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MODERNIZING THE SUPERFUND CLEANUP PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

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CONTENTS

	Page
Hon. John Shimkus, a Representative in Congress from the State of Illinois, opening statement	1
Prepared statement	3
Hon. Paul Tonko, a Representative in Congress from the State of New York, opening statement	4
Hon. Frank Pallone, Jr., a Representative in Congress from the State of New Jersey, opening statement	6
Hon. Marsha Blackburn, a Representative in Congress from the State of Tennessee, opening statement	7
Hon. Greg Walden, a Representative in Congress from the State of Oregon, prepared statement	119
WITNESSES	
Barry Breen, Principal Deputy Assistant Administrator of the Office of Land and Emergency Management, U.S. Environmental Protection Agency	8
Prepared statement	10
Answers to submitted questions	142
Steve Cobb, Chief, Land Division, Alabama Department of Environmental Management, on behalf of the Association of State And Territorial Solid Waste Management Officials	42
Prepared statement [1]	1046
Answers to submitted questions	154
J. Winston Porter, Environmental and Energy Consultant	59
Prepared statement	62
Answers to submitted questions	164
James McKenna, Portland Harbor Policy Analyst, Governor Brown's Natural Resources Office	69
Prepared statement	71
Answers to submitted questions	166
Debbie Mans, Executive Director and Baykeeper, NY/NJ Baykeeper	81
Prepared statement	83
Katherine Probst, Independent Consultant	92
Prepared statement [2]	94
SUBMITTED MATERIAL	
Office of Solid Waste and Emergency Response Climate Change Adaptation Implementation Plan, June 2014, submitted by Mr. McNerney	121

[1] The attachments to Mr. Cobb's statement can be found at: *https://docs.house.gov/meetings/if/if18/20180118/106783/hhrg-115-if18-wstate-cobbs-20180118.pdf.*

[2] The attachments to Ms. Probst's statement can be found at: *https://docs.house.gov/meetings/if/if18/20180118/106783/hhrg-115-if18-wstate-probstk-20180118.pdf.*

MODERNIZING THE SUPERFUND CLEANUP PROGRAM

THURSDAY, JANUARY 18, 2018

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

The subcommittee met, pursuant to call, at 10:15 a.m., in room 2322 Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, McKinley, Barton, Blackburn, Harper, Olson, Johnson, Flores, Hudson, Walberg, Carter, Tonko, Ruiz, Green, DeGette, McNerney, Cárdenas, Dingell, and Pallone (ex officio).

Staff present: Allie Bury, Legislative Clerk, Energy/Environment; Jordan Haverly, Policy Coordinator, Environment; A.T. Johnston, Senior Policy Advisor, Energy; Mary Martin, Deputy Chief Counsel, Energy & Environment; Katie McKeogh, Press Assistant; Tina Richards, Counsel, Environment; Dan Schneider, Press Secretary; Jennifer Sherman, Press Secretary; Andy Zach, Senior Professional Staff Member, Environment; Jeff Carroll, Minority Staff Director; Jacqueline Cohen, Minority Chief Environment Counsel; Jean Fruci, Minority Energy and Environment Policy Advisor; Evan Gilbert, Minority Press Assistant; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; Alexander Ratner, Minority Policy Analyst; Tuley Wright, Minority Energy and Environment Policy Advisor; C.J. Young, Minority Press Secretary; and Catherine Zander, Minority Environment Fellow.

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

Mr. SHIMKUS. The subcommittee will now come to order. Thank you for closing the door. The chair recognizes himself for 5 minutes.

Today, we continue the subcommittee's oversight of the Superfund cleanup program and we initiate a discussion with the EPA and other stakeholders about ways to modernize the program to make sure that the Superfund sites around the country are getting cleaned up and returned to productive use in the most efficient and effective manner.

The Comprehensive Environmental Response, Compensation, and Liability Act, commonly referred to as CERCLA, also known as "Superfund," was signed into law on December 11th, 1980. The National Priorities List came into existence in 1983 and it is the

prioritization of sites with known releases or threatened releases of hazardous substances throughout the United States. As of November 2017, there were over 1,300 sites on the National Priorities List and many of the sites have been on the list for more than 20 years. The process of evaluating contamination at the site and determining the appropriate remedy can take years or even decades, which delays the cleanup of the site and prevents the area from being returned to productive use, which is why today's hearing is so important.

We applaud Administrator Pruitt for making Superfund cleanup a priority because he correctly noted that cleanups take too long to start and too long to complete. To improve the efficiency and efficacy of the Superfund program, EPA developed an extensive list of recommendations to restructure the cleanup process and make sure that responsible parties and other stakeholders are fully engaged in the process. I would like to welcome Mr. Breen, the principal deputy assistant administrator for the Office of Land and Emergency Management, who will hopefully be able to share with us information about the efforts undertaken by the Agency to expedite cleanups and reinvigorate redevelopment. We hope that today will be a start of a productive dialogue about the Superfund cleanup program and how we can all work together to make sure that the program results in timely and efficient cleanups.

When CERCLA was enacted, very few states had their own cleanup programs, whereas today all states have robust and successful programs. We need to assess whether states should have a more significant role in CERCLA cleanups and whether there are cleanups that are best handled entirely by the states. Furthermore, there is a lot of process involved in CERCLA cleanups. We need to take a serious look at whether the process is working or whether it encourages or impedes cleanups.

To help us with this analysis, we welcome our second panel. We welcome back Mr. Cobb from the State of Alabama, who is here on behalf of a good friend of the subcommittee, ASTSWMO. Mr. Cobb is the head of the Land Division in Alabama and will hopefully talk to us about how far states have come with developing cleanup programs and whether the current role for states in CERCLA cleanups is appropriate. We also welcome Mr. Porter, who is former head of the EPA's Office of Solid Waste and Emergency Response. Mr. Porter has been in the trenches at EPA with respect to CERCLA cleanups and hopefully he can share with us his ideas and suggestions for making the program work better. We also have with us today Jim McKenna, who comes from us from Governor Brown's office in Oregon, who I personally met on my trip to that Superfund site with our colleague a couple months ago. Mr. McKenna has over 30 years of experience working with the Superfund cleanup program and we welcome his suggestions for modernizing the program both in the state and responsible party perspective. And last but not least, we will hear from Katherine Probst, who truthfully wrote a detailed report on how to improve the Superfund program, and Ms. Mans, who is part of the Community Advisory Group for the Passaic River—I should know that—Superfund site in New Jersey, which was listed on the National Priorities List in 1984. So, hope-

fully, she will have some productive suggestions for us how to make the program work better.

So, we welcome everyone. Mr. Carter, do you want to take my last minute to do your introduction?

[The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

The Subcommittee will now come to order. The Chair recognizes himself for 5 minutes.

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The Comprehensive Environmental Response, Compensation, and Liability Act or CERCLA also known as 'Superfund' was signed into law on December 11, 1980. The National Priorities List came into existence in 1983 and it is the prioritization of sites with known releases or threatened releases of hazardous substances throughout the United States. As of November 2017, there were over 1,300 sites on the NPL and many of the sites have been on the list for more than 20 years. The process of evaluating contamination at a site and determining the appropriate remedy can take years or even decades which delays the cleanup of the site and prevents the area from being returned to productive use—which is why today's hearing is so important.

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Mr. CARTER. Thank you, Mr. Chairman.

I just wanted to recognize that you've already mentioned Dr. Winston Porter, who is here. He happens to reside in my district and I appreciate him being here very much.

He's very familiar with the four Superfund sites that we have in our district and we appreciate that. As you mentioned, Mr. Chairman, he was the EPA's assistant administrator with national responsibility for the Superfund program. We are very pleased to have him here and appreciate his expertise and him sharing it with us.

Thank you, Mr. Chairman. I yield back.

Mr. SHIMKUS. The gentleman yields back to me and I yield back my time.

The chair now recognizes the ranking member of the subcommittee, Mr. Tonko from New York, for 5 minutes.

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

Mr. TONKO. Thank you, Mr. Chair, and thank you for holding this hearing on modernizing EPA's Superfund program.

And thank you, Mr. Breen, for being here. Appreciate you being here. However, I am disappointed that Albert Kelly, who led the Superfund task force, is not with us.

It is critical that we hear from the Agency's political leadership on this and other important issues. In 1980, Congress passed the Comprehensive Environmental Response Compensation and Liability Act, which is more commonly known as Superfund.

Superfund is critical to protecting Americans' health and the environment. It is estimated that over 50 million Americans live within 3 miles of a Superfund site. Today, there are over 1,300 sites listed on the National Priorities List. These represent many of the most contaminated sites in our country. There is no question that remediation of these sites is complex. There are many reasons why cleanups are slow and often delayed, and I believe many members would be interested in examining what changes are needed to the program to ensure that it operates more effectively, moving forward.

But we cannot discount the importance of funding and the need for robust engagement with stakeholders and the people that live near these sites. Administrator Pruitt has said remediating these sites is a top priority. However, the president's fiscal year 2018 budget request proposed a 30 percent cut to the program. The EPA has also proposed eliminating financial support for the Justice Department's Environment and Natural Resources Division. EPA provides this office with 27 percent of its budget which is used to support Superfund efforts.

Superfund has always been based on the principle of the polluters pay. Responsible parties should foot the bill to clean up contaminated sites, not our taxpayers. But it is critical that EPA has the resources to hold responsible parties accountable as well as ensure remediation of "orphaned" sites.

Similarly, Superfund can only succeed with public buy-in. Rushing to delete sites without engaging stakeholders or failing to alleviate their concerns that a site is not adequately remediated will

undermine the integrity of the program as well as its ability to complete meaningful cleanups.

As we will hear this morning, Administrator Pruitt has taken actions related to Superfund. In July, the Superfund task force released its report with 42 recommendations and last month the EPA published a list of 21 sites targeted for immediate intense action.

I have questions and concerns about how these recommendations and priorities have been developed. These cases are yet additional data points in an unacceptable pattern of behavior.

This administration's aversion to transparency and public influence is well noted. In the case of the targeted list, the task force's own recommendation was not even closely followed. As far as I am aware, there was no method released publicly for determining site selection and it seems to me that sites where human exposure is not under control were not sufficiently prioritized.

It appears that many of these sites do not have much in common with one another. According to the questions and answers document on EPA's website, they were at least partially chosen because they have upcoming critical milestones and intent is to have sites added and removed from this list, going forward. I am not convinced that cycling sites through a meaningless list and churning out press releases celebrating milestones are going to result in these sites being cleaned up more quickly. So far, this list has only raised more questions and caused confusion with stakeholders. As always with Superfund, members will have questions about sites of great interest to them.

For the people of my district, that means the Hudson River. I am very concerned about the status of the site. EPA's draft second 5-year review concluded that today the upper Hudson fails to meet the minimum standard for Superfund cleanup, protection of human health, and the environment. The draft review concluded that EPA expects the site to be protected at some point in the very distant future, 55 years or more, although that assumption seems tenuous.

The U.S. Fish & Wildlife Service, the National Oceanic and Atmospheric Administration, and New York State have all challenged EPA's timeline for achieving the remediation goals and the adequacy of the cleanup.

The communities I represent have already waited a lifetime to see this river and its rich heritage restored. They should not have to wait another 5 or 6 decades as a best-case scenario.

The Federal Government has a responsibility to ensure that the Hudson River is indeed protected. So, I encourage EPA to reevaluate the draft review.

Finally, I want to emphasize that rolling back environmental protections and reducing enforcement actions will ensure that we continue to add sites to the National Priorities List in the future. I hope we can consider Superfund's role in the context of the Agency's broader plan to protect human health and the environment.

And with that, Mr. Chair, I yield back.

Mr. SHIMKUS. The gentleman yields back his time. As the chair waits for the chairman of the full committee, I would like to turn to 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, for calling this hearing on the Superfund program, which is a critical public health program that's made an enormous difference in my state and nationwide.

It is essential that this committee conduct oversight of the controversial and, frankly, confounding implementation decisions being made by President Trump, Administrator Pruitt, and the rest of the political leadership at EPA.

In the past month, this administration has published not one but two new lists of Superfund sites with no public process and no clear explanation of how sites were chosen or will be impacted and neither of these lists focuses on the riskiest sites, calling into question this administration's commitment to cleaning up the most toxic sites poisoning communities around this country.

Unfortunately, we do not have anyone from EPA's political leadership here today to answer our questions and, Mr. Chairman, this administration has gone to extraordinary lengths to avoid transparency with the public and with Congress and I repeatedly raised these concerns with you and Chairman Walden and I have to raise them again today.

EPA did not send a single witness to testify before this committee until November. Last month, Administrator Pruitt appeared for the first time, a full 10 months after taking office, and at that hearing he pledged to provide witnesses for future hearings and to respond to our oversight request.

Well, over a month has passed since he appeared, and we have received no additional responses to our oversight requests, and despite the promise of Albert Kelly testifying today, we are now told he had to back out because of unavoidable conflicts. Now, strangely, these conflicts appeared very recently, despite EPA being apprised of this hearing some 2 months ago.

Mr. Chairman, I believe Mr. Kelly's unavoidable conflicts have nothing to do with scheduling and everything to do with his troubling financial ties. Mr. Kelly owes this committee and the public a thorough explanation of his past misdeeds, an explanation that EPA's career staff cannot provide.

Public office is a public trust and that's especially true for the Superfund program—billions of dollars moved to the Superfund trust fund and the Superfund special accounts, money that can mean the difference between a toxic environment and a safe one for communities around the country. And Mr. Kelly, who Administrator Pruitt pledged in charge of these funds or placed, I should say, in charge of these funds, was just this past year banned for life from working in any federally-insured bank or financial institution. He was banned for life because of his unfitness to serve and his willful or continuing disregard for the safety and soundness of the bank for which he worked.

Is that really the type of person we should trust to run the Superfund program? In September, I wrote to EPA to ask for an explanation and, of course, like so many other inquiries made to this EPA there has been no response. When we first learned that

Mr. Kelly would skip this hearing, we urged you to postpone for good cause. Mr. Kelly appears to be running the Superfund program singlehandedly and generating no records. He's the only one who can answer questions about the decision he has made. This hearing should have been postponed until he was available. That didn't happen so now we should schedule another hearing and the committee should use all of its available tools to ensure that Mr. Kelly appears.

All I am saying is that we must hold this administration accountable but that's not happening with this Republican majority. Cleaning up toxic Superfund sites protects human health and the environment. We must move past the press releases to protect the Superfund program and all the essential laws that the EPA implements. And I just hope in this new year we can move forward together in our oversight efforts. I just think this program is too important, Mr. Chairman. The EPA is too important. We can't accept this administration's lack of transparency and we can't accept the appointment of people who do not deserve, in my opinion, the public's trust.

And I yield back, unless someone else wants some of my time. But I don't think so. Thank you.

Mr. SHIMKUS. The gentleman yields back his time.

The chair is looking for the chairman, who has not arrived. Anyone else—majority?

The chair recognizes the gentlelady from Tennessee for 5 minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you. Thank you, Mr. Chairman.

I want to applaud the EPA's back to basics approach and Administrator Pruitt's commitment to focus on the Agency's core mission. I think these are steps in the right direction and to stay within the bounds of constitutional law and to cut unnecessary bureaucracy. And I will tell you, in Tennessee my constituents talk about the work that's being done to cut regulation and bureaucracy. They like these steps.

Now, in Tennessee there are 28 Superfund sites. Four are on the National Priorities List and they are in my district. So, this is something that we focus on. You need to clean up these contaminated sites. There is no question about it and I will tell you, I have questions about the amount of process and the foot dragging that is involved in cleaning up these sites under CERCLA.

Bids for these sites should not be taking 15 or 20 years. That would be commons sense. We know that process has to speed up.

Administrator Pruitt has said a couple of things. Back last June at an appropriations hearing he made a comment, "It's more about decision making, leadership, and management than money."

I agree with him on that. As I said, it ought not to take 15 or 20 years. At our oversight hearing in December he said, "Most of it is a lack of direction on how we should clean up."

So, these are solvable problems. Communities want to see these sites cleaned up. They want to see the problem solved. So, we all

know it is possible to do more with less. The private sector does this every single day and it is time for government to start to do more with less and to do it in a more timely fashion and time efficient manner.

Let us be responsible to the states, to the communities, and to the parties that are involved in this process and let's speed this up and get these cleanup efforts in gear.

And I will yield, Mr. Chairman, to whomever would like the time or yield it back.

Mr. SHIMKUS. It looks like you could yield it back and we'd be great.

Mrs. BLACKBURN. I yield back.

Mr. SHIMKUS. Gentlelady yields back her time and we appreciate that.

All time having expired, the chair now recognizes the first panel.

Mr. Barry Breen, Principal Deputy Assistant Administrator for the Office of Land and Emergency Management, U.S. Environmental Protection Agency—before the hearing, he and I spoke. We both served in the Army at the same time.

So, thank you for your service and you're recognized for 5 minutes.

STATEMENT OF BARRY BREEN, PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR OF THE OFFICE OF LAND AND EMERGENCY MANAGEMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. BREEN. Thank you, Mr. Shimkus, and thank you, Ranking Member Tonko and Ranking Member Pallone. Thank you, all the members of the subcommittee. We are grateful to be here and to answer your questions.

The Superfund program is a premier example of how we can both protect the environment and pursue economic development at the same time. The importance of Superfund to human health is highlighted in recent academic research by faculty at Princeton University, University of Chicago, and the University of California at Berkeley.

Superfund cleanups reduce the incidents of congenital abnormalities, birth defects in infants, by as much as 25 percent for families living within 2,000 meters of a site.

At the same time, Superfund is important to economic development. Faculty at Duke University and the University of Pittsburgh found that increased residential property values within three miles of Superfund sites go up between 18 and 24 percent when the sites are cleaned up and deleted from the NPL.

Superfund responds to both short-term emergencies and long-term remedial action needs. Each year about 30,000 calls come into the national response center and many of these are best handled by state and local responders. But EPA works with our Coast Guard partners in responding to roughly 150 to 200 of these releases each year.

EPA has a 24-hour response capability and for the last 11 years EPA completed or oversaw 3,600 and some response actions. At the same time as those short-term emergencies are being dealt with, the Superfund remedial program addresses complex, high-priority,

long-term cleanups. They reflect both legacy practices from decades ago and more recent contamination as well.

Through 2017, EPA and our partners completed final remedial assessments at more than 51,000 potentially contaminated sites. But at the same time much has been done, there's much left to do and we've taken several steps to further improve and expedite the process of site remediation.

The administrator established a Superfund task force to provide recommendations on an expedited time frame. The task force report provides 42 recommendations and we adopted it in July. We included a list, as Mr. Tonko mentioned, of the 21 sites for immediate and intense attention. In developing the list, we considered sites that would benefit from the administrator's direct engagement and have identifiable actions to protect human health and the environment. We wanted to spur action at sites where opportunities exist to act quickly. Sites will move on and off the list as appropriate.

We also recently released an initial list of Superfund sites with the greatest expected redevelopment and potential for commercial development. These are where we think there's been previous outside interest, access to transportation corridors, land values, and similar development drivers. It's not a complete list of everything with redevelopment potential and we hope sites will move on and off the list as appropriate.

And we are addressing risk at all Superfund sites, not just of those on the list. The administrator's expectation is a renewed focus on accelerating work in progress at all sites nationwide.

We appreciate your interest in our program. Protecting human health and the environment by enhancing ongoing cleanup and reuse remains one of EPA's top priorities.

Such efforts will always be undertaken in partnership with other federal departments and agencies, states, tribes, and local communities in a manner that protects human health and the environment and seeks economic development as well.

Thank you very much, and I will look forward to your questions.

[The prepared statement of Mr. Breen follows:]

TESTIMONY OF
BARRY BREEN
PRINCIPAL DEPUTY ASSISTANT ADMINISTRATOR
OFFICE OF LAND AND EMERGENCY MANAGEMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
ENERGY AND COMMERCE COMMITTEE
HOUSE OF REPRESENTATIVES

JANUARY 18, 2018

Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, thank you for the opportunity to appear today to discuss the Superfund program's accomplishments and challenges.

At EPA, cleaning up the nation's Superfund sites and returning them to communities for beneficial use is one of Administrator Pruitt's top priorities. The Superfund program is a premier example of how EPA can accomplish its core mission of protecting human health and the environment while simultaneously promoting jobs and economic growth in thousands of communities across the country.

The importance of the Superfund cleanup program to human health is highlighted by academic research by faculty at Princeton University, University of Chicago, and University of California, Berkley, published in the *American Economic Review,* that found that investment in Superfund cleanups reduces the incidence of congenital abnormalities in infants by as much as 25 percent for families living within 2,000 meters of a site.[1]

[1] Currie, Janet, Michael Greenstone, and Enrico Moretti.2011. "Superfund Cleanups and Infant Health". *American Economic Review*, 101(3): 435-441

Superfund cleanups also provide significant economic benefits to communities. EPA has collected data showing that at 487 Superfund sites that are in reuse, 6,622 businesses are generating $43.6 billion in sales and employ 156,352 people who earned a combined income of $11.2 billion.[2] Work under the Superfund program improves property values as well. A peer-reviewed study by researchers at Duke University and University of Pittsburgh found that residential property values within three miles of Superfund sites increased 18.7 - 24.4% when sites were cleaned up and deleted from the NPL.[3]

Superfund Removal/Emergency Response

The Superfund program includes shorter-term removal actions to mitigate immediate threats to human health and the environment, and remedial actions, which address more complex and longer-term cleanup.

Each year, approximately 30,000 applicable release notifications are reported in the United States. While many of these are best handled by state and local responders, EPA works with the Coast Guard as our key partner in the federal government's response to these releases. EPA has a 24-hour-a-day response capability, and from FY 2007 through FY 2017, EPA completed or oversaw 3,655 response actions to protect communities and reduce the immediate threat to human health and the environment across the country. The total for FY 2017 alone was 255.

[2] For more information on Redevelopment Economics and in depth case studies please use the link below. https://www.epa.gov/superfund-redevelopment-initiative/redevelopment-economics

[3] Gamper-Rabindran, Shanti and Christopher Timmons. 2013. "Does cleanup of hazardous waste sites raise housing values? Evidence of spatially localized benefits," Journal of Environmental Economics and Management 65(3): 345-360

Superfund Remedial Program

The Superfund Remedial program addresses complex, high-priority, longer-term cleanups. These contaminated sites reflect both legacy practices and more recent activity. There are currently 1,345 sites on the NPL, and 55 sites have been proposed for the list but not yet finalized.

Earlier this month, EPA announced that in 2017, the agency deleted all or parts of seven Superfund sites from the NPL. As of the end of fiscal year 2017, 394 sites had been deleted from the NPL and 836 Superfund sites were ready for anticipated use on a site-wide basis. Another key measure at Superfund sites is when human exposure has been brought under control. This information is currently available on the Superfund site profile website.

State partnerships are critical to the Superfund remedial cleanup efforts. They are well situated to evaluate what sites should be on the NPL in the first place. Through FY 2017, the EPA and its state, tribal, and federal partners completed final remedial assessments at more than 51,000 potentially contaminated sites, and just as with the sites added to the NPL that was announced last week, EPA routinely seeks the state's written concurrence before adding a site to the NPL.

As you can see, the Superfund Program is hard at work, and at the same time there is a great deal of work left to do. Administrator Pruitt has taken several steps over the past year to further improve and expedite the process of site remediation and to promote reuse. For example:

- To promote increased oversight, accountability and consistency in remedy selections, the Administrator retained the authority to select Superfund NPL remedies estimated to cost $50 million or more at sites;

- Overall, the Administrator has directed the EPA regional offices to more closely and more frequently coordinate with the Administrator's office throughout the NPL process of developing and evaluating alternatives and selecting a remedy, particularly at sites with remedies estimated to cost $50 million or more;
- In May, the Administrator established a Superfund Task Force to provide recommendations on an expedited timeframe on how the agency can restructure the Superfund cleanup process, realign incentives of all involved parties to promote expeditious remediation, reduce the burden on cooperating parties, incentivize parties to remediate sites, encourage private investment in cleanups and sites and promote the revitalization of properties across the country.

In July, EPA released the Task Force's report, which provided 42 recommendations to improve the Superfund Program. The Administrator issued a directive to implement a number of specific actions right away. In December, EPA addressed one of the recommendations and released a list of Superfund sites that Administrator Pruitt has targeted for immediate and intense attention. In developing this initial list, EPA considered sites that will benefit from the Administrator's direct engagement and have identifiable actions to protect human health and the environment. The list is designed to spur action at sites where opportunities exist to act quickly and move site cleanup and reuse forward. Sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

EPA recently released an initial list of Superfund NPL sites with the greatest expected redevelopment and commercial potential. The sites on this list were found to have significant redevelopment potential based on previous outside interest, access to transportation corridors,

land values, and other critical development drivers. This list is not a complete list of sites in the Superfund pipeline with redevelopment potential, and sites will move on and off the list as appropriate. EPA remains dedicated to addressing risks at all Superfund sites, not just those on these lists. The Administrator has set an expectation for a renewed focus on accelerating work and progress at all Superfund sites nationwide.

CONCLUSION

We appreciate the Committee's interest in the Superfund Program. Protecting human health and the environment by enhancing ongoing cleanup and reuse activities remains among Administrator Pruitt's top priorities. Such efforts will always be undertaken in partnership with other federal departments and agencies, states, tribes and local communities and in a manner that continues to protect human health and the environment.

Mr. SHIMKUS. I thank the gentleman and now we'll turn to the round of questions and I will start with—recognize myself 5 minutes for the first—for the first member to speak.

First of all, welcome. We are glad to have you here and, just to put this in perspective, a long-time career professional employee from the EPA. We appreciate your service, and that gives us a pretty good insight into—you have seen a lot over the years.

So, I want to thank Administrator Pruitt and the EPA for making the Superfund cleanup program a priority. If we don't have a Superfund site in our district we have one close enough and we've been bedeviled by this process, as you all have been, for decades and that's a frustration that you will hear from members who have been on the committee for a long time just how long this takes, the cost it takes, the parties involved and those issues.

Would you please walk us through what you view as the most important issues that need to be addressed to make the program more effective and more efficient?

Mr. BREEN. Thank you.

In fact, we asked ourselves those questions when we put together the task force over the summer and developed the 42 recommendations.

The way the recommendations were developed was by asking senior career staff, for the most part, what we should do and we all listened as well to outside input.

But in the end, it was the task force that put the recommendations together and provided it to the administrator in June on about the 30-day timeline he'd asked for.

Then there was interaction with the administrator and then we came out with the report as reflected in July. So, I would have to say what we would reflect back are what's in the task force report.

For one thing, it's looking for hindrances that can be moved aside. Things were put in place for a reason at one time, but that time may well have passed.

We want to focus on demonstrable outcomes like construction completion, getting site wide ready for anticipated use. We want sites deleted when they can be safely. We want to get the work done.

So I would turn us to those 42 recommendations as what I would suggest as the consensus view.

Mr. SHIMKUS. Thank you.

The state cleanup programs when I had the history of the Superfund in my opening statement—that's what I was pulling out—enacted in 1980, the National Priority List in 1983. There are still sites on that list that haven't been remediated, which is, again, I think, embarrassing from a national government perspective.

Having said that, what has evolved and what is different is state involvement in cleanup and cleanup actions. Would cleanups be more efficient if certain Superfund CERCLA authorities were delegated to the states?

Mr. BREEN. Thank you.

So let me start by saying we, at least from our perspective, have a very strong relationship with the states and we appreciate it, and, in fact, we couldn't accomplish nearly enough without that strong relationship.

We have a baseline already of many sites not being addressed on the Superfund National Priorities List because states are addressing them under state programs, and in many cases we have formal agreements to that end and in other cases we have strong working relationships that don't need a formal agreement.

But there are indeed probably thousands of sites that are not on the National Priorities List thanks to strong state programs. In order for a site to get on the National Priorities List, our practice is to ask states for their concurrence before putting it on the list and, indeed, many of the filtering and screening and site assessment work that leads to a site being put on the NPL are actually accomplished by state programs. And so, in fact, for one recent year, in 2017, we provided $58 million to states in total, both to conduct activities on NPL sites and to support state Superfund programs.

Where states are undertaking work on their own, the statute already provides that states have the same ability that the EPA does to recover cost from polluters. And so Superfund is a response statute. It involves men and women working on the ground. We'd be ready to talk further about ways we can work together. But I wouldn't want to miss the reality that the strong working relationship is already making a big difference.

Mr. SHIMKUS. In my short time remaining, does the national contingency plan need to be updated and modernized to more effectively deal with sites that are being cleaned up?

Mr. BREEN. Thank you.

We recently amended the hazard ranking system to account for subsurface intrusion. This is the TEC, typically, or other halogenated solvents that can move with the water through the ground water and then come up into homes and basements.

We recently amended the hazard ranking system to address that. In terms of other NCP amendments, we'd be open to discussion. I know it's not just Superfund but the oil program as well in the NCP.

Mr. SHIMKUS. I want to thank you, and I will now recognize the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Mr. Breen, how does the EPA consider concerns from the public, from peer agencies, states, and independent scientists in its 5-year review determinations?

Mr. BREEN. There is a formal process for doing a 5-year review determination and, as you mentioned, with the Hudson River we did a draft and put it out for public comment and we did extensive interagency coordination on it, and now we are in that step with the final.

It is the case that we are working hard on this, and I listened carefully to what you said and I will, naturally, take that back and we've had input as well from New York State as well as natural resource trustees at the federal level, including.

So we'll take that all back. But we have not yet resolved the 5-year review.

Mr. TONKO. And you will factor all of those concerns that the state has shared, and others into its final decision?

Mr. BREEN. Yes, sir.

Mr. TONKO. I do not believe the site possibly being protected 55 years from now is deserving of it being granted a current status of being complete and protected.

I would encourage EPA to take another look at the evidence gathered by your counterparts in the New York State government and other federal agencies.

One of the goals of the Superfund task force recommendations is to engage partners and stakeholders. So, unfortunately, everything we have seen from this administration has been contrary to that given goal.

There has been a shocking lack of transparency in both the development of the task force recommendations and the choice of 21 targeted sites. Given that lack of transparency, it is especially problematic that we do not have the Agency's political leadership here today to testify.

Mr. Breen, how were the members of the Superfund task force chosen?

Mr. BREEN. For the most part, they are overwhelmingly career members of the EPA whose assignments—they are mostly senior, very senior members—whose assignments bring them into the kind of work that the task force has undertaken.

There wasn't a formal sort of filter where only some people could be on. I was on some of the phone calls and it seemed to be a considerable matter of people's work making them the natural choice to be on.

Mr. TONKO. OK. Now, for the next questions I would appreciate a yes or no answer.

Administrator Pruitt noted that stakeholder partners contributed to the task force report. Did the task force comply with the requirements of the Federal Advisory Committee Act?

Mr. BREEN. To the best of my knowledge, the answer is yes.

Mr. TONKO. Were task force members announced in the Federal Register or at least on the Agency's website?

Mr. BREEN. There is a list posted. I don't think it's on the Agency's website but I would have to check on that.

But I want to be clear, this is an internal group, not an external federal advisory committee.

Mr. TONKO. Right. But, again, were they listed in the register?

Mr. BREEN. No, I don't believe so.

Mr. TONKO. Did the task force hold public meetings?

Mr. BREEN. No.

Mr. TONKO. Did the task force publish proposed recommendations for public comment and other responses to public comments?

Mr. BREEN. So I understand you want a yes and no.

The task force report itself, which we published in July, is intending to be a living document and we would be grateful for input on it.

Mr. TONKO. So did they publish proposed recommendations for public comment?

Mr. BREEN. Not before July of 2017.

Mr. TONKO. OK. Did the task force maintain and publish records of its meetings and process?

Mr. BREEN. So, again——

Mr. TONKO. Yes or no on that one.

Mr. BREEN. I understand, sir.

Again, the task force isn't a freestanding body. It's a group of people who work together and——

Mr. TONKO. Right. But do they maintain and publish records of their meetings and process?

Mr. BREEN. We have not published records.

Mr. TONKO. OK. This is disappointing and, frankly, counterproductive.

Transparency can go a long way to building trust and community support for Superfund activities, which is essential for effective cleanups.

Let's move on to the list of 21 targeted sites announced on December 8. Again, yes or no answers, please.

Did EPA develop a formalized methodology for selecting sites?

Mr. BREEN. You're asking did EPA acknowledge——

Mr. TONKO. Did they develop a formalized methodology for selecting sites?

Mr. BREEN. We have an objective for what we were looking for in the list of sites.

Mr. TONKO. But no formalized methodology?

Mr. BREEN. Well, I would say there was a methodology. We asked the regions for candidates. We understood what that objective was, which I can tell you, and then the regions came in with sites.

There was discussion about it and then finally a list was given to the administrator.

Mr. TONKO. OK. Let's move on. Did EPA hold public meetings or solicit public recommendations for sites to be included on the list?

Mr. BREEN. So a number of times, I have to say, we asked people what should be included. But I don't think we held a public meeting——

Mr. TONKO. OK.

Mr. BREEN [continuing]. Specifically on that topic.

Mr. TONKO. OK. Did EPA publish a proposed list for public comment?

Mr. BREEN. No.

Mr. TONKO. Did EPA confer with stakeholders at sites before they were listed including the formal community advisory groups?

Mr. BREEN. So we did not ask the regions to formally go out to the community advisory groups. But in asking the regions what sites to put on the list, regions may usefully have taken into account what they thought would be the public——

Mr. TONKO. All right. Has EPA met with stakeholders at the listed sites since they were listed to explain the consequences of listing?

Mr. BREEN. I would have to check on that on a site by site basis and get back to you.

Mr. SHIMKUS. OK. The chair has been very patient. The chair now will reclaim the time and yield to the gentleman from West Virginia, Mr. McKinley.

Mr. MCKINLEY. Thank you, Mr. Chairman, and thank you, Mr. Breen, for appearing here today.

I was impressed with how quickly you were able to put together these recommendations because apparently the charge was put in

May and by July they had 42 recommendations. Given the work output in Washington, that's a dynamic thing to be able to accomplish—42 recommendations in 2 months, to come up with it. And I was particularly impressed with one component of it. It was I think recommendation 23 and 28 perhaps. Had to do with comfort letters.

Having come from the engineering practice and working on some of these Superfund sites and other Brownfield locations, owners desperately want to understand whether or not this site is clean. And I don't know whether people have been able to read yet the recommendations that you had. But one of the comfort levels that in the past is pretty illuminating in that here it is at the conclusion, a typical comfort level it says this letter—this is coming from the EPA—"This letter is provided solely for informational purposes." An owner is trying to find out, or a prospective buyer, is this site clean.

And so the government gets back to them in a bureaucratic fashion by saying this letter is provided solely for informational purposes and is not otherwise intended to limit or affect the EPA's authority under CERCLA or provide a release from CERCLA liability. There is no comfort.

So I am curious now. How much progress have you made since July when this report came out that you might be able to have something on a comfort level that actually does give comfort and support for someone?

Mr. BREEN. Thanks, Mr. McKinley.

So we do intend to come out with a quarterly progress report starting soon that would have recommendation by recommendation—our approach.

What I would like to do is offer a briefing for you and your staff on where we are on that particular recommendation in particular without waiting for the quarterly report. We'll get back to you with some specifics.

Mr. MCKINLEY. OK, if you could.

The other is I am trying to understand the driving factor that puts these sites——

Mr. BREEN. Yes.

Mr. MCKINLEY. Is it bankruptcies? If a company declares bankruptcy, it seems to be unclear whether or not they can shed their liability in a bankruptcy.

What causes a site to be transferred from a corporation or a business over to the federal government to clean it up? What would be an example?

Mr. BREEN. So a site could be on the national Superfund priority list with a bankruptcy situation or without—either one. Bankruptcy would be an important marker that there are not enough assets in the corporation in order for the enforcement part of the Superfund program to seek cost recovery.

Mr. MCKINLEY. But couldn't we go back personally on the stockholders or someone? Why has this become a way to shed responsibilities of corporations to the Federal Government?

Mr. BREEN. So there are lawyers at the Justice Department who do this 12 hours a day. I would probably do best to get you one of the environmental bankruptcy lawyers at the Justice Department.

Mr. MCKINLEY. Yes. I would like to hear back from someone what would be some suggested legislation that we might be able to do to make sure they can't shed this, because we've had enough problems around here with corporations shedding their pension responsibilities, and I don't like the idea of them also shedding their environmental liabilities as well. So——

Mr. BREEN. Thank you.

Mr. MCKINLEY [continuing]. Is there anything else that—there was another question. If it's taking 5 years to come up with a plan, what can we do from Congress to speed up this process—that after we've identified it, why would it take 5 years to come up with a remedial process when EPA has demonstrated that within 2 months they can come up with 42 suggestions?

