA, the Department is designated as a trustee for natural resources, and must act as such on behalf of the public.

Environmental response and restoration activities under CERCLA for departmental and trust resources are coordinated by the Office of Environmental Policy and Compliance (OEPC). OEPC coordinates these activities among all bureaus when more than one bureau is involved, and collaborates with the bureaus and military agencies on any necessary remediation for former military sites on lands under the Department's jurisdiction. The Department has standardized procedures for performing response actions, as well as working with other agencies.

Generally, the Department or responsible bureau serves as the CERCLA "lead agency," authorized to respond to releases or threatened releases, that are not emergencies, on or from land under its jurisdiction, custody, or control. Although the Department does not have the authority to take action under CERCLA for emergency removal actions, emergency response actions may be carried out by the land managing bureau under other authorities, such as under authority of the bureau's general land management statutes, in support of the federal, state, or local emergency response officials.

The Department or responsible bureau may also serve in a "support agency" role at sites not under the Department's jurisdiction, and there are times where coordination with private property owners or state government agencies is necessary.

There are multiple funding sources for these actions within the Department. First, the Central Hazardous Materials Fund (CHF) is a Department-wide account that provides funding to land-managing bureaus for CERCLA response actions. Typically, the CHF receives both annual appropriations as well as funds from cost recoveries from Potentially Responsible Parties. Funding from the CHF may only be provided to projects that have completed a Preliminary Assessment/Site Inspection and for which the responsible bureau is undertaking additional response action using the Department's CERCLA authorities.

In addition, the bureaus typically have a bureau-specific account that can be utilized for CERCLA response actions. Often, the bureaus use these funds to perform the necessary steps for CERCLA projects to become eligible for CHF funding, as well as to support non-CERCLA projects, like petroleum spill response. Sometimes, the bureaus use these funds for lower priority or smaller

CERCLA projects than those requesting CHF funding.

As noted previously, given the large acreage managed by the Department and the broad mission of its bureaus, all of the land managing bureaus have in place some form of environmental response program. Several of the more significant programs in the land managing agencies are highlighted below.

Bureau of Land Management

The Bureau of Land Management is responsible for the management of nearly 250 million acres of land and 700 million acres of subsurface estate. This vast portfolio is managed on behalf of the public under the dual framework of multiple use and sustained yield, which means the BLM manages public lands for a broad range of uses, including renewable and conventional energy development, livestock grazing, timber production, hunting, fishing, recreation, and conservation.

With this broad mission, CERCLA authorities and responsibilities delegated to the BLM may involve addressing situations on BLM-managed public lands related to:

- authorized operations involving the use of hazardous substances;
- mitigation of hazardous substance releases from adjacent properties;
- illegal dumping;
- land acquisitions; and
- releases at historic/abandoned sites, such as abandoned mine lands.

The BLM uses its authority under CERCLA to remediate environmental contamination on the public lands it manages, to prepare and implement emergency response contingency plans for oil and chemical spills, and to recover costs from Potentially Responsible Parties. Key BLM programs that carry out these functions are the Abandoned Mine Lands Program, discussed below, and the Hazardous Materials Management Program, which ensures that the BLM is in compliance with federal and state environmental regulations; acts to protect human health and the environment by cleaning up hazardous waste sites; and implements federal initiatives directed at improving environmental management and sustainability.

National Park Service

The National Park System, which celebrates its centennial anniversary next year, includes 408 areas covering more than 84 million acres in every state, the District of Columbia, American Samoa,

Guam, Puerto Rico, and the Virgin Islands. These areas include a wide range of cultural and natural landscapes, such as national parks, monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, and scenic rivers and trails.

When the resources under NPS management are damaged by hazardous substances, the NPS's Resource Protection Program, in the Environmental Quality Division, will assist parks by providing direct support to prevent or minimize damage to park resources, and in documenting injuries and obtaining funds to implement restoration projects for injured resources.

U.S. Fish and Wildlife Service

The U.S. Fish and Wildlife Service manages the National Wildlife Refuge system, comprising more than 560 refuges located in all 50 states and 150 million acres of land primarily for the benefit of fish and wildlife. The FWS also manages 74 fish hatcheries and related facilities used for endangered fish recovery and to restore native fishery populations. The FWS is responsible for the protection and conservation of certain trust species, including species listed as threatened or endangered under the Endangered Species Act, migratory birds, and certain marine mammals.

The FWS uses two major programs to clean up contaminated land: the Refuge Cleanup Fund (RCF) and the CHF, discussed previously. The RCF program addresses approximately five-to-six projects per year. The RCF is managed by the National Wildlife Refuge system, and is effective for cleaning up smaller-scale sites, such as soil contamination from petroleum spills and contamination issues identified during environmental compliance audits. The RCF also is instrumental in funding the collection of preliminary information about sites in order to confirm whether or not contamination is present. The FWS currently manages approximately 15 ongoing CHF projects, ranging from the closure and monitoring of former municipal landfills to the clean-up of former industrial and military activities.

The Ecological Services Program within the FWS is responsible for working with partners for the conservation, protection, and enhancement of fish and wildlife and their habitat. The Ecological Services Program works with partners to prevent contamination; identify and assess any contamination adversely affecting fish and wildlife; provide guidance to reduce the damage to important habitats and trust resources from oil spills or the release of other hazardous materials, and participate in contaminant cleanup and restoration activities.

In cooperation with state, tribal and federal co-trustees, FWS staff investigates injuries that result from the release of hazardous material and oil spills and applies their unique technical expertise to reduce the impact on natural resources and to restore injured resources. Through Interagency Agreements with the Environmental Protection Agency, U.S. Forest Service, and the BLM, the FWS currently supports risk assessment, cleanup, remediation, and restoration activities at multiple active CERCLA sites across the United States, including abandoned mines. Other contaminants that can impact resources under the jurisdiction of the FWS include:

- nonpoint source pollution from agriculture and urban runoff;
- point source pollution from industrial and municipal waste treatment facilities; and
- discharges of dredge and fill material;

In addition to on-the-ground actions, the FWS participates in the development of Departmental Program guidance and participates in damage assessment cases funded by the Departmental Program.

Abandoned Mine Lands

Abandoned mines pose a serious threat nationwide, including on lands managed by the Department. Given the significant amount of land managed by the Department's bureaus, addressing hazards created by abandoned mines on federal lands is an important objective.

The significant concentration of known abandoned mines and related features on lands under the Department's jurisdiction occur on BLM and NPS-managed lands and are associated with both public safety hazards and environmental and natural resource impacts.

Over the last 150 years, much of the public land managed by the BLM has experienced some form of mining activity, which has ranged from exploration to full development. In many cases, this activity has resulted in disturbed and sometimes contaminated land across parts of the West. Mining activities prior to January 1, 1981, the effective date of the BLM's Surface Management regulations, were often not properly reclaimed, and in many cases no financially responsible party exists to help pay for the cleanup. The BLM's abandoned mine land program has identified approximately 49,000 abandoned AML sites on BLM administered public lands.

Over the last six years the BLM has mitigated 6,321 AML physical safety sites, restored the water quality on 8,435 acres of BLM managed land, and conducted monitoring on 5,138 AML sites. Each year an average of 5,400 new AML sites are discovered, with many millions of acres of BLM lands remaining to be inventoried. The BLM continues to develop new processes to more effectively inventory AML sites on the nearly 250 million acres of surface estate and 700 million acres of mineral estate that it manages. This inventory work focuses on high-priority areas, as established by environmental and physical safety risk criteria.

The BLM prioritizes abandoned mine reclamation work based on public safety and environmental risk. The highest priority is given to mines that present the greatest risk to the public, such as those located closest to population centers, schools, or recreation areas, and those with the greatest potential environmental concern. Criteria for the ranking of environmental sites includes human presence, threat to the environment, relative toxicity of contaminants, impacted media and location of the site relative to surface water and/or groundwater, aquifer characteristics, and soil or sediment characteristics.