Mr. BREEN. So we don't want it to take long either. That's why we come to work every day is to get it cleaned up.

The truth is we don't pick the worst sites. The worst sites get—what I mean to say is we pick the worst sites. We didn't make them. So they're on our list precisely because they're hard and difficult.

So sometimes to do it right does take time. But we want to go faster, too.

Mr. MCKINLEY. OK. I yield back.

Mr. SHIMKUS. Gentleman yields back his time. The chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

Obviously, I wanted to use my time today to ask Albert Kelly, the controversial political appointee who's been put in charge of the Superfund program, to explain to the American people exactly what he did to get barred for life from the banking industry.

But, unfortunately, he backed out, probably because he doesn't want to answer these questions, and like my colleague from New York, Mr. Tonko, I find this lack of transparency unacceptable and I am also concerned that my Republican colleagues on the committee continue to enable this lack of transparency because they don't insist on his being here or do other things to try to get him here.

So I am going to have to turn to Mr. Breen because he's the only witness. Mr. Breen, can you explain to the American people what exactly Mr. Kelly did to get barred for life from the banking industry?

Mr. BREEN. I understand that Mr. Kelly elected to settle a matter with the FDIC. He suggested I pass on to you that he is fully willing to discuss this matter.

Mr. PALLONE. Well, I would hope then that, as I said before, Mr. Chairman, that we can get him back for another hearing—bring him in here to testify because I think he's the only one that can really answer the question.

But I appreciate the fact that he's willing to come back and I would hope that that would mean that you would be willing to bring him back because, this really is a matter that relates, I think, to the long-term solvency of the Superfund program.

Now, since 1983, EPA has relied on the National Priorities List to identify and target the Superfund sites that present the greatest threat to human health and the environment.

In December, EPA introduced a new list of sites that would be targeted for immediate intense action. That list is not based on risk to human health or the environment, meaning that some of the most dangerous Superfund sites are not being targeted "for immediate intense action."

Then yesterday EPA published yet another new list of sites, the sites that EPA believes have the greatest potential for redevelopment.

This list is also not based on risk to human health or the environment and suddenly one list has become three, and I think the public is understandably confused.

So, Mr. Breen, am I correct that neither of these new lists targets the sites that present the greatest risk to human health and the environment?

Mr. BREEN. The answer is yes. I want to thank you, Mr. Pallone, for your personal support and interest over the years.

Mr. PALLONE. Well, I appreciate that.

Isn't the mission of EPA and the Superfund program to protect human health and the environment? Isn't that the reason?

Mr. BREEN. That's right. So the National Priorities List is risk based. These are units within the NPL that we use to say these need the administrator's attention and——

Mr. PALLONE. OK.

Mr. BREEN [continuing]. These others are available for redevelopment to bring money and jobs to the site even while we are addressing risk.

Mr. PALLONE. No, I understand that.

But we've heard a great deal about how Administrator Pruitt is attempting to focus on the core mission of the Agency. So, to me, it's kind of alarming to see that these actions seem to focus the EPA attention away from the riskier sites.

Mr. Breen, is EPA still committed to cleaning up the sites that pose the greatest risk to human health and the environment?

Mr. BREEN. Yes.

Mr. PALLONE. OK. And even if those sites don't appear on either of these new lists that's still true?

Mr. BREEN. Yes.

Mr. PALLONE. OK. But, again, it's kind of ridiculous that I have to ask you these questions. But EPA's recent actions, in my opinion, have called into question whether the Agency is still focused on the most dangerous sites.

I've heard from communities in my district that are threatened by these sites and the sites that weren't included on the new list and they don't know what it means.

So does EPA have plans to reach out to those communities to reassure them that their cleanups are still a priority even though they're not on these new lists?

Mr. BREEN. You have marked for us work we need to do. We are not moving away from cleaning up all the sites and, for that matter, the riskiest sites get a very high priority.

Mr. PALLONE. All right. You seem to be saying but I am going to ask you more specifically—can you say right now to reassure these communities that their sites will still get funding, still get EPA attention, and still get health protective cleanups—that that's the goal?

Mr. BREEN. Yes, sir. The one thing I have to worry about is funding, as do you all.

Mr. PALLONE. OK. Well, again, you know, when we talk about funding, myself and many Democrats on this committee have, you know, introduced legislation to try to reinstitute the trust fund and reinstitute, you know, the tax on the oil and chemical industry that will provide more funding so we don't have to rely on the general revenue.

But we haven't been able to get the Republicans to do that, and I go back to when Newt Gingrich was the Speaker and it expired because he didn't want to do it.

So, again, I am just concerned that many endangered communities are being ignored, even as Administrator Pruitt declares the Superfund to be his top priority.

But thank you, Mr. Chairman.

Mr. SHIMKUS. The gentleman yields back his time. The chair now recognizes the gentleman from Texas, Mr. Olson, for 5 minutes.

Mr. OLSON. I thank the chair, and welcome, Mr. Breen.

As you know, Texas has more than its fair share of Superfund sites. One site that is causing the most concern in Texas-22, as you mentioned earlier, is the San Jacinto River Waste Pits.

Waste from paper manufacturing has been stored in hardened caps at the bottom of the San Jacinto River for about 40 years. Hurricane Harvey, bringing down 60 inches of rain in some places, overwhelmed those caps and cancer-causing dioxin was released. One EPA estimate of the release measured 70,000 nanograms per kilogram. The cleanup threshold is 30 nanograms per kilogram. That's the same chemical in natural forces that started the Superfund in Love Canal.

We'd like to thank you and Mr. Pruitt for committing to remove all of that waste—not just recap it but remove it from threat. You also mentioned emergency response in your testimony. You said that you have to deal with 30,000 release notifications each year. Some of those are really important. Some not as important.

My question is, how do you determine when it's appropriate for you to step in in an emergency or when should you let that go to the states and locals to take care of some contamination?

Mr. BREEN. Thank you.

There's a very well-practiced protocol for that. The calls go to one central place, the National Response Center, which is operated by the U.S. Coast Guard.

They get, as I said, about 30,000 calls a year. It's a 24-hour line. There are people on duty all the time, and as well there are 10 EPA regional emergency operation centers and one EPA headquarters emergency operation center. As calls come in, the watch officer at the Coast Guard national response center is making some on-the-spot decisions about who to tell and, as I said, probably 99 percent of the time it's the local fire department or the state hazmat unit, and that's as it should be.

These are the people who are closest geographically anyway and they know the communities the best. But frequently they ask us to come in and then we come in right alongside beside.

Mr. OLSON. Thank you.

Now, do you have the resources you need to address these calls to do what you have to do by law?

Mr. BREEN. There's considerable work sharing between us and the states and local governments, and what's really happening very often is that professionals are deciding among themselves who's closest to the site, who can get there fastest, who's got the equipment and the people with advanced degrees to know what are the gases being released, what are the constituents going into the water.

Mr. OLSON. So it sounds like you're OK. You could probably use more but you got what you need right now.

Mr. BREEN. We will work with whatever you give us.

Mr. OLSON. Well, thank you.

I would like to also talk about responsible parties and how we tackle some other sites like the San Jacinto River Waste Pits. In that case, we have three class action lawsuits out there right now with at least three defendants, none of whom were actually involved in the waste storage when it happened.

And so we are trying to find out the responsible party. Can you talk about how we can determine who is the responsible party and what's the process for getting them to the table earlier rather than later?

Mr. BREEN. I can speak in general terms. Given the litigation, I probably ought to be careful not to speak in particular terms about this site and this set of potentially responsible parties.

In general terms, Congress sets who is a potentially responsible party—present owners and operators, owners and operators at the time of disposal, those who arranged for the hazardous substance to be put at the site, and those who transported it there.

There's a PRP search typically early in a site's development, and while the engineers are doing site evaluation and remedial investigations, the enforcement program is seeing who could ultimately be brought to the table.

There are notice general and special notice letters that go out. But that's not the end of the story. We continue to look for potentially responsible parties.

Ultimately, we'll pick those who we think both have responsibility and the assets to pursue.

Mr. OLSON. Well, thank you. Those are my questions. I would like to also congratulate you and Chairman Shimkus because for the first time in 15 years you all have beaten my Navy-Army at football. Congratulations.

[Laughter.]

I yield back.

Mr. SHIMKUS. I think we are 2–0 right now.

So the chair now recognizes the gentleman from California, Dr. Ruiz, for 5 minutes.

Mr. RUIZ. Thank you, Mr. Chairman.

Since 1980, the Superfund program has cleaned up hazardous sites and helped corporations such as landfill operators, chemical

companies, and manufacturers—hold them accountable for polluting communities across the country.

In May, Administrator Pruitt announced the creation of a Superfund task force that would prioritize and streamline procedures for remediating more than 1,300 sites.

While it would be appropriate for this committee to hold public hearings on potential updates to the Superfund program and how to ensure necessary cleanups are not delayed, Administrator Pruitt's unilateral decision to streamline the process raises some serious transparency concerns.

Which procedure specifically is the task force streamlining? Meaningful consultation with affected tribes are required by Executive Order 13175? The scientific evaluation scoring of sites based on the severity of the contamination? The prioritization of the most contaminated sites for limited federal cleanup funds?

The American public and this committee are all wondering which specific proposals Administrator Pruitt unilaterally decided to streamline and I hope today's hearing will shed some light.

Since I came to Congress I have heard horror stories about the pollution and contamination of tribal lands or near tribal lands that tribes rely on that our government turned a blind eye toward for decades.

Two years ago, I convened a round table discussion to hear from tribal leaders across the Nation and learned more about the environmental injustices they have dealt with and continue to face with federal agencies.

One tribe in particular, the St. Regis Mohawk in New York, raised concerns with the EPA's effectiveness in mitigating the impacts of two Superfund sites located directly upstream and upwind from where the tribes draw their drinking water. Although consulted, the EPA disregarded the St. Regis Mohawk's input on the level of remediation required at each site. Later, testing revealed elevated levels of pollution in fish from nearby water sources that the tribe relies on for their economy and their consumption.

Living in close proximity to environmental hazards yet not being meaningfully consulted in the government's mitigation planning threatens the health and well-being of tribal members who rely on resources like rivers for survival.

That's why I, along with Ranking Member Pallone, Ranking Member Grijalva, and 24 other members of Congress asked the Government Accountability Office to prepare an investigative report on the adequacy of federal policies that protect tribal lands and recommendations for how the policies can be improved.

GAO has since initiated the study and I look forward to seeing the results and identifying how we can improve the way our government works with tribal governments, not walk away from our responsibility.

Now is not the time to stop this momentum and push environmental injustices back into the shadows. The flagrant lack of transparency surrounding the task force selection of sites coupled with the failure to uphold any public meetings confirms that the task force is a step perhaps in the wrong direction.

We have a duty to ensure that the families living in these communities and disproportionately suffering from exposure to pollut-

ants emanating from these Superfund sites are being meaningfully engaged in the remediation process so that they can enjoy a cleaner and safer outdoor environment to work, play, and raise their families.

Mr. Breen, since the last task force failed to generate a record of its deliberations, I am troubled by the lack of transparency and whether affected communities were meaningfully consulted.

So what specific procedures did the task force follow to meaningfully consult with affected tribes and communities living near toxic sites during the selection process of the 21 sites recommended for immediate intense action?

Mr. BREEN. Thank you very much.

We completely agree that our relations with tribal governments are of high importance. This is a government-to-government relationship and the many cases there are——

Mr. RUIZ. I have heard that for so many years. But the actions speak louder than words, and the actions do not show that.

So what have you actually done to consult with tribes?

Mr. BREEN. I will address that. I just didn't want to let it go unsaid.

Mr. RUIZ. I only have 47 seconds left and it seems like you're stalling. So what actions——

Mr. BREEN. I am definitely not stalling.

Mr. RUIZ [continuing]. Have you done to meaningfully implement meaningful consultation with tribes?

Mr. BREEN. Of the 21 sites that we identified for the administrator's immediate and intense attention in our data system, 8 of the 21 are identified as having Native American interest.

Mr. RUIZ. That's not meaningful consultation. That's what I've heard over and over again where they have Native American interest or they invite a Native American to a room just to check a box. That is not meaningful consultation where you take their considerations, their concerns, and actually implement with them at the table.

This is exactly what went wrong with the St. Regis Mohawk problem with the contamination of the rivers. They went to a meeting. They checked the box. They weren't listened to. Nothing was implemented, and now they have a problem.

I yield back my time.

Mr. SHIMKUS. I thank the gentleman. The gentleman yields back his time.

The chair now recognizes the gentleman from Georgia, Mr. Carter, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman.

Mr. Breen, thank you for being here. Appreciate your indulgence with us. I am over here. Hello.

Mr. BREEN. I am sorry. I am looking at——

Mr. CARTER. OK. Thank you. Appreciate it.

Mr. BREEN. I was getting out my right sheet of paper.

Mr. CARTER. That's OK. That's OK.

Mr. Breen, I was just wondering, in 1996 do you remember what you were doing? Were you with the Agency then or——

Mr. BREEN. I was.

Mr. CARTER. You were?

Mr. BREEN. Yes.

Mr. CARTER. OK. That's a long time ago, right? 1996, yes.

In 1996, the LCP chemical site in Brunswick, Georgia, was put on the National Priorities List, in 1996. Twenty years later in 2016 a settlement was announced. But we still don't have funding. The funding still hasn't materialized.

Seriously? Dumb it down for me. Tell me what's going on here. I mean, seriously.

Mr. BREEN. The reason I was looking for my sheet of paper was to get some facts. But on the question of why not funding, I don't have that and I will commit to getting you that.

Mr. CARTER. We got a settlement in 2016 and we don't expect funding for years to come, and this is something that happened in 1996.

Mr. BREEN. Right. I will commit to getting you more information on that.

Mr. CARTER. OK, and I appreciate that. I sincerely do.

Why did it take so long?

Mr. BREEN. I am going to have to just get you more on the site in general for that as well.

I can tell you some things but I can't tell you that.

Mr. CARTER. Let me ask you, just in general why do these claims take so long? Is the EPA doing the work or is the DOJ doing the work? Who is responsible here?

Mr. BREEN. So I can help with that. So the remedy selection and the remedy design and the construction is an EPA responsibility. Often, we are doing it with the state, but it is an EPA responsibility.

Pursuing the potentially responsible parties is a Justice Department lead in courtroom matters, always with an EPA strong participation.

Mr. CARTER. So the EPA does have a say in these settlements.

Mr. BREEN. Yes.

Mr. CARTER. In these type of settlements, they have a say and they're divided up and they provide direction on funds outside of the direct remediation. EPA has that authority and has that ability.

Mr. BREEN. Yes.

Mr. CARTER. So is the EPA able to usher these claims along?

Mr. BREEN. Which claims?

Mr. CARTER. These claims, such as this, with the one that I am stating here with the LPC chemical site in Brunswick?

Mr. BREEN. Sure. So where there's a potentially responsible party, EPA would be doing the site investigation that would lead to the referral to the Justice Department.

Mr. CARTER. OK. Earlier, you talked about the 42 recommendations that were outlined in the Superfund task force report and one aspect of these sites is that it's taken so long to remediate.

The administration's top ten list—has it materialized and has that been set yet?

Mr. BREEN. Thank you.

When we did the task force report, we envisioned a top ten list. It turns out that we thought there was more progress we could make than just at 10 sites.

So what we thought was going to be 10 turned out to be 21 and that's the list that we produced last month.

Mr. CARTER. So what started out as 10 turned out to be 21?

Mr. BREEN. Yes.

Mr. CARTER. Right. You mentioned about state involvement and about task force report, and in the task force report it describes the importance of third party investments.

Can you elaborate on that just a little?

Mr. BREEN. Sure. So there are hundreds of sites that are in productive reuse, and often that's taking the work from mere clean to actually useable and the use of private investment for that is a strong possibility.

Mr. CARTER. Do you see any alternative methods or approaches to financing site cleanups?

Mr. BREEN. I think there probably are things we could be thinking about.

Mr. CARTER. Any examples?

Mr. BREEN. Sure. I think the Brownfields program gives us some examples we could look toward and understand better and learn from.

Mr. CARTER. OK.

Mr. Breen, I am not trying to give you a hard time. But I am the one who has to go back to my district and answer these people and they want to know, 20 years, seriously? And yet, we got a settlement where we still haven't had any financial relief whatsoever. What am I supposed to tell them?

Mr. BREEN. Well, we'd like to sit down with you and walk you through it so you have that information.

Mr. CARTER. OK. All right. I hope it will be within the next 20 years. I mean, seriously.

Mr. SHIMKUS. If the gentleman would yield. I know he's about ready—not much time. But if and when you have that meeting I would like to attend. I think it's a budgetary issue. I think it's a funding issue and I think there's a deeper answer—question to this answer.

Mr. CARTER. Right. Thank you very much, and I yield.

Mr. SHIMKUS. Gentleman's time has expired.

The chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman and Ranking Member, for holding today's hearing.

A strong and well-funded Superfund program is necessary to ensure the toxic sites in Texas and throughout the United States are cleaned up.

Mr. Breen, thank you for joining us today at our hearing. I have a district in Houston, Texas, and Texas was hard hit by Hurricane Harvey in August. It destroyed houses, schools, businesses along the Texas Gulf Coast.

A major concern from our community during Hurricane Harvey was the status of the nearly two dozen Superfund sites in and around the Houston area. The major one was the San Jacinto River Waste Pits, and I want to thank EPA and the administrator for being there right after the water subsided and visiting that site and also making the decision that they will be cleaned up.

Of course, we have a responsible party with that facility. One of the things I kept hearing—because we did have a fire that's just east of my area—is there a national toll-free number that can people call at the EPA on some tragedy or something like that to get information or——

Mr. BREEN. Well, there is a national number for calling and reporting a release. In terms of getting information, we would, I think, probably hope those calls get routed to the people in the regions who are closest to it rather than handling them back——

Mr. GREEN. Yes. Well, in our Region Six—like I said, on this one, but because of where we are located and our industries we have a significant number of Superfund sites.

Is there a team that's ready to be deployed at sites immediately after a national disaster?

Mr. BREEN. Yes. We have about 200 to 250 on-scene coordinators. These are men and women who, as they say, sleep with their boots by their beds and there is at all times someone who is on call ready to go.

Mr. GREEN. OK. Because we did have some tragedies at some of our facilities after that.

One of the hallmarks of Superfund is a "polluter pays" principle, which holds polluters liable for the cleanup of toxic substances.

Last month, Administrator Pruitt came before our committee and I asked Administrator Pruitt about the "orphaned" Superfund sites that do not have identifiable responsible parties, or PRP.

I would like to follow up on the questions. How many "orphaned" sites are listed on the National Priorities List? Do you have a number?

Mr. BREEN. And I wondered about that, too, when your staff mentioned you would ask.

I don't have a specific number. I can tell you we usually approximate that at the remedial actions the responsible parties are performing the work about 60 to 70 percent of the time.

But even at the remaining 30 to 40 percent, it's often the case that there are people we can go after. But we don't want to wait to make them do it. So we are doing it ourselves and we'll get reimbursed.

So I don't know how many "orphaned" sites there are.

Mr. GREEN. I hope that reimbursement works.

Mr. BREEN. Yes. We hope so, too. So but it usually does and we'll commit to getting you as best a number as we can.

Mr. GREEN. OK. And so my second question is does the taxpayer pay for the cleanup in those cases on an "orphan?" But you're still going after somebody who may be the responsible party.

Mr. BREEN. That's right. If it's a truly "orphaned" site then there's nothing else but the federal government. But even at sites where there are PRPs not doing the work, we will seek cost of recovery if we think we can get the money.

Mr. GREEN. The appropriations process, the money for the Superfund trust fund, did EPA request a funding increase for the Superfund for this current year do you know of?

Mr. BREEN. I think the president's budget does not.

Mr. GREEN. OK. Was there a proposed cut in the Superfund? I haven't looked at the president's budget. We are not on appropriations so we don't carry it around with us.

Mr. BREEN. I think the president's budget showed a reflection of less money. But as I said, we'll work with whatever you give us.

Mr. GREEN. In the Obama administration, 61 sites, or Superfund sites, were removed from the NPL including 12 toxic sites in 2014 alone.

Can the administrator set an expectation for accelerating work in progress on all these Superfunds nationwide when EPA is recommending the sharpest budget cuts in the Nation's history, or the Agency's history, in eliminating 4,000 positions.

Of course, the president's budget—and we appropriate the money—someday we'll have an appropriations bill maybe, but I hope that EPA seriously reexamines it budget request for 2019 that will fully protect what in our area is human life and environment in a very urban area but also a very industrialized area in the upper Texas coast.

I want to thank you, Mr. Chairman, for the time.

Mr. SHIMKUS. Gentleman's time is expired.

The chair now recognizes the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman and Mr. Tonko, for holding this hearing.

Mr. Breen, we appreciate you being here. I've looked at your limited bio that we are presented and it's unbelievably positively impressive. Princeton, Harvard Law, active Army, Justice Department criminal division, and that's all before you went to the EPA. That's impressive. It really is.

How long have you actually been at the EPA?

Mr. BREEN. About 25 years.

Mr. BARTON. Twenty-five years. So you—that would be '93?

Mr. BREEN. It was toward the end of 1992.

Mr. BARTON. 1992. OK. So 1992, first Bush was president.

Mr. BREEN. Right.

Mr. BARTON. Did you go into the EPA as a civil service or as a political?

Mr. BREEN. Civil service.

Mr. BARTON. Civil service. So your career has been in the civil service?

Mr. BREEN. Yes.

Mr. BARTON. Do you have at present at EPA a political appointee above you other than Administrator Pruitt?

Mr. BREEN. No.

Mr. BARTON. No. Has there been someone who has been sent to the Senate?

Mr. BREEN. No.

Mr. BARTON. Is there anybody under consideration?

Mr. BREEN. That I——

Mr. BARTON. You don't know.

Mr. BREEN. I would have to defer on.

Mr. BARTON. So for the time being, you're the man. Is that fair to say?

Mr. BREEN. I am the national program manager for the Superfund program.

Mr. BARTON. In Texas we'd say you're the man. Yes.

[Laughter.]

Just out of curiosity, does the name Jan Gerro strike a bell with you?

Mr. BREEN. It does, but I——

Mr. BARTON. She's my sister. She is an environmental enforcement attorney for Region Six EPA in Dallas.

Mr. BREEN. Congratulations.

Mr. BARTON. And is reputed to be a holy terror.

[Laughter.]

Mr. BREEN. I will take that back.

Mr. BARTON. I don't normally admit to that up here in Washington, since I am a conservative Republican. But she goes at them. She goes and gets them.

Mr. BREEN. Thank you.

Mr. BARTON. Has almost a 100 percent conviction rate, at least that's what she tells me.

Our Congressman Carter from Georgia was just, rightfully so, complaining about Superfund site in his district that apparently nothing has been done on in 22 years.

Can you tell me how many Superfund sites have actually been cleaned up in the history of the program?

Mr. BREEN. Yes, and I ought to get you the exact number.

Cleanup is a term that really occurs in stages. So we have deleted hundreds from the National Priorities List. But even before a site is deleted it can be ready for anticipated use and we have hundreds more ready for anticipated use.

And even sometimes cleanup is when is the construction complete, even if the public isn't ready to use it yet, and we have even more yet.

So I will get you specific numbers on all of the——

Mr. BARTON. Just kind of a ballpark number. Seven or 800?

Mr. BREEN. For construction completion, I think we are higher than that.

Mr. BARTON. OK. Now, the staff briefing says that there are 1,341 sites that are still listed.

Mr. BREEN. Right.

Mr. BARTON. Do you agree with that number?

Mr. BREEN. If the question is whether it includes the list we just put out a few weeks ago so I could——

Mr. BARTON. For debating purposes——

[Simultaneous speaking.]

Mr. BREEN. Yes.

Mr. BARTON. What's a reasonable number for Congress to expect of the existing sites to be cleaned up per year?

Mr. BREEN. How many?

Mr. BARTON. Yes. Ten per year? Twelve per year?

Mr. BREEN. So we will make projections in our budget forecast that we'll give you in a week and a half for what we would project to do. I would probably be best to wait to get you those numbers.

Mr. BARTON. OK. But, I mean, is it reasonable for the Congress to expect double digit sites per year to be cleaned up?

Mr. BREEN. Yes, for construction completions I think so. How many double digits, whether it's 10 or 30 or whatever, I am going to wait.

Mr. BARTON. Now, and our chairman alluded to this, is the primary reason we don't have more progress on sites like Congressman Carter's because we just don't have the funding? Is that the primary reason? Or is it the complexity and the technical issues involved with the actual cleanup?

Mr. BREEN. It's a mix. We think—we think there are things we can do and that we are undertaking to be more efficient and we are going to push hard on those.

In the end, though, there may be sites that still we can't get to and that's been the case for years. For probably every year but one out of the last, say, 10 or 15 there are sites we haven't gotten to.

Mr. BARTON. OK. Well, my time is expired. But we do appreciate your service and I think we've got a bipartisan agreement on the subcommittee that we need to modernize the Superfund process.

But we also need to fund it if it's a funding issue. We need to clean these sites up. I mean, you know, Congressman Carter's got a very legitimate issue. When this sites' been on the list for 22 years and it doesn't appear that anything has been done——

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

Mr. BARTON. I yield back.

Mr. SHIMKUS. Gentleman yields back. The chair now recognizes our own holy terror from the State of Colorado, Ms. DeGette, for 5 minutes.

[Laughter.]

Ms. DEGETTE. Thank you so much for that vote of confidence, Mr. Chairman.

Mr. BARTON. Holy terror is a compliment.

Ms. DEGETTE. All right. From you, probably.

So, Mr. Breen, Congressman Carter—in your conversation with him you talked about the potential of using Brownfields money for Remediation. But, of course, we are prohibited from using Brownfields money, yes or no?

Mr. BREEN. I didn't mean to suggest Brownfields money.

Ms. DEGETTE. OK. Yes. Yes. We are prohibited from using Brownfields money for Superfund cleanup, right?

Mr. BREEN. Yes.

Ms. DEGETTE. And, in fact, the whole idea of Brownfields is very different from Superfund, right?

Mr. BREEN. Not necessarily.

Ms. DEGETTE. You wouldn't want to take all the Brownfields money and use that for Superfund?

Mr. BREEN. We wouldn't want to do that.

Ms. DEGETTE. Thank you.

Now, I want to ask you a couple of other questions. You told Mr. Tonko that there's a list of the members of the task force. Is that right?

Mr. BREEN. Yes.

Ms. DEGETTE. Can we get a copy of that list?

Mr. BREEN. Yes.

Ms. DEGETTE. Thank you so much.

Now, do we have records of when the task force met?

Mr. BREEN. What we have are a hundred people's meeting notes that they took from the meetings that——

Ms. DEGETTE. But do we have actual records of when the meetings were?

Mr. BREEN. I would have to check.

Ms. DEGETTE. If you have them can we get a copy of that, too? And were there minutes of what was requested at those meetings?

Mr. BREEN. Not to my knowledge.

Ms. DEGETTE. Just the notes of the——

Mr. BREEN. Of individuals.

Ms. DEGETTE. OK. Now, in your experience, is it a normal practice at the EPA for a task force to develop a report with nor written records?

Mr. BREEN. It's not the case that we have no written records.

Ms. DEGETTE. Well, OK. Let me ask you this then.

Is it the practice for a task force to meet and to have no minutes or other records of what was discussed?

Mr. BREEN. Minutes would be pretty unusual. Other records is kind of the same situation as——

Ms. DEGETTE. Do we have other records of the task force?

Mr. BREEN. Sure.

Ms. DEGETTE. OK. Can we get a copy of those?

Mr. BREEN. I will have to turn that over to the people who actually manage——

Ms. DEGETTE. But you don't have an objection?

Mr. BREEN. I don't personally have——

Ms. DEGETTE. OK. I just have to say, Mr. Chairman, it seems a little odd to me that you'd have a task force with a recommendation but no minutes, no nothing. So I will be eager to see what I can get, Mr. Breen.

I want to talk to you for the time I have remaining about the Gold King Mine. I imagine you'd assume that.

The Gold King Mine in Colorado, it was included on the EPA list released on December 8 targeted for immediate intense action. A lot of us from Colorado have been focused on addressing the environmental damage caused by the August 2015 release of toxic mine water that tainted the Animas River and caused hardship for Coloradoans, New Mexicans, and members of the Navajo tribe living downstream.

So I want to ask you a couple questions. First of all, I understand that the EPA is currently conducting a remedial investigation and feasibility study. Can you give us a timeline for when that study will be released?

Mr. BREEN. It is the case we are undertaking remedial investigation. I don't have a target date for conclusion of it. I will get that to you.

Ms. DEGETTE. That would be great. Thanks.

Now, one of the goals highlighted by the Superfund task force was "engaging partners and stakeholders." What actions is the EPA taking to engage stakeholders while the remediation plan is being developed?

Mr. BREEN. Thank you.

So, first of all, we have provided more than $2 million to states and tribes to support water quality monitoring while the work is going on.

Ms. DEGETTE. Right. Well, that's great. But what are you doing to engage the stakeholders? Are you having meetings? What efforts are you——

Mr. BREEN. There are community involvement coordinators who are working on what we call the Bonita Peak Mining District because——

Ms. DEGETTE. Right.

Mr. BREEN [continuing]. Because the Gold King Mine and several dozen more.

Ms. DEGETTE. Is part of that. Yes.

Mr. BREEN. Let me ask them to summarize for you what they're doing and get that to you.

Ms. DEGETTE. That would be excellent. Thank you, because I know people are concerned.

Also, in terms of funding, the EPA spent about $29 million responding to the release and about $5 million in additional cleanup at the site. Is that correct?

Mr. BREEN. The number $29 million is in my notes. I didn't have the other $5 million.

Ms. DEGETTE. The $5 million was after that.

Mr. BREEN. OK.

Ms. DEGETTE. So my question to you is, is the EPA committed to providing sufficient funding to complete the cleanup that we need to do?

Mr. BREEN. Yes.

Ms. DEGETTE. OK. Great.

Finally, I understand the EPA is opening a water treatment plan to clean up the water from Gold King Mine at the cost of $1.2 million. What is the EPA's long-term plan for the plant's operating cost?

Mr. BREEN. Well, if we are talking about the same thing, we know that in 2018 we'll continue to treat all the water——

Ms. DEGETTE. Right.

Mr. BREEN [continuing]. Gold King Mine. Beyond 2018, I don't have written down. I will have to get that for you.

Ms. DEGETTE. You don't know who's going to be in charge of that after——

Mr. BREEN. Oh, I know who will be in charge. I just don't have it to tell you at the minute.

Ms. DEGETTE. OK. Great.

Mr. BREEN. But we'll get that for you.

Ms. DEGETTE. If you can let me know I would appreciate it. Thank you so much. Thanks for your years of service to the Agency, too.

Mr. BREEN. Thank you.

Mr. SHIMKUS. Gentlelady's time has expired.

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

Mr. JOHNSON. Thank you, Mr. Chairman, and Mr. Breen, thank you for joining us today.

How can the EPA use incentives to encourage responsible parties to cooperate and come to the table early in order to avoid the increased transaction costs associated with protracted negotiations?

Mr. BREEN. Yes. The statute gives us considerable tools and I can explain a few of them and tell you we are eager to find whatever more tools, and that's one of the recommendations is to look at this.

Mr. JOHNSON. OK.

Mr. BREEN. This is probably the most powerful statute in terms of civil liability that the Congress has written for environment law.

If we give an order and the responsible party does not comply, in addition to daily penalties of $25,000 or more per day, when we ultimately clean up the site ourselves, we can sue for punitive trouble damages.

So if we clean up for $5 million, the defendant is exposed to our $5 million cost recovery, $15 million in punitive damages, and $25,000 or more per day. It's an enormous exposure on the defendant's part—not one that companies take on lightly.

Mr. JOHNSON. OK. Well, that actually answers my second question—how can you use enforcement authorities and that's some of the enforcement leverage that the EPA has to get a cleanup started or to help reach settlement, right?

Mr. BREEN. Right.

Mr. JOHNSON. OK. How does the EPA ensure the timeliness and the cost effectiveness, consistency, and quality of cleanups?

Mr. BREEN. We have a number of methods in place. First of all, the remedial project managers are well-trained and they all have branch chiefs who are experienced and veterans.

And so the natural thing is to design remedies by people who are well-trained and expert. For most remedies above a certain amount, we then take it into what's basically an internal peer review process.

For about the last 20 to 25 years we have used what's called a remedy review board, and remedies over a certain size get discussed by all 10 regions before the remedy selection is finalized.

And now for the largest remedies we take them to the administrator himself and that in that way the whole region, including the regional—we take them to the U.S. EPA administrator. So the regional administrator will be involved as well as headquarters.

Mr. JOHNSON. OK. All right.

Finding new ways to efficiently addressing clean up sites on the National Priority List is certainly commendable and we've talked a lot about that here today.

That's why I am encouraged by EPA's focus on this issue through the Superfund task force and its recommendations. So while the Superfund task force notes that there is no need for statutory changes to carry out its recommendations, were there ideas omitted that did require congressional action and are there any recommendations that could be most effective through a statutory change?

Mr. BREEN. So in the deliberations of the task force, we just put aside anything that might lead to a need for statutory change. It just wasn't within the scope.

I did observe that in last month's hearing the administrator—when one of your colleagues asked that question, the administrator said that perhaps there are lessons to be learned from the new Brownfields legislation that could be carried into Superfund. We would be prepared to discuss those kinds of ideas or others with you.

Mr. JOHNSON. OK. All right. Thank you.

Mr. Chairman, I yield back a whole minute and 13 seconds.

Mr. SHIMKUS. The chair thanks and the chairman yields back his time.

Now we recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. OK. Thank you, Mr. Chairman, and thank you, Mr. Breen, for appearing this morning.

When Administrator Pruitt was here last month I brought up the importance of enforcing all of our environmental laws, not just relating to Superfund.

If we fail to enforce all of our environmental laws we will continue to create new dangerous sites, adding to the national Superfund priorities list.

Unfortunately, I think this administration's efforts to delay and dismantle regulations will do just that. Mr. Breen, as deputy administrator for the Office of Land and Emergency Management, I would like to ask you about some of the rules that have been delayed or repealed.

The risk management planning program amendments would have made chemical facilities with large stores of dangerous chemicals safer. Those amendments were about to take effect last year but had been repeatedly delayed and are now being reconsidered.

If a disaster were to strike a facility covered by the risk management planning program, leading to a large-scale release of toxic chemicals, could that release lead to the creation of new Superfund sites?

Mr. BREEN. Thank you.

So the risk management program, the public comment period in 2016 ended within a few days of an important ATF finding that the west Texas explosion, which had motivated so many of us to do better—that the west Texas explosion was associated with arson rather than an accident.

That important fact needed to be taken into account. So we delayed the effective date in order to take that and similar kinds of input into account.

But to answer your question, any site could explode and create a Superfund site.

Mr. MCNERNEY. Well, turning now to the requirements for safe disposal rule of waste under the resource conservation and recovery rule, we all know that unsafe disposal of waste can lead to the creation of Superfund sites.

Despite this, the EPA announced in September that the Agency would reconsider the final rule governing the disposal of coal ash. When the Kingston coal ash impound burst in 2009, the contaminated water that was released created a new Superfund site. Is that right?

Mr. BREEN. I don't know if it created a new Superfund. But it certainly released material that we responded to.

Mr. MCNERNEY. Thank you.

Your office also handles emergency response including response to hurricanes.

Mr. BREEN. Yes.

Mr. MCNERNEY. As we've seen this year, and also illustrated by my friend, Mr. Olson, hurricanes can damage Superfund sites and cause dangerous release from refineries and chemical plants.

In my State of California, we've seen devastating wildfires and mud slides, which also have the potential to spread environmental contamination.

Do you agree that extreme weather events have the potential to create or worsen Superfund sites?

Mr. BREEN. Yes.

Mr. MCNERNEY. Hasn't the EPA found that Superfund sites are vulnerable to the effect of climate change including flooding, rising sea levels, increasing wildfires, and changes in temperature?

Mr. BREEN. So we took a study on this ourselves and found that, first of all, we have to respond to climate change and that's just part of our mission set and so we need to design remedies that account for that.

And we don't get to pick where Superfund sites are. We deal with the waste where it is. So we found in our own study that our procedures were, for the most part, satisfactory but that we needed to be careful and attentive and have some additional tools to meet those procedures.

But as well I think there are external reviews both by the general—Government Accountability Office and the inspector general and we'll look forward to working with them to understand whether they think we need to be doing different, not just better.

Mr. MCNERNEY. Well, thank you.

Mr. Chairman, I have here a June 2014 climate change adaptation implementation plan adopted by Mr. Green's office to address the risk of climate change to Superfund sites.

Unfortunately, this document does not appear on the EPA's website. So I would like to include it for the record.

Mr. SHIMKUS. Hearing no objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. MCNERNEY. All right.

Mr. SHIMKUS. And I thank you.

Mr. MCNERNEY. Despite this evidence, the climate change will make Superfund sites more dangerous and potentially create new additional Superfund sites.

The Trump administration and the Pruitt EPA are undermining and rolling back our efforts to fight climate change. If the president and Administrator Pruitt are serious about addressing contaminated sites in our country, they need to abandon the regulatory rollbacks and strongly enforce all of our environmental laws including the Clean Air Act to address climate change.

Thank you. I yield back.

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

The chair now recognizes the gentleman from Michigan, Mr. Walberg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thank you, Mr. Breen, for being here.

One of the questions that always comes up about special accounts and I would like to ask if you could give us a brief overview of how special account funds are collected. If you would tell us what the current balance of the special accounts is and if you could walk us through how special account funds are spent.

Mr. BREEN. Yes, sir.

So the current balance is about $3.2 billion in special accounts and over all the years we've collected about $6.8 billion. So $6.8 billion collected, $3.2 billion approximately on hand.

In nearly every case, special accounts are funded as a result of a consent decree with a responsible party and they give us cash. We can settle for cash or work or both, and there are plenty of times they would give us cash.

The United States has the authority under legislation that the Congress gave us to not turn that money over to the miscellaneous receipts account, which is where it would otherwise go, but to instead keep it in the EPA accounts at the Treasury in order to spend it at the site.

So this is thanks to you that we do this.

Mr. WALBERG. So that's why the balance is so high at this point right now?

Mr. BREEN. I will just add one more thing.

Mr. WALBERG. OK.

Mr. BREEN. We earn interest on it and Treasury credits us interest. So not just get the money from the PRPs but we get money from the Treasury as interest grows.

Many of these sites it's smart to take the money now because we don't know—if we said to the PRP, "Give us a million a year for the next 30 years," we are betting on that PRP having that money for the next 30 years and it's just smarter to take it now and put it in the Treasury where it's safe and then spend it as it's needed. So for that $3.2 billion that's on hand, we have multi-year plans for every site with a material amount of money for how that money will be used year by year into the future.

Mr. SHIMKUS. Would the gentleman yield just a minute?

Mr. WALBERG. I certainly would.

Mr. SHIMKUS. So why we are asking this question is really following up on what Buddy Carter had said on his site and it would be interesting in the discussions if some of the litigation or whatever went into that special account and if so why isn't that money being then used. That's kind of how we are following up this line of questioning.

Mr. BREEN. Thank you. We will factor that in then. Thank you.

Mr. SHIMKUS. Thank you, Mr. Walberg.

Mr. WALBERG. One of the recommendations of the task force is to use special account funds as financial incentives to potentially responsible parties perform cleanup work. Can you explain how these incentives would work?

Mr. BREEN. There are important discussions to be had with the Justice Department on this and the Office of General Counsel. Obviously, we can only do what's statutorily authorized and most of

these accounts are created because we have a consent decree, which the Justice Department has been instrumental in providing.

But it may be that within the terms of the consent decree the money doesn't have to be used only in the way it was originally visioned but it can be used in the way that's needed now.

So we would be open to thinking about that and seeing what can be done.

Mr. WALBERG. So you could give incentives. Could you reimburse a potentially responsible party that completes the work early at the site?

Mr. BREEN. That I would need to get counsel on to give a good answer for.

Mr. WALBERG. OK. Does the statute need to be updated to clarify what special account funds may be used for?

Mr. BREEN. We'd like to work with you on that. We'd want to make sure we sort of articulated for you what the need is. So let us work with you on that.

Mr. WALBERG. OK. Well, thank you. I yield back.

Mr. SHIMKUS. The gentleman yields back his time and the chair thanks my colleague for that round of questions.

The chair now recognizes the gentlelady from Michigan, Mrs. Dingell, for 5 minutes.

Mrs. DINGELL. Thank you, Mr. Chairman, and I want to thank you and Ranking Member Tonko for having this hearing, and Mr. Breen, I do believe that you deeply care about this program but I still have a lot of concerns, which I think you have been hearing all of my colleagues, Republican and Democrat, express today.

The EPA's Superfund program is really one of our cornerstone environmental pieces, so legislation that has always shared great bipartisan support.

Today, as you look at the future of the program, you can tell that all of us here are really worried about it and we are really worried about what's not happening, and I hope that we are all going to work together in Congress to provide and protect full robust funding during the annual appropriation process.

Without strong and continued funding, we continue to increase the risks to our public health and the environment long term. We would also see negative economic consequences in communities plagued by contaminated pollution sites.

Of the 1,345 sites on the National Priorities List, Michigan has 88 listed Superfund sites and in my district alone we've got three contaminated sites that need serious attention.

Only one of them has been designated as an official—it's been put on this National Priorities List—and I am going to go off script, which I always do, and make this point that I've been in the Congress for 3 years. Walked into, in my first year, a meeting that the city people had asked me to organize for Brownfield sites and was told by my region that this was on the list for the national priority site. It was a serious site. It's the Trenton McLouth Steel site, as you know.

And by the way, my colleague, Mr. Walberg, abuts and shares with me the Gelman Science dioxin plume in Ann Arbor as well, which we've been doing many meetings, and you know that you too have shared concerns on that.

But I think, unfortunately, I've been in too many meetings on both of these sites and what stuns me is that the site is leaking, that we are not telling the community there could be danger, and this Superfund site or potential Superfund site that you have told me is going to be listed at some point on the national priority site there was raw sugar being stored that was then being distributed in Michigan.

So I think all of us are concerned that there are many more sites that are even on the site that need to be cleaned up and it's taking too long to be designated, and then I've even been told on both sites but even when you get designated it's going to take years to get the money to clean it up.

Now, we founded this law to keep communities clean. You heard my colleague, Mr. Carter, talk about how long that site had been sitting there.

This is a crisis in our country that we've got sites that are hurting areas that aren't being cleaned up. So with my remaining time, I think funding for EPA's Superfund program matters so it's going to be the focus of what's left.

Appropriations to the Superfund program have generally declined between fiscal year 1999 and 2016 by about 45 percent. Additionally, cuts were announced for fiscal year 2018.

Mr. Breen, in EPA's budget for fiscal year 2018 the Superfund program was decreased by 30 percent? Yes or no.

Mr. BREEN. That's approximately right, certainly.

Mrs. DINGELL. Concerning, this long decline in funding had delayed the start of the new remedial action projects in many states that I was just talking about and additional cuts will only delay further projects.

And yet, despite declining funds and a slowdown of completed remedial actions, Superfund sites continue to be added to the National Priorities List which, by the way, I think they should be.

Mr. Breen, why were dramatic cuts made to the Superfund program in the fiscal year 2018 budget? How do you justify these cuts as the National Priorities List grows and can we expect future cuts to the program, and what the hell does that mean?

Mr. BREEN. Thank you.

First of all, of course, we always support the president's budget. Secondly, it's always true that we will work with what you give us.

Let me now turn to what we can do within that. First, we are looking for ways to save money no matter what. Even if you were going to give us more money, we should be looking for ways to save money.

The inspector general told us a few months ago that they thought we could reallocate where Superfund personnel are assigned and be more efficient. The inspector general told us that some regions are having to hold up work because of insufficient people to do it and other regions are not.

So we are going to undertake a way to, in a multi-year plan, look at how we distribute FTE among regions. We are looking at ways to do contracting better with a remedial action framework and, frankly, we think the 42 recommendations some of those will yield savings. In the——

Mrs. DINGELL. Mr. Breen, can I ask you—because we are now in positive—do you need more money to do what you need to do?

Mr. BREEN. So there are choices we even make.

Mrs. DINGELL. But that's not my point. Do we have sites that need to be cleaned up that are threatening people that need dollars to clean them up?

Mr. BREEN. So I can answer that in this way. In almost every year for the last 10 or 15, at the end of the year we have had sites that are ready to be funded but that we didn't have funds to get to. These are projects that we didn't fund. That's been true for a very long time.

Mr. SHIMKUS. The gentlelady's question has been answered and she yields back her time, and the chair thanks Mr. Breen for his attendance and I think it was an excellent job in answering the questions as we put forward, based upon the place where you're at.

Are you ready to ask questions, Mr. Cárdenas?

Mr. CÁRDENAS. Thank you.

Mr. SHIMKUS. So you're not excused. We still have one last member. The gentleman from California is recognized for 5 minutes.

Mr. CÁRDENAS. Thank you very much, Mr. Chairman.

Sorry about that. You were almost excused. But thank you for holding this important hearing. Let me gather my thoughts really quick.

When it comes to environmental cleanups and it comes to the status of where we are at in this country today, are we up to par? Are all in order? Or do we have much work to do?

Mr. BREEN. First of all, we have a remarkable legacy that I couldn't be prouder of. We also have a lot more to do.

Mr. CÁRDENAS. OK. Is it specifically confined to one region or one state where we have more work to do?

Mr. BREEN. We have nationwide a considerable amount of work to do.

Mr. CÁRDENAS. I would venture to believe that there's probably not a state in the nation that doesn't have some effort that we need to address.

Mr. BREEN. I would have to check on whether it's every state. I would need to get back to you on that.

Mr. CÁRDENAS. Again, not every corner of the country but there's probably no state exempt from work that still needs to be done.

Mr. BREEN. We have unfinished work in lots and lots of places.

Mr. CÁRDENAS. Yes. When it comes to the amount of funding that we have afforded ourselves to address these issues, are we where we need to be or should we figure out a way to make sure that we responsibly try to help our local governments and our local communities address these issues?

Mr. BREEN. We are looking for ways to be more efficient with the dollars that we get.

Mr. CÁRDENAS. Sure. Always.

Mr. BREEN. And in fact, one of the things the Superfund program does is fund on-the-ground emergency response and there's a choice to be made about how much to put into emergency response and how much to save for the long-term cleanups. It's kind of a pick your favorite child situation. You want to do more of both but that's a judgment call.

Mr. CÁRDENAS. We are a very blessed nation. We have a pretty high standard of living, et cetera. But is potable water still an issue in parts of our country and also is potable water being affected by activities that, unfortunately, we've affected that potable water in communities around the country?

Mr. BREEN. Indeed, in your district. As you certainly know so well, better than me, we've produced 95 billion gallons of clean drinking water, thanks to the work of the Superfund sites in your district.

Mr. CÁRDENAS. And those Superfund sites are still going on, literally, today.

Mr. BREEN. Exactly.

Mr. CÁRDENAS. As my neighbors and even my children said, "Dad," thinking I know everything, "what's that?" They cordon off a portion of a street and I said, "Well, they're cleaning up the ground water below us," et cetera. With issues as dangerous as chromium-6 and, again, your average American says, "Chromium what?" But the bottom line is it's dangerous elements, heavy metals, et cetera, that we, unfortunately, allowed to leach into our drinking water.

So that being the case, Los Angeles has been fortunate that—I believe, that with the cooperation of the state and support and the federal government and with a—the largest department of water and power that serves my community of the 4 million people of Los Angeles we've been able to do a little bit of catch up but we still have much work to do.

Let's take a community like Los Angeles. People think it's a big city. But it is spread out. We have many aquifers. We have many sources of water, et cetera.

Can you give me an example of what we could do more together with local government and the Federal Government when it comes to the cleanup that still has to be done in a community like Los Angeles?

Mr. BREEN. Yes. One thing that we aren't doing right now is seeing whether we can make upgrades to the Superfund remedies presently installed in the sites in your district rather than just say that we are going to let them run themselves down.

We want to see if we can upgrade them and that work is ongoing.

Mr. CÁRDENAS. OK. Again, to the earlier point that you and I agreed, much work to do.

Mr. BREEN. Absolutely.

Mr. CÁRDENAS. Now, that being the case, what can Americans do today to help make sure that we reduce the number of future Superfund sites, et cetera?

And I am not picking on business. I am just saying as a populace whether it's business or individuals or government what could we do to be more preventative?

Mr. BREEN. This is a complicated question and some of it is not law. Some of it is the ways in which we make things. One of the programs in my office at the EPA is sustainable materials management. It's a use of things that don't have to be thrown away—that can be reused or repurposed—and there's a lot of progress that could be made there.

Mr. CÁRDENAS. Yes. And, unfortunately, sometimes regulation is labeled as bad. But when it comes to, for example, potable water, it's so precious and to every community.

Isn't it important that we have right size regulation and responsible efficient regulation?

Mr. BREEN. Yes.

Mr. CÁRDENAS. OK. Thank you very much.

I yield back.

Mr. SHIMKUS. The gentleman yields back his time. All time is expired and we want to thank Mr. Breen again.

We are going to talk real quick so you can get out of here before someone else shows up.

Thank you very much and we would like to sit the second panel and we will dismiss Mr. Breen.

Thank you all for being here and thank you for listening to the first panel. I think that could be helpful and as we have our discussion here today because we want—the whole intent is to try to see if there's legislative changes we can do to make the system work better.

So we want to thank you for being here today and taking the time to testify.

At the second panel we have Mr. Steve Cobb, chief of land division, Alabama Department of Environmental Management on behalf of the Association of State and Territorial Solid Waste Management Officials.

We have John Winston Porter, environment and energy consultant. We have James McKenna, Portland Harbor policy analyst for Governor Brown's Natural Resources Office. Debbie Mans is executive director and baykeeper, New York/New Jersey Baykeeper, and Katherine Probst, who is an independent consultant.

Your full records have been submitted for the record. You will have 5 minutes. And with that, I would like to turn to Mr. Cobb to start.

You are recognized for 5 minutes.

STATEMENTS OF STEVE COBB, CHIEF, LAND DIVISION, ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, ON BEHALF OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; DR. J. WINSTON PORTER, ENVIRONMENTAL AND ENERGY CONSULTANT; JAMES MCKENNA, PORTLAND HARBOR POLICY ANALYST, GOVERNOR BROWN'S NATURAL RESOURCES OFFICE; DEBBIE MANS, EXECUTIVE DIRECTOR AND BAYKEEPER, NY/NJ BAYKEEPER; KATHERINE PROBST, INDEPENDENT CONSULTANT

STATEMENT OF STEVE COBB

Mr. COBB. Thank you for the introduction, Mr. Chairman.

Good morning, Chairman Shimkus, Ranking Member Tonko, members of the subcommittee. I want to thank you for the opportunity to speak at today's hearing.

Representing ASTSWMO, which is the State and Territorial Solid Waste Management Officials with the waste management officials including those responsible for the oversight of cleanups, we

appreciate the opportunity to present our thoughts on the topic of modernizing the Superfund cleanup program.

As you're aware, much has changed and many lessons have been learned in the almost 40 years since CERCLA has been enacted. For example, robust cleanup programs have been developed by the states and EPA. The methods and technologies have been expanded. States have become key co-regulators and program partners with EPA in protecting human health and the environment.

Given the history and growth of our cleanup programs both state and federal, I will describe several recommendations to consider in evaluating the modernization of the cleanup program.

CERCLA is a vitally important tool in the EPA and state toolboxes for ensuring and implementing needed cleanup at many sites across the country.

However, effective tools must be periodically sharpened and maintained to ensure their continued relevance and effectiveness.

As a part of any effort to modernize the program, the national contingency plan should be updated to reflect important lessons learned from the almost 40 years of cleanup experience by states and EPA.

In order to truly affect streamlining and efficiency improvements for the long term, changes to the program must be incorporated into the fabric of the program and communicated to those individuals who conduct the day-to-day implementation.

The NCP is the rule book that project managers, supervisors, and legal support refer to on a regular basis for guidance and direction in managing cleanup and decision making, and the foundation that CERCLA cleanup program guidance is based upon.

The NCP should also be updated to provide for a more streamlined and efficient process for managing responsible party-led and funded cleanups as compared to those cleanups conducted directly by EPA using funds from the Superfund trust fund, where additional documentation is often required in order to support future litigation and cost recovery efforts.

By providing for a more streamlined process for sites where the responsible party is funding and implementing the process, a further incentive is created to encourage responsible parties to step forward and work with EPA and the states cooperatively to clean up sites in a more timely, efficient, and cost-effective manner.

The process for identifying and selecting ARARs is also an area which should be addressed as part of modernizing the program. In addition, the statute and regulations should be updated to make clear the state environmental covenant, laws, and regulations are essential components of many remedial actions, especially those that require longer-lasting remediation activities.

As a part of improving the ARAR's identification and selection process and in recognition of the co-regulator role of the states, it's important that the role for state co-regulators in CERCLA decision making is enhanced. As a part of the evaluation of the ARAR process perhaps the long-standing CERCLA exemption for permits should be reconsidered.

While this exemption may have been advantageous in the beginning of the program to ensure that cleanups were timely, the

states' and EPA's permanent programs have matured to the point where this may no longer be a benefit.

Modernization of the program should include strengthening and clarifying the federal facilities compliance provisions of CERCLA. In implementing the cleanup provisions of CERCLA, it is imperative to ensure that both industry and government responsible parties are held to the same high standards.

Recognizing that robust state cleanup programs have been developed and implemented in the four decades since the enactment of CERCLA, the program should also more clearly recognize the cleanups conducted under other cleanup authorities achieve results at least as productive as CERCLA actions.

The states generally consider the nomination of a site for the NPL as a last resort and only after exploring and exhausting all other available state and federal programmatic enforcement and incentive options to either motivate a recalcitrant PRP or entice an unliable party interested in taking on the cleanup as a part of redevelopment.

It is not wise to give the impression that only CERCLA cleanup actions are protective. By ensuring that CERCLA recognizes the merits of other programs, we increase the overall effectiveness and efficiency of cleanups regardless of the program under which they're conducted.

States' concerns related to cost share related to fund-led cleanup should also be addressed including consideration of greater flexibility and credit for states in providing in-kind contributions to cleanups which may be used to fulfill these cost contribution obligations, and modernization should include provisions to ensure that needed regulatory cleanup standards are developed and updated in an expeditious manner using sound science and the best information available.

The program consists of at least four distinct components: the assessment and identification of releases, referred to as the preliminary assessment site investigation component, short-term removal actions, long-term removal actions conducted and funded by responsible parties, and long-term actions conducted by EPA using the trust fund.

Many states have the resources and desire to play a greater role in the process, and when willing and able those states should be encouraged to do so.

Consideration should be given to authorizing states to directly implement both the PA/IS and the responsible party-led and funded removal and remedial components, which would add substantial capacity to the cleanup and decision making authority of the program and free up precious federal resources to focus on those "orphan" sites and fund-led sites.

In conclusion, states consider the Superfund cleanup program to be a vitally important tool for cleaning up our nation's contaminated sites and restoring and protecting human health and the environment.

States have positioned themselves to be effective partners and co-regulators with EPA in implementing the cleanup program and look forward to working with EPA, Congress, and others in our col-

lective efforts to continue to modernize and improve the effectiveness and efficiency of this program.

Thank you.

[The prepared statement of Mr. Cobb follows:]

ASTSWMO, Providing Pathways to Our Nation's Environmental Stewardship Since 1974

Hearing

"Modernizing the Superfund Cleanup Program"

U.S. House of Representatives

Committee on Energy and Commerce

Subcommittee on the Environment

January 18, 2018

Testimony of

Stephen A. Cobb

on behalf of the

Association of State and Territorial Solid Waste Management Officials

Main Points:

1) States consider the Superfund Cleanup Program to be a vitally important tool for cleaning up many of our nations' contaminated sites.
2) States have positioned themselves to be effective partners and co-regulators with EPA in implementing the Superfund Cleanup Program.
3) The National Contingency Plan (NCP) should be updated to reflect important lessons-learned from almost 40 years of environmental cleanup experience by States and EPA under not only CERCLA, but also under the RCRA, Brownfields and State cleanup programs.
4) The process for identifying and selecting ARARs, including the applicability permits and of State environmental covenant and land use control laws and regulations, should be addressed.

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5) The federal facilities compliance provisions of CERCLA should be strengthened and clarified in a manner similar to improvements made to the federal Solid Waste Disposal Act (SWDA) through the Federal Facilities Compliance Act of 1992.

6) The Superfund Cleanup Program should more clearly recognize and embrace that investigations and cleanups conducted under other cleanup authorities achieve results at least as protective as CERCLA actions. Recognizing the protectiveness and value of cleanups conducted under State and federal cleanup programs other than CERCLA expands our capacity as a nation to respond effectively to releases of hazardous substances, and increases our cleanup efficiency by minimizing unnecessary redundancy and duplication of efforts.

7) State's concerns related to the 10% Cost Share and the 100% of operations and maintenance (O&M) costs which States are required to contribute to Fund-lead cleanups should be evaluated and addressed, including consideration of greater flexibility and credit for States in providing "in kind" contributions to cleanups.

8) Modernization of the Superfund Cleanup Program should include provisions to ensure that needed regulatory cleanup standards for emerging contaminants are developed and updated in an expeditious manner using sound science and the best information available.

9) Consideration should be given to authorizing States to directly implement the PA/SI component of the program and the RP-led and RP-funded removal and remedial program components, while removal and remedial actions conducted by EPA using funding from the Superfund Trust Fund should continue to be implemented and conducted directly by EPA

Good morning Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee. Thank you for the opportunity to speak at today's hearing. My name is Stephen Cobb and I am Chief of the Land Division of the Alabama Department of Environmental Management (ADEM). I am also a Past-President of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), of which the ADEM is a member organization. I am here today to testify on behalf of ASTSWMO. 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 cleanup of Superfund sites.

Modernizing the Superfund Cleanup Program

We appreciate the opportunity to present our thoughts on the topic of "Modernizing the Superfund Cleanup Program". Periodic review, reassessment and modernization of our statutory and regulatory authorities is a critical process of government to ensure that we are able to continue to provide the desired protection of human health and the environment for all of our citizens in an efficient and effective manner as we learn from the past and plan for the future. As you are aware, much has changed and many lessons have been learned in the almost 40 years since the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted and we as a nation began in earnest to clean-up hazardous substance sites which pose a threat to human health and the environment. For example:

1) Robust cleanup programs have been developed by the States and EPA, including both mandatory and voluntary programs, under federal cleanup and enforcement authorities including CERCLA, the Resource Conservation and Recovery Act (RCRA), Brownfields and also under various State authorities,

2) Site investigation methods and technologies have expanded and matured,

3) Existing cleanup technologies have improved, and new technologies have been developed,

4) Our understanding of how to assess, investigate, remediate, and monitor contaminated sites has greatly improved,

5) Our understanding of, and the available tools for, the assessment and management of environmental risks from contaminated sites have been substantially expanded,

6) Many lessons have been learned from the thousands of sites which have been assessed, investigated and remediated through these various cleanup programs,

7) The inherent value of early intervention and prevention programs in reducing the need for after-the-fact remediation programs has repeatedly been underscored,

8) The environmental permitting programs of the States and EPA have developed and matured such that permit application requirements are well understood, required environmental permits are reviewed, processed, and issued in a timely and consistent manner, and the permitting processes of the States and EPA have been shown to be an effective management tool for ensuring consistency in the application and enforcement of our various environmental laws and regulations, and

9) States have become key co-regulators and program partners with EPA in protecting human health and the environment through the implementation of our various regulatory and cleanup programs, including the Superfund Cleanup Program.

Given this reflection of history and the growth of our State and federal cleanup programs, I will describe below several recommendations to consider in evaluating the modernization of the Superfund Cleanup Program. Many of these recommendations have been the subject of discussion for years, while others are more recent. Some would require changes to the statute, others to existing regulations, guidance and policy.

CERCLA (aka Superfund) is a vitally important tool in the EPA and State toolboxes for ensuring and implementing needed cleanup at many sites across the country. CERCLA cleanups prevent continued harmful impacts from hazardous substances. However, we must recognize that effective tools must be periodically sharpened and maintained to ensure their continued relevance and effectiveness.

ASTSWMO members have provided testimony to this Subcommittee (see attached testimony by Jeffery Steers, VA on May 17, 2013, Bonnie Buthker, OH on September 16, 2015, and Amy Britton, OK on July 13, 2016) and to the Senate Committee on the Environment and Public Works (EPW) (see attached testimony by Jeffery Steers, VA on August 1, 2017) in previous hearings regarding various aspects of the CERCLA program. The issues, concerns and observations raised in their statements are still relevant and should be addressed in any effort to modernize CERCLA.

ASTSWMO and its member agencies routinely work with our partners at EPA to identify opportunities for improvements in the Superfund Cleanup Program. Examples of this collaboration in recent years include a LEAN process evaluation of various aspects of the program, as participants in a workgroup to develop tools to improve the process of identifying Applicable or Relevant and Appropriate Requirements (ARARs), as part of an effort to evaluate and improve State Superfund Contracts which define the terms and conditions for States and EPA to share remedial action costs at individual Fund-lead National Priorities List (NPL) sites, and a detailed analysis of the Superfund Site Assessment Program which is used to identify releases of hazardous substances, pollutants or contaminants that may endanger human health or the environment and to determine whether those sites qualify for inclusion on the NPL. Our members are currently collaborating with EPA regarding the recommendations of the Superfund Task Force regarding potential improvements to improve the pace and efficiency of the Superfund Cleanup Process. ASTSWMO and its members value this collaborative partnership with EPA, and stand ready to work with EPA to

implement the various streamlining and process improvement recommendations that have resulted from these efforts as well as others that may be identified in the future. As co-regulators working together to clean up contaminated sites, we share common goals and objectives, and it is imperative that we work together to improve the effectiveness and efficiency of the programs and processes through which we accomplish these cleanups.

As a part of any effort to modernize the Superfund Cleanup Program, the National Contingency Plan (NCP) should be updated to reflect important lessons-learned from almost 40 years of environmental cleanup experience by States and EPA under not only CERCLA, but also under the RCRA, Brownfields and State cleanup programs. In order to truly effect streamlining and efficiency improvements for the long-term, any changes to the program must be clearly documented, incorporated into the fabric of the program, and communicated down the chain-of-command to the individuals who conduct the day-to-day implementation of the program. The NCP is the "rulebook" that project managers, supervisors, and legal support refer to on a regular basis for guidance and direction in managing cleanups and decision-making, and the foundation that CERCLA cleanup program guidance is based upon.

For a clear example of the positive effect of modernization and streamlining efforts on a national cleanup program, we should look to the progress of the RCRA Corrective Action program before, as compared to after, the series of RCRA Corrective Action Reforms enacted by EPA and the States in the late 1990's and early 2000's. As a direct result of the policy and procedural changes enacted through these reforms, the RCRA Corrective Action program was transformed into a much more efficient and effective cleanup program, and States and EPA continue to find more efficient and effective ways to speed up the investigation and cleanup process while maintaining stringent and protective cleanup standards. As a part of updating the NCP, consideration should be given to streamlining not only the investigation and remediation processes under

CERCLA, but also the more routine paperwork and documentation processes, such as those for reviewing, approving and amending reports, records of decisions, deferral and delisting petitions.

The NCP should also be updated to provide for a more streamlined and efficient process for managing and implementing Responsible Party (RP) -led and RP-funded cleanups, as compared to cleanups conducted directly by EPA and its contractors using funds from the Superfund Trust Fund where additional documentation may be required to support future cost-recovery efforts and other litigation needs. By providing for a more streamlined process for sites where the RP is funding and implementing the cleanup process, as compared to sites where EPA must conduct the cleanup using Trust Fund monies and then seek to recoup those costs through litigation, a further incentive is created to encourage RPs to step forward and work with EPA and the States to cleanup sites in a more timely, efficient and cost effective manner. An example of the increased cleanup efficiency that can be realized from such a streamlining approach can also be seen from the improvements in pace and effectiveness of cleanups which resulted from EPA's RCRA Corrective Action Reforms of the late 1990's and early 2000's.

States are the primary implementers of the majority of our collective environmental laws and regulations, and we have a vested and important interest in ensuring that our laws and requirements are applied consistently and fairly across all regulated entities within our jurisdictions. As Ms. Brittain testified before this Subcommittee on July 13, 2016 and as Mr. Steers testified before the Senate EPW on August 1, 2017, the process for identifying and selecting ARARs is also an area which should be addressed as a part of modernizing the Superfund Cleanup Program. In addition to clarifying and modernizing the ARARs identification and selection process, the statute and regulations should also be updated to make clear that State environmental covenant and land use control laws and regulations are essential components of many remedial actions, especially those that require longer lasting remediation activities and those which utilize risk management

cleanup approaches to ensure long-term protection of human health and the environment. These laws and regulations, which have generally been developed and implemented in the last twenty years for the express purpose of ensuring that environmental cleanup remedies remain protective for generations to come, have often been challenged as ARARs on the basis that they are viewed as "property laws", as opposed to "environmental laws". Clarification in the statute and regulations that such laws and regulations are indeed ARARs under CERCLA is needed to address repeated issues which the States encounter in ensuring compliance with these requirements as a part of CERCLA remedies, and thus ensuring the continued protectiveness of the selected remedies. As a part of improving the ARARs identification and selection process, and in recognition of the co-regulator role of the States, it is also important that any modernization of CERCLA ensures that the role for State co-regulators in all CERCLA decision-making for sites within their boundaries is enhanced. As a part of the evaluation of the ARARs process, perhaps the long-standing CERCLA exemption from permits should be reconsidered. While this exemption may have been advantageous in the beginning of the program to ensure that cleanups were timely, the States' and EPA's permit programs have matured to the point where this is no longer a benefit. This exemption leads to unnecessary inconsistency and less efficiency in the review and approval of cleanup plans and other actions. The environmental permitting requirements of the States and EPA should be the same to implement remedial actions at a given site, regardless of whether it is conducted under a State-led cleanup program, by a RP as part of a CERCLA cleanup, or by EPA at a Fund-lead site.

As discussed in Ms. Buthker's testimony before this Subcommittee in 2015, modernization of the Superfund Cleanup Program should include strengthening and clarifying the federal facilities compliance provisions of CERCLA in a manner similar to improvements made to the federal Solid Waste Disposal Act (SWDA) through the Federal Facilities Compliance Act of 1992. In implementing the cleanup provisions of CERCLA, it is imperative to ensure that both industry and government RPs are held to the same high standards. And as

the State role in CERCLA cleanups continues to increase through an increased role in the decision-making process, and through the application and utilization of ARARs and other State cleanup programs and authorities, it is important to make clear that federal entities must comply with State environmental laws and regulations to the same extent as non-federal entities when conducting those cleanups.

Recognizing that robust and effective State cleanup programs and authorities have been developed and implemented in the four decades since the initial enactment of CERCLA, and that the vast majority of our nation's contaminated sites are cleaned up under State regulatory oversight using authorities other than CERCLA, the Superfund Cleanup Program should also more clearly recognize and embrace that investigations and cleanups conducted under other cleanup authorities (e.g., RCRA Corrective Action and many State cleanup programs) achieve results at least as protective as CERCLA actions; when such cleanup has occurred or is occurring, CERCLA should more readily defer action under CERCLA to those programs when appropriate. States generally consider the nomination of a site for the NPL a "last resort", and only after exploring and exhausting all other available State and federal programmatic, enforcement, and incentive options to either motivate a recalcitrant potentially responsible party (PRP) or entice a non-liable party interested in taking on the cleanup as part of a redevelopment. It is not correct, productive or wise to create or foster the impression that only CERCLA cleanup actions are protective. Recognizing the protectiveness and value of cleanups conducted under State and federal cleanup programs other than CERCLA expands our capacity as a nation to respond effectively to releases of hazardous substances, and increases our cleanup efficiency by minimizing unnecessary redundancy and duplication of efforts by both regulatory agencies and by the RPs. We must remember that CERCLA is only one of the tools in our environmental cleanup toolbox, it is not the only tool for the job. By ensuring that CERCLA recognizes the merits and effectiveness of similar cleanups conducted under other State and federal authorities, we increase the overall effectiveness and efficiency of needed

environmental cleanups regardless of the program under which they are conducted, and thus enhance and increase our overall protection of human health and the environment.

Mr. Steers and Ms. Brittain have also testified before this Subcommittee and the Senate EPW regarding State's concerns related to the 10% Cost Share and the 100% of operations and maintenance (O&M) costs which States are required to contribute to Fund-lead cleanups. In looking at the modernization of the cleanup program, these issues should be evaluated and addressed, including consideration of greater flexibility and credit for States in providing "in kind" contributions to cleanups which may be used to fulfill these cost contribution obligations.

In conducting cleanups under the Superfund Cleanup Program and other State and federal cleanup authorities, State and federal project managers rely on EPA as a centralized clearinghouse for technical expertise that States and EPA Regions cannot and should not maintain individually, including the development of toxicity and risk information, evaluation of cleanup technologies and analytical methods, and research and information on new threats from, and strategies for addressing, contaminants of emerging concern. Without this critical support and information, and the resulting chemical-specific remediation standards that are derived from it, States and EPA are often unable to satisfactorily address the concerns of the public regarding releases of these emerging contaminants, which currently include well known chemicals of concern such as the perfluorinated compounds (PFAS), perchlorate, 1-4-Dioxane, and others. Therefore, modernization of the Superfund Cleanup Program should also include provisions to ensure that needed regulatory cleanup standards are developed and updated in an expeditious manner using sound science and the best information available.

The Superfund Cleanup Program consists of at least four distinct components: 1) the identification and assessment of releases to determine whether a cleanup under CERCLA is needed, which is often referred to as the Preliminary Assessment and Site Investigation (PA/SI) component, 2) short-term removal actions which are conducted to perform short-term abatement and stabilization of releases and imminent threats of release, 3) long-term remedial actions which are conducted and funded by RPs, and 4) long-term remedial actions which are conducted by EPA and its contractors and funded by the Superfund Trust Fund.

The CERCLA PA/SI program component has historically been largely implemented by States through cooperative agreements with EPA. This program component has been proven to address numerous developing hazardous substance issues and sites before they rise to the level of requiring NPL listing and long-term remedial action under CERCLA. This early intervention is a wise investment in prevention and early action at sites across the country, which greatly reduces future taxpayer funded cleanup needs. Under the PA/SI program component, States assess the vast majority of contaminated sites evaluated under the Superfund Cleanup Program, with fewer than 10% of these sites ultimately requiring listing on the NPL. The balance of those sites requiring remediation are addressed under State cleanup authorities, under voluntary cleanup authorities, or under Brownfields cleanup authorities with State oversight. As a result, the PA/SI program serves as a kind of clearinghouse to evaluate sites and direct them to the authority best suited to address the site-specific situation. ASTSWMO has documented the effectiveness of the PA/SI program in two recent reports, its May 9, 2014 report "Analysis of Superfund Site Assessment Program Cooperative Agreements with States: Benefits of Effective State and Federal Partnerships" and its subsequent "Site Assessment Program Analysis" report dated August 26, 2017.

Many States have the resources, expertise and desire to play a greater role in the Superfund process. When willing and able, those States should be encouraged (and funded) to do so. Given the development and

maturation of State cleanup and authorities which has occurred over the past four decades, consideration should be given as a part of modernizing the Superfund Cleanup Program to establishing a State and Tribal Assistance Grant (STAG) program, and authorizing States to directly implement in lieu of EPA, with appropriate EPA oversight, both the PA/SI component of the program and the RP-led and RP-funded removal and remedial program components. Such authorization, including appropriate provisions for information collection and enforcement (e.g., CERCLA Section 106) authority by the State program, would:

a. add substantial resources and capacity to both the technical project management and oversight component of the Superfund Cleanup Program and to the cleanup decision-making capacity of the program,
b. free up precious federal EPA resources needed to focus on the timely and effective cleanup of Fund-lead sites where there is no viable RP, or where the RP is unwilling or unable to conduct the required cleanup themselves,
c. provide for faster and more efficient cleanups at both RP-lead sites and at Fund-lead sites simultaneously by reducing the competition for limited agency resources for needed regulatory oversight and decision-making,
d. reduce duplication of effort in cases where both EPA and the State are regulating and overseeing the same cleanup,
e. retain overall EPA program oversight of State programs, while removing existing process, capacity, and decision-making bottlenecks, and
f. build on proven State-led cleanup programs and regulatory systems already operating in other federal environmental programs (e.g., RCRA, Clean Water Act, Clean Air Act).

Under this scenario, removal and remedial actions conducted by EPA using funding from the Superfund Trust Fund should continue to be implemented and conducted directly by EPA in order to 1) maintain direct federal

control and management of Trust Fund expenditures for cleanup, 2) enable meaningful prioritization of Trust Fund expenditures for sites in various States, and 3) facilitate subsequent federal legal action necessary to seek re-imbursement of Trust Fund expenditures from RPs.