AML sites are also present on NPS lands throughout the country. NPS began to collect data on AML sites on park lands in 1983, and in September 2014 completed the first comprehensive inventory and assessment of AML sites in the park system. Extraction activities left behind 37,050 AML features in 133 units of the system. The vast majority – 81% - of features are located in the NPS Pacific West Region, especially in Death Valley National Park, Mojave National Preserve and Lake Mead National Recreation Area. However, AML features are distributed throughout the system and are a significant management issue in all regions.

The majority of AML features on NPS lands, 31,437 - almost 85%, do not require remedial action either because they do not constitute a threat to human health and safety or generally do not pose a natural resource problem. Almost 1,800 features (about 5%) have already been remediated. However, over 3,800 of these features (over 10%) in 76 park units do require remedial action to mitigate public safety threats and natural resource impacts.

According to the NPS, the principal cause of death at AML sites nationwide is drowning in water-filled quarries and pits. Other risks include vertical drop-offs; unstable structures and rock falls; deep and unstable pit walls; deadly gases and radioactive air; abandoned explosives; hazardous chemicals; and high concentrations of contaminants inherent to the mineral deposit. Mine

contaminant releases can affect natural resources such as air, soil and water quality as well as plant and animal health.

The responsibility to reclaim dangerous AML sites is resource intensive and requires cooperation with federal, state, and local partners. Even dangerous mines that have been properly sealed off are sometimes vandalized, entered, and left open. AML sites are also prone to erosion and de-stabilization of natural topography due to the interruption of natural drainages by mining-related excavation and tailing and waste rock placement. Impacts to scenic qualities of natural areas can also occur at AML sites. However, there are other factors that merit management attention in AML site assessment and treatment, including the historic value of mines, some of which are listed in the National Register of Historic Places, and the wildlife habitat value of AML sites for species such as bats.

With this in mind, the goal of programs addressing AML issues in the Department is to work to remediate the physical safety hazards, such as shafts, adits, and entrances, and environmental threats associated with abandoned mine sites.

Addressing Priorities

Due to the abandoned nature of these sites, the public is often left with the bill for remediation of legacy abandoned mines, rather than the companies who originally developed the resources. The Administration has continued to request funds to address this significant problem; the Department prioritizes these activities and addresses those priorities within available resources.

The BLM's 2016 budget request for the AML Program is $19.95 million. The NPS's request includes $5 million in Construction funding to initiate AML remediation efforts, however NPS is continuing efforts to fund a comprehensive program to address all of the AML features requiring mitigation.

The Administration has included in its 2016 budget request, and in prior budgets, a legislative proposal intended to address the legacy of abandoned hardrock mines. The Administration's proposal would hold the hardrock mining industry responsible for the remediation of abandoned hardrock mines, just as the coal industry is responsible for remediating abandoned coal sites.

The proposal would levy an AML fee on uranium and metallic mines on both public and private lands, which would be assessed on the volume of material displaced after January 1, 2016. The receipts would be split between federal and non-federal lands, and the Secretary would disperse the share of non-federal funds to each state and tribe based on need. States and tribes would select their own priority projects using established national criteria.

The proposed hardrock AML fee and reclamation program will operate in parallel with the coal AML reclamation program as part of a larger effort to ensure the most dangerous abandoned coal and hardrock AML sites are addressed by the responsible industries. With the number of identified sites increasing as better inventories are performed, we recognize that there is a very large unmet need to address this problem.

Conclusion

The significant acreage managed by the Department and the broad mission that the Department and its bureaus undertake necessitate robust implementation of CERCLA. Within that program, the remediation of abandoned mine lands on lands under the Department's jurisdiction remains a challenge.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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October 8, 2015

Ms. Elizabeth Dieck
Director, Environmental Affairs
South Carolina Department of Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

Dear Ms. Dieck:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, September 16, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, October 22, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

ECOS

THE
ENVIRONMENTAL
COUNCIL OF
THE STATES

50 F Street, N.W.
Suite 350
Washington, D.C. 20001

Tel: (202) 266-4920
Fax: (202) 266-4937
Email: ecos@ecos.org
Web: www.ecos.org

October 29, 2015

Will Batson, Legislative Clerk
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Mr. Batson:

Thank you again for the opportunity to testify before the Subcommittee on the Environment and the Economy on Wednesday, September 16, 2015, for the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA." Please find attached responses to your questions submitted by the Honorable John Shimkus regarding Ms. Dieck's testimony at the September 16th hearing. Should you have any follow-up questions, please contact me at (202) 266-4920.