In conclusion, States consider the Superfund Cleanup Program to be a vitally important tool for cleaning up many of our nations' contaminated sites and for restoring and protecting human health and the environment for all of our citizens and for generations to come. States have positioned themselves to be effective partners and co-regulators with EPA in implementing the Superfund Cleanup Program, and look forward to working with EPA, Congress, and others in our collective efforts to continue to modernize and improve the effectiveness and efficiency of this important program.

Thank you for the opportunity to speak with you today. I would be happy to answer any questions you may have.

[The attachments to Mr. Cobb's statement can be found at: *https://docs.house.gov/meetings/if/if18/20180118/106783/hhrg-115-if18-wstate-cobbs-20180118.pdf.]*

Mr. SHIMKUS. Thank you.

Dr. Porter, you're recognized for 5 minutes.

STATEMENT OF J. WINSTON PORTER

Mr. PORTER. It's good to be here. I want to be very direct this morning. I used to run this program for a long time and I was going to tell Mrs. Dingell that I spent a lot of time with her husband. I would certainly call the him Father of Superfund.

Mr. SHIMKUS. We have all dealt with Congressman Dingell.

Mr. PORTER. We all—and Mr. Oxley and many other people have dealt with this committee.

Anyway, I want to be very, very direct here, if I can. I am in private practice now but I spent a lot of time in Superfund. I still spend a lot of time in Superfund.

I liked the 40 items that the previous speaker—Barry Breen's a good guy. I know him well. He's very smart. He's not in the position to make the kind of things you need to make this program going. You need somebody that represents the president, and I'll talk more about that later.

One of the things I want to mention is that, as several people have said today, the most important thing in Superfund—we got a lot of people who worked on the Superfund. EPA has got a lot of good people. The states have done a lot of good work.

But the basic thrust today, Superfund costs way too much and does not nearly as much work as it should, period. That's my bottom line.

Now, how do we improve this situation? And by the way, I think we can do it. I've seen several assistant administrators who have done quite well. Others have not done so well. It's a tough job and you need people who can really run this program.

In fact, I would say the most important thing I can say to you today I'll start out with. It's critical that the president put in someone in my old job or other assistant administrators.

They had the ability to do it. They are authorized by law to make remedy selections. So if you really have a site that's not being done, you go to my old position and that person has the authority in the CERCLA statute to make the decision.

Otherwise, it's a very large committee process.

So it's critical, in my opinion, that the president appoint an assistant administrator to run the Superfund program on a day-to-day basis.

He or she has the authority to make the key decisions and can run the projects. I don't mean micro manage them all but to be sure things get done, and make the tough decisions.

Excuse the name dropping, but I've talked to at least a dozen or so governors when I was there, many, many hundreds or dozens, at least, of people, Congressmen, where you had to kind of get down to making a decision, and I think that's really critical that you get somebody who can do that.

That person, in my judgement, should have a technical background probably, is a good manager, understands the program, and is willing to make tough decisions and is, frankly, a pretty good communicator.

Now, there are three or four things I want to present today, some of which you heard, some of which you haven't. Probably the next most important thing is to set and enforce deadlines.

One thing I used to do, every quarter I would send all 10 regional administrators, here's what we are going to finish this quarter—give me a call—send your staff up if you don't make it.

I grew up in the private sector where I ran large projects around the world and I try to treat this just as seriously. So you set and enforce deadlines, and a key job of the assistant administrator is to be sure we get these things done. When I tell the governor or I tell a member—Congressmen or Senators I'll bring in and finish the site, we finish it.

Love Canal, just a quick name we all know—I spent a lot of time with senior people in the state of New York. I spent a lot of time in Buffalo, et cetera, and a lot of time with Mr. LaFalce who was a Congressman at that time.

When I said we were going to do it in a year and a half, we did it in a year and a half. I am not the only one that can do that. Many people can do that. You just got to get the right people.

Set and enforce deadlines and, particularly, help with the selection of remedy. That's the key thing in this program is what are we going to do here. I have a couple sites—well, I may mention several, and I gave a lot of names here. But there have been sites where you've spent $100 million in 10 years and don't have a remedy.

I am not saying don't clean up the site. I am saying don't even have a remedy, and these are fairly recent sites and there are many others.

One thing that's not been discussed today—and Mrs. Dingell might be interested in this, from what she said—there is an A+ program at EPA called Emergency Removals and Early Actions.

It's not done as well as it could be done but it's very—when I was interviewed, a reporter when I left said would you give yourself an A on anything? I said, well, I'd get some B's and B minuses, but A+ is the Emergency Removal program.

And what that basically means is I, and other people in the regions, can agree to do something that's, they might say to me, "Can you give me a couple million dollars to go out; these barrels are leaking," and stuff like that. Very good program.

In fact, one of the guys—I'll mention one name here—several people I know that have been in that position and one or two of them became assistant administrators. They were very good because they were used to doing things quickly.

So I think Emergency Removals are going to be important. Number three, I wanted to take a little different tack on one issue. The term PRP—potential responsible parties—has not been mentioned much today.

Those are the companies or the cities or the other people who are caught up in this program. They are going to have to pay for it, et cetera. And that needs improvement. And I've talked a lot to my industry colleagues out there about how I am concerned that many large companies, when they start a program like this, they immediately turn to their legal department.

My dad was a lawyer. Many of you are lawyers. I have nothing against lawyers. But you need top managers to do this work. And I think I talked to—most of the EPA when I was there was the general counsel. He was extremely good, extremely helpful. He would always tell me, "Where do you want to get to and how do we get there?"

So it's important that the PRPs, or responsible parties, be dealt with and they need to improve because they have the know how. I don't need to necessarily tell a Dupont or a Monsanto or AT&T how to run a project. But what I do need to do is say, "You're going to pay for this. Let's do it in the most cost-effective way we can and let's really get on with it."

So I think it hasn't been talked about enough. There is some real failure here, in some cases, of the companies involved to get serious, work with us. Not listen only to their lawyers but also their engineers and, frankly, their senior management—that we want to get this thing done. It's a terrible PR problem, et cetera.

One thing that has most——

Mr. SHIMKUS. Give me your last or quick—you're already over so give me——

Mr. PORTER. OK. Just going to say I'd like to see us get rid of some of the things that are just a drag on us.

Mr. Breen mentioned the Remedy Review Board. It's worse than nothing. It takes a lot of time and stuff. Nice people and all that, but it takes a lot longer. It's because that one thing. So there are many other things like that, too.

[The prepared statement of Mr. Porter follows:]

Modernizing the Superfund Program

Testimony of Dr. J. Winston Porter
Subcommittee on Environment
House Committee on Energy and Commerce

January 18, 2018

Mr. Chairman, my name is J. Winston Porter, and I am an environmental and energy consultant, based in Savannah, Georgia. Formerly, I was the EPA's Assistant Administrator with national responsibility for the Superfund program

It is a pleasure to be here today to provide testimony on EPA's progress in the cleaning up of Superfund sites. Specifically, I will make a number of recommendations to improve the effectiveness of these remedial activities.

In my testimony I will draw on about 30 years of Superfund experience, including management of the early EPA program as well as consulting activities with various federal agencies, states and private parties. My professional background also includes the fields of chemical engineering and project management. My degrees are from the Universities of Texas (Austin) and California (Berkeley).

I understand that some are critical of President Trump and his EPA Administrator Scott Pruitt for reducing funds for the Superfund hazardous waste cleanup program. But money is not Superfund's problem.

While Superfund has completed over a thousand contaminated sites, the work completed is not nearly commensurate with the huge public and private dollars spent — well over $100 billion. Also important, people living near Superfund sites are often unhappy with the excessive times needed to complete the sites.

Actually, over the 37- year life of Superfund the basic problem has been site cleanups take too long and cost too much. The good news is that Mr. Pruitt has put a high priority on completing Superfund sites in a timely and cost-effective manner. Also, my belief is that EPA career staff are competent, but what is often missing are EPA presidential-appointees who can ensure that Superfund sites are dealt with effectively.

Specifically, the President and Congress need to get the new Assistant Administrator for Land and Emergency Management (OLEM) in place . As such, this AA has the final

authority to approve Superfund cleanups. In this position, we need a person with technical and project management skills and a strong bent toward environmental results and common sense.

The idea is not for the AA to micro-manage every Superfund site, but to see that major site schedules are adhered to and make, if necessary, final decisions for such complex matters as site remedies.

The key Superfund subordinates for the AA should continue to be the 10 EPA regional administrators and Superfund chiefs. No longer should the making of Records of Decision (site remedies) be made by middle level EPA personnel and committees.

Here are the other steps needed to fix Superfund.

The key is that Superfund remediation is not an exact science, which is why experienced senior managers are needed to deal with such disparate Superfund items as waste toxicity issues as well as cost-effectiveness and community and state interactions with EPA.

Second, EPA should promptly deal with the most important Superfund problem — the lack of firm deadlines for completing projects. It is actually unusual to have clear deadlines for remedy selection and site completion activities.

Also, EPA senior management should insist that remedy selection for Superfund sites should take place in less than 30 months. The assistant administrator can always allow somewhat more time for very complex sites, like remediation of nuclear weapons facilities.

Unfortunately, at many sites, the study work meanders around for 5 to 15 years without even selecting a cleanup remedy. As for costs, some recent studies, ranging from New Jersey to Oregon, have exceeded $100 million.

Frankly, much of the costly activities are because Superfund has become a lucrative source of work for lawyers and consultants. At a Senate hearing a number of years ago I was asked by the late Senator Frank Lautenberg (D-N.J.) why, after all these years, Superfund cleanups take so long. My answer: At many sites I find few people who seem to really want to finish the project. It is a very lucrative program for many.

One answer to this problem is to ensure that both EPA and the potentially responsible parties need to ensure that the contracted work is only focused on information needed to select the best site remedy.

Third, the most effective part of the Superfund program has been "emergency removals" and other early actions, which directly correct obvious environmental problems. These early cleanup activities also inform later, more extensive work activities

Unfortunately, the EPA bureaucracy and lawyers for the potentially responsible parties (PRPs) often stymie these early action efforts with such interminable debates as to who will pay what.

Fourth, PRPs caught up in Superfund should be more active and not just with their contractors, some of whom tend to string out the process. A more cost-effective approach by PRPs would be to make proposals to EPA for good remedies and then offer to conduct the cleanup work themselves. (They will have to pay anyway someday.)

Over the years, a troubling trend has been for many companies to turn Superfund over to their legal departments. The resultant outside lawyers have increasingly become the de facto Superfund site managers.

The EPA should get rid of "remedy review boards" which were set up years ago to make sure that the "right" site remedy was selected. In other words, EPA middle managers from around the country can second-guess more senior local managers regarding the remedy. This adds much more time to remedy selection and further confuses the EPA chain of command.

Finally, the Congress may need modest legislative activities to ensure some of the fixes noted in this testimony, particularly those related to deadlines for major site remediation activities. Some specific suggestions: The cost and time limits for emergency removals should be increased from two to five million dollars and one year to two years to maximize these cost effective measures.

In addition, within 18 months of a Superfund site listing EPA should identify any early responses needed to deal with obvious contamination problems. The site remedial investigation/feasibility study (RI/FS) should normally be completed in no more than 30 months of site listing on the Superfund list. Finally, a site ROD (remedy) should be issued no later than 12 months of completion of the RI/FS.

Looking ahead, Superfund sites should increasingly be taken on by appropriate state superfund programs, which are usually much less costly than EPA and closer to the problems. For example, unlike air and water issues, waste site problems usually involve a matter of acres and only one state.

Mr. Chairman, I will be happy to answer any questions that you or other members may have.

Energy and Commerce Committee
Subcommittee on Environment
Testimony of James McKenna
January 18, 2018

One-Page Summary of Testimony:

Witness Name: James McKenna, Portland Harbor Superfund Policy Analyst

Witness Organization: Office of Oregon Governor Kate Brown

Name and Date of Hearing: Modernizing the Superfund Cleanup Program, January 18, 2018

Subcommittee: Energy and Commerce Committee; Subcommittee on Environment

Main Points of Testimony:

The federal Superfund Program must remain strong and viable in order to live up to its promise of protecting public health and the environment, and ensuring people live and work in healthy, vibrant places. In that spirit the State of Oregon recommends:

- Increasing the Superfund program budget to ensure timely resolution of existing and new NPL sites.
- Maintaining adequate staffing and technical expertise at the Headquarter and Regional levels.
- Reinstating a revenue source(s) to replenish the "Fund" for orphan sites (the State of Oregon is spending nearly $5-million/year on orphan sites).
- For mega-Superfund Sites, breaking the sites up into manageable Operable Units.
- For sites with numerous PRPs, recognize the difficulty of negotiating one settlement with the entire PRP group. EPA should develop tools that give PRPs enough certainty so they can settle-out in ways that allow cleanup to move forward, while maintaining the government's need for prudent reopeners. And,
- Accommodating flexibility in cleanup design and implementation. EPA should work with PRPs and the community to appropriately accommodate flexibility in area-specific cleanup designs that are not inconsistent with the ROD, but which recognizes the unique conditions and likely future land uses at each location.

Energy and Commerce Committee
Subcommittee on Environment
Testimony of James McKenna
January 18, 2018

Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, thank you for providing me the opportunity to testify today on the Superfund Program. I am here representing the Office of Oregon Governor Kate Brown to discuss the Federal Superfund Program. Before I get into the details of my testimony please allow me to convey my background to demonstrate my expertise with superfund sites.

I have been involved with the Superfund cleanups for over thirty years, starting as Environmental Coordinator with NASA's Jet Propulsion Laboratory in the 1980s. JPL had a contaminated groundwater plume adversely impacting the City of Pasadena water supply wells. Prior to joining the Office of Oregon Governor Brown I owned and managed a private environmental consulting firm that focused primarily on cleanup of Superfund sites.

Governor Brown supports the Federal Superfund Program. One of Oregon's most complex, the Portland Harbor Site, is critical for the vitality of the region's economy. The challenges of site cleanup for Portland Harbor are similar to those in many other sites across the country and I will present this committee with recommendations for improving the federal program to help sites like Portland Harbor and those in your districts and those of your colleagues. For Portland Harbor the Governor will ensure State agencies coordinate with EPA to adequately and timely reduce risks to the community, protect the environment, and uphold the polluter pays principle. It is also a high priority of the Governor that at-risk and underserved communities are not inordinately impacted or unjustly burdened by cleanup activities.

Achieving this common vision calls for close coordination with Tribal governments, key stakeholders, local businesses, and the community. Governor Brown will therefore ensure the state retains a prominent seat at the table in regards to cleanup of the Portland Harbor. This level of coordination and leadership is vital considering the complexity of the Portland Harbor site:

- Technical: The Willamette River is a large and dynamic system, and cleanup must address numerous contaminants from a multitude of legacy industrial operations and some on-going sources. Willamette River salmon and stealhead are Endangered Species, and hence limit the in-water work to about 4 months per year.
- Regulatory: EPA manages the in-water sediment cleanup; DEQ oversees the upland and upstream source control efforts; the Army Corps of Engineers maintains the Federal Navigation Channel; and six sovereign Tribal Governments are engaged as Natural Resource Trustees.
- Legal: there are over 100 identified potential responsible parties (PRPs), including public and private entities. This includes federal and State agencies and departments, local governments, international corporations, and local small businesses. Most of the PRPs are participating in a private mediation to resolve their respective liabilities.

The Portland Harbor Superfund Site was placed on the National Priorities List in 2000. Field studies were conducted and reports generated through 2015. EPA presented their Proposed Plan to the public in mid-2016, and issued its Record of Decision in January 2017.

Cleanup of Portland Harbor is critical to revitalizing and sustaining a vibrant regional economy. The harbor is an industrial sanctuary and an economic engine for regional industries and agriculture. The Harbor supports approximately 30,000 direct jobs and 30,000 induced or indirect jobs. Annually this translates to approximately $4-billion in payroll, $400-million in State and local taxes, and $13-billion in business revenue. Maintaining a healthy, safe, and clean working harbor is essential to all Oregonians.

Portland Harbor benefits from unique transportation interconnectedness: North to south and east to west interstate highways and railroads; a deep-water draft federal navigation channel; and an international airport. Nowhere else in the State will you find this confluence of infrastructure. That being said, economic studies

indicate the Portland region needs to add approximately 10,000 industrial family-wage jobs in next 15 to 20 years. To do so will require reinvestment and revitalization of hundreds-of-acres of under-utilized or vacant industrial lands in and near Portland Harbor. Redevelopment of these Brownfield sites will require a cooperative effort of private businesses, and local, State and federal agencies and resources. Oregon has a track record of successfully implementing complex Brownfield projects, as evidence by the recent Howard Orlean Excellence Award for redevelopment of the former Reynolds Aluminum site (a Superfund Site east of Portland and along the Columbia River).

Implementation of EPA's Record of Decision, along with the resolution of PRP liabilities, will help lift the cloud of economic uncertainty that has hung over Portland Harbor since being listed as a Superfund Site in 2000. It has been one year since the ROD was released and we have momentum in moving the project towards final cleanup: four private PRPs have signed an Order with EPA to conduct the baseline sampling; Northwest Natural Gas has signed an Order to complete the cleanup design at their GASCO facility; the City of Portland is partnering with several private PRPs and they have signed an Order to finalize the cleanup design at River Mile-11East; the Port of Portland is negotiating an Order with EPA for final design of cleanup at Terminal-4; and the State of Oregon is in preliminary discussions with EPA regarding Orders to design cleanup at Willamette Cove, generate a comprehensive Data Management Plan, and develop the Institutional Controls Implementation and Assurance Plan.

The federal Superfund Program must remain strong and viable in order to live up to its promise of protecting public health and the environment, and ensuring people live and work in healthy, vibrant places. In that spirit the State of Oregon recommends:

- Increasing the Superfund program budget to ensure timely resolution of existing and new NPL sites.
- Maintaining adequate staffing and technical expertise at the Headquarter and Regional levels.

Mr. SHIMKUS. That's the kind of testimony we like to hear. We appreciate your time.

The chair now recognizes the gentleman from Oregon, Mr. McKenna. Welcome. It's good to see you again. You're recognized for 5 minutes.

STATEMENT OF JAMES MCKENNA

Mr. MCKENNA. Thank you.

Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, I thank you and Governor Brown thanks you for providing this opportunity to provide testimony today on modernizing the Superfund program.

Before I get into the details of the testimony, please allow me to convey a little bit of my background and my expertise in Superfund.

I've been involved with Superfund sites for over 30 years starting off as an environmental coordinator for NASA's Jet Propulsion Laboratory in Pasadena which, in and of itself, had a contaminated groundwater plume impacting the city of Pasadena water wells.

Prior to joining Governor Brown's Natural Resource Policy Office, I was a private consultant, owned my own firm doing primarily Superfund work.

I know my time to testify is limited so you have my written material. So I am going to cut to the chase of the issues I want to bring forth in terms of improving the program.

Any attempts to modernize or revamp the Superfund program should consider four existing principles. In other words, these are principles we wouldn't support changing in any way, shape, or form and that is, number one, the "polluter pays" principle—that the polluters each pay their fair share at the end of the day for the contamination and not put that burden on the public.

Number two, there could be no adverse impact or unjust burden placed on at-risk or underserved communities in the neighborhood of Superfund sites. In fact, we should be looking for ways to develop family wage jobs for those at-risk community members associated with the cleanup as the cleanup is progressing to see if we could actually do job force, work force development to get them involved in the cleanup as well as the Brownfield redevelopment sites' post-cleanup.

Number three, there's no cookie cutter approach to revamping Superfund. All these sites are very unique. Portland Harbor is a very large mega complex site and so the fixes for a Portland Harbor-like site are not necessarily going to be the appropriate fixes for smaller Superfund sites. We need to keep that in mind. There's no cookie cutter approach.

And number four, any efforts to reduce or obviate the timely and meaningful input of the public and the Native American sovereign governments at these sites would not be acceptable to the State of Oregon.

We have a very complex site. We have numerous community involvement. Community groups have been involved since the beginning in 2000. We have six Native American tribes, all sovereign governments that have been actively involved. The Nez Perce, Yakima, Warm Springs, Umatilla, Grand Ronde, and Siletz are all at

the table. There need to be seats maintained at that table for those parties to make sure that they have meaningful input in the process.

So that being said, the State of Oregon has a list of proposed modifications to the program. I will go through this list very quickly and then be happy to answer questions at the end.

We believe that we need to increase the funding for Superfund. That's been a part of the conversation here this morning. The Superfund program needs a sufficient budget in order to ensure that there's adequate staffing and resources available at the headquarters and regional offices to push these NPL sites to closure.

We need to reinstate a revenue source—the Superfund tax—to replenish the fund for the "orphan" sites. Again, the topic has come up a number of times this morning. We need to have the orphan fund money available for those sites where there are no viable PRPs to do the cleanup.

For mega Superfund sites, the complex ones like Portland Harbor, we think EPA should consider breaking those sites up into manageable areas. Some call them operable units or some form of smaller areas. So you could attack the sites and get to cleanups sooner than later.

And then for sites with numerous PRPs, again, focusing on the Portland Harbor site, we have 19 Superfund sites in Oregon but, obviously, Portland Harbor is the most complex for a number of reasons.

We have over a hundred PRPs at that site. We recognize the difficulty of EPA negotiating one settlement offer with all of those PRPs at once. So we suggest that EPA develop tools to give the PRPs enough certainty that they can settle out their respective liabilities and move on with cleanup while maintaining the government's need for prudent reopeners of that cleanup.

And then, finally, accommodating flexibility and cleanup design at each specific location. So a site like Portland Harbor where you got about 14 different cleanup areas each one will be unique.

Our record of decision, which came out in January of 2017, accommodates flexibility at each of these sites. We promote that so that you can consider the unique conditions at each location and the future land use and groundwater uses at those locations.

I know I am running out of time, but I am happy to answer questions. I have a lot of other information to talk about in terms of Portland Harbor, in terms of Brownfield redevelopment.

[The prepared statement of Mr. McKenna follows:]

- Reinstating a revenue source(s) to replenish the "Fund" for orphan sites (the State of Oregon is spending nearly $5-million/year on orphan sites).
- For mega-Superfund Sites, breaking the sites up into manageable Operable Units.
- For sites with numerous PRPs, recognize the difficulty of negotiating one settlement with the entire PRP group. EPA should develop tools that give PRPs enough certainty so they can settle-out in ways that allow cleanup to move forward, while maintaining the government's need for prudent reopeners. And,
- Accommodating flexibility in cleanup design and implementation. EPA should work with PRPs and the community to appropriately accommodate flexibility in area-specific cleanup designs that are not inconsistent with the ROD, but which recognizes the unique conditions and likely future land uses at each location.
- Sites with low-level risk or in the long-term Operations and Maintenance mode could be delisted and transferred to State environmental agencies that are willing and able to oversee these sites.

Thank you for allowing me to testify today, and I am happy to answer questions.

Testimony of Debbie Mans
NY/NJ Baykeeper, Executive Director and Baykeeper
Co-Chair Passaic River Community Advisory Group
January 18, 2018
U.S. Congress House of Representatives
Committee on Energy and Commerce, Subcommittee on Environment

SUMMARY

- My name is Debbie Mans and I am the co-chair of the Passaic River Community Advisory Group or CAG. I am also the Executive Director and Baykeeper for NY/NJ Baykeeper. NY/NJ Baykeeper was founded in 1989 to protect, preserve and restore the NY Harbor Estuary, which includes the lower Passaic River. NY/NJ Baykeeper holds the Technical Advisory Grant (TAG) for the Passaic River Superfund site.
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- The Superfund Task Force Recommendations report raises concerns with the emphasis on adaptive management, reuse or redevelopment of Superfund sites, and reduced oversight and the use of independent third parties to oversee certain aspects of the PRP lead cleanups.
- It is essential that human health and environmental protection be the top priority for taking action at Superfund sites.
- It is critical to keep the Superfund public participation program intact, through the use of CAGs, TAGs and other technical assistance provided by the EPA.
- Finally, it is important to note that while Administrator Pruitt has stated that the Superfund program is a cornerstone of the work that EPA performs for citizens and communities across the nation, President Trump has proposed slashing the EPA budget by 31%.

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Co-Chair Passaic River Community Advisory Group
January 18, 2018
U.S. Congress House of Representatives
Committee on Energy and Commerce, Subcommittee on Environment

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Over the years the cleanup had progressed slowly along, primarily consisting of a constant back and forth negotiation between the Responsible Parties and the EPA over sampling locations and methodologies, sampling results, new-fangled ideas to "clean" the River, fish swaps or recommendations to "let the River heal itself." The recalcitrance of the PRPs was further amplified by the lack of funds to allow the EPA to move forward with the cleanup itself due to the lapse of the Superfund tax.

When the Obama Administration arrived in 2009, the community knew it had a chance to really achieve a timely and comprehensive cleanup plan and in the Fall of 2009 instituted the CAG. Since that time, we have been meeting on a near monthly basis, in the basement of a Newark church, to advise and push for a cleanup that would make it safe for people to fish and crab from the River.

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However, the remainder of the Superfund site – an additional 9 miles of waterway upriver and the Newark Bay - is still under investigation. Recently, the Diamond Alkali Co. (aka Upper Lower Passaic) section was listed as a Superfund site targeted for "immediate and intense action" by the EPA. This is the upriver portion of the Superfund site. As described in EPA materials, "EPA considered sites that can benefit from Administrator Pruitt's direct engagement and have identifiable actions to protect human health and the environment."

Further inquiries to regional staff and a thorough reading of the EPA's "Questions and Answers" document has not produced a clearer understanding of what this designation means for us in the impacted communities.

This announcement, coupled with the May 2017 announcement and memo by Administrator Pruitt revising EPA's delegation of authority to ensure decision making comes straight from the Administrator to select remedies estimated to cost $50 million or more, rather than the Assistant Administrator for Office of Land and Emergency Management and the Regional Administrators, gives me pause. The May 2017 memo further states that "as part of effectuating this adjustment to the remedy selection process, I ask that you involve the Administrator's office early-on and throughout the process of developing and evaluating alternatives and remedy selection."

This would appear to add a layer of bureaucracy, rather than make processes more efficient at EPA. Now, the regional offices must involve the EPA Headquarters early and often throughout the process. Now, the technical experts at the regional offices must confer with political appointees based in Washington, DC, on developing and evaluating cleanup alternatives and remedy selections for sites. This makes no sense to the stakeholders working locally on these cleanups. The people who know these sites the best are the local EPA technical experts, who come to our community meetings and inspect the sites, not someone sitting at a desk hundreds of miles away.

My best guess as to why the "Upper Lower Passaic" site is on the list of Superfund sites targeted for immediate and intense action is that EPA Headquarters would like to test out

adaptive management through use of an early action being promoted by the Potentially Responsible Parties (PRPs). As outlined in the Superfund Task Force Recommendations, "[u]nder an Adaptive Management strategy, Regions are encouraged to consider greater use of early and/or interim actions including the use of removal authority or interim remedies, to address immediate risks, prevent source migration, and to return portions of sites to use pending more detailed evaluations on other parts of the site." (See Strategy 2, page 2.)

This concept was first proposed by the PRPs after EPA released the proposed plan in 2014 for the lower 8.3 miles of the River. The PRPs alternative cleanup plan was called the "Sustainable Remedy." Essentially, the plan called for hot spot removal of contaminated sediments in the River, with natural attenuation to let the River heal itself. This plan was so lacking in scientific basis, actual data, and protections to public health, it was not even included in the EPA's review of alternatives.

What concerns me is that the PRPs are potentially getting another chance to move forward with this concept, now under the guise of a Task Force report and new directives from EPA Headquarters. Indeed, regional staff recently informed the CAG that the PRPs will be presenting on an alternative cleanup plan for the upper portion of the River during our February 2018 CAG meeting. This proposal will also be the subject of an upcoming Contaminated Sediments Technical Advisory Group (CSTAG) meeting in Region 2.

The CAG will need to be convinced of the merit of this proposal and how it is different than the plan that was presented, and rejected by EPA, just a few years ago. On a contaminated sediment site like the Passaic River, it could be years before we understand how an early action

has reduced public health risks and, by then, how will we ever bring the PRPs back to the table to finish a cleanup? Short cuts could result in insufficient assessment of the contamination and, therefore, an incomplete cleanup. This may ultimately make it more difficult for sites to be used for other purposes than future industrial locations.

The Superfund Task Force Recommendations raises further concerns with the emphasis on reuse or redevelopment of Superfund sites and reduced oversight and the use of independent third parties to oversee certain aspects of the PRP lead cleanups.

First, it is essential that human health and environmental protection be the top priority for taking action at Superfund sites. Redevelopment should never supersede human health concerns. When our CAG members talk about future use of the Passaic River, they mention habitat restoration, new boat ramps, waterfront parks and other recreational amenities, they do not mention industrial redevelopment. The City of Newark recently cut the ribbon on the third phase of waterfront park along the River, with plans to expand. The Passaic River has been cut off from the community for decades due to pollution and industrial use, it is now time to restore a healthy River back to the community. This is the community priority and it must be respected by the EPA.

Second, reduced oversight and the use of independent third parties to oversee certain aspects of site cleanup has been underway in New Jersey for several years. This program is called the Licensed Site Remediation Professional (LSRP) Program (see http://www.nj.gov/dep/srp/) and it requires that all remediations under state oversight in New Jersey proceed under the supervision of a LSRP. It is important to bear in mind that the general tendency in New Jersey is

to ask EPA to take over more complicated contaminated sites or sites where the PRP is not cooperating, so simply transferring a LSRP-type program over to the Superfund program would not be appropriate.

The implementation of the LSRP program in New Jersey, while potentially addressing smaller contaminated sites more quickly, has lead to less transparency and public engagement. This is due to the fact that our state agency, the New Jersey Department of Environmental Protection (NJDEP), no longer has immediate access to cleanup plans, sampling results or other technical reports because they are generated by a consultant hired by the property owner to conduct the investigation and then subsequently submitted to NJDEP, thus finally making them finally publically available. The onus is now on the public to work directly with multiple private consultants and property owners to get information, rather than one public agency.

It is critical to keep the Superfund public participation program intact, through the use of CAGs, TAGs and other technical assistance provided by the EPA. The Passaic River CAG has worked side-by-side with the EPA to develop Community Health and Safety Plans, local jobs, public participation guidelines, and meaningful comments on proposed cleanup plans. An engaged and educated public is an asset, not a burden.

The Superfund Task Force Recommendations make short shrift of engaging partners and stakeholders. The recommendations, tacked on at the end of the report, can be summed up as identify stakeholders, talk to them and form an advisory committee. This is unacceptable and falls far short of where EPA already is for the Passaic River Superfund site.

Finally, it is important to note that while Administrator Pruitt has stated that the Superfund program is a cornerstone of the work that EPA performs for citizens and communities across the nation, his own President has proposed slashing the EPA budget by 31%.

The Trump Administration proposed cuts to the Superfund program of 25% nationally, which would result in the loss of 536 staff slots. New Jersey has 114 Superfund sites, the most of any state and receives approximately 25% of the national budget, so cuts like this would be devastating to our communities.

Thank you for allowing me to testify today on this critical public health issue.

More information on the Community Advisory Group (CAG) and the Passaic River Superfund site can be found here: http://ourpassaic.org/

Mr. SHIMKUS. Very good. Appreciate it, and thank you for your testimony.

And now we'd like to turn to Ms. Debbie Mans. You're recognized for 5 minutes. And I am very generous with the time so don't feel too pressured. We can go over.

STATEMENT OF DEBBIE MANS

Ms. MANS. Thank you.

So good morning. Thank you for this opportunity to testify. Again, my name is Debbie Mans and I am the Co-chair of the Passaic River Community Advisory Group, or CAG, and the CAG provides advice and recommendations to the EPA and its partner agencies to help ensure a more effective and timely cleanup and restoration of the Lower Passaic River. It's a construct of the Superfund law.

In 2015, our CAG won the Community Involvement Award from the U.S. EPA, a national award that recognizes outstanding achievements in environmental protection.

I am also the Executive Director and Baykeeper for New York/New Jersey Baykeeper, which works to protect, preserve, and restore the New York Harbor Estuary, which includes the Lower Passaic River, and we hold the technical assistance grant for the Passaic River Superfund site.

I am here today to represent the communities that have been harmed by the pollution in the Passaic River. The site was first listed on the NPL in 1984, so I think we might win the bets here.

Dioxin, PCBs, metals, PHs, and pesticides are found in the sediment of the Lower Passaic River and the primary polluter on the river was a company called Diamond Alkali, which produced Agent Orange during the Vietnam War, and they used to shovel the byproduct of that production, dioxin, off the bulkheads into the Passaic River.

The Superfund site now consists of 17 miles of the Passaic River, Newark Bay, and other portions of New York Harbor, and over the years the cleanup has progressed slowly along, primarily consisting of a constant back and forth negotiation between the PRPs and the EPA over sampling locations and methodologies, sampling results, newfangled ideas to clean the river, fish swaps, or recommendations to let the river heal itself.

The recalcitrants of the PRPs was further amplified by the lack of funds to allow EPA to move forward with the cleanup itself due to the lapse of the Superfund tax.

In March 2016, a record of decision was selected for the lower 8.3 miles of the river, the most contaminated section of the Superfund site and the source for ongoing contamination, spreading throughout the New York Harbor estuary.

However, the remainder of the Superfund site—an additional 9 miles of waterway upriver in Newark Bay—is still under investigation, and recently the Diamond Alkali Company, AK Upper Lower Passaic Section, was listed as a Superfund site targeted for immediate and intense action by EPA Administrator Pruitt. This is the upriver portion of the Superfund site.

This announcement, coupled with the May 2017 announcement by Administrator Pruitt revising EPA's delegation of authority to

ensure that decision making comes straight from the administrator to select remedies estimated to cost $50 million or more—and we will be over that amount—rather than the assistant administrator and the regional administrators gives me pause.

The May 2017 memo further states that as part of effectuating this adjustment to the remedy selection process I ask that you involve the administrator's office early on and throughout the process of developing and evaluating alternatives and remedy selection. This would appear to add a layer of bureaucracy rather than make processes more efficient at EPA. Now the regional offices must involve EPA headquarters early and often throughout the process.

Now technical experts at the regional offices must confer with political appointees based in Washington, D.C. on developing and evaluating cleanup alternatives and remedy selections per site. This makes no sense to the stakeholders on the ground. The people who know these sites the best are the local EPA technical experts who come to our community meetings and inspect the sites. My best guess as to why the Upper Passaic site is on the list of Superfund sites targeted for immediate and intense action is that EPA headquarters would like to test out adaptive management, a strategy outlined in the task force report for the use of an early action being promoted by the PRP.

What concerns me is that the PRPs are potentially getting another chance to move forward with a concept that was earlier reviewed and rejected by the EPA due to lack of scientific basis and protections to public health.

Now, under the guise of a task force report and new directives from the headquarters, indeed, regional staff recently informed us that our CAG will be updated on this potential cleanup proposal at our February CAG meeting and the proposal was also a subject of an upcoming Contaminated Sediments Technical Advisory Group, CSTAG, meeting in Region Two.

On a contaminated site like the Passaic River it could be years before we understand how an early action has reduced public health risks and by then how will we ever bring the PRPs back to the table to finish a cleanup.

One last point on the emphasis on reuse of Superfund sites, in New Jersey we've had for several years a private sector program that our state Agency delegates to private consultants to do cleanup of sites. It's called the Licensed Site Remediation Professional Program, and simply transferring a program like this over to sites that are Superfund sites would be inappropriate.

Generally, in New Jersey Superfund sites are, as we talked about, the last result, and they ask the EPA to take over sites that are very complicated or the PRP is not cooperating.

This LSRP program in New Jersey has actually resulted in less transparency and public engagement because the use of private consultants with less Agency oversight results in less public participation and transparency.

So I have the rest of my information in my written testimony. Thank you again for this opportunity.

[The prepared statement of Ms. Mans follows:]

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The Trump Administration proposed cuts to the Superfund program of 25% nationally, which would result in the loss of 536 staff slots. New Jersey has 114 Superfund sites, the most of any state and receives approximately 25% of the national budget, so cuts like this would be devastating to our communities.

Thank you for allowing me to testify today on this critical public health issue.

More information on the Community Advisory Group (CAG) and the Passaic River Superfund site can be found here: http://ourpassaic.org/

Mr. SHIMKUS. Thank you.

And now we'll turn to Katherine Probst, independent consultant. You are recognized for 5 minutes. Thank you for being here.

STATEMENT OF KATHERINE PROBST

Ms. PROBST. Thank you very much, members of the subcommittee, and thank you for inviting me to testify before you today.

My testimony today is going to focus on three issues improving the effectiveness of the Superfund remedial program, estimating the funding needs for the Superfund program, and the Superfund task force recommendations.

The first question that must be asked, and this has already come up many times today from both Republicans and Democrats, is why does it take so long to clean up sites on the NPL? It's a great question and it's really sad we don't have any answers. At the end of fiscal year 2016, there were 441 nonfederal NPL sites that were not yet construction complete.

Just over 40 percent of these sites were added to the NPL before fiscal year 2000. Some have been on the NPL since 1983.

EPA needs to conduct an objective analysis to determine why these sites are still not construction complete in order to develop effective program reforms.

Is the obstacle lack of funding, PRP inaction, bureaucratic morass, technical challenges, or something else? Until we know why these sites are taking so long, we really can't develop solutions.

And if it's worth noting that more than half of remedial actions at NPL sites are PRP lead. Much more attention needs to be paid to whether at some sites PRPs are in fact responsible for lengthy cleanup durations. Second, the Agency needs to determine why there are still NPL sites where human exposure is not under control and what can be done about it.

The most important goal for the remedial cleanup program is to protect public health. Yet, at the end of fiscal year 2016, there were over a hundred nonfederal NPL sites where human exposure was not under control and at another 150 sites there was insufficient information to determine if it was under control or not.

This issue should be the top priority of the Superfund program. Interestingly, the July 25th, 2017 memo from Administrator Pruitt directs senior staff to "Prioritize and take action to expeditiously effectuate control over any site where the risk of human exposure is not fully controlled," and to provide a report that identifies these sites and describes where such risks are expected to be controlled within 60 days, which I think would have been the end of September.

No information on this effort has been made public. To address this pressing issue, EPA should issue a report lifting all nonfederal NPL sites where human exposure is not under control or whether there is insufficient data to determine if it is under control and detail what steps are needed to address potential exposure and when these actions will be implemented.

Some have suggested there is little or no need for a federal cleanup program and that the program should be delegated to the states. Yet, few if any states have the financial resources to pay for

the cleanup of an average NPL site, much less a mega site with costs of $50 million or more.

In fact, states have increasingly raised concerns about their ability to come up with the funds to cover the state cost share for fund lead actions at NPL sites. To address this issue, EPA should commission an independent analysis of the financial resources and NPL cost burden for all states and territories that have NPL sites.

As Congress seeks to improve the Superfund program, one key question, which again has come up this morning is whether the program is receiving adequate annual appropriations to successfully carry out its responsibilities.

EPA is not provided a public estimate of future funding needs to implement the program for many, many years. Congress should require that EPA issue an annual estimate of future costs of completing work at all nonfederal sites on the NPL.

EPA should also develop an estimate of the amount needed for a PRP reserve fund. One of the important tools for EPA to get PRPs to agree to pay for and implement cleanups is the threat that if they don't EPA will do so and then seek cost recovery or, potentially, treble damages.

For this threat to be real, EPA needs to have a sizeable reserve fund to draw on, which is not the case. EPA should also investigate the potential savings of an optimal cleanup funding approach.

Given the very real constraints on annual EPA funding for site construction, which was only $187 million for fiscal year 2017, it is almost certain that site cleanups are not funded in an optimal manner.

This results in work at some sites being spread out over many years, likely increasing total costs. If an analysis of a different funding approach showed substantial cost savings, Congress could consider whether a few years of surge funding would be worthwhile as a mechanism to get some of the more expensive NPL site completed faster and at a total lower cost.

Finally, as you know, in July EPA issued a Superfund task force report with 42 recommendations. As of yesterday, there has been no public information on the implementation status of any of the recommendations except for the release in December of the list of the 21 sites targeted for immediate and intense action, and yesterday the release of a list of 31 sites with high redevelopment potential.

Congress, the public, other interested parties and, most importantly, residents living near NPL sites have no information on the status of the many task force recommendations nor on the impact of these recommendations on the day-to-day operations of the Superfund program.

Neither has there been any information on exactly what it means to be included on the list of 21 sites targeted for immediate action.

The lack of transparency is staggering.

Thank you for asking me to testify before you today. Be happy to answer any questions.

[The prepared statement of Ms. Probst follows:]

Testimony of Katherine N. Probst
before the
Committee on Energy and Commerce,
Subcommittee on the Environment

Hearing on Modernizing the Superfund Cleanup Program

January 18, 2018

Members of the Subcommittee, thank you for inviting me to testify before you today.

My name is Kate Probst, and I am an independent consultant. For over 20 years, I have worked as a researcher and policy analyst evaluating the Superfund program and making recommendations for improvement. I was the sole author of the report *Superfund 2017: Cleanup Accomplishments and the Challenges Ahead*, an independent report commissioned by the American Council of Engineering Companies that was released in June 2017. I was also the lead author and project director of the 2001 Report to Congress *Superfund's Future: What Will It Cost?* which was requested by the Senate and House Appropriations Committees and published by Resources for the Future (RFF), a Washington, DC think tank where I was a Senior Fellow for 20 years. The conclusions, recommendations, and opinions in my testimony today are mine and mine alone, and do not represent any other person or organization. I would appreciate it if the full text of the report *Superfund 2017: Cleanup Accomplishments and the Challenges Ahead* were submitted for the record.

After presenting a few key facts about the status and funding of the Superfund remedial program, I have organized my testimony today around three key issues:

1. Improving the effectiveness of the Superfund remedial program, that is, the program to address sites on the National Priorities List (NPL);
2. Estimating the current and future funding needs for the Superfund program; and
3. Administrator Pruitt's *Superfund Task Force Recommendations* report that was released July 25, 2017, as well as the December 8, 2017 list of 21 contaminated sites targeted for "*immediate, intense action*."

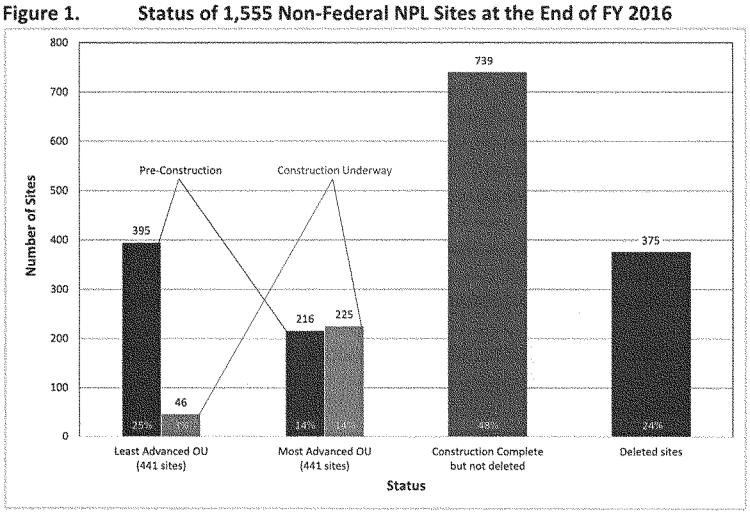
All of the information presented today is for sites that are on the EPA's National Priorities List (NPL) that are not owned or operated by a federal agency, referred to inelegantly as "non-federal" sites. While federal facilities that are on the NPL are important and deserve attention, funding and management of these sites differ in important ways from non-federal sites, and thus present a host of different issues. Information on federal facilities, proposed (but not final) NPL sites, and Superfund Alternative sites is *not* included in any of the data or information herein. Most of the data is drawn from my recent report (*Superfund 2017*) and is as of the end of FY 2016. In some cases, I provide more recent information from the EPA

Superfund website or from data obtained at the end of May 2017, which is so noted. Finally, my testimony does not address the Superfund "removal" program.

I. Status of NPL Cleanups at Non-Federal Facilities[1]

1. **At the end of FY 2016, over two-thirds of the 1,555 non-federal sites on the NPL either had been deleted from the NPL (meaning that all response actions had been completed and all cleanup goals had been achieved) or were construction complete (meaning all remedies had been constructed).** As of the end of FY 2016, 24% (375) of non-federal NPL sites had been deleted from the NPL and another 48% (739) were construction complete but not deleted, meaning that all remedies had been constructed but all cleanup objectives had not been achieved. The remaining 28% (441) of sites were in some stage of the remedial pipeline and require additional EPA work or oversight. See Figure 1, below.

Figure 1. Status of 1,555 Non-Federal NPL Sites at the End of FY 2016



Source: US EPA

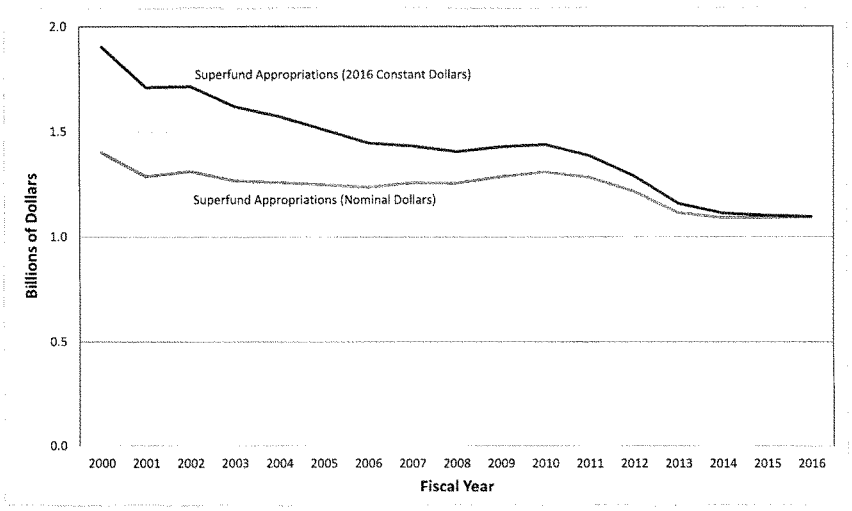
2. **At the end of FY 2016, there were over 100 non-federal NPL sites where human exposure was not under control, and over 150 sites where there was insufficient information to determine if human exposure was under control (or not).** Seven percent of non-federal NPL sites were categorized by EPA as "human exposure not

[1] Information from this section is not included in my oral statement.

under control" at the end of FY 2016. At another 10% of non-federal NPL sites, there was insufficient data to determine whether human exposure was under control or not.

3. **Funding for the Superfund program has declined markedly since FY 2000, and it appears that the remedial program is facing a funding shortfall.** In constant 2016 dollars, annual Superfund appropriations declined from a high of $1.9 billion in FY 2000 to a low of $1.09 billion in FY 2016, a decrease of 43% in real dollars, as shown in Figure 2 below. Not surprisingly, funding for the remedial program declined as well, from a high of $749 million in FY 2004 to a low of $501 million in FY 2016, a decrease of 33% in constant dollars.

Figure 2. Superfund Appropriations in Constant and Nominal Dollars, FY 2000–FY 2016



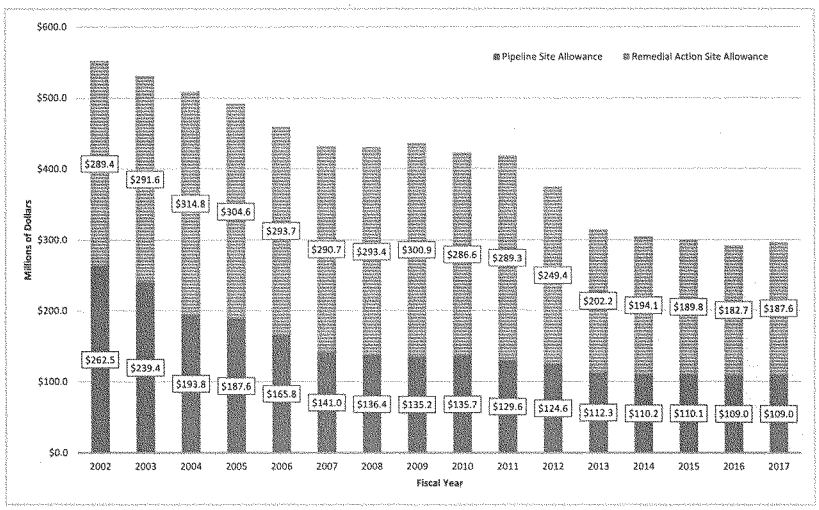
Source: U.S. EPA

Note: Funds from the American Recovery and Reinvestment Act (ARRA) of 2009 that were allocated to the Superfund program in FY 2009 are not included in this figure.

Due to lack of funding, EPA has had to delay the start of some cleanups for 14 out of the past 17 years. Over the past five years, the end-of-year funding shortfalls for remedial action projects have averaged $67 million in constant 2016 dollars. Most likely, this is only the tip of the iceberg in terms of underfunding, as unfunded remedial action starts are among the easiest items to track. Much more difficult to quantify are more subtle results of funding constraints: sites not added to the NPL, site study and remedial projects spread out over a longer time-period, and other less visible actions not taken or delayed due to lack of resources.

Funding for site-specific activities has also declined over time. Figure 3, below, shows the decline in remedial site allowances from FY 2002 through FY 2017 in constant 2016 dollars. The "remedial action site allowance" is the amount of annual appropriations from Congress that is available for fund-lead construction work at NPL sites. As documented below, in FY 2017, this amount totaled approximately $187 million.

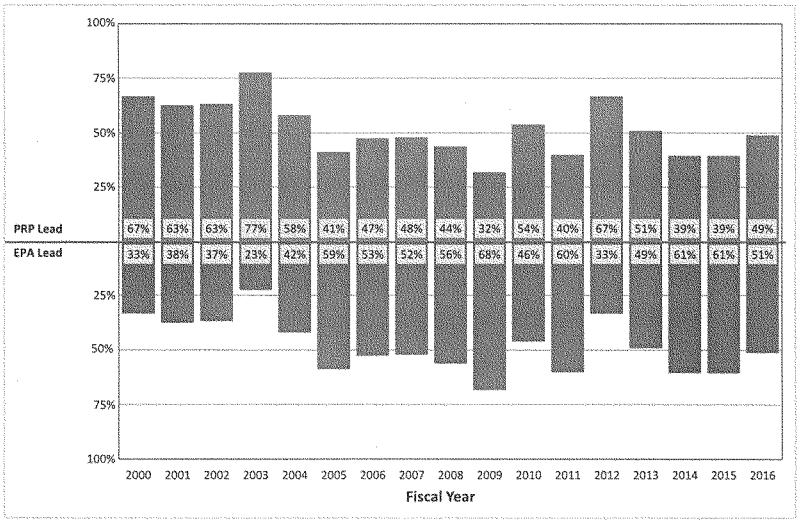
Figure 3. Remedial Site Allowances in Constant 2016 Dollars, FY 2002 - FY 2017



Source: U.S. EPA
Note: Additional funds for remedial pipeline actions come from special accounts, PRP-lead actions and state contributions.

4. **Responsible parties play a critical role paying for and implementing actions at non-federal NPL sites.** As envisioned in CERCLA, responsible parties take the lead – and pay for – many actions at non-federal NPL sites. Since FY 2000, potentially responsible parties (PRPs) have taken the lead for from 32% to 77% of the remedial action project starts each year, as shown in Figure 4 below. Discussion of how to improve the cleanup program needs to include the role of PRP-lead cleanups. Encouraging more PRP-lead cleanups and ensuring EPA has the enforcement resources and financial leverage to encourage PRP-cleanups is a critical element in an effective program.

Figure 4. Percentage of Remedial Action Project Starts at Non-Federal NPL Sites that were PRP and EPA Lead, FY 2000 - FY 2016



Source: U.S. EPA
Note: Remedial actions starts are tracked at the project, not the operable unit, level.
Percentages may not add to 100% due to rounding.

II. Improving the Effectiveness of the Superfund Program

The Subcommittee's background memo for this hearing asks many salient questions about the Superfund program. Key among them is: "Are there changes that need to be made to make the program more efficient and effective?" The answer, is surely "yes." However, it is not possible to solve a problem if we do not know what is causing it. The Agency must invest, with the full support of the Subcommittee, in evaluating key aspects of the Superfund remedial program in order to develop effective and workable solutions to the issues of concern. Recommendations for improving the program should be based on sound, objective analysis – not on anecdotes about individual sites.

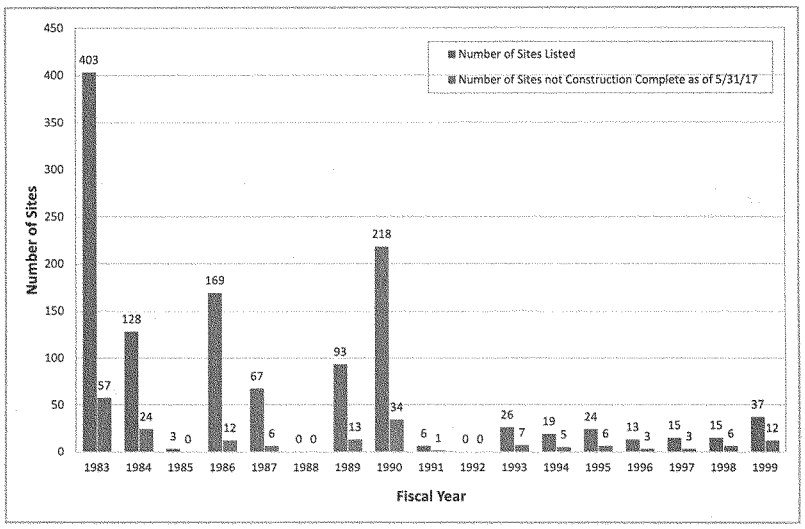
While there are myriad issues once could address, I have chosen to focus my testimony on three key issues: duration of cleanup, sites where human exposure is not under control, and the need to better understand state financial capabilities to address NPL-caliber sites.

1. Why does it take so long to complete cleanup at some of the sites on the NPL?

This is a great question. Unfortunately, we really don't have an answer. We know that some cleanups take a very long time, but we don't really know why. While it is true there are some very large and complex sites, it is not only these types of sites that are taking decades to address. And, even for the very large sites, it should be possible to identify the specific factors that have led to cleanup durations of 20 years or more.

At the end of FY 2016, there were 441 non-federal NPL sites that were not yet construction complete. Just over 40% of these sites (189) were added to the NPL before FY 2000, and thus have been on the NPL for almost 20 years, if not longer, as shown in Figure 5 below.

Figure 5. Non-Federal NPL Sites that were not Construction Complete as of May 31, 2017 by Year Added to Final NPL (1983 - 1999)



Source: U.S. EPA
Note: This is a different data set than used in the Superfund 2017 report, thus the total number of sites that are not construction complete is different than the end of FY 2016 data.

Even more astonishing is the fact that 57 of the 403 sites listed in FY 1983 were still not construction complete at the end of May 2017.

Investigating *why* these sites are still not construction complete is critical to understanding the causes of delay and to being able to develop meaningful program reforms. Is the obstacle to getting to construction complete lack of EPA funding? PRP inaction?

Bureaucratic morass? Technical challenges? Or something else? Examining the 189 sites listed on the NPL before FY 2000 that are not construction complete and determining why cleanup is taking so long and what kind of action – if any – could accelerate cleanup would be an efficient way to identify the factors delaying cleanup and provide useful input to making changes to improve program efficiency and effectiveness. And, it is worth noting, that while most of us (including me) tend to focus on lack of EPA funding or EPA inaction as a cause of delay, more than half of remedial actions at NPL sites are PRP-lead. Much more attention needs to be paid to whether at some sites PRPs are in fact responsible for lengthy cleanup durations and, if so, what steps could be taken to address this issue.

There is little or no useful information on the factors that result in cleanups taking so long. Any initiative by EPA to speed cleanup should begin by identifying the specific factors that are contributing to delay at NPL sites. Specific recommendations are below. The analyses below should all be made public to inform effective oversight and reform of the Superfund program.

a) The Agency should develop a list of no more than 15 possible factors that lead to cleanup delay and identify which factor or factors are most important for each NPL site that is not yet construction complete. Possible factors include: Lack of adequate EPA funding, PRP-inaction, EPA-inaction, lack of adequate EPA staff, bureaucratic or process requirements, State concerns regarding their cost-share, State concerns about proposed remedy, other State issues, the sheer magnitude of the site and contamination, and technical limitations of available cleanup technologies, among other possibilities. Once this information is compiled EPA can: 1) seek to implement actions to accelerate cleanup, where appropriate, at individual sites, and 2) analyze the information to identify what appear to be the most important contributors to delay and develop specific actions to address these factors for the program as a whole. EPA should issue a report describing the factors that contribute to lengthy cleanup durations.

b) The Agency should examine all sites that have been construction complete for 5 years or more but are not yet deleted, and conduct a similar analysis to identify the key factors making deletion elusive. A different list of factors will need to be developed, and should include: lack of effective technology, unenforceable institutional controls, and technical challenges, among others. EPA should issue a report on the factors making it difficult for sites to be deleted from the NPL and identify those specific sites that are unlikely to be deleted from the NPL for 10 years or more for purely technical reasons, i.e. not because of funding constraints or inaction.

c) The Agency should develop or commission case studies of a handful of NPL sites that have been on the NPL for 15 years or more and are not construction complete to document the process, including examining the roles of EPA, states and responsible parties, describing the complexity of the sites, including the difficult technical and

scientific issues, describing the major contamination and risks at the sites, as well as the concerns of the affected community. The goal of the case studies should be to document what has happened in order to identify improvements to the way the remedial program is structured in the future, not to criticize the Agency or second guess past actions. It should be noted, there is no need for extremely long, academic quality case studies, the purpose is to amass a fact-based "picture" of actions at the sites over time to enable senior EPA management to identify which aspects of the cleanup process are in need of reform. Of the 17 final NPL sites (out of the 21) identified by Administrator Pruitt on December 8 as needing immediate attention, 11 were added to the NPL before 2000. These sites might be good candidates for case studies. That said, it would be helpful to evaluate the process at a few NPL sites that are less notorious as well. Again, this work should be made public.

2. Why are there still sites on the NPL where human exposure is not under control, and what – if anything – can be done about it?

The most important goal of the remedial cleanup program is to protect public health. Yet, at the end of FY 2016, there were over 100 non-federal NPL sites where human exposure was not under control, and at another 150 non-federal NPL sites, there was insufficient information to determine if human exposure was under control (or not).

a) EPA should review all non-federal NPL sites where human exposure (1) is not under control, or (2) where there are insufficient data to determine if it is under control, to determine what steps would be needed to address the potential exposure. This assessment should identify the specific steps that are needed to bring human exposure under control, as well as whether the actions would be paid for and implemented by PRPs, EPA, states or some other entity, and include an estimate of the associated cost. For those sites with insufficient data, the report should detail why this is the case, and what steps would be needed to obtain sufficient data or information to make this determination. In addition, the assessment should examine whether there are technical obstacles to addressing these concerns and identify those specific sites where it is not technically possible to bring human exposure under control in the next decade, and why. For example, there are some sites where it is simply not possible to control exposure and to ensure compliance with institutional controls. EPA should make public the results of this analysis.

This should be a top priority of the Superfund program. And in fact, a very similar task to that outlined above is the first item on page 2 of the July 25, 2017 memorandum from Administrator Pruitt laying out the next steps for reforming the Superfund program. The memorandum directs senior EPA staff to:

"Prioritize and take action to expeditiously effectuate control over any site where the risk of human exposure is not fully controlled. Within 60 days (*Note: this would have been the end of September*) regions should prepare a report to the chair of the task force that identifies these sites and describes when such risks are expected to be controlled.[2]"

Information has not been made public regarding whether this task has been implemented. If it has, information on the actions taken should be made public immediately, Information on this performance measure should be reviewed and updated at least monthly, and more frequently if needed, and should be communicated in a more user-friendly and accessible fashion than is currently the case on the EPA website.

3. **Understanding State Financial Capabilities for Addressing NPL-Caliber Sites**

Some have suggested there is little or no need for a federal cleanup program and that the program should be delegated to the states, or that states should take on a much larger role for NPL cleanups. Yet few (if any) states have the financial resources to pay for the cleanup of an NPL-caliber site, much less a mega site costing $50 million or more.

a) To address this issue, as well as state concerns about their financial burden for cleanup and operation and maintenance costs at NPL sites, EPA should commission an independent analysis of the financial capacity, NPL cost share, and legal authorities of state Superfund programs. This report should be conducted in coordination with the Association of State and Territorial Solid Waste Management Officials, and potentially with the Environmental Council of the States and the National Governors Association. The report should provide information for all 50 states (and any US territories with NPL sites) and include for each state or territory, the names of the NPL sites where the state is currently responsible for 10% of EPA-performed remedial actions and the associated estimated annual and total cost share, as well as the estimated annual cost of operation and maintenance for these sites. In addition, the study should include information on the total amount of monies, if any, in each state's cleanup fund (that is, funds that could be used to pay for cleanup of contaminated sites similar to those listed on the NPL), whether these funds are replenished on an on-going basis, the average cost of any state-funded non-NPL cleanups implemented over the past 10 years, and whether state Superfund laws have the same liability provisions as CERCLA. This kind of information is critical to a frank assessment of the possible future state role for NPL cleanups. For a number of years, EPA commissioned an in-depth analysis of state Superfund programs that was conducted by the Environmental Law Institute. The last of these reports was issued in 2002.

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[2] July 25, 2017 Memorandum "Receipt of Superfund Task Force Report and Next Steps for Revitalizing the Superfund Program" from E. Scott Pruitt, EPA Administrator, pg. 2.

III. Estimating Current and Future Funding Needs for an Effective Superfund Program

As Congress seeks to improve the efficiency and effectiveness of the Superfund remedial program, one key question is whether the program is receiving adequate annual appropriations to successfully carry out its responsibilities. For many years, EPA developed and publicly released an estimate of the future funding needs for the Superfund program, called the "out-year liability model." While there were criticisms of the estimates (which is why RFF was asked to develop the estimates in the 2001 *Report to Congress* mentioned earlier), it did provide a baseline estimate of future funding needs, with assumptions that could be examined and debated. That report has not been issued in many years. Unfortunately, the 2001 RFF Report to Congress is the last time there has been a comprehensive public analysis of the key building blocks of the program and an estimate of future funding needs.

It is time for Congress to require that EPA estimate future funding needs for the Superfund program on an annual basis. Absent an annual estimate of the future cost of cleaning up non-federal sites on the NPL, it is difficult, if not impossible, to evaluate whether annual funding levels are adequate.

a) **EPA should estimate the future cost of completing work at all non-federal sites on the NPL.** This estimate, and the assumptions behind it, should be made public and should be updated on an annual basis. To ensure the credibility of the effort, EPA should commission a small advisory panel of outside experts to review the approach, data used, assumptions, and results. This work does not have to be an expensive or time-consuming exercise, as the goal is to have a reasonable ballpark estimate of future costs, not a precise figure. A simple model with site-specific costs for all mega sites (cleanup cost of $50 million or more) and average unit costs by site type for all other sites, based on the total number of operable units at each site, would be sufficient as a starting point. Over time, the estimate can become more precise. The model should include the cost of future EPA actions and activities at all non-federal NPL sites and of long-term response actions paid for by EPA. The estimate should include both extramural (contract) and intramural (staff) costs and the staff costs to oversee PRP-lead actions.
b) **EPA should develop an estimate of the amount needed for a "PRP-reserve fund."** One of the most important tools for EPA to get PRPs to implement actions expeditiously is the threat the EPA will itself implement cleanup actions if PRPs are recalcitrant or drag their feet. In order for this threat to be real EPA needs to have a sizeable reserve fund to draw on so that PRPs know if they don't take action in a timely manner, EPA will step in and move forward with the cleanup process at NPL sites on its own. In earlier years, when Superfund appropriations were more generous, this threat was real. In recent years, with the amount of cash on hand available for actual cleanup (see Figure 3) much depleted, EPA does not have the cash on hand to step in and take action. This imbalance

needs to be corrected in order to ensure an effective enforcement program. Every dollar paid by a responsible party is a dollar that does not need to be paid for by taxpayers and government revenues.

c) **EPA should investigate the potential savings of an "optimal cleanup funding" approach for NPL sites.** It is well known that there are some very expensive fund-lead sites that, alone, would dwarf the annual remedial action site allowance, which in 2017 was $187 million (in 2016 dollars) for *all* sites on the NPL. Given the constraint on annual EPA funding for site construction, the number of active NPL sites, and the average cost of a remedial action, it is almost certain that site cleanups are not funded in an optimal manner and that, due to cash constraints, the work at some sites is spread out over many years. Many believe that this approach increases total site costs, both in terms of staff time and support and the "extramural" cost of cleanup. If the goal is a more efficient program, it would be extremely useful to have a better understanding of the potential total cost savings to a different "optimal" approach to funding cleanups. Thus, EPA should conduct an optimal funding analysis for five or more fund-lead NPL sites each with total cleanup costs of $50 million or more, to examine whether less constrained annual funding for these sites would result in total cost-savings, and if so, how much. If the analysis showed substantial cost savings, coupled with the promise of faster cleanups, Congress could consider whether a few years of "surge" funding would be worthwhile as a mechanism to get some of the more costly sites completed faster, at less cost.

d) **What kinds of sites are being added to the NPL, and why?** Any estimate of future cleanup needs requires some sense of what kinds of sites have been added to the NPL in recent years, and why, and what kinds of sites are likely to be added to the NPL in the future. EPA should examine the sites that have been added to the NPL over the past five years and issue a report detailing the types of site, why the site warranted EPA attention (orphan, enforcement difficultly, emerging contaminant, need for resident relocation, state referral/request, etc.) as well as a crude estimate of likely cleanup cost and complexity.

IV. Administrator Pruitt's *Superfund Task Force Recommendations* Report (July 25, 2017) and List of 21 Contaminated Sites Targeted for "*Immediate, intense action*" (December 8, 2017).

As you know, on July 25, 2017 EPA issued a report that included 42 recommendations for improving the Superfund program which was accompanied by a memorandum from Administrator Pruitt identifying his top priorities for action. As of January 16th, there has been no public information on the implementation status of any of the recommendations, except for the recommendation calling for EPA to identify a "top 10" list of sites, which I will turn to in a moment. We in the public, and of course, more importantly, residents living near NPL sites, have no information on whether some or all of the recommendations have been implemented, nor of the disposition of the actions called for in the report. There has been no information on

the status of the recommended actions, on the progress implementing the actions, or perhaps on difficulties encountered, nor on how the 42 recommendations have affected or changed Superfund operations and priorities. Nor have there been any statements on when the public and affected residents can expect information on progress. In sum, information on the Superfund program has become more elusive than ever.

Some of the recommendations in the July 25th report and memo – such as the task noted earlier that calls for EPA to take action at NPL sites where human exposure is not under control – clearly require EPA to gather substantive information on a subset of sites, information the public has a right to know. One would assume this information is either in an excel spreadsheet or a WORD document somewhere. It is curious that no information on this, or other tasks called for in the memorandum, has been made public.

The list of 21 sites announced on Dec. 8 is equally troubling. It is unclear why or how these sites were chosen for "immediate and intense" action, and exactly what that means. We have been told it does not mean more EPA money, but other than that no information has been provided. One would have thought that having identified these sites as a top priority, that more information about these sites and the proposed actions by the Administrator would be forthcoming. My own analysis based on the individual site websites (the information on these websites can change any time, so the information below may be out of date) suggests that of these 21 sites:

- At 9 sites, human exposure is not under control;
- At 5 sites, there is insufficient data to determine if human exposure is under control;
- At 3 sites, information on this measure is not readily available on line; and
- At 4 sites, human exposure is under control.

Given the importance of this measure, one would think that this is one of the first issues the Administrator would examine once the information on subsequent actions at these sites has been provided.

What is needed are meaningful reforms for improving the Superfund program as a whole, not a list of 21 sites that receive the Administrator's personal attention.

* * * * *

Thank you for asking me to testify before you today. I would be happy to answer any questions.

[The attachments to Ms Probst's statement can be found at: *https://docs.house.gov/meetings/if/if18/20180118/106783/hhrg-115-if18-wstate-probstk-20180118.pdf.*]

Mr. SHIMKUS. Thank you very much, and I will recognize myself 5 minutes for the members' questioning.

And Mr. Cobb, in your written testimony you note that the national contingency plan should be updated and you specifically suggest perhaps the national contingency plan should be revised to apply separately to cleanups funded by potential responsible parties, or PRPs, versus cleanups paid for by the federal government.

Can you walk us through your suggestion for updates to the national contingency plan? And if you can do it quickly. I want to try to get to as many people as I can.

Mr. COBB. Yes, sir. I will be glad to.

Yes. First, the NCP was written almost 35 years ago. We've learned a lot since then. We need to update it for the lessons that we've learned, and recognizing the difference between PRP-led cleanups and fund-led cleanups, recognizing that we have many PRPs who now get it, wwho want to be able to resolve their issues, want to be able to move forward and conduct cleanups, yet the NCP was written as though every site was going to litigation, every site was going to cost recovery. So it is very detailed.

We need to make a difference there to enable sites and facilities that want to resolve their issues to be able to move forward quickly. That provides a greater incentive to encourage more sites to do that and still reserves the detail for those sites that need to go through the trust fund type cleanup and cost recovery.

Mr. SHIMKUS. And I appreciate that. And for the panel as a whole, just as a statement, and I am not sure where we as a committee can get to—I think a lot of you have raised the issue in observing us, we are frustrated, it takes too long, we are looking for recommendations, and if we as members could eventually decide on what the solution to that goal is together, we maybe start writing something that would help update some of these records and files and timelines and stuff.

So I would encourage a continued dialogue with us as we move forward.

Back to Mr. Cobb. Do you—and part of this debate is do you think—and it was raised by other panelists, do you think that certain authorities under the Superfund act could be delegated to states?

Mr. COBB. Yes. As I stated in my written testimony, I think that where responsible parties are willing and able to go forward with cleanup, states certainly have the expertise and the capacity to be able to do that.

The advantage of that is it doesn't take away from EPA's actions under fund-led cleanups. In fact, it enhances them because it removes some of the decision making and technical bottlenecks that we see of everything going through the federal project managers through the federal decision makers and freeze up resources to be able to move sites faster through the process.

Mr. SHIMKUS. And I don't know if it was Ms. Mans, Ms. Probst—someone mentioned this. Ms. Mans, with your Passaic River issue, is there a problem with a proposal that some Superfund responsibilities be delegated to the states?

Ms. MANS. Well, the Passaic River—there's a close partnership with the states for that cleanup. It's one of the largest and most

complicated in-water Superfund sites in the country. So I don't think that's an appropriate site to do that.

The State of New Jersey has a lot of expertise in cleaning up contaminated sites.

Mr. SHIMKUS. So is it fair to say that states wouldn't want a huge one maybe like the Portland area, but smaller ones that can be managed, Mr. McKenna?

Mr. MCKENNA. Yes. I think this is one of those issues where it's really state-specific and site-specific.

In Portland, we have the Portland Harbor Superfund site, which is about 11 miles, and EPA is the lead for the in-water cleanup there. The State of Oregon is the lead for the in-water sediment cleanups immediately adjacent and immediately upstream because we need to control those——

Mr. SHIMKUS. Because when I toured it, there was one site that was relatively remediated by the state——

Mr. MCKENNA. Right.

Mr. SHIMKUS [continuing]. Where all the surrounding areas, in essence, were not, if I remember that.

Mr. MCKENNA. That was McCormick and Baxter, which is a separate Superfund site and which it was an orphaned site, federal funds and the state implemented the cleanup there.

The state also implemented the cleanup at sediment sites immediately upstream of the Portland Harbor Superfund site and in that area where there were multiple cleanup sites, they dealt with each one separately and the PRPs of those sites separately, and they've actually got the cleanups done at the same cleanup goals as Portland Harbor. But they're actually done as opposed to the continuing work that's going on at Portland Harbor.

So I think there are ways and we are happy to sit down with anyone and talk about the lessons learned and some of the progress we've made in those areas.

Mr. SHIMKUS. Thank you. And Dr. Porter, I don't have time for a question but I appreciate your blunt straightforward analysis and we look forward to working with you on ways if we get a decision to try to move forward on trying to at least clean up the process legislatively.

So I will yield back my time and turn to the ranking member, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Ms. Mans, as I mentioned, I've been very concerned with transparency, the Superfund task force process and the development of the administrator's targeted list.

Did anyone at EPA engage with you before the Diamond Alkali site appeared on the administrator's targeted list?

Ms. MANS. No. We actually, subsequent to the listing, requested a meeting with the regional administrator, Peter Lopez, and we just met with him last week to ask more. We didn't really get much more information about what it means.

Mr. TONKO. And are you going to continue to pursue to get information on that?

Ms. MANS. Yes, we will. I mentioned we are anticipating a proposal by the PRPs for that cleanup for that portion that was put on the list next month and then we'll have to turn around and pro-

vide technical comments on that on behalf of the community for the CSAG meeting on March 1st.