Sincerely,

[redacted]

Alexandra Dapolito Dunn
Executive Director and General Counsel

Attachment

Responses to Additional Questions from the Subcommittee on Environment and Economy Hearing Entitled "Oversight of Federal Facility Cleanup under CERCLA," Wednesday September 16, 2015, Testimony by Elizabeth Dieck on Behalf of the Environmental Council of the States (ECOS)

The Honorable John Shimkus

1. How does Executive Order 12580 shield federal agencies from State statutes and regulations?

E.O. 12580 delegates several CERCLA authorities to Executive Branch agencies, if there is a release on or solely from a facility under the agency's jurisdiction, custody, or control. Under these circumstances, Sections 2, 3, and 6 of E.O. 12580 delegate to the head of the Executive Branch agency a number of specific powers and duties, including the authority to:

- Gather information necessary to carry out their functions under E.O. 12580 or CERCLA (Executive agencies have information gathering authority no matter whether they own/operate property)
- Issue information/access orders to gather necessary information and gain access (with concurrence from the U.S. Attorney General)
- Award response action contracts (RACs) and indemnify RAC contractors.

In addition, Sections 2 and 4 of E.O. 12580 delegate authorities to Executive agencies to respond to releases in particular situations, including the authority to carry out the following:

- Initiate studies and investigations of releases on or from a facility under the jurisdiction, custody, or control of the federal agency;
- Select remedial actions (at non-National Priorities List (NPL) federal facilities); and
- Conduct removal or remedial actions.

A. What revisions has ECOS sought to Executive Order 12580?

ECOS has developed Resolution Number 00-9 (attached), entitled "Clarification of CERCLA Sovereign Immunity Waiver for Federal Facilities." The resolution requests the Administration revise Executive Order 12580 to clarify that federal facilities are subject to appropriate state regulations and are not unduly shielded by sovereign immunity and lead agency authority.

B. Can you please explain why revisions to the Executive Order are necessary?

State experience for many contamination actions at federal facilities has shown that assertions of sovereign immunity and CERCLA lead agency authority have led to inappropriate and/or inconsistent interpretation of state law and have not supported cleanup to the same standards as private parties. In addition, assertions of sovereign immunity and CERCLA lead agency authority hamper consistent state regulatory oversight and responsibility to its citizens.

C. Is a statutory change to CERCLA necessary to address the issue regarding delegation of lead agency authority?

Yes. ECOS encourages the U.S. Congress act to support the States by implementing specific legislation that will, without equivocation, acknowledge state authority and regulatory responsibility for oversight of removal and cleanup actions at current and formerly owned or operated federal facilities.

2. The Department of Interior and the United States Department of Agriculture have a significant number of federal facilities that they are in the process of cleaning up. How are those agencies doing with respect to keeping states involved in the identification, assessment, and cleanup process?

State experience has shown that, in general, the Department of Interior (DOI) and the U.S. Department of Agriculture (USDA) are not keeping states involved with respect to the identification, assessment, and cleanup process. Most states are unaware of the existence of DOI and USDA sites requiring investigation and cleanup. More often than not, States are not consulted about work priorities or what state requirements apply to the investigation and cleanup of these federal facilities. Additionally, because DOI and USDA are quite decentralized, it is difficult to understand who the appropriate points of contact are for the sites within a state.

A. Do the Department of Interior and the USDA assert the waiver of sovereign immunity more frequently than the other federal agencies involved in CERCLA cleanups?

ECOS has not collected data on the frequency at which Federal Agencies assert the waiver of sovereign immunity; however, state experience has shown that DOI and USDA often use their CERCLA lead agency authority to make removal decisions as a way to avoid involving states or be subject to state oversight at their contaminated sites. Further, we understand that both agencies have asserted that they do not have to follow state regulatory rules or pay state oversight costs.

3. What barriers do States face with respect to cleanups at Federal Facilities?

- Inability to require state-endorsed cleanups. Because federal agencies are often the lead agencies under CERCLA, they have the final say over what remedy is implemented and what cleanup standards must be met. Though states can challenge the remedy proposed by federal agencies, the federal agencies can still choose to implement a remedy that the state does not endorse. Federal agencies also have the final say in what state regulations apply to implementation of the remedy and what do not. While states can sue federal agencies to force compliance with state regulations, federal agencies can assert sovereign immunity to prevent these lawsuits from proceeding.

- Inadequate federal resources create barriers to effective cleanup. Some federal agencies do not reimburse states for oversight costs of their investigations and cleanups and without this funding, states may be unable to provide the necessary resources for

adequate oversight. States also are concerned that the available federal agency budget determines the remedial approach at some sites, meaning that they may not be implementing the most effective and appropriate cleanup approach at a site.

- Unilateral decisions by federal agencies can compromise cleanups. As discussed in Ms. Dieck's testimony, states frequently see federal agencies unilaterally changing site cleanup schedules or goals, pushing ultimate completion out by years and in some cases decades and compromising the site's ultimate usability. One way federal agencies unilaterally change cleanup schedules is by failing to seek or allocate sufficient funding for their cleanup commitments. When a federal agency unilaterally decides to change the terms of a cleanup by extending a deadline or changing other goals, the trust-based relationship breaks down and can lead to tension and then to costly litigation, taking funds away from cleanup efforts.

A. What can Congress do to remove barriers to State oversight and regulation at federal facilities?

ECOS suggests the following Congressional actions to remove barriers to state oversight and regulation at federal facility cleanups:

- Strengthen the state voice in cleanup decisions, making them equal partners with federal agencies in investigation and cleanup at federal facilities.
- Ensure that the Administration and relevant federal agencies request sufficient, stable funding for site investigation, oversight, interim risk management, and clean up.
- Recommend that federal agencies establish a baseline of all of their contaminated sites with risk-informed prioritization so that states can meaningfully establish clean-up priorities based on environmental concerns and economically beneficial reuse.
- Disallow unilateral changes to cleanup schedules by federal agencies.

4. Does ECOS think that changes are necessary to make CERCLA function more efficiently? If so, please specifically identify such changes.

While ECOS cannot address changes to make CERCLA function more efficiently in general, ECOS does believe that CERCLA should be amended to address state concerns with federal facility cleanups under CERLCA by waiving sovereign immunity for federal agencies implementing cleanups under CERCLA and by including language that requires federal agencies to comply with state regulations in the investigation and cleanup of their facilities.

ECOS

Resolution Number 00-9
Approved April 12, 2000
Philadelphia, Pennsylvania

Retained April 4, 2003
By mail vote

Retained March 17, 2006
By mail vote

Revised March 23, 2009
Alexandria, Virginia

Revised March 20, 2012
Austin, Texas

Renewed March 18, 2015
Washington, DC

As certified by
Alexandra Dapolito Dunn
Executive Director

CLARIFICATION OF CERCLA SOVEREIGN IMMUNITY WAIVER FOR FEDERAL FACILITIES

WHEREAS, current and former federal facilities have some of the most pressing environmental problems, such as hazardous substances, unexploded ordnance, radioactive materials, and abandoned mines; and

WHEREAS, problems associated with some of these federal facilities pose substantial threats to public health, safety, and the environment; and

WHEREAS, ECOS believes the States' regulatory role at federal facilities should be recognized and that federal agency environmental cleanup activities are subject to and should receive the same regulatory oversight as private entities; and

WHEREAS, for many contamination actions the federal agencies assert Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) lead agency authority under Executive Order 12580; and

WHEREAS, state experience for many contamination actions has shown that assertions of sovereign immunity and CERCLA lead agency authority have led to inappropriate and/or inconsistent interpretation of state law and have not supported cleanup to the same standards as private parties; and

WHEREAS, assertions of sovereign immunity and CERCLA lead agency authority hamper consistent state regulatory oversight and responsibility to its citizens; and

WHEREAS, a clarification of Executive Order 12580 and/or federal legislation would aid states in implementing regulations which have been duly enacted by the states; and

WHEREAS, this resolution fully supports Policy NR-03 (specifically Section 3.5 on "Natural Resources") executed by the National Governors' Association.