Mr. TONKO. For a little more clarification here, did EPA give any explanation to you as to what it means to have the site on the list?

Ms. MANS. No. They were as helpful as they could be but it was just different variations of the word intense and immediate.

Mr. TONKO. OK. People can accuse me of cynicism if they want but I do believe that this is a strategy for generating future press releases more than actually working toward remediating sites for the standard of protecting human health and our environment.

So Ms. Mans, can you explain the role that local stakeholders play in making a remediation successful?

Ms. MANS. Sure. Our CAG is very highly educated. We've been meeting since the fall of 2009 almost on a monthly basis, and we've done everything to provide advice on the community health and safety plan, the job training program. We created local jobs at our request on emergency action there or initial cleanup and as well as provide, like I said, technical advice to the——

Mr. TONKO. And how important is that engagement within buy-in from the local community?

Ms. MANS. It's the most important thing you can have at a Superfund site. When the EPA announced the March—in 2016 ROD we had both senators, every single congressional representative in the region, the community, the mayor, all standing up to support that decision and that's what made the difference.

Mr. TONKO. Well, I will not argue with Dr. Porter—that many cleanups could happen more quickly and more cost effectively. But I really do believe a well-funded EPA is critical to get these cleanups done.

Ms. Probst, has a lack of EPA funding caused a delay in starting some cleanups?

Ms. PROBST. Well, as Barry Breen mentioned, we know from EPA's own data, I think it's 14 of the last 17 years they've had to delay remedial actions that are—you can document that.

I think it's fair to say that if you listen to Mr. Carter or anybody who has a site, sites are taking a long time. One has to assume that the lack of actual funding for construction is causing EPA to spread things out over multiple years.

That is much harder to capture. So all we know is the specific actions that have been delayed. But you have to assume that if you only have $187 million, which I would love to have personally, but is not a lot money for this program for cleanups, for construction, that things are being parceled out over years.

So we don't know exactly how much but I think it's fair to say it contributes to the delay.

Mr. TONKO. And can you explain how EPA needs both enforcement and cleanup resources in order to ensure responsible parties remediate these sites?

Ms. PROBST. Sure. Although I am not a lawyer but, the enforcement program the whole goal is that the responsible parties will actually pay for and implement cleanups themselves. In theory, they see that as an advantage because they assume they're more efficient than EPA, although one actually doesn't know that. But it's in their interest to have more control.

So under the enforcement program, and usually we are talking settlements here, EPA works with responsible parties and the implement, as Barry said, I think, we think it's 60 or 70 percent of remedial actions.

The other thing that's important that I mentioned in my testimony is EPA being able to step in if there's a site that has been sitting there for 5, 10, 15, or 20 years and the responsible party isn't doing anything, and there are at least two of the 21 sites on the lists that it clearly says the PRPs have been sitting on this site.

The idea is that EPA should have the funding to go in there and say OK, PRP, there's been this remedial action ready to go for 3 years or 5 years—you're dragging your feet—forget it, we are going to implement. That's part of the program.

Mr. TONKO. And just quickly here, Ms. Mans, I mentioned the issues facing the Hudson River this morning. It is clear how important it is to get the remedy right the first time. Can you explain how an insufficient assessment for sampling or modelling or an incomplete cleanup will make it more difficult to make sites protective of human health and bring responsible parties back to the table?

Ms. MANS. Well, if you move forward with that type of thing, I don't see how you can bring them back to the table, especially years later for, like, a sediment thing site when you only then figure out decades later that the fish are not getting healthier and you're not reducing the cancer risk.

The ROD that we have now is a bank-to-bank dredging and we look to what happened at the Hudson River with just the hot spot removal as informing us about what should be happening for that river, and that's what concerns us about the upper river and that maybe they'll try hot spot removal.

Mr. TONKO. Thank you so much.

With that, I yield back, Mr. Chairman.

Mr. SHIMKUS. Gentleman yields back.

The chair now recognizes the gentleman from Georgia, Mr. Carter, for 5 minutes.

Mr. CARTER. Thank you, Mr. Chairman.

Dr. Porter, I want to echo the comments of the chairman. I find your testimony to be quite refreshing and I appreciate that, and I want to associate myself with you that I think it takes more than just throwing money at a problem to cure it. So often up here in Washington we think that's the cure. If you can get enough money to it, then it's going to be solved. You, obviously, don't adhere to that advice, although agreed that we probably do need to do better than what we are doing.

I wanted to ask you, you have also, in your testimony I noticed that you said that nearly a $100 billion that EPA has spent in public and private funds really is not proportional to the amount of work that's been done.

You mentioned in your testimony the need to move the site remediation decisions to the key subordinates of the secretary. Can you elaborate on that? Is that going to help? Is it going to make it more timely? How is that going to work?

Mr. PORTER. Well, I think you have got a very important project here where you have got to get people who—the key people are the

administrator, who spends some time out, and I am very happy the administrator at least is putting focus on this thing. I have not seen too many of the administrators spend this much time on Superfund. So that in itself is kind of interesting.

But below that, you have got my old job, which is the national program manager who can actually make remedy decisions, him or herself, and you've got the ten regional administrators and you've got the Superfund chiefs in the region. They're all important.

So I think it's important. Frankly, I am very disappointed in recent years or quite a few years actually, that the management of the projects has been sitting lower and lower and lower at EPA. More and more committees, more and more whatever.

So I think that's important. I also want to point out that the remedy itself is critical. I've seen sites with a $50 million remedy, $800 million remedy, or $2 billion remedy. And the $500 million is 5 times as good as the 10 or the 20. They're just different. For example, the comment just here recently about—and I am familiar with all these sites—of the Passaic River and the Hudson or whatever and maybe hot spot removal is better than wall-to-wall dredging of the river, which is billions of dollars.

And so I think it's important, as you have a lot of judgement for it, and by the way, the first thing in the statute of this law—back to Mr. Dingell's day—is that the president shall pick, meaning people like me, the president shall pick a cost-effective remedy. That means a good remedy has not another criteria that go in there.

And so I think it's very important to have the people at pretty senior things—mainly at the region. I want the region to go as far as they possibly can. Most sites they can handle. But when they can't handle the site or they want help, someone—like in my old job—has got to get in there and help them and, frankly, I might even say I think we ought to do this.

I had lots of time in the early days of Superfund of having regions come in and talk to me about that we are going to—here's the site we're going to do, and I won't get in a lot of detail. But I will say, I would ask them the following five or six questions.

For example, real simple, you say EPA is going to do this—well, you do know that Mr. Dingell, et cetera, put in there, which is good, that the state shall pay—if EPA has to pay for it, the state has to pay 10 percent. Does Oklahoma have 10 percent, just to pick a name at random?

And the answer often is no. So you have to be careful and I would say, well go back to the remedy and the PRPs will do it. Well, they'll do it. They'll do the $80 million remedy but they won't do the $90 billion remedy. Had nothing to do with the cost. It's just they'll go to court on that. You can ask the people in the area, well, do you want the $90 million remedy or the $80 million remedy—no, we don't want to be moved out of our houses. I think of that Love Canal as a good example of things. That kind of dialogue would happen all the time.

So it takes a lot of judgment of these nine criteria and that judgement needs to be held pretty high and the reason I am telling the president or anybody else who will listen, get my old job filled with a full time person who has a lot of savvy and help you and help the regions and help everyone else, Democrats and Repub-

licans, because the remedy itself, I've seen sites all over the place where you're going along thinking it's $200 million or $300 million, next thing you know it's a billion. And that doesn't mean it's good or bad. It's just let's think, guys. The law says you pick a cost-effective remedy and a bunch of other things. So what we don't need is a bureaucracy. What we now have is a lot more bureaucracy than in my day.

Mr. CARTER. Let me just really quickly, Dr. Porter.

So do you believe states ought to have more authority or less?

Mr. PORTER. Yes. In my written testimony I think one of the things I said looking down the road a ways I think the states should do most of this work.

I've looked at a lot of sites around the country and what I find in general the states—for similar sites, not a bad site and a not so bad site—but those kind of sites that the "good" states that had really good programs are usually about a third of the cost and much faster.

Mr. CARTER. OK. But Ms. Probst, you mentioned in your testimony that you didn't think the states could do it or they're not qualified, they don't have the money, or what?

Ms. PROBST. I think we are talking a little bit vaguely.

Right now, there is nothing that precludes states from cleaning up sites that are on the NPL and if you listen carefully to the testimony from Mr. Cobb they want the states that don't involve a lot of funding. They want the PRP lead sites.

So I don't really know what's being recommended. There's nothing that precludes states—a site only gets on the NPL if the state concurs. That's not legal but that's basically the policy.

So it's not that EPA is adding sites to the NPL without state agreement. So I am not actually sure what's being recommended. But it is true that states don't have a lot of financial capability. They're upset about the 10 percent cost share.

So I think that whatever recommendations you get on the states it needs to be clearer. I don't know what's being recommended here. And so I don't know if they want more NPL sites or what they want.

Mr. CARTER. Right. Well, thank all of you for your work, and I yield back.

Mr. SHIMKUS. Yes, excellent work.

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

Mr. PALLONE. Thank you, Mr. Chairman.

I just want to say I am happy to have Debbie Mans here because she's really a fierce advocate for the environment in New Jersey and has a wealth of experience with the Superfund program.

But I wanted to follow up, Debbie, on the issues raised by Mr. Tonko. I have several Superfund sites in my district and stakeholders and those sites have called me to ask why they weren't included on the list. I know we have many lists now. And they wonder if that means their sites are now headed to the back of the line.

As I stressed in my questions to Mr. Breen, the focus of the Superfund program has been and should remain protecting human health and the environment.

Obviously, you agree with that, yes?

Ms. MANS. Yes.

Mr. PALLONE. OK. But let me ask you, do you have concerns that the recent EPA actions have the potential to shift EPA attention and cleanup funds away from the riskier sites?

Ms. MANS. I think in the current state of almost a third of the budget being cut at EPA, what's going to happen is that you just can't do more with less.

And so yes, priorities will be shifted and choices will have to be made and I think inevitably it will result in slowdowns at other cleanup sites.

Mr. PALLONE. OK. Now, I am particularly concerned about yesterday's publication of the list of Superfund sites with the highest potential for economic redevelopment, which is a factor that is not really relevant to the risk posed by the site.

The Passaic River was or was not on that last list?

Ms. MANS. I am still looking at the list on December 8th so I am not sure.

Mr. PALLONE. OK. All right. So, but of course, my understanding is that—the Passaic River is not going to be redeveloped for industrial use. So, that doesn't make the cleanup less important.

Ms. MANS. Right. In the Passaic River, the community has been perfectly clear what they want to see for the river. They want waterfront parks, boat ramps, habitat, clean water where if you catch a fish or a crab you will not get cancer or that it's illegal to do that.

That's what the community wants for their river.

Mr. PALLONE. Yes, and as you say, the community often is the most knowledgeable. I am not saying they're the only factor but certainly the most knowledgeable.

But then, it's not true that because the site may not be redeveloped that there aren't significant economic benefits from doing the cleanup, right? You still see significant economic benefits to what you're proposing, even if it's not redeveloped.

Ms. MANS. Right. The proposed cleanup of the lower 8.3 miles include a channel, which has not been dredged for 40 years. So we we took commercial interest into account for the cleanup.

But yes, there is a new waterfront park in Newark. The third phase was just opened last month. That's what's going to drive revitalization in our communities is places where people want to go open space and where businesses know that will attract their employees.

Mr. PALLONE. See, that's my concern. In other words, you have a site that will be cleaned up, it will be much more open to recreational uses. It won't be primarily focused on manufacturing.

But that's the very thing that actually may bring more people and economic activity to Newark or to the area. That's essentially what I think you're saying.

Ms. MANS. Yes.

Mr. PALLONE. I don't have a lot of time. So I just wanted to ask one more thing.

You raised it in your testimony and this comes up all the time, that recent actions by the EPA could undermine the quality of the cleanups done, OK.

Can you explain why you feel the recent EPA recommendations and targets could lead to weaker or less effective cleanups?

Ms. MANS. We'll find out more about this next month at the CAG. But our understanding is that the PRPs plan to propose a cleanup for the upper 9 miles. That sounds like it will be a hot spot removal. Sounds a lot like their prior proposal for sustainable remedy that was earlier rejected by the EPA when we were looking at alternatives for the cleanup.

So it's a big concern and the directives from the headquarters at EPA, not the regional staff, which have been really amazing, leaves us with concern.

Mr. PALLONE. See, my concern is that this task force report and the substantive targeted list could lead to inadequate cleanups and not robust cleanups that are really protective of human health and the environment, and the mission of the Superfund program is to protect human health and the environment.

So if you do these meaningless cleanups that don't actually address that then we are not accomplishing——

Ms. MANS. We don't have a Superfund program. Yes.

Mr. PALLONE. Right. All right. Thank you so much. I appreciate you being here.

Mr. SHIMKUS. Gentleman's time has expired.

The chair recognizes the gentleman from Michigan, Mr. Walburg, for 5 minutes.

Mr. WALBERG. Thank you, Mr. Chairman, and thanks to the panel for being here.

Mr. Cobb, in your written testimony you discussed the modernization of the correction action program of the Resource Conservation Recovery Act that happened in the 1990s.

What could be learned from that process that can be applied to modernization of the Superfund today?

Mr. COBB. Mr. Walberg, I believe what we can learn from that process is many of the things that I outlined in my testimony about enabling sites with facilities that understand their liability now and want to resolve it, enabling them to move forward.

Back in the 1990s, 2000s, I was actually one of the voices against that kind of action because I believed that the more prescriptive requirement that RCRA was using up until that time worked to our benefit.

I am happy to say today that I've been proven wrong on that because as RCRA was redesigned to be more flexible and allowing sites to move forward in targeting interims actions such as Dr. Porter described earlier and making quicker decisions, we've been able to get more sites cleaned up faster.

Facilities have recognized that if they're willing to work with us they can get through the process faster and more economically and still arrive at a very protective cleanup.

Mr. WALBERG. And so that's the enabling you're talking about?

Mr. COBB. That's the enabling, yes. We have to recognize that, as Mr. Breen testified earlier, only about 30 percent or so of the sites on the NPL require fund leave activity. Most of them are PRP leave. And there are many other sites that are not on the NPL that are also conducted as CERCLA cleanups.

Currently, the way the statute is written, all of those decisions, all of that review, is under EPA authority. None of it is delegable

to the states although the states work cooperatively with EPA on those things.

What I am proposing is that by opening that up and giving states a broader role that we increase the through-put capacity of the program we enable sites that want to move forward to move forward and get cleanup done and then we are able to focus more resources on those recalcitrants sites or the orphan sites and be able to apply the full force of the Superfund liability scheme on those sites, which creates a greater incentive for sites to come forward voluntarily to help us out.

This has worked and we've been able to move thousands of sites through the process much more quickly and I believe it will work in the Superfund program as well.

Mr. WALBERG. So it's not a fix-all but it does narrow the scope. We think of the Gelman site, for instance, which seems to drag on.

Mrs. DINGELL. And on and on.

Mr. WALBERG. And on. Can we start this song together?

That would be one where we are not seeing that efficiency, speed, and creativity in completing the process.

Mr. COBB. That is correct, and if I could venture to say that has has been discussed by the committee, there are issues with cleanups being funded limited.

But one of the things we in the states have learned through the years is that we've got to streamline our processes. For those things that we do and do well, we've got to make those as efficient as possible to be able to wisely use the funds that we do have and then make sure we have the available funds to do the work we need to do.

Mr. WALBERG. And then make sure the states have the funds, and I think that is a crucial point we have to remember up here.

Thank you.

Dr. Porter, what are some actions EPA could take to improve Superfund cleanup program? Either changes to the statute that need to be made and taking in consideration of making them more effective and efficient?

Mr. PORTER. Yes. I think one of the things to think about is in my statement I believe I mentioned three things that might be worthy of legislation. One is to actually increase funding of the removal and early action programs because we've done thousands and thousands—we, EPA—of actual short-term things.

So what I am saying instead of having a million dollars that you can go out and pick up barrels or whatever, just make it $3 million or $4 million, because those are very effective.

First off, you do things directly like picking up barrels or whatever. You learn a lot for the next step, and we at EPA tend to do is we go on and on and on, thinking about every conceivable thing.

There's a lot of sites where a company may come forward, I will spend a $100 million or $20 million or $10 million on this fairly quickly. People have done that. They offered to do things in other places. And that often just ends up in lots of dialogue forever and ever and never gets done.

The second thing I did, unlike Mr. Dingell in his day, and I was very supportive of the statute, that statue many years ago, has a lot of starts. You shall do 250 studies, you do 513 of this. We met

all those. That was fine. I want to see things that are ending like, for example, how long will it be before you have a remedy—you're starting the site, put it on the site and—by law and you can always tweak it a little bit if you're the top person. In 2 years you shall have a remedy or maybe it's like in 1 year I would like to see a new statute to say after 1 year the EPA needs to tell us what do the likely remedies look like or what are the things you can do immediately.

So I think there's things like that you could do.

Mr. WALBERG. Well, thank you. Thanks for the pertinent advice.

Mr. PORTER. Everything—there's a date on it.

Mr. WALBERG. Yes. Thank you. I yield back.

Mr. SHIMKUS. Gentleman's time has expired.

The chair recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman.

EPA's recent recommendations for reforms in the Superfund focus on sites with viable responsible parties without paying much attention to the orphan sites that need public funds to be cleaned up.

In fact, when Administrator Pruitt was here last month he told us that there weren't really very many orphan sites and they didn't require a lot of funding. I've asked him to provide an exact number of how many orphan sites are on the NPL for the record of last month's hearing but I am still waiting for that.

A good example, we have a huge one that has a responsible party, but in the Houston area in southeast Texas we have a number of them. One of them is in our district. It's an oil tanking facility that's been there for at least many, many years and there is a responsible party but they've absconded. They went to Latin America somewhere. So that would, I hope, be included in an orphan site because it's EPA staff working on it as best they can.

Ms. Probst, what has been the coincidence of this sharp decline in the funding for the Superfund cleanup since the year 2000?

Ms. PROBST. It's really hard to tell, frankly, without doing any analysis. I don't really have an answer and I guess I would just say that, one of the things that has plagued the Superfund program for a very long time—it's not just this administration—again, there hasn't been how much funding they need. There hasn't been an effort to pinpoint what the problems are. If you don't pinpoint what the problems I don't care who you are, you can't solve them.

So I actually can't tell you because numbers—like the number of sites, well, sites are heterogeneous. There's a $5 million site, there's a multiple hundred million dollar site.

So it's a very good question and I can't give an answer.

Mr. GREEN. Well, and that's many administrations, not just the current one or previous but since 2000, and I've been out on that site and this is just barrels of toxic substances, crude oil mainly, sitting out in the rain rusting and every once in a while they'll come in and move some of them. But they're still at the site and that land is fairly valuable both for industrial or commercial purposes where it's at.

Do you believe that the funding for cleanups of orphan sites is an essential component of the Superfund program?

Ms. PROBST. Absolutely. And can I just say one thing about that? It is true that only some percent are orphan sites. But, again, you need the threat of bringing things back from responsible parties and the numbers flip in terms of the percent that are done by the fund in the earlier stages. The RIFS, the site study stage, tends to be done by EPA to get things moving.

So it's not that a PRP site has no direct costs to EPA.

Mr. GREEN. OK. And Ms. Mans, do you agree?

Ms. MANS. Yes.

Mr. GREEN. When you were talking, by the way, the recovery there, that one site that we are working on still that was a dioxin facility, people are still crabbing and fishing off of that, and I wish we could turn it into a touristy place.

But I have an industrial area and I think what'll take over there is a barging operation because that's the growth in that area—the San Jacinto River there were it enters the Houston ship channel.

Ms. Probst and Ms. Mans, is the federal funding also essential for sites with the responsible parties because it allows the EPA to move ahead with cleanups where the responsible parties are hesitant, let's call it?

Ms. PROBST. Yes.

Mr. GREEN. OK. Also, what do you believe would be the consequences if EPA's budget request last year for drastic cuts in Superfund enforcement accounts were to go into effect?

Ms. PROBST. Well, that just means everything is going to be paid for by the taxpayers. If you don't have enforcement—you don't PRP lead sites, what you're saying is that all your sites are going to be paid for by the federal government.

Mr. GREEN. OK.

Ms. MANS. Just on some numbers—we were crunching them—the Trump administration proposed cuts to the Superfund program of 25 percent nationally, which would result in the loss of 536 staff slots.

Mr. GREEN. Well, and Mr. Chairman, I have other questions but I know it's time for us to leave. But it's frustrating that what we see that our own budget process now—that how do we run the Department of Defense, much less EPA, with what we are doing now. But I yield back my time.

Mr. SHIMKUS. Thank you. The gentleman yields back the time.

The chair now recognizes the other force of nature on the committee, Mrs. Dingell, for 5 minutes.

Mrs. DINGELL. I've behaved today.

It's great to see all of you and I thank you for sitting here. And Dr. Porter, I will tell the other Dingell that you referred to him many times today. It'll make his day.

But I, again, am going to go off script. But Dr. Porter, you were talking about how we should have remedies. But when we do remedies in the timeline, do we have the cost associated with them?

One of the things that I've really learned it is taking far too long to even make the National Priority List when you know someone should be on it. Do we have the dollars we need to—when you try to put that timeline on a remedy?

Mr. PORTER. Yes. I think so. I think there's such a broad range of things. For example, a lot of the sites you're talking about that

should be on the list or not be on the list, I am a big believer in putting a fair amount of money into well, what about when you go out and deal with it this afternoon?

We've done thousands of things where someone has something that you could do fairly quickly. The other big thing——

Mrs. DINGELL. So why can't we do that? Because it's become such a bureaucracy.

Mr. PORTER. Yes. I don't think it's so much bureaucracy. The guy that did a great job was Tim Fields. He was the Clinton administration. He came out of the removal program. He had my job a few years later.

Tim was sent a million dollars here, $2 million here, $5 million there. I would OK a lot more sometimes than we had to, and he would cleanup sites.

Now, obviously, if something is going to be $500 million, it takes a little longer. But I think there's a lot of ways to be more creative. I would like to see more money put in these more straightforward projects where you can just go out and do it because there was a guy—just really quickly—a guy in Region 4, for a long time back in the old days we had six cleanup sites, so the worst post every day. I had one guy clean up six in 3 months.

When I told the 10 regional administrators, got to get all the six cleaned up back—way back when. One guy goes back to Atlanta and he did six sites by himself, so to speak. And the reason he did it, he was creative.

He said, well, first off, I am not going to bring the Army Corps of Engineers in here because we can do this with a removal program, and on and on and on.

So I think there's a lot of creativity you can use, and sometimes maybe a little constraint of money is not all bad. But I want to see people that can actually think hard about what's a better way to do it.

All these sites, as you may have heard me say earlier, they have huge, a big site, I worked in my practice the Department of Energy—I had a $100 million remedy and a $9 billion remedy.

Well, one of the nine criteria here you have the pick an implementable site. It's not implementable to get Congress to get $9 billion. I am just making this up, but not totally.

So I think it may well need more money. But I would like to see more money thrown where it's going to do some good because let me say really quick——

Mrs. DINGELL. OK. Because I got to ask Dr.——

Mr. PORTER. You can take out a lot of money of this budget by not doing stupid things—excuse the expression—like Remedy Review Boards that go around and take all kind of time reviewing things that the region should have done.

Mrs. DINGELL. OK. So let me go to Ms. Mans and Ms. Probst at the same time. So an analysis by the Government Accountability Office found that only 27 percent of the new remedial action projects were funded in fiscal year 2013 compared to 100 percent in 1999.

Could both of you answer, Ms. Mans and Ms. Probst, can you highlight some of the serious consequences we face both in terms of public health and the environment if we don't fund these Super-

fund programs annually at a robust level or if it keeps going, significant cuts?

Ms. MANS. Well, yes. Thank you. I just want to say I did hone my advocacy skills in your district, born and raised.

Mrs. DINGELL. I know. I was going to tell—and her cousin was John Dingell's—unfortunately, he died 2 weeks ago. But George Mans was a great man.

Ms. MANS. So, our public health is at risk. We had people coming down to the river and catching fish and crabs that have dioxins in them, and it's unacceptable. And that's what we are dealing with.

Ms. PROBST. Yes. Again, I think it's really informative to look at the very limited amount of money that actually goes to cleanup in the Superfund budget.

So when you're talking about these cuts and—I am very grateful I don't live near a Superfund site. My daughter lives sort of near the Gowanus site. I am a little bit less grateful about that.

But I think, it's easy for us who aren't living near these sites. But if you are living there and if you have children or if you do subsistence fishing or if you want to walk around New Bedford Harbor, which there's no way to enforce institutional controls—I assume all the contaminated waterways are that way—there are over a hundred sites where human exposure is not under control and there could be 250 sites where there are human exposure and not under control.

Mrs. DINGELL. And local communities are being hurt by this.

Ms. PROBST. And local communities are therefore at risk. The first thing the administration ought to do is put out that list of sites which you can do from the website. But that should be the top priority.

Mrs. DINGELL. I am out of time but—and he was going to give me more but I know it's—what I want to say is I hope we'll all work together. My colleague, Mr. Walburg, works with me on this—the dioxin plume, which totally gets caught up in bureaucracy between two communities with a Superfund site. Two communities are in court. It's been—and it's been 50 years and it's ready and it's not getting cleaned up.

Like, yesterday the Supreme Court upheld that the original polluter has to maintain responsibility. But it's the local communities that are—and people who were scared about what's going to happen.

So I hope, Mr. Chairman, and my other remaining colleague, we can all work together to make sure we are getting robust funding and it's a priority for all of us in this country.

Mr. SHIMKUS. Well, I thank the gentle lady and, of course, it's been a good hearing. But before we dismiss this panel, obviously, Chairman Walden is from Oregon and Congressman Schrader is a member of the full committee. Of course, I got a chance to go out to Portland and tour that site about a year ago.

So everybody else had multiple things to be able to say and we wanted to make sure that we'd given you a chance, based upon what you have heard to weigh in any response to some of this debate.

Mr. MCKENNA. Well, Mr. Chairman, I truly appreciate that.

A couple things. One, I think when you talk about state involvement and leveraging some state resources, I think it's definitely worth looking into. But I think we have to evaluate that under two different buckets. One is if you have a site where there's no money for the cleanup and public moneys need to be spent first and then seek reimbursement through legal action. That will be very difficult for a state like Oregon to take on a site like Portland Harbor that's a billion dollars plus and take on that risk.

But at Portland Harbor, we have the PRPs who have stepped forward to do the work and they are paying not only for the studies and the cleanup, but they pay the state and federal government oversight costs.

So in situations like that around the country, I think we should look at leveraging state resources to bring more expertise to the table and help move these projects forward quicker.

I think the other issue, and Dr. Porter touched on this a bit, I think for the early actions as these Superfund sites, when you come to a site and you recognize that there's a problem and something needs to be done now, there are PRPs who are willing to step forward and do some early action. But there's also concern from the public that that quick early action becomes the final action. I think we need to develop, and the state is more than happy—I have it in my talking points—of sitting down and talking about ways where PRPs like Northwest Natural and Portland Harbor who want to step forward and do the work can do it, and they stepped forward and did early actions back in 2004 and 2005, recognizing that the ROD was going to take longer to get to.

So they stepped forward and did the early action, recognizing that they were probably going to have come back later and do more work. And I think if the PRPs recognized that, then more PRPs will step forward and do early action work.

Mr. SHIMKUS. If I can follow up with the PRPs—a volunteer will probably want to make sure that people know that they did some early action and get some credit for at least being involved early. Would you say that that would be true?

Mr. MCKENNA. Yes, I would. Yes.

Mr. SHIMKUS. Well, again, I think this is a very important hearing and a very difficult topic.

Thank you for your answering the questions, your testimony, and we'll stay in contact.

And with that, the hearing is adjourned.

[Whereupon, at 1:10 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Thank you, Mr. Chairman, for holding this hearing to give us a chance to look at ways to modernize the Superfund cleanup program.

The Superfund program is 38 years old and some clean-up projects are as old as the law itself. The Portland Harbor site in Portland Oregon was listed on the National Priorities List in 2000 and the cleanup has been underway for over 15 years but it finally feels like we are making progress and that significant headway has been made recently.

When Administrator Pruitt began his work at the EPA he came out of the gate by announcing that Superfund cleanup efforts would be restored to their rightful

place at the center of the Agency's core mission. The fact that EPA is focused on prioritizing Superfund cleanups and revitalizing contaminated sites is great news for people who live near Superfund sites and just want to make sure that their communities are safe and for responsible parties who want to do the right thing by cleaning up contamination but whose efforts have been stalled by years of indecision. It is great news for the States in which the Superfund sites are located because States are invested—both from a decision-making and financial perspective—in the cleanup of these sites. It is great news for the American people because there is hope that we can finally start making real progress on getting sites contaminated by hazardous substances cleaned up and returned to productive use.

So today we ask EPA and our stakeholder witnesses:

• How can we continue to make progress on making the Superfund cleanup program more effective and efficient?

• Is there too much process involved in cleanups? Can we reduce the red tape and speed up decision making?

• Should states play a more significant role in implementing the Superfund cleanup program?

• What role can Congress play in helping EPA with making superfund cleanups a priority—do we need to update the statute to get the program back on track and get these sites cleaned up?

Mr. Chairman, I would like to thank Principal Deputy Assistant Administrator Barry Breen for appearing before the Committee today on behalf of the President and the EPA. We hope that Mr. Breen will be able to share with us more details about the progress being made by EPA to eliminate delays within the Superfund program so we that we can get started on workable, effective cleanups and make progress at other sites around the country like we have made recently at Portland Harbor.

We are also glad to hear from our panel of stakeholders and experts. A hearing in this Subcommittee would not be complete without the voice of the States and other partners. Mr. Chairman, all our Members are grateful for the chance to take a deeper dive into these thorny cleanup issues that impact so many Americans. We hope that this will be just the start of the discussion as we look for constructive solutions on how to make sure that the program is able to adequately address the sites that still need to be cleaned up. I yield back the balance of my time.

Office of Solid Waste and Emergency Response
Climate Change Adaptation
Implementation Plan

June 2014

Preface

The U.S. Environmental Protection Agency (EPA) is committed to identifying and responding to the challenges that a changing climate poses to human health and the environment.

Scientific evidence demonstrates that the climate is changing at an increasingly rapid rate, outside the range to which society has adapted in the past. These changes can pose significant challenges to the EPA's ability to fulfill its mission. The EPA must adapt to climate change if it is to continue fulfilling its statutory, regulatory and programmatic requirements. The Agency is therefore anticipating and planning for future changes in climate to ensure it continues to fulfill its mission of protecting human health and the environment even as the climate changes.

In February 2013, the EPA released its draft *Climate Change Adaptation Plan* to the public for review and comment. The plan relies on peer-reviewed scientific information and expert judgment to identify vulnerabilities to EPA's mission and goals from climate change. The plan also presents 10 priority actions that EPA will take to ensure that its programs, policies, rules, and operations will remain effective under future climatic conditions. The priority placed on mainstreaming climate adaptation within EPA complements efforts to encourage and mainstream adaptation planning across the entire federal government.

Following completion of the draft *Climate Change Adaptation Plan*, each EPA National Environmental Program Office, all 10 Regional Offices, and several National Support Offices developed a *Climate Adaptation Implementation Plan* to provide more detail on how it will carry out the work called for in the agency-wide plan. Each *Implementation Plan* articulates how the office will integrate climate adaptation into its planning and work in a manner consistent and compatible with its goals and objectives.

Taken together, the *Implementation Plans* demonstrate how the EPA will attain the 10 agency-wide priorities presented in the *Climate Change Adaptation Plan*. A central element of all of EPA's plans is to build and strengthen its adaptive capacity and work with its partners to build capacity in states, tribes, and local communities. EPA will empower its staff and partners by increasing their awareness of ways that climate change may affect their ability to implement effective programs, and by providing them with the necessary data, information, and tools to integrate climate adaptation into their work.

Each Program and Regional Office's *Implementation Plan* contains an initial assessment of the implications of climate change for the organization's goals and objectives. These "program vulnerability assessments" are living documents that will be updated as needed to account for new knowledge, data, and scientific evidence about the impacts of climate change on EPA's mission. The plan then identifies specific priority actions that the office will take to begin addressing its vulnerabilities and mainstreaming climate change adaptation into its activities. Criteria for the selection of priorities are discussed. An emphasis is placed on protecting the most vulnerable people and places, on supporting the development of adaptive capacity in the tribes, and on identifying clear steps for ongoing collaboration with tribal governments.

OSWER Climate Change Adaptation Implementation Plan Workgroup Members:

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I. Climate Change Impacts to OSWER Programs

What We Do

Climate change is posing new challenges to the Environmental Protection Agency's (EPA's) ability to fulfill its mission. The Office of Solid Waste and Emergency Response's (OSWER's) mission is to protect human health and the environment, and preserve and restore land resources. OSWER strives to protect the land from contamination through sustainable materials management and the proper management of waste and petroleum products. When contamination does occur, OSWER and its partners clean up communities to create a safer environment for all Americans. In addition, OSWER prepares for and responds to environmental emergencies and promotes redevelopment of contaminated areas and emergency preparedness and recovery planning.

Without proper protections and effective restoration, the presence of uncontrolled hazardous substances in surface water, ground water, air, soil and sediment can cause human health concerns, threaten healthy ecosystems, and inhibit economic opportunities on and adjacent to contaminated properties. Waste on the land can also migrate to ground water and surface water, contaminating drinking water supplies. There are multiple benefits associated with cleaning up contaminated sites: reducing mortality and morbidity risk; preventing and reducing human exposure to contaminants; reducing impacts to ecosystems; making land available for commercial, residential, industrial, or recreational reuse; and promoting community economic development. In addition, materials management and sustainable land management practices can significantly reduce greenhouse gas emissions.

Impact of Climate Change

Changes in climate and its impacts may test OSWER's ability to serve these important functions. OSWER recognizes that anticipating and planning for future changes in the climate and incorporating climate considerations into its programs and operations is critical for OSWER to continue to achieve its mission and fulfill its statutory, regulatory, and programmatic requirements. There is some uncertainty, however, as to how and when these changes to the climate will occur. OSWER will act prudently to ensure its actions address pressing needs and will review its vulnerabilities, actions and the state of climate science to make adjustments in the future.

> Vision
>
> OSWER will continue to achieve its mission to protect human health and the environment, and preserve and restore land resources, even as the climate changes.

Definition of Key Terms

Adapt, Adaptation: Adjustment in natural or human systems to a new or changing environment that exploits beneficial opportunities or moderates negative effects.

Adaptive capacity: The ability of a human or natural system to adjust to climate change (including climate variability and extremes) to moderate potential damages, to take advantage of opportunities, or to cope with the consequences.

Mitigation: An intervention to reduce the causes of changes in climate, such as through reducing emissions of greenhouse gases to the atmosphere.

Resilience: A capability to anticipate, prepare for, respond to, and recover, from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.

Risk: A combination of the magnitude of the potential consequence(s) of climate change impact(s) and the likelihood that the consequence(s) will occur.

Vulnerability: The degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the character, magnitude, and rate of climate variation to which a system is exposed, its sensitivity, and its adaptive capacity.

Source: NRC. (2010). *America's Climate Choices: Adapting to the Impacts of Climate Change*. National Research Council.

- *"In much of the Southeast and large parts of the West, the frequency of drought has increased coincident with rising temperatures."* Decreased precipitation and increased frequency of drought may impact water-intensive remedies and site stability, as well as increase the risk of wildfires.
- *"Wildfires in the United States are already increasing due to warming. In the West, there has been a nearly fourfold increase in large wildfires in recent decades, with greater fire frequency, longer fire durations, and longer wildfire seasons."* Wildfires at contaminated sites could promote the spread of contamination or impact remedies. Wildfire in the upland areas above contaminated sites could reduce vegetative cover, thereby increasing surface water runoff and resulting in catastrophic flooding that spreads contamination or impacts remedies.

In order for OSWER to fulfill its mission to protect human health and the environment, it is critical that OSWER anticipate and plan for future climatic conditions. OSWER must appropriately integrate consideration of climate into its program activities, policies, and regulations. Through adaptation planning, OSWER can continue to protect human health and the environment but in a way that accounts for effects of climate change.

Identification of Vulnerabilities

The first step in the development of OSWER's Climate Change Adaptation Implementation Plan was the identification of OSWER's vulnerabilities to climate change. A vulnerability in this context reflects the degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes. Using expert professional judgement and information from peer-reviewed scientific literature, the OSWER workgroup used the aforementioned climate change impacts as an initial screening tool to determine vulnerabilities to OSWER's processes, activities, and functions. OSWER did not conduct a detailed quantitative assessment of vulnerabilities. In total, 27 unique vulnerabilities were identified (Table 1).