NOW, THEREFORE, BE IT RESOLVED THAT THE ENVIRONMENTAL COUNCIL OF THE STATES (ECOS):

Requests the Administration revise Executive Order 12580 to clarify that federal facilities are subject to appropriate state regulations and are not unduly shielded by sovereign immunity and lead agency authority;

Encourages the U.S. Congress act to support the States by the implementation of specific legislation which will without equivocation acknowledge state authority and regulatory responsibility for oversight of removal and cleanup actions at current and formerly owned or operated federal facilities; and

Authorizes the transmittal of this resolution to the Administration, appropriate congressional committees, federal agencies, and other interested organizations and individuals.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

October 8, 2015

Ms. Bonnie Buthker
Chief
Southwest District Office
Ohio Environmental Protection Agency
401 East Fifth Street
Dayton, OH 45402

Dear Ms. Buthker:

Thank you for appearing before the Subcommittee on Environment and the Economy on Wednesday, September 16, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, October 22, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment and the Economy

Attachment

ASTSWMO, Providing Pathways to Our
National Environmental Stewardship Since 1974

October 19, 2015

Will Batson, Legislative Clerk
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Mr. Batson:

Thank you again for the opportunity to testify before the Subcommittee on the Environment and the Economy on Wednesday, September 16, 2015 concerning the oversight of federal facility cleanups under CERCLA. Per your request, attached please find my responses to questions submitted by the Honorable John Shimkus concerning my testimony at the hearing on September 16, 2015.

If you have any questions or need further information, please contact me at (937) 285- 6469.

Sincerely,

Bonnie B. Buthker

Bonnie B. Buthker
Vice President

1101 17th Street NW, Suite 707, Washington, DC 20036
T: (202) 640-1060 F: (202) 331-3254
www.astswmo.org

Responses to Additional Questions from Hearing Entitled "Oversight of Federal Facility Cleanup under CERCLA:

The Honorable John Shimkus

1. **Please describe the relationship between States and the Department of the Interior and the Department of Agriculture, and in particular the federal land managers such as the Forest Service and the Bureau of Land Management?** The relationship between States and the Department of Interior and the Department of Agriculture is, in general, different than the relationship between States and the Department of Defense and Department of Energy. First of all, both DoD and DOE have tried to foster good working relationships with States, involving them in their budget and planning process, ensuring that they have an active role in the investigation and cleanup of their facilities, even providing States funding to cover our oversight costs. For the Department of Interior and Department of Agriculture, most States do not know about those sites within their state that require investigation and cleanup. States are also not consulted about prioritization of work or consulted about what state requirements apply to the investigation and cleanup of these facilities. These agencies are also highly decentralized compared to the DoD and DOE. For example, the Department of Interior has nine Bureaus and several Offices. Within these there are several Headquarters, field, or regional offices, all of which could be involved in federal facility cleanups. This decentralization makes it difficult to determine the appropriate points of contact for sites within a State.

   In addition, federal land managers (FLM), the Bureau of Land Management in particular, have insisted in having States and DoD invite them to the national Workgroup forums {Defense State Memorandum of Agreement and Formerly Used Defense Sites (FUDS)} and the local State-FUDS meetings so that they can be part of the discussions on site and policy issues between States and DoD. Some States welcome this for local meetings, but States do not know who at the local FLM offices to contact. Headquarters requests that all invitations bypass the local FLM offices and go directly to Headquarters. Overall, I think a major problem is internal communication and Federal to Federal Communication within the FLM agencies.

   A. **Do these agencies more frequently assert the waiver of sovereign immunity?** Based on an informal information request conducted by ASTSWMO in 2012, the number of examples of the Department of Interior and Department of Agriculture invoking sovereign immunity were less than those of the Department of Defense since 2008. However, because there are more DoD facilities that require investigation and cleanup, and States are provided funding for oversight costs, this could account for the larger number of examples where DoD invoked sovereign immunity. Nonetheless, some States have had the waiver sovereign immunity raised as a defense for failing to comply with state law.
   B. **Do these agencies comply with applicable state statutes and regulations in conducting cleanups?** ASTSWMO has heard from States that both the Department of Interior and the

Department of Agriculture do not always comply with applicable state statutes and regulations in conducting cleanups. In addition, as mentioned previously, States also relayed to ASTSWMO that neither the Department of Interior, nor the Department of Agriculture, consult with States regarding what requirements would apply to the investigation and cleanup of these facilities.

2. **What barriers do States face with respect to cleanups at federal facilities?** The first barrier States face is that, because federal agencies are often the lead agencies under CERCLA, they have final say over what remedy is implemented and what cleanup standards will be met. Though States can challenge the remedy proposed by federal agencies, the federal agencies can still choose and implement a remedy that States do not support. The federal agencies also have final say in what state regulations apply to implementation of the remedy and what do not. Like I said in my testimony, States can sue federal agencies to try to force them to comply with state regulations; however, federal agencies can invoke sovereign immunity to prevent state lawsuits from moving forward. Another barrier that States face is that some federal agencies do not reimburse States for oversight costs of their investigations and cleanups. Without funding, States may not be able to provide necessary resources for adequate oversight.

   A. **What can Congress do to remove barriers to State oversight and regulation at federal facilities?** There are three things that Congress can do to remove these barriers. First, Congress could waive sovereign immunity for federal agencies (including federal land managers) implementing cleanups under CERCLA consistent with the same waiver of sovereign immunity under the Resource Conservation and Recovery Act. Secondly, Congress could clarify that federal agencies implementing CERCLA must comply with state regulations in the investigation and cleanup of their facilities. These two actions would ensure that States were equal partners in the investigation and cleanup of federal facilities. Thirdly, Congress could also clarify that federal agencies are required to reimburse States for oversight costs.

3. **Your written testimony stated that federal agencies should ensure that state costs for regulation of federal facilities, including costs associated with State agency oversight, should be fully reimbursed to States in the same extent and manner as other regulated entities. Would you please explain what you mean by that?** States require private companies undergoing investigation and cleanup to pay for costs associated with state oversight. These include personnel costs associated with document review and field oversight and laboratory costs for sample analysis. If private companies refuse to pay these costs, the State will sue the company for reimbursement. Though States also expect federal agencies to reimburse States for oversight costs, they do not always agree to do so and can use sovereign immunity to prevent States from recovering these expenditures. Some federal agencies voluntarily reimburse States for oversight costs through programs such as the Defense State Memorandum of Agreement program, but even through this program, they determine which state costs are

reimbursable and which are not. Some federal agencies (such as the Department of Interior and Department of Agriculture), generally refuse to reimburse States for any oversight costs.

A. **Is a change to CERCLA necessary to make sure that States receive full reimbursement of these costs?** States believe it would be helpful if it could be clarified that federal agencies are required to reimburse States for oversight costs. As I discussed during my testimony, for those federal agencies that voluntarily agree to fund States (DoD and DOE) these programs have provided numerous benefits to both the States and the federal agencies, including cost savings, expedited cleanup, reduced litigation, and increased public trust in the investigation and remediation of these facilities.

4. **Your written testimony also noted that DoD and DOE currently provide cost reimbursement to States for oversight costs. What about the federal land managers-do they reimburse States for oversight costs? If not, please explain.** No, the federal land managers do not typically reimburse States for costs. From past meetings that ASTSWMO has had with federal land managers, the federal land managers have indicated that they have very limited budgets for investigation and cleanup of their facilities. Therefore, they believe they should not use these limited funds for reimbursing state costs for oversight. They believe that, if States want to be involved in the investigation and cleanup of these facilities, States should cover their own costs.

5. **What barriers to States face with respect to cleanups at federal facilities?** Please see answer to question 2 above.
   A. **What can Congress do to remove barriers to state oversight and regulation at federal facilities?** Please see answer to question 2A above.

6. **Does ASTSWMO think that changes are necessary to make CERCLA function more efficiently? If so, please specifically identify such changes.** Since this hearing was focused on federal facilities, I am answering this question focused on that topic. For ASTSWMO's response, see 2A above.