Each vulnerability is linked to at least one climate change impact, however most vulnerabilities are linked to multiple impacts (Appendix A). For example, increased contaminant spread could occur because of the greater incidence of flooding at contaminated sites from heavy precipitation, hurricanes, and sea level rise, as well as, melting permafrost or wildfires. Several vulnerabilities, such as data collection for mapping and training are linked to all the impacts of climate change.

As the vulnerabilities were identified, they were organized by four critical OSWER programmatic focus areas and a cross-cutting category:

- Preserving Land –Proper Management of Hazardous and Non-Hazardous Wastes;
- Preserving Land –Reducing Chemical Risks and Releases;
- Restoring Land;
- Emergency Response;
- Tools, Data, Training and Outreach.

Under each focus area a vulnerability may apply to more than one OSWER program office. For example, five different OSWER offices identified contaminant migration from sites as a vulnerability for their program. In addition, there were several vulnerabilities related to training and data needs that cut across all program offices in OSWER, as well as across EPA.

III. Addressing Impacts of Climate Change

Focusing on Specific Vulnerabilities

In a resource-constrained environment, in order to prioritize and focus OSWER's efforts to address the impacts of climate change, each vulnerability was evaluated based on a set of criteria. Together, these criteria allowed each OSWER office to use its best professional judgment to evaluate the areas that needed the most or immediate attention and where its contribution would be most effective.

The first two criteria, referred to as the "Characterization Criteria", were designed to enhance the understanding of the overall impact of a particular vulnerability. Because climate change is a long-term problem, both the scale and timing of adaptation actions are important.

Characterization Criteria:

- Scale of impact to human health, the environment or vulnerable communities because of the vulnerability – The scores for this criterion reflect the potential for harm to human health, the environment, or a vulnerable community, if the vulnerability is not addressed.
- Likelihood of occurrence because of the vulnerability – This criterion is a reflection of what impacts have already occurred at OSWER sites and programs.

The second set of criteria reflect EPA roles in addressing the impacts of these vulnerabilities and are collectively referred to as "Opportunities for OSWER to make a difference". These criteria are intended to identify those vulnerabilities for which action by OSWER would significantly advance adaptation efforts and ones in which OSWER is more directly responsible for addressing.

Opportunities for OSWER to make a difference:

- Does EPA have a unique or lead role or technical expertise in this area?
- To what extent are climate impacts currently not considered in this area?
- To what extent could additional EPA involvement build momentum or leverage current activities?
- Is there an opportunity to incorporate climate change into an ongoing effort (e.g., rulemaking, changes to grant criteria, updates to guidance and training)?

Each OSWER office determined which vulnerabilities were applicable to its work and developed a score for the vulnerability. When applying the criteria, offices did not rank vulnerabilities in relation to each

Priority Actions

OSWER has identified 26 priority actions to begin over the next 3 years. These actions are in one or more of the four programmatic focus areas and one cross-cutting category. The actions are found in a summary chart in Appendix C and are listed below by programmatic focus area and office.

Preserving Land – Proper Management of Hazardous & Non-Hazardous Wastes

Proper treatment, storage, and disposal of hazardous waste protect the environment from harmful contamination. To ensure these materials are properly managed, OSWER supports prevention by activities such as permitting and inspections. Non-hazardous waste must also be properly managed, both routinely and in times of emergency.

In the "Proper Management of Hazardous and Non-Hazardous Wastes" focus area, the vulnerability that ranked the highest was the management of surges in waste, particularly from the impacts of extreme events. ORCR is already involved in several efforts in this area and has identified several actions to respond to this vulnerability. These actions are also applicable in the "Emergency Response" focus area.

As a crucial part of the RCRA program, ORCR has also identified a long-term action that will begin to look at issues related to climate change and permitting programs. Even though, vulnerabilities related to permitting did not receive high criteria scores, particularly in terms of likelihood of occurrence and potential impacts.

Actions:

ORCR

- Based on outreach to states and tribes, develop recommendations for these stakeholders to incorporate climate change into RCRA Permitting Programs as appropriate (e.g., through robust implementation of technical standards for facility location and design).

ORCR (also in the Emergency Response section)

- Prepare Fact Sheets on proper management of wastes/debris associated with large natural disasters (e.g., electronic, household hazardous wastes, white goods, etc.).
- Continue collaborative development with the Office of Homeland Security, on an interactive electronic waste management planning tool to aid federal, state and local emergency planners and managers in development of waste/debris management plans.
- Finalize a document describing the "4 Step Process for Waste Management Planning."
- Update ORCR Homeland Security Website with updated waste management planning information.

high probability of occurrence, and often under the control of EPA programs. Second, remedy effectiveness, which includes three separate vulnerabilities representing various stages of the cleanup process (remedy selection, remedy effectiveness during cleanup, and remedy effectiveness after a cleanup is complete), was also identified by several offices as having a high vulnerability score and a role for EPA involvement.

Numerous OSWER offices involved in cleanup activities identified either a short- or long-term action related to the vulnerabilities mentioned above. Due to the differences in how OSWER cleanup programs are implemented, whether at the headquarters office, in partnerships with states, or through grants, the actions differ across offices. There may, however, be areas where offices can share resources and knowledge, for example, as we learn more about the effectiveness of particular remedies under extreme climate conditions.

Actions:

ORCR

- Develop recommendations for states and tribes to encourage climate change considerations be incorporated into all of their RCRA Corrective Action Programs (e.g., regarding remedy selection, etc.).

OUST

- Work with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to gather information on if and how states currently:
    - alter remediation plans in response to changing climate impacts;
    - alter site assessments in response to flooding or drought conditions;
    - alter risk factors and rankings in response to flooding or drought conditions.
- Share information among states, tribes, and EPA regions regarding:
    - new or modified investigation strategies and remediation techniques;
    - new or modified assessment techniques;
    - how climate conditions may impact risk-based cleanup factors and rankings.

OBLR

- Work with regional staff to update the Analysis of Brownfields Cleanup Alternatives (ABCA) language in the brownfield grant Terms and Conditions to include language that requires recipients take potential changing climate conditions into consideration when evaluating cleanup alternatives.

Actions:

OUST

- Work with ASTSWMO to gather information on if and how states currently respond to climate-related emergencies (e.g., use of GIS mapping in flood-prone areas).
- Analyze lessons learned from Hurricanes Katrina (2005) and Sandy (2012) to identify how EPA can help states respond to UST-related hurricane impacts.
- Share information among states, tribes, and EPA regions regarding emergency response and preparedness (e.g., OUST's Flood Guide).

ORCR (also in the Proper Management of Hazardous and Non-Hazardous Wastes section)

- Prepare Fact Sheets on proper management of wastes/debris associated with large natural disasters (e.g., electronic, household hazardous wastes, white goods, etc.).
- Continue collaborative development with the Office of Homeland Security, on an interactive electronic waste management planning tool to aid federal, state and local emergency planners and managers in development of waste/debris management plans.
- Finalize a document describing the "4 Step Process for Waste Management Planning."
- Update ORCR Homeland Security Website to incorporate facts sheets, 4 Step Process, and updated waste management planning information.

OEM

- Utilize the National Response Team multi-agency membership (e.g., National Oceanic and Atmospheric Administration, Federal Emergency Management Agency, U.S. Coast Guard) to monitor the state of preparedness. Based on these meetings, evaluate if additional resources and planning exercises will be needed to address the impacts from changes in the frequency and/or severity of extreme weather events.
- Incorporate the use of FlexViewer technology as a preparedness tool for climate change impacts.
  - The EOC will build on-going development and use of FlexViewer technology to graphically display information on notifications and incidents in headquarters and all 10 regional EOCs. This technology will allow for improved and up-to-date Geographic Information System (GIS) mapping of watersheds and coastal areas impacted by climate change.
- Incorporate materials on the impacts of climate change as EOC training materials are updated and exercises are planned.

IV. Disproportionately Affected Populations

Disproportionate Impact

While climate change will affect all parts of society, it will have disproportionate effects on particular communities, demographic groups and geographic locations.[5] Certain parts of the population, such as children, the elderly, minorities, the poor, persons with underlying medical conditions and disabilities, those with limited access to information, and tribal and indigenous populations can be especially vulnerable to the impacts of climate change. These disproportionately affected groups may have less ability to cope with or adapt to climate change due to economic, social, physical, or health constraints. Also, certain geographic locations and communities are particularly vulnerable, such as those located in low-lying coastal areas.

Populations that are already overburdened by environmental contamination, poverty, and environmental health issues, may face greater adaptation challenges.[6] Though Hurricane Sandy was not necessarily due to climate change, the impacts resulting from associated flooding are similar to what could occur in a climate related flooding or storm surge event. Many of the elderly and poor in New York and New Jersey suffered significantly from flooding-associated power and heat loss, scarcity of food and supplies, and difficulty in accessing medical care.[7] These populations may have lacked the resources to evacuate outside the affected areas and as a result could not as readily avoid the adverse conditions resulting from the storm. During the recovery and reconstruction phases, vulnerable populations may also have a more difficult time due to underlying factors such as economic and social resource base and health status that can limit their access to resources as well as their ability to take action.

In addition, a community's location near a vulnerable ecosystem or a contaminated site may also result in differential impacts depending on how that ecosystem or site is impacted by climate change. Degraded ecosystems or those changed from human activities may place communities near them at higher risk for the effects of climate change. The ecosystems that may have served as a natural buffer against storm surge or may have provided valuable cultural, recreational, or other resources can no longer serve this purpose due to their altered state.[8] For example, an environmental justice community's resilience and ability to adapt to climate change may be complicated by their location both near a hazardous waste site

[5] USEPA. (2012). *Climate Change Adaptation Plan: Public Review Draft.*
[6] ibid.
[7] USEPA. (2012). Region 2 Adaptation Plan.
[8] USGCRP. (2009). *Global Climate Change Impacts in the United States*, Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (Eds.). Cambridge University Press.

Ongoing Partnerships to Address Vulnerable Populations and Places

OSWER has identified three focus areas to address environmental justice (EJ) in its programs. These focus areas are designed to integrate ongoing EJ activities and produce tangible outcomes in overburdened and underserved communities impacted by OSWER programs. These focus area activities listed below are designed to meaningfully advance EJ in OSWER programs, have EJ as the central focus, and can produce meaningful, measurable outcomes in low income and minority communities.

- **Focus Area #1:** Incorporate EJ considerations into OSWER programs, policies, and activities by addressing disproportionately high, adverse human health and environmental impacts on overburdened and underserved populations to the greatest extent practicable and permitted by law
- **Focus Area #2:** Institute a continual learning process through training and the use of agency environmental justice tools to help OSWER staff better serve overburdened and underserved communities
- **Focus Area #3**: Expand community engagement approaches and increase partnership building which allows overburdened and underserved communities to meaningfully participate in decision making activities and address local environmental concerns.

Ongoing Partnerships with Tribes

EPA values its unique government-to-government relationship with Indian tribes in planning and decision making. This trust responsibility has been established over time and is further expressed in the *1984 EPA Policy for the Administration of Environmental Programs on Indian Reservations* and the *2011 Policy on Consultation and Coordination with Indian Tribes*. These policies recognize and support the sovereign decision-making authority of tribal governments. OSWER works as a partner with many Tribal Nations to implement OSWER programs. OSWER's partnership with tribes is based on its tribal strategy.[13] The long-term goal of the tribal strategy is to support and provide direction for OSWER's Indian program, enhance outreach efforts with tribes on environmental protection in Indian country, and maintain consistency with EPA's Indian Policy. OSWER short-term strategies include:

- Ensure appropriate government-to-government consultation and communication with tribal leaders in accordance with EPA's *2011 Policy*.
- Build tribal capacity. OSWER provides support through training, financial support, and technical assistance to tribes to build capacity in assuming regulatory and program management responsibilities. Additionally, OSWER develops guidance and provides for research in

[13] USEPA, Office of Solid Waste and Emergency Response. (2008). *Tribal Strategy: EPA & Tribal Partnership to Preserve and Restore Land in Indian Country.*

will be informed by experiences with the impacts of previous extreme weather events (*e.g.*, Hurricane Katrina and Superstorm Sandy) and the subsequent recovery efforts.

Adaptation actions must recognize and be tailored to the specific issues at the regional, state, local, and community levels.[14] OSWER can provide federal leadership, guidance, information, and support which are vital to planning for and implementing adaptive actions, however, adaptation planning must include collaboration between multiple stakeholders including state and local governments, tribes, communities, non-governmental organizations and others.

Vulnerable Population Actions

OSWER will give special attention to populations and places that are most vulnerable to climate related impacts to its sites. OSWER will also continue to work to better understand the populations that surround these sites in order to expand its knowledge on potential impacts and better protect vulnerable communities and places.

Actions:

- Work with the agency's climate change workgroup and EPA's Office of Research and Development to ensure consistent mapping data and protocols to better understand the intersections of climate impacts and population vulnerability and help to inform future policy and office activities and ensure they take evolving climate science into account.
- Review and update as necessary, existing community engagement tools and training to incorporate climate change concerns in how we partner with communities, based on new knowledge relating to climate change.

In addition, the Community Engagement Network being created by OSWER may provide a valuable internal forum for sharing and gathering information about best practices for engaging communities in climate change conversations.

Tribal Actions

Supporting the development of adaptive capacity among tribes is a priority for the EPA. Networks and partnerships already in place will be used to assist tribes with climate change issues, including Regional Tribal Operations Committees, the Institute for Tribal Environmental Professionals and the Indian General Assistance Program. Transparency and information sharing will be a focus, in order to leverage activities already taking place within EPA offices and tribal governments.

[14] USGCRP. (2009). *Global Climate Change Impacts in the United States*, Thomas R. Karl, Jerry M. Melillo, and Thomas C. Peterson (Eds.). Cambridge University Press.

V. Measures and Evaluation

The actions proposed in this plan expand OSWER's efforts to mainstream and integrate climate change adaptation into its programs. OSWER will monitor the status of climate science, particularly as it relates to known or anticipated impacts on OSWER's program areas, as well as the effectiveness of its program activities under changing conditions, and update or adjust its direction as necessary. OSWER commits to periodically publicly reporting on progress implementing these actions and what it has accomplished in website updates or factsheets.

To measure and evaluate progress toward completing actions, the workgroup that developed this document will continue to meet to discuss progress implementing actions and share information that may assist other offices in their efforts. Collaborative tools may also be utilized to facilitate the discussion.

VI. Legal and Enforcement Issues

OSWER works closely with the Office of General Counsel (OGC) to ensure that its actions are legally supported and in compliance with all applicable laws. OSWER will continue to work with OGC as it plans for and develops programming related to adaptation and the impacts of climate change.

OSWER will partner with the Office of Site Remediation Enforcement (OSRE) to address enforcement concerns related to climate change issues. OSWER and OSRE will work together to develop tools that address climate change policy questions as well as site-specific issues.

Program Vulnerability	Climate Change Impact								
	Increased extreme temps[1]	Sustained changes in average temp[2]	Sea level rise[3]	Decreased permafrost[3]	Decreased precipitation increasing drought[4]	Increased heavy precipitation events[1]	Increased flood risk[4]	Increased frequency & intensity of wildfires[5]	Increased intensity of
	Very Likely			Likely					
Restoring Land									
Site characterization and design of cleanups may not reflect changing climate conditions.	20 / 48	14 / 26	20 / 40		15 / 35	12 / 33	24 / 46	27 / 41	10 / 39
Risk factors and rankings for risk-based cleanup strategies may need to be reassessed based on changing climate conditions.			20 / 41			5 / 33	20 / 46	23 / 45	13 / 46
Changing climate conditions may impact continued remedy effectiveness.	21 / 51	19 / 39	20 / 46	17 / 37	14 / 41	13 / 37	24 / 46	17 / 37	17 / 39
Remedies that are "complete" or are long-term actions may no longer be protective and resilient as climate conditions change at site.	19 / 47	19 / 46	17 / 47	16 / 44	12 / 34	13 / 33	17 / 43	13 / 33	17 / 39
Increased contaminant migration may lead to boundary changes at current sites or creation of new sites.			15 / 40	20 / 40		7 / 27	14 / 41	6 / 27	10 / 35
Changes in climate conditions may alter assumptions about contaminant form/volatility.	13 / 40	12 / 42	15 / 37	16 / 40	10 / 33	13 / 33	12 / 46	11 / 37	12 / 35
Current scientific monitoring and sampling protocols on sites may no longer be effective.	13 / 40	13 / 47			10 / 43	5 / 33	14 / 49	10 / 37	13 / 48
Safety procedures on sites may not reflect likelihood or intensity of surrounding conditions.	16 / 41	14 / 39	20 / 43			5 / 33	12 / 43	11 / 31	10 / 41
Availability of utilities and transportation infrastructure may be limited as a result of increased impacts to those systems.	16 / 41		13 / 40	16 / 40		13 / 33	13 / 43	11 / 37	13 / 39
Current assumptions regarding protectiveness of remediation and containment methods may not reflect changing climate impacts.	11 / 41	16 / 43	11 / 40	17 / 40	11 / 34	11 / 33	13 / 43	11 / 37	13 / 39
Periodic evaluations of implemented remedies may not incorporate all climate change impacts, including changes in frequency and intensity that may impact remedy effectiveness.	14 / 41	13 / 40	17 / 40	13 / 37	12 / 34	11 / 33	13 / 40	11 / 37	13 / 39
Use of natural resources impacted by sites may change as a result of increased need, resource scarcity, or compromised resources.			11 / 40		12 / 35	14 / 35	11 / 39	11 / 40	14 / 39

Appendix B – Vulnerability Scorecard[1]

Program Vulnerability	Office	Characterization Criteria: Total Score	Scale of impact (Scale 1-10 10(High) -1(Low))	Likelihood of occurrence (Scale 1-10 10(High) -1(Low))	Opportunities for OSWER to Make a Difference: Total Score	Role for EPA technical expertise? (Scale 1-5 5(Yes)-1(No))	Are climate impacts currently considered? (Scale 1-5 5(Not) – 1(Fully))	Would build momentum or leverage current activities. (Scale 1-5 5(Very Likely)-1(Not	Can
Preserving Land – Proper Management of Hazardous and Non-Hazardous Wastes									
Design and placement of RCRA Treatment, Storage and Disposal facilities, non-hazardous Subtitle D landfills, Superfund remedies and municipal recycling facilities may need to change to accommodate climate change impacts.	FFRRO	6	5	1	12	4	2	3	
	ORCR	6	5	1	10	2	3	4	
	OSRTI	6	5	1	18	5	3	5	
Hazardous waste permitting requirements may need to be updated to reflect climate change impacts.	FFRRO	15	10	5	14	5	2	4	
	ORCR	6	5	1	13	5	3	4	
Current waste management capacity may be insufficient to handle surges in necessary treatment and disposal of hazardous and municipal wastes, as well as mixed wastes generated from climate events.	FFRRO	20	10	10	8	1	3	3	
	ORCR	15	5	10	15	4	3	4	
	OSRTI	15	5	10	18	5	3	5	
Levels of necessary financial assurance at RCRA and CERCLA facilities may need to adjust for increased risks/liabilities at specific facilities that may be directly affected by climate change impacts.	FFRRO	10	5	5	12	4	2	3	
	ORCR	10	5	5	8	3	3	1	
	OSRTI	10	5	5	15	5	3	4	
Preserving Land – Reducing Chemical Risks and Releases									
Remediation and containment strategies and materials used in construction may need to be strengthened to reflect changing climate conditions.	FFRRO	15	8	7	8	1	2	3	
	ORCR	10	5	5	14	5	3	4	
	OSRTI	10	5	5	18	5	3	5	
Current equipment, scientific monitoring and sampling protocols on sites may no longer be effective and therefore may require adjustments due to climate change impacts.	FFRRO	12	5	7	10	1	3	3	
	ORCR	2	1	1	9	4	3	1	
	OSRTI	2	1	1	18	5	3	5	
Current assumptions regarding protectiveness of remediation and containment methods may not reflect changing climate impacts.	FFRRO	10	5	5	8	1	2	4	
	ORCR	15	5	10	6	3		2	
	OSRTI	16	8	8	8	2	3	1	
Spill Prevention Plans may need to be updated due to the significant increases in the incidence of flooding and storm events.	OEM	4	2	2	6	2	1	2	

Program Vulnerability	Office	Characterization Criteria: Total Score	Scale of impact	Likelihood of occurrence	Opportunities for OSWER to Make a Difference: Total Score	Role or technical expertise?	Currently considered?	Build momentum or leverage current activities
			Scale 1-10 10(High) -1(Low)			Scale 1-5 5(Yes)-1(No)	Scale 1-5 5(Not) – 1(Fully)	Scale 1-5 5(Very Likely)-1(Not
Restoring Land (continued)								
Current scientific monitoring and sampling protocols on sites may no longer be effective.	FFRRO	15	7	8	14	4	4	3
	ORCR	2	1	1	16	5	5	3
	OSRTI	2	1	1	16	3	3	5
	OBLR	2	1	1	9	1	4	2
Safety procedures on sites may not reflect likelihood or intensity of surrounding conditions.	FFRRO	6	5	1	15	3	5	3
	OSRTI	6	5	1	17	4	3	5
	OBLR	6	5	1	8	1	3	2
Availability of utilities and transportation infrastructure may be limited as a result of increased impacts to those systems.	FFRRO	10	5	5	12	3	3	3
	OSRTI	15	10	5	13	2	3	5
	OBLR	15	10	5	11	2	3	3
Current assumptions regarding protectiveness of remediation and containment methods may not reflect changing climate impacts.	FFRRO	17	7	10	10	4	2	4
	ORCR	15	5	10	15	4	3	4
	OSRTI	15	5	10	16	5	3	3
	OBLR	15	5	10	12	2	4	3
	OUST	15	5	10	7	1	3	1
Periodic evaluations of implemented remedies may not incorporate all climate change impacts, including changes in frequency and intensity that may impact remedy effectiveness.	FFRRO	10	5	5	14	3	3	4
	ORCR	10	5	5	16	4	4	4
	OSRTI	10	5	5	18	5	3	5
	OBLR	10	5	5	8	1	4	2
Use of natural resources impacted by sites may change as a result of increased need, resource scarcity, or compromised resources.	FFRRO	10	5	5	12	3	3	3
	OBLR	6	5	1	9	2	4	2

Appendix C – OSWER Actions

Theme		Vulnerability	Office	Action	Timin
Preserving Land	Proper Management of Hazardous and Non-Hazardous Waste	Design and placement of RCRA Treatment, Storage and Disposal facilities may need to change to accommodate climate change impacts.	ORCR		L
		Current waste management capacity may be insufficient to handle surges in necessary treatment and disposal of hazardous and municipal wastes, as well as mixed waste events. (Actions also in Emergency Response)		Prepare Fact Sheets on the proper management of wastes/debris associated with large natural disasters (e.g., electronic, household hazardous wastes, white goods, etc.)	S
				Continue collaborative development with the Office of Homeland Security on an interactive electronic waste management planning tool to aid federal, state and local emergency planners and managers in development of waste/debris management plans.	L
				Finalize a document describing the "4 Step Process for Waste Managment Planning."	M
				Update the ORCR Homeland Security Website with updated waste management planning information.	M
	Reducing Chemical Risks and Releases	Spill Prevention Plans may need to be updated due to the significant increases in the incidence of flooding and storm events.	OEM	Incorporate sensitivity for climate change vulnerabilities in oil Spill Prevention, Control, and Countermeasure (SPCC) and Facility Response Plan (FRP) Inspector training (e.g., reminding inspectors to consider vulnerabilities at the subject facility during catastrophic weather events).	M
				Incorporate in SPCC and FRP guidance the statement of potential vulnerabilities to oil facilities from catastrophic weather events due to climate change.	M
				Incorporate sensitivity for climate change vulnerabilities in risk management plan (RMP) Inspector training and guidelines. (e.g., example, reminding inspectors to consider vulnerabilities at the subject facility during catastrophic weather events).	M

Theme	Vulnerability	Office	Action	Timin
Emergency Response	Existing emergency planning currently required or employed by OSWER may not sufficiently consider elevated risks from multiple climate impacts.	OUST	Work with ASTSWMO to gather information on if and how states currently respond to climate-related emergencies (e.g., use of GIS mapping in flood-prone areas).	M
			Analyze lessons learned from Hurricanes Katrina (2005) and Sandy (2012) to identify how EPA can help states respond to UST-related hurricane impacts.	M
			Share information among states, tribes and EPA regions regarding emergency response and preparedness (e.g., OUST's Flood Guide).	M
	Current waste management capacity may be insufficient to handle surges in necessary treatment and disposal of hazardous and municipal wastes, as well as mixed waste events. (Actions also in Proper Management of Hazardous and Non-Hazardous Waste)	OSWER	Prepare fact sheets on the proper management of wastes/debris associated with large natural disasters (e.g., electronic, household hazardous wastes, white goods, etc.)	S
			Continue collaborative development with the Office of Homeland Security, on an interactive electronic waste management planning tool to aid federal, state and local emergency planners and managers in development of waste/debris management plans.	L
			Finalize a document describing the "4 Step Process for Waste Managment Planning."	M
			Update the ORCR Homeland Security Website with updated waste management planning information.	M
	Current levels of administrative, enforcement, and emergency response staff may be insufficient to cover needs if number of extreme events increase.	OBM	Utilize the National Response Team multi-agency membership (e.g., NOAA, FEMA, U.S. Coast Guard) to monitor the state of preparedness. Based on these meetings, evaluate if additional resources and planning exercises will be needed to address the impacts from changes in the frequency and/or severity of extreme weather events.	S
	Existing emergency planning currently required or employed by OSWER may not sufficiently consider elevated risks from multiple climate impacts.		Incorporate the use of RexViewer technology as a preparedness tool for climate change impacts. -The EOC will build on-going development and use of RexViewer technology to graphically display information on notifications and incidents in headquarters and all 10 regional EOCs. This technology will allow for improved and up-to-date GIS mapping of watersheds and coastal areas impacted by climate change.	S
	Training needs (both current and future) are likely to increase in order to meet the increase demand for response actions.		Incorporate materials on the impacts of climate change as EOC training materials are updated and exercises are planned.	M
Tools, Data, Training and Outreach	Identification of reliable data sources to use in site-specific analyses may need to be identified.	OPA	Provide recommended data sources and parameters to OSWER offices and Regions to ensure consistent mapping data and protocols. Develop these recommendations by working with the agency's climate change workgroup and EPA's Office of Research and Development.	S
	Revised training protocols and SOPs that take into account climate change impacts and what to look for may need to be developed.		Participate in agency climate change adaptation training development, as well as develop specific training as needed for OSWER staff.	S
	Models, decision tools, site environmental data and information feeds may need to be updated to reflect changing climate conditions.		Work with EPA partners and external experts to monitor evolving assumptions related to climate science. Develop a method for disseminating this information to OSWER offices that ensures consistent assumptions are used across all activities.	S

Appendix D – Bibliography

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February 15, 2018

Mr. Barry Breen
Principal Deputy Assistant Administrator
Office of Land and Emergency Management
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Mr. Breen:

Thank you for appearing before the Subcommittee on Environment on January 18, 2018, to testify at the hearing entitled "Modernizing the Superfund Cleanup Program."

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 Friday, March 2, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@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

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

Attachment

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

MAR 13 2018

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

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

Dear Chairman Shimkus:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's Questions for the Record following the January 18, 2018, hearing titled "Modernizing the Superfund Cleanup Program,"

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]

Troy M. Lyons
Associate Administrator

Enclosure

Enclosure

U.S. Environmental Protection Agency
Responses to Questions for the Record
House Committee on Energy and Commerce
Subcommittee on Environment
Hearing on
"Modernizing the Superfund Program"
January 18, 2018

The Honorable John Shimkus

1. **EPA retains money received through settlements with Potentially Responsible Parties (PRPs) in site-specific accounts to conduct planned future cleanup work at the site based on the terms of the settlement agreement. Is EPA constrained or prevented from using special account funds to get these sites cleaned up?**

   Response: While EPA has the authority to collect funds from parties to support Superfund investigations and cleanups, site specific account are set up separately and distinctly and may only be used for the sites and uses outlined in the settlement(s) with the party. Section 122(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to retain and use funds received pursuant to a settlement agreement with a party to carry out the purpose of that agreement. Funds are deposited in Superfund site specific special accounts for cleanup at the sites designated in individually negotiated settlement agreements. Special accounts are generally used before the agency's annually appropriated funds for response actions identified in the terms of the settlement agreements. Special accounts are crucial to EPA's ability to continue to fund investigations and construction projects at sites across the country and save taxpayer dollars for those sites where no viable or cooperating responsible party has been identified.

   a. **If not, why is the balance in the account so high and why is the money not being spent?**

   Response: EPA carefully manages the available resources in special accounts for site response work. EPA has plans to spend approximately $1.3 billion of currently available special account funds over the next 5 years, but use of the funds are also planned for much further into the future to continue activities such as conducting five-year reviews or remedy optimization where waste has been left in place. In addition, the agency continues to receive site-specific settlement funds that are placed in special accounts each year, so progress on actual obligation and disbursement of funds may not be apparent upon review solely of the cumulative available balance. In FY 2017, EPA deposited more than $289 million into special accounts and disbursed and obligated over $357 million from special accounts.

b. **Does CERCLA need to be updated to clarify what special account funds may be used for?**

Response: The Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites through the use of special accounts. The proposals include options for building in flexibilities in the use of special account funding and the ability to enter into administrative agreements with additional classes of entities such as bona fide prospective purchasers.

2. **The recommendations of the Superfund Task Force included a recommendation that EPA "maximize the use of special accounts to facilitate site cleanup and/or redevelopment." Other than developing guidance, what is the plan for implementing this recommendation?**

Response: The EPA's Special Accounts Senior Management Committee, comprised of agency senior managers, is responsible for the management and use of special accounts. The Committee monitors the use of special account funds on an ongoing basis to ensure that EPA is conducting cleanups and using the funds as quickly and efficiently as possible to address Superfund sites.

The Superfund Task Force identified a gap in current special account guidance, which will be addressed by providing clarifying guidance to EPA regions on the use of special account funds. The guidance will clarify that in appropriate circumstances, special account funds may be used as an incentive for potentially responsible parties or bona fide prospective purchasers (BFPPs) who agree to conduct CERCLA response actions at a site to address contamination and facilitate redevelopment of the site. Providing available special account funds to a BFPP that agrees to conduct CERCLA response actions will help address risks posed by Superfund sites and facilitate redevelopment.

In addition, the Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites through the use of special accounts.

3. **EPA drafted guidance that is expected to allow for or encourage the provision of Superfund's "special account" funds to bonafide prospective purchasers (BFPPs) as an incentive to conduct work on Superfund sites. Does EPA have the legal authority to reallocate special account funds in this way?**

Response: The legal authority for using special accounts is found in Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), which authorizes EPA to "retain and use [funds] for purposes of carrying out the agreement." This authority enables EPA to use special account funds for EPA-lead cleanup at a site, or to provide those funds to other parties who agree to perform an EPA selected response action at that site under a CERCLA agreement. Consistent with this authority, CERCLA agreements generally establish that special account funds can be "retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund." Therefore, BFPPs may be eligible, at EPA's discretion, to receive special account funds when they conduct CERCLA

response actions at a site pursuant to an agreement under CERCLA that is consistent with the response actions agreed to in the settlement agreement that created the account.

4. **One of the recommendations of the Superfund Task Force was the use of adaptive management. Does EPA intend to incorporate adaptive management into the Superfund cleanup program and if so, how?**

   Response: The agency formed an Adaptive Management Workgroup following issuance of the Task Force recommendations. This workgroup is exploring options for incorporating adaptive management into the Superfund cleanup program. At this time, formal decisions have not yet been made regarding implementation.

5. **How can EPA use incentives to encourage responsible parties to cooperate and come to the table early to avoid the increased transaction costs associated with protracted negotiations?**

   a. **What incentives can EPA utilize to clean up a Superfund site faster and more efficiently?**
   b. **How can EPA use enforcement authorities as leverage to get a cleanup started or to help reach settlement?**

   Response: One of the principal goals of the Superfund Task Force is to speed up cleanup; these questions go to the core of Recommendation 16: *Provide Reduced-Oversight Incentives to Cooperative, High-performing PRPs, and Make Full Use of Enforcement Tools as Disincentives for Protracted Negotiations, or Slow Performance Under Existing Cleanup Agreements*. The agency is examining these issues, as well as others, to identify and evaluate its existing best practices, as well as propose future methods to encourage timely cleanup and decrease transaction costs. EPA expects to issue guidance pursuant to this recommendation later this fiscal year and can provide an updated response to these questions at that time.

6. **Please identify any statutory changes EPA believes need to be made to improve the Superfund cleanup program or to implement the recommendations of the Superfund Task Force.**

   Response: The Administration's "Legislative Outline for Rebuilding Infrastructure in America" includes several legislative proposals that could improve EPA's ability to facilitate cleanup and redevelopment of Superfund sites. The proposals include additional funding opportunities such as through the Water Infrastructure Finance and Innovation Act (WIFIA) program and the creation of a low-interest revolving loan fund, as well as options for building in flexibilities in the use of Superfund funds and the ability to enter into administrative agreements with additional classes of entities such as bona fide prospective purchasers.

7. **Would EPA support delegating certain aspects of the Superfund cleanup program to States that seek such authorization?**

Response: It is not necessary at this time to add additional delegation of authority to the states. The partnership between EPA and the states is an existing cornerstone principle under CERCLA and the National Contingency Plan. CERCLA includes key roles for states in the federal Superfund remedial program, and where appropriate, enables states to be designated as the lead agency for remedial action. In addition, EPA's policy calls for state concurrence in listing sites on the National Priorities List (NPL) and consults with the states on cleanup decisions. Through cooperative agreements, EPA provides states with funding to conduct work under the Superfund program including, but not limited to, site assessment, site characterization, review of remedy decision documents, remedy implementation and enforcement actions. In FY 2017, EPA provided approximately $58 million to states to conduct activities at NPL sites, and to support state Superfund programs. Cost recovery authority is available to states under CERCLA.

Separately, state cleanup programs already address a wide variety and large number of contaminated sites that do not make it on the NPL. EPA will continue to seek and expand opportunities afforded by the existing statute to work closely with states to efficiently leverage our respective cleanup resources.

The Honorable David McKinley

1. **Mr. Breen- It is our understanding, upon completion of assessment in the Pre-Remedial Program, sites are reviewed and considered for listing on the NPL. If a site is contaminated but not determined to be appropriate for the NPL, recommendations are made for remediation outside of the CERCLA Program. However, these recommendations are not enforced by EPA, and property owners without financial interest often do not act on the recommendations. These sites are generally encouraged to enter a state Voluntary Remediation Program, but the property owners cannot be forced to participate in a voluntary program. This issue, combined with a pressure to not list new sites on the NPL, has created a "black hole" where contaminated sites without proper remediation lay dormant and potentially dangerous for years. What reforms can be done to address this issue? Is any legislation needed to remedy the problem?**

   Response: The Superfund program's site assessment/listing multi-phase evaluation process is used to determine and implement the appropriate responses to releases of hazardous substances, pollutants or contaminants to the environment. In close coordination with states and tribes, this process informs whether Superfund is the most appropriate program for cleanup or if a different authority would be a better fit (e.g., state RCRA corrective action program, state Superfund program, state voluntary cleanup program, or some other federal authority).

   In the case of a referral of an NPL-eligible site to a state cleanup program, including a state voluntary remediation program, EPA uses the "Other Cleanup Activities" designation. EPA is not directly involved in the enforcement or oversight but does retain these sites in the agency's Superfund active site inventory and monitors the site until a state completes cleanup or determines that cleanup is warranted. In addition, should site conditions or cleanup plans change or if cleanup progress stalls, the state can refer the site back to EPA for reassessment under Superfund. The statute currently provides for a state to establish and submit, for EPA's consideration, state priorities for remedial action among known releases and potential releases.

The Honorable Richard Hudson

1. **Mr. Breen, thank you for coming before the committee today. In your testimony you mention that cleaning up Superfund sites is not only a top priority for Administrator Pruitt, but also an important aspect of the EPA's core mission. In my home state of North Carolina there are 48 Superfund sites, six of which are in my district. These sites vary dramatically in how long they've been on the list ranging from 1984 to 2008. With that in mind how do you strike the balance between removing sites from the list and taking immediate actions to mitigate risk at new sites?**

   Response: Addressing new sites and removing sites from the National Priorities List (NPL) is a balance. The Superfund program places the highest priority on addressing sites that warrant an emergency response or immediate removal action to address imminent risk to human health or the environment. The program also lists sites to the NPL that pose a threat to human health and the environment and require a longer term cleanup approach. Sites or parts of sites that are deleted from the NPL, are in the last stages of the Superfund process and no longer pose an unacceptable risk to human health and the environment. Long-term remedial action is typically necessary before a site is ready for deletion from the NPL. Deletion is an administrative process to document that all response actions have been fully implemented and remedial objectives have been achieved. EPA's appropriated resources for remedial actions, which are part a longer-term cleanup process that may eventually lead to a site deletion, are separate from the agency's appropriated resources for investigation and/or removal at newer sites that may pose immediate risks.

2. **As part of the Superfund program it requires coordination with the EPA, Regional bodies, and individual states. Can you describe the level of coordination of these efforts? Is the EPA in a position to effectively lead these efforts or should it take the role more generally as a facilitator? Should more power be delegated down to the states?**

   Response: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes key roles for states and tribes in the federal Superfund remedial program. EPA's regional offices closely coordinate with their state and tribal counterparts on each site. CERCLA also enables states and tribes to be designated as the lead agency for remedial action in lieu of EPA.

   Through cooperative agreements, EPA provides states and tribes with funding to conduct work under the Superfund program including site assessment, remedial action, review of remedy decision documents and enforcement actions. In FY2017, EPA provided approximately $58 million to states to conduct activities at NPL sites and to support state and tribal Superfund programs.

   EPA's policy calls for state and tribal concurrence in placing sites on the NPL. States and tribes can ask that EPA defer placing a site on the NPL if the state or tribe, or another party under a state or tribal agreement, is conducting a response action under the state or tribe's response program to protect human health or the environment, or if the state or tribe is actively pursuing an agreement with a responsible party to perform a response action. State and tribal cleanup

programs are used to address a wide variety and large number of contaminated sites that are not listed on the NPL.

The agency continues to seek and expand opportunities afforded by the existing statute to work closely with states to efficiently leverage our respective cleanup resources and responsibilities.

The Honorable Tim Walberg

1. **On December 8, 2017 the Administrator released a list of 21 sites that EPA targeted for "immediate and intense attention." The list is comprised of sites with "critical, near-term milestones" that EPA determined would benefit from Administrator Pruitt's direct engagement.**

    a. **Who completed the analysis?**
    b. **Other than impending milestones, what factors were considered in adding sites to the list?**
    c. **What milestones rose to the level of being "critical" and resulted in the site being added to the list?**
    d. **If no money is attached to being on the top 21 list – what does it mean to be on the list?**

Response: In formulating the list, senior career Superfund staff at EPA headquarters and in each region were consulted and they identified potential sites that may be worthy of special attention now or in the future to advance those sites through the cleanup process. The recommended sites represent the EPA regions' best professional judgment where the Administrator's involvement would facilitate site progress. The Administrator reviewed the recommendations and personally selected the sites for inclusion. The list includes sites that require timely resolution of specific issues to expedite cleanup and redevelopment efforts. The specific issue or milestone that may benefit from the Administrator's attention is noted for each site on the list, which can be found on the EPA website at https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action.

The list is designed to spur action at sites where opportunities exist to act quickly and decisively. The Administrator will receive regular updates on each of these sites. Further, the list is intended to be dynamic and sites will move on and off the list as appropriate. At times, there may be more or fewer sites based on where the Administrator's attention and focus is most needed.

2. **On January 17, 2018 EPA released another list of sites, these with the greatest expected redevelopment and commercial potential – the Redevelopment Focus List.**

    a. **Were all superfund sites analyzed and just the 31 on the list made the cut?**
    b. **Who made the decision and what factors were considered?**
    c. **The list directs interested developers and potential owners to Superfund sites with redevelopment potential, but notes that it does not necessarily include all possible sites with similar potential. What distriguished these 31 sites from the others?**

d. What does it mean to be on this list?

Response: In formulating the Redevelopment Focus List, EPA headquarters staff reached out to the EPA regional Superfund Redevelopment Initiative (SRI) coordinators to inquire about sites where there has been a strong interest in reuse or at sites appearing to have the strongest near-term reuse potential. This inquiry formed an initial list. Consistent with the Task Force Recommendation #33: *Focus Redevelopment Efforts on 20 NPL Sites with Redevelopment Potential and Identify 20 Sites with Greatest Potential Reuse*, EPA headquarters staff then narrowed the list based on the following criteria:

- Previous outside interest;
- Transportation access;
- Land values;
- Other critical development drivers.

This refined list of sites was shared with the agency's regional Superfund offices, which vetted the sites with SRI experts, remedial project managers, attorneys and regional management. The regional offices also contacted property owners, as appropriate, to let them know that EPA was considering their sites for the list, and reached out to EPA's state counterparts to ask if they had additional sites with redevelopment potential that the Agency should consider. Once EPA headquarters and the regions reached agreement, the list was made public.

The Redevelopment Focus List is intended to easily direct interested developers and potential owners to Superfund sites with redevelopment potential. EPA plans to focus redevelopment training, tools and resources towards the sites on this list. The agency also plans to work with developers interested in reusing these and other Superfund sites; identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. This list is intended to be dynamic with sites moving on and off the list as appropriate.

The current list of sites may be found at: https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list
For additional information about the Superfund Redevelopment Initiative, please go to: https://www.epa.gov/superfund-redevelopment-initiative

3. **Similarly, the EPA also relies on responsible parties to cooperate in remediation efforts. How can EPA use incentives to encourage responsible parties to cooperate and come to the table early in order to avoid the increased transaction costs associated with protracted negotiations? What incentives can EPA utilize in order to clean up a Superfund site faster and more efficiently?**

Response: One of the principal goals of the Superfund Task Force is to speed up cleanup, and EPA is working to address these issues under the Task Force Report Recommendation 16: *Provide Reduced-Oversight Incentives to Cooperative, High-performing PRPs, and Make Full Use of Enforcement Tools as Disincentives for Protracted Negotiations, or Slow Performance*

Under Existing Cleanup Agreements. The agency is planning to identify and evaluate its existing best practices in this area, as well as propose future methods to encourage timely cleanup and decrease transaction costs. EPA expects to issue guidance pursuant to this recommendation later this fiscal year and can provide an updated response to these questions at that time.

The Honorable Paul Tonko

1. **Migratory Pollutants at Sites**

   a. **How does EPA consider the impact of migratory pollutants on natural resources outside a defined cleanup unit when determining 5-Year Review findings and issuing Certificates of Completion?**

Response: Site-specific monitoring plans are developed for projects where waste is left in place above levels that allow for unrestricted land and resource use. As part of a five-year review, the results of the monitoring and other available information are assessed to determine whether the remedy is or will be protective of human health and the environment. As part of this assessment, an examination of contaminant characteristics and toxicity, such as the nature and extent of contaminant migration and the effects on receptors, including ecological receptors, is considered. If monitoring indicates a change in site conditions or receptors, EPA will determine whether additional actions are necessary. Certification of Remedial Action Completion is issued when EPA determines that the remedial action has been performed in accordance with the consent decree and generally when the remedy-specific performance standards have been achieved. The consideration of monitoring data when making this determination is based on the language in the specific consent decree as well as the requirements outlined in the accompanying remedial design/remedial action statement of work.

   b. **What experience does EPA have relying upon natural attenuation as the principle strategy for a site when there is a possibility that it could result in contamination of downstream resources?**

Response: EPA typically employs monitored natural recovery (MNR) at sediment sites as a component of remedies that use dredging and/or capping technologies. Where remedies employ MNR, EPA applies its extensive experience in monitoring and assessing the impacts both on the site and the downstream to ensure the anticipated recovery is actually occurring. As part of the agency's five-year review process, EPA will evaluate monitoring information to assess the remedy's protectiveness and, if additional action is deemed appropriate to protect human health and the environment, the agency will initiate actions to do so.

2. **Certificate of Completion**

   a. **What are the conditions upon which a Certificate of Completion is issued to the liable party for a Superfund cleanup?**

Response: The exact conditions upon which a Certificate of Completion is issued to the liable party for a Superfund Site depends upon what the particular CERCLA consent decree states. CERCLA Section 122(f)(3), 42 U.S.C. § 9622(f)(3), states "a covenant not to sue for future liability to the United States shall not take effect until the President certifies that remedial action has been completed in accordance with the requirements of this chapter at the facility that is the subject of such covenant." EPA's guidance states:

> EPA interprets completion of the remedial action as that date at which remedial construction has been completed. Where a remedy requires operational activities, remedial construction would be judged complete when it can be demonstrated that the operation of the remedy is successfully attaining the requirements set forth in the [Record of Decision] and [Remedial Design].
>
> The exact point when EPA can certify completion of a particular remedial action depends upon the specific requirements of that remedial action. Each consent decree should include a detailed list of those activities which much be completed before certification can occur.
>
> Certification of completion under section 122(f)(3) does not in any way affect a settling party's remaining obligations under the consent decree. All remedial activities, including maintenance and monitoring, must be continued as required by the terms of the consent decree.

Covenants Not to Sue Under SARA, 52 Fed. Reg. 28036, at 28041.

b. What is the role of the Record of Decision and Consent Decree in this context?

Response: Performance standards for cleanups are often established in Records of Decision and, as described above, EPA's Model Remedial Design/Remedial Action Consent Decree generally ties the issuance of the Certification of Remedial Action Completion to the achievement of those standards.

3. Hudson River Site

a. Does the agency intend to wait until the Remediation Goals have been achieved and the remedy is protective of human health and the environment before issuing the Certificate of Completion?

Response: The Consent Decree for the Hudson River PCBs site does not require EPA to wait until the Remediation Goals have been achieved before issuing the Certification of Completion of the Remedial Action. With regard to this certification, the Consent Decree states:

> If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State and by the Federal Trustees for Natural Resources, that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to [General Electric]. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this consent decree including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of

> the Remedial Action shall not affect [General Electric's] remaining obligations under this Consent Decree. [Consent Decree, parag. 57.d]

The Consent Decree defines Remedial Action as "those activities, except for Remedial Design and Operation, Maintenance and Monitoring, to be undertaken to implement the [2002 Record of Decision], in accordance with the [Statement of Work], the final Remedial Design plans and reports, the Remedial Action Work Plans, and other plans approved by EPA." (Consent Decree, parag. 4) General Electric has informed EPA that it believes that it completed the Remedial Action portion of the cleanup as required by the Consent Decree and has requested EPA's Certification of Completion of the Remedial Action. EPA is reviewing input from the New York State Department of Environmental Conservation, the National Oceanic and Atmospheric Administration, the U.S. Fish & Wildlife Service, and the New York State Attorney General's office as it considers GE's request.

The Certification of Completion of the Remedial Action does not in any way suggest that the cleanup is finished. In the Record of Decision, EPA projected that construction of the remedy (including dredging, backfilling, and habitat reconstruction) would be performed over six years, to be followed by decades of "monitored natural attenuation" or "MNA," during which PCBs remaining in the river after dredging would gradually decrease until the remedial goals are achieved. MNA is also part of the cleanup, and during the entire period of MNA, GE is required to perform "Operation, Maintenance and Monitoring" of the remedy, which includes an extensive program that includes monitoring of sediments, water quality and fish, as well as monitoring of the caps that were installed on portions of the river bottom, and repairing those caps should any damage occur. Once all the work required by the consent decree is complete, the consent decree authorizes EPA to issue a further certification, known as a Certification of Completion of the Work. We do not anticipate issuing this certification any time before the remedial goals are achieved.

EPA is currently working with our state partner, the New York State Department of Environmental Conservation (NYSDEC) to review some 1,800 sediment samples collected by NYSDEC. EPA is working in cooperation with NYSDEC to review the data and work towards developing joint findings on the results of the sampling. As such, EPA is refraining from any decision making regarding the issuance of the Certificate of Completion of Remedial Action until the data from these samples have been fully analyzed.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

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February 15, 2018

Mr. Stephen Cobb
Chief, Land Division
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110

Dear Mr. Cobb:

Thank you for appearing before the Subcommittee on Environment on January 18, 2018, to testify at the hearing entitled "Modernizing the Superfund Cleanup Program."

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 Friday, March 2, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@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

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

Attachment

Lance R. LeFleur
Director

Kay Ivey
Governor

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May 1, 2018

Kelly Collins
Legislative Clerk
U.S. House of Representatives - Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Ms. Collins:

Please find attached responses to additional questions requested by members of the Committee on Energy and Commerce in regards to my testimony at the recent hearing entitled "*Modernizing the Superfund Cleanup Program.*" In preparing these responses, I have incorporated our experience in Alabama, as well as obtaining input and examples from my colleagues from other States and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO).

Thank you for the opportunity to provide these additional clarifications and to assist the Committee with this important issue.

Please contact me at (334) 271-7732 or via electronic mail at sac@adem.alabama.gov should you or the Members have any additional questions.

Sincerely,

[redacted]

Stephen A. Cobb, Chief
Land Division

Attachment

cc: Dania Rodriguez

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Attachment---Reponses Additional Questions for the Record regarding the Testimony of Stephen A. Cobb before the Committee on Energy and Commerce in the Hearing Entitled *"Modernizing the Superfund Cleanup Program"*

The Honorable John Shimkus

1. **How can States help reduce the number of sites on the National Priorities List (NPL)?**

   Reduction in the number of sites on the NPL begins with prevention, and the inherent value of early intervention and prevention programs in reducing the need for after-the-fact remediation programs has repeatedly been underscored. States play key roles in these prevention efforts through the implementation of preventative regulations, such as those under the Resource Conservation and Recovery Act (RCRA). Today fifty states and territories have been authorized to implement their own base RCRA regulations in lieu of the federal program (USEPA, n.d.). These State programs, like RCRA, are designed to prevent releases of wastes into the environment, mitigating public health threats and environmental damage caused by such releases. RCRA and authorized State programs ensure that past and present releases of waste and hazardous constituents are investigated, monitored, and cleaned-up to protective levels. This provides incentives to industry to prevent future releases and places the burden on the industry owner/operator, not the taxpayer, to address known releases (ASTSWMO, 2011). In summary, these efforts prevent future NPL sites. Continued support of RCRA and authorized State programs by EPA and Congress is essential for maintaining this level of prevention.

   Another key component to reducing the number of NPL sites is actually in the Superfund Site Assessment Program, which identifies actual and potential releases of hazardous substances and their eligibility for inclusion on the NPL. The Site Assessment Program is conducted in partnership with many States. Through this process, where the majority of sites are screened out from inclusion on the NPL, states have been able to identify sites for action by state cleanup programs. A 2011 study by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) noted that almost 50 percent of study sites identified through the Site Assessment Program were undergoing or had already completed non-NPL cleanup/closure actions (ASTSWMO, 2011). This demonstrates the value of the Site Assessment Program beyond supporting NPL listing and its importance to the national cleanup effort. ASTSWMO has recommended additional federal funding to States to continue support and grow this phase of the Superfund process (ASTSWMO, 2017).

For sites already on the NPL, States implement a variety of robust cleanup programs, including both mandatory and voluntary programs, and have gained experience and an advanced understanding of assessing, investigating, remediating, and monitoring contaminated sites (Cobb, 2018). Working under cooperative, work-sharing agreements that provide detailed but flexible scopes of work and adequate funding, EPA can leverage this advanced knowledge and experience by placing more sites, particularly PRP-led cleanups, under State control.

One of the areas that EPA itself has identified for improvement is the identification of tools for third party investors interested in the reuse of Superfund sites (USEPA, 2017). Many states have robust brownfield redevelopment programs and other tools that can facilitate expedited reviews, remedy implementation and pragmatic yet protective long term monitoring as may be required. Investors require a level of certainty not typically found in the Superfund program. The States can assist EPA in facilitating and negotiating agreements with third parties (Steers, 2017). Leveraging additional human and monetary resources by working cooperatively with State co-regulators and third-party investors will lead to faster cleanups and ultimately fewer sites remaining on the NPL.

2. How can States take more of a leadership role in addressing sites on the NPL?

As I stated in my testimony, in the four decades following the enactment of CERCLA, States have implemented many different types of comprehensive cleanup programs under multiple authorities. In fact, the vast majority of cleanups of contaminated sites across the U.S. have been conducted under State oversight. CERCLA is only one tool in our cleanup toolbox and EPA's Superfund program must begin to recognize this.

States are already well positioned to take on more responsibilities and greater leadership roles in Superfund cleanups. Making this a reality begins not with the States themselves but with EPA. First of all, EPA's Superfund program must end the practice of "federalizing" sites under CERCLA where a State program is already in place overseeing all or portions of the cleanup, as they have done in Alabama and many other states. We have seen this result in losses of progress and momentum of cleanups by having to shift into a new regulatory oversight structure, particularly the highly procedural and inflexible structure of Superfund. Secondly, EPA must be willing to defer more CERCLA cleanup activities, specifically including the decision-making role for deferred sites, particularly those at PRP-led sites. The NCP currently allows for this, but many times EPA and State activities are conducted in tandem. EPA allowing States to take the lead on more cleanup actions avoids duplication and redundancy.

Deferral of site management without concurrent deferral of the decision-making role too often results in EPA re-reviewing work already completed by states, and also results in sites/states being unwilling to move sites forward without EPA concurrent review.

3. **Your written testimony discussed allowing States to directly implement certain parts of the remedial and removal process---would you please explain why States may be more effective at directly implementing certain aspects of the Superfund cleanup program?**

States implement many different types of cleanup programs under both State and federal statutes, including CERCLA, RCRA, Brownfields, State voluntary programs, and State regulatory programs. Many of these programs, such as RCRA Corrective Action, have already benefited from process and procedural improvements. And because states oversee cleanups under so many different authorities, they have become adept at focusing on common cleanup tools, technologies, and goals rather than procedural constructs and regulatory process.

As a result of having to adapt to inadequate funding, States have also been forced to develop and leverage internal resources and expertise for cleanup oversight, whereas EPA's Superfund program relies heavily on third-party contractors for many cleanup oversight functions. This allows States to conduct many oversight functions at lesser costs than EPA in many circumstances.

Also as a result of these experiences, States tend to be more focused on a "culture of completion," where the goal is to reach a protective and sustainable endpoint for a cleanup as quickly and efficiently as possible (as opposed to continued study in search of the "perfect" solution), and to prefer remedies which are sustainable and protective for the long-term with a minimum (to the extent possible) of long-term resource requirements for continued operation and maintenance.

States have more direct knowledge of local area issues and characteristics that are critical to the success and acceptance of a Superfund cleanup. State cleanup managers understand the local soil and geological characteristics, topography, hydrology and hydrogeology, weather patterns, and many other technical aspects involved in the cleanup process. More often than not, States cleanup programs already have relationships with local communities and are in a more effective position to communicate with them about cleanup issues and concerns.

a. What changes would need to be made to CERCLA to effectuate such a change?

On this particular issue, neither I nor my ASTSWMO partners believe that the CERCLA statute or the NCP provides legal impediments to States assuming greater leadership in the Superfund process. On this matter, all that must change is a simple willingness on the part of EPA to defer more actions to States. However, since the CERCLA statute does not currently provide for delegation of CERCLA removal and remedial implementation or decision-making authorities to State programs, adding these provisions would be helpful in facilitating more State leadership in the program.

4. How can EPA better utilize enforcement as a tool for getting sites cleaned up?

The most effective enforcement tool is one that is tailored to the specific project considering such factors as the PRPs level of willingness and ability to perform the cleanup, willingness and ability of State programs to assist, and the conditions of the specific site. Enforcement cannot be viewed as a "one-size-fits-all" approach, especially in the CERCLA program.

I agree with many of the recommendations that EPA has already identified for more effective use of enforcement tools, such as adding flexibilities and reduced oversight, adjustments to financial assurance requirements, and addressing liability protection issues for cooperating PRPs (USEPA, 2017).

Overall, the CERCLA enforcement process should be operated in a manner to provide incentives to cooperative PRPs by applying the full rigor of the CERCLA process to non-cooperative or recalcitrant PRPs.

5. How can EPA use incentives for PRP's to get sites cleaned up?

The most effective "incentive" EPA can offer a willing and cooperative PRP is the ability to "navigate" the Superfund process as quickly and concisely as possible. The Superfund process itself is costly and time-consuming and any effort to modernize the program must recognize and address this issue.

My agency and its fellow ASTSWMO members stand ready to assist EPA in refining and implementing recommendations that EPA has already identified (USEPA, 2017), such as:

- Recognizing, promoting, and facilitating third party investment in inactive and abandoned Superfund sites;

- Recognizing that PRP-led cleanups are fundamentally different from cleanups led by EPA and tailoring oversight accordingly;
- Reducing procedural oversight milestones for cooperative, high-performing PRPs; and
- Realigning EPAs own internal resources to conduct oversight activities, like plan and report reviews, more quickly.

6. **Your testimony noted that industry and federal government responsible parties should be held to the same high standards. How is it that federal responsible parties are held to a different standard and are there changes that need to be made to the program or the statute to ensure that all parties are held to the same standards?**

   CERCLA makes clear that Federal facilities are subject to the requirements of the NCP, but only to State laws where CERCLA action is deferred and the Federal facility in not on the NPL (42 USC §9620(a)(4)). As I testified on January 18, deferral of CERCLA actions to States is rare and an area we recommend for consideration in the modernization of the Superfund program. But in addition, CERCLA should be amended making clear that all Federal facilities, including those on the NPL, are subject to applicable and relevant State laws, particularly those State laws governing state-specific cleanup goals and land use/institutional controls, which are critical parts of many cleanups and essential to the State's long-term maintenance of the selected remedy.

7. **Your written testimony indicated that many States have the resources, expertise, and desire to pay a greater role in the Superfund process and that States should be encouraged to do so---can you provide examples of how we can encourage greater participation by the States?**

   Many of the impediments to more State participation in Superfund cleanups include such issues as:

   - Clarification and enhancement of the State role, through delegation of various aspects of the program, including decision-making authorities, as discussed in my testimony and above responses.
   - CERCLAs remedy cost-sharing requirements, discussed in more detail below;
   - Difficulties in the ARAR process, also discussed in more detail below;
   - EPA's general tendency to perform CERCLA activities in tandem with States, discussed earlier, and its general reluctance to defer actions to States.

   Addressing these issues and others designed to streamline and modernize the Superfund program will help pave the way for more State access and involvement.

8. **Are State requirements appropriately identified and accepted as Applicable or Relevant and Appropriate Requirements (ARARs) during the investigation and remedy selection process?**

States as a whole have raised the following policy concerns regarding the identification and acceptance of ARARs (ASTSWMO, 2018):

- Inconsistencies in ARAR determination from one site to another and from EPA Region to EPA Region;
- EPA's application of State requirements as ARARs that is inconsistent with how States apply their cleanup requirements and standards;
- EPA's determination that a State requirement is procedural rather than substantive when the State believes it is an ARAR critical to implementation of the chosen remedy;
- Reluctance of other federal entities (e.g., DOD, DOE, DOI, NASA, BLM, etc.) to recognize State environmental laws and regulations as ARARs;
- Lack of written documentation on an ARAR determination where EPA finds that a State cleanup requirement was not an ARAR;
- EPA delays when determining whether a State requirement is an ARAR, and as a result, leaving the State inadequate time to challenge the finding; and
- EPA and other federal entities reluctance to recognize State land-use control and environmental covenant laws and regulations as "environmental laws", and thus as ARARs.

a. **Are State cleanup program personnel appropriately consulted before ARARs are waived by EPA or other federal agencies implementing CERCLA?**

This is an area States have identified as needing improvement, although it should be noted that EPA has taken certain steps to improve this process. In October 2015 States and EPA participated in an ARARs LEAN event to help explore ways to improve the overall ARARs process. Drawing on these discussions, EPA's Office of Land and Emergency Management (OLEM) issued Directive 9200.2-187, *Best Practice Process for Identifying and Determining State Applicable or Relevant and Appropriate Requirements Status Pilot* (USEPA, 2017).

I refer the Committee to recommendations made by ASTSWMO to EPA regarding the overall ARARs process, such as providing better training and guidance to Regions on the ARAR identification process and consideration of State requirements to ensure the concepts identified in OLEM Directive 9200.2-187 are consistently applied (ASTSWMO, 2018):

9. What other steps could EPA take to enable the Superfund cleanup program to complete cleanups faster, more effectively, and more efficiently?

EPA should review and revise the NCP to reflect the many important lessons-learned from the years of experience by States and EPA under CERCLA and other cleanup programs, including RCRA, Brownfields, and State cleanup programs. A few examples of changes to the NCP that EPA should consider include:

- Reduce the reliance on pre-approved written plans for assessment and investigation activities on PRP-led cleanups. CERCLA sites tend to stay in this stage of the process for many years before the first actual cleanup activities are undertaken. We've observed that much of that time is spent negotiating plans for field activities, and many times the negotiations take longer than the field activities themselves. Also, as we've seen in other programs, most notably RCRA, these back-and-forth exchanges, and multiple iterations of Remedial Investigation/Feasibility Study (RI/FS) plans provide opportunities for recalcitrant PRPs to delay work;
- Reduce the requirements for, or even eliminate the Feasibility Study (FS) for PRP-lead cleanups. The FS is most certainly needed for Fund-led cleanups to ensure that public money is being spent in the most efficient way while providing for a protective cleanup, and to support future cost-recovery actions against recalcitrant PRPs. But where public monies are not involved in the cleanup process, EPA can and should reduce or eliminate these requirements and provide cooperative PRPs with more flexibility and discretion, with appropriate oversight, to develop remedies that are both protective and affordable;
- Address ARARs more effectively and earlier in the Superfund process; and
- Increase the use of interim removal actions and other interim remedy components throughout the assessment, investigation, and remedy development process to speed up actual cleanup.

10. What other steps could Congress take to enable the Superfund cleanup program to complete cleanups faster, more effectively, and more efficiently?

While not necessarily related to the speed and efficiency of ongoing NPL cleanups, States have concerns about the current requirements for State assurance, specifically the requirements for States to assure 10% of the cleanup cost and 100% of the future maintenance costs for cleanup remedies (42 USC §9604(c)(3)). Many States simply do not have this funding available and are prevented from entering into Superfund State Contracts or from concurring with NPL listings that would obligate them to these costs. Consideration should be given to providing more flexibility to EPA to credit States for

"in-kind" contributions to cleanups, such as human resources, technical equipment, and income which may be generated from the property, such as the recycling of valuable materials from the wastes and other materials removed from the property as part of the cleanup.

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GREG WALDEN, OREGON
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ONE HUNDRED FIFTEENTH CONGRESS

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February 15, 2018

Dr. Winston J. Porter
Environmental and Energy Consultant
3 Sweet William Retreat
Savannah, GA 31411

Dear Dr. Porter:

Thank you for appearing before the Subcommittee on Environment on January 18, 2018, to testify at the hearing entitled "Modernizing the Superfund Cleanup Program."

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.

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

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment

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

Attachment

J. Winston Porter's Answers to Energy and Commerce Committee Questions, 2/22/18

1. We can use the model of the emergency removal program to improve the remedial program by increasing the allowable time and costs of the removal program activities so that more remedial-type cleanups can be dealt with by using the much less-expensive and more flexible removal program. For example, if a $ 5 million remedial project could be handled under the removal concept it would not have to undergo the mult-year remedial investigation/feasibility study process.

2 and 2a. We can encourage PRPs to be more active and effective in the cleanup process if we allow these parties to propose more site remedies and then undertake such remedies themselves.

3. Setting formal deadlines for key project elements would greatly speed the pace of site cleanups by providing clear time expectations for such site cleanups. Currently, many site cleanups can take decades for completion while communities have little information on schedules for site cleanups.

4. No, the current decision-making structure of the clean-up program is not appropriate. In the early days, the Superfund EPA assistant administrator or the relevant EPA regional administrators made the key site decisions, such as site remedy selections. Over the years the decision-making structure has moved to much more junior managers, leading to slower development of key project decisions and thus much slower site cleanups. I recommend that the decision process return to the initial,more senior managers.

5. I believe the current National Contingency Plan is generally adequate and need not be changed unless key modifications are made to the Superfund statute.

J. Winston Porter

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH 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

February 15, 2018

Mr. James McKenna
Portland Harbor Policy Analyst
Natural Resources Office
State Capitol Building
900 Court Street, N.E.; Suite 160
Salem, OR 97310

Dear Mr. McKenna:

Thank you for appearing before the Subcommittee on Environment on January 18, 2018, to testify at the hearing entitled "Modernizing the Superfund Cleanup Program."

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 Friday, March 2, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Kelly.Collins@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

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

Attachment

KATE BROWN
GOVERNOR

March 9, 2018

Kelly Collins, Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Dear Ms. Collins,

The State of Oregon thanks Representative John Shimkus, Chairman of the Subcommittee on Environment, for the opportunity to testify before the subcommittee regarding "Modernizing the Superfund Cleanup Program" and to provide responses to the nine follow-up questions presented in the Chairman's letter to Mr. James McKenna, dated February 15, 2018.

The State's responses to the nine questions are attached for subcommittee consideration and to be added to the record.

Thank you for your consideration of these recommendations.

Sincerely,

Jim McKenna
Office of Governor Kate Brown
Portland Harbor Policy Analyst

JM:ec

Attachment 1: State of Oregon Responses to Nine Questions

254 STATE CAPITOL, SALEM OR 97301-4047 (503) 378-3111 FAX (503) 378-6827
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ATTACHMENT 1: STATE OF OREGON RESPONSE TO ADDITIONAL QUESTIONS

1. **How can States help reduce the number of sites on the National Priorities List?** In general, the State of Oregon recommends three approaches to reducing the number of NPL sites: a) prevent releases of hazardous substances; b) restore a sustainable source of federal funding for orphaned sites; and c) prioritize early delisting of sites that are in the long-term monitoring/institutional controls phase.

   Support State Prevention Programs. Reducing or eliminating the use of hazardous substances, along with promoting best-management practices for the storage, transport, handling and use of these substances, is the best way to reduce the number of newly contaminated sites and minimize the need for new sites to be added to the NPL. Compliance with state and federal regulatory requirements will greatly reduce the potential for new releases of hazardous substances. Many states operate with inadequate funding to perform activities involving technical assistance, permitting, compliance, inspection and enforcement related to hazardous substances. Underfunded programs are less likely to prevent releases that might create a new NPL site in the future.

   Restore Superfund Tax. The Superfund pollution tax on particular industries expired over two decades ago. This fund provided critical resources to EPA and the states to timely implement removal and remedial action at sites involving recalcitrant or financially incapable responsible parties. Most facilities that states refer to EPA for potential listing on the NPL involve recalcitrant responsible parties or unknown or unable responsible parties.

   Reinstatement of the Superfund tax (or some other form of revenue for the Fund) would provide a mechanism for federal financial assistance to states to take response actions at facilities with unknown or unwilling responsible parties. EPA has employed a similar approach for corrective action of leaking underground storage tanks. In Oregon this has facilitated cleanup of over 9000 tanks systems to federal standards in the past 30 years. Similarly, EPA's Brownfield Program provides funding assistance to the state and communities to address non-NPL caliber sites. Having a sustained federal funding mechanism available to the states to address NPL-caliber sites would help keep them off the NPL, and likely result in timelier cleanup of these sites. In the absence of adequate federal funding, Oregon's limited funds for orphan sites will continue to be inadequate to timely address the orphaned sites, and hence DEQ will continue to refer many of them to EPA.

   Delist NPL Sites Earlier. Most NPL sites are "closed" (i.e., active cleanup has been completed). However, most of these sites require some form of long-term engineering and institutional controls. As such, they may take decades, if ever, to meet NPL delisting requirements. This results in perpetually-listed NPL sites. These sites often become underutilized brownfields due to the liability risk posed to prospective purchasers (i.e.,

the site is still on the NPL list). EPA should make it a priority to de-list these sites (e.g., defer them to states to oversee the long-term monitoring and institutional controls), and provide the necessary resources to timely and aggressively negotiate prospective purchaser agreements that do not comprise protection of human health and the environment, but which promotes economic development and prudent land use.

2. **How can States assume more of a leadership role in addressing NPL sites?**

Many states like Oregon have promulgated cleanup laws modelled after CERCLA. These states have developed robust cleanup programs with highly experienced staff. State cleanup programs are often integrated throughout the state's regions and have a detailed understanding of the technical, economic, community and political issues within these regions. For example, DEQ's cleanup program employs over 50 technical staff in in three separate regions, and with offices throughout the State. The staff have degrees in engineering, toxicology, chemistry, geology, biology, environmental science and more. Approximately 60% of these staff have more than 20 years of experience working in the environmental field. Since DEQ's cleanup program was established in 1987, more than 2000 sites have been cleaned up and closed. Many of these sites would have qualified for listing on the NPL.

Many states like Oregon have experience coordinating CERCLA cleanups with EPA. The Oregon DEQ is or has been the support agency on 17 NPL sites in Oregon and is the lead agency on two NPL sites: the McCormick & Baxter Superfund Site located in Portland Harbor and the UPRR Tie Treating Plan located in The Dalles. EPA has also deferred five NPL-caliber sites to DEQ for management under the state's cleanup program. EPA also denominated a NPL site because DEQ had successfully led a multi-party area-wide groundwater cleanup that restored the City of Portland's backup regional water supply well field.

Allowing states with established cleanup programs and demonstrated success to manage and oversee a greater number of NPL sites (actual or proposed) could free up EPA's limited resources for those NPL sites that are most suited for federal oversite and management.

3. **Your written testimony noted that sites with low-level risk or sites that are in the long-term Operations and Maintenance Phase could be transferred to State environmental agencies that are willing and able to oversee these sites. Why are States positioned to take over site in O&M.**

As described under question #2, many states have established cleanup programs and experienced staff. Also, many states have acceptable risk range standards that either mirror or are more stringent than those under CERCLA. In addition, the states are

typically better positioned and have the established processes in place to manage sites subject to land or water use restrictions. The states have close relationships and processes in place with local jurisdictions and municipalities to facilitate safe and timely reuse of these facilities. The states, not EPA, have the authorities to restrict land and water use, and EPA relies on states to file and track land and water use restrictions in the form of an easements and equitable servitudes.

Superfund modernization could include reevaluating delisting criteria. This could include delisting when a site meets the upper acceptable risk range of $1x10^{-4}$ excess cancer risk with the state taking on risk management responsibilities under state authorities. Consideration should be given to delist sites following construction completion and an operational and functional determination subject to the state having an enforceable agreement with the responsible party that includes financial assurance. A memorandum of understanding between EPA and the state that articulates clear roles and responsibilities for the respective entities would provide the pubic a formal mechanism by which to determine if the state is delivering effective project oversight.

Delisting and transferring low-risk NPL sites to willing and able state cleanup programs would allow the residual risk of these sites to be addressed using the full range of tools that have been developed and refined over the past several decades by state agencies.

4. **How can EPA better utilize enforcement as a tool for getting sites cleaned up?**

Dispute resolution. Technical disputes under EPA consent orders are typically resolved by the manager of the EPA staff who made the decision under dispute. Opportunities for meaningful dispute resolution can be an important incentive for settling parties, but lack of independent review diminishes the value of this right. Nonetheless, performing parties may feel obligated to pursue dispute resolution for a number of reasons, including administrative exhaustion and cost recovery/contribution. EPA could standardize independent technical review under consent orders simply by revising its model orders. Doing so would not require legislation or rulemaking.

> "When scientific and technical information is used as part of the basis for a public-policy decision, peer review can substantially enhance not only the quality but also the credibility of the scientific or technical basis for the decision. After-the-fact criticisms of the science are more difficult to sustain if it can be shown to have been properly and independently peer reviewed." *(Strengthening Science at the U.S. Environmental Protection Agency: Research-Management and Peer-Review Practices,* National Academy of Sciences [2000]).

5. **How can EPA use incentives for PRPs to get sites cleaned up?**

   EPA should pursue more early settlements with de minimis or de micromis PRPs. Settlement funds could be made available to PRPs entering an order to implement the remedial action (i.e., Performing Parties), in cases where the de minimis and de macromis PRPs lack sufficient resources or financial assurance to complete the cleanup.

6. **Can you explain the benefit of EPA allowing parties to engage in early or interim actions?**

   Implementing interim actions provides several benefits. Interim actions provide early control of on-going releases of contaminants from highly concentrated source zones. Removal of those hot spots often increases the understanding of site conditions and the contaminant fate and transport processes and complexities. Applying treatment technologies in a localized area can facilitate the scoping, development and design of a final remedial action alternative based on the performance of the technology during an interim action. Implementing these interim actions concurrent with the RI/FS should not delay final remedy selection and implementation. A responsible party will be more willing to implement a costly cleanup using technology that has demonstrated effectiveness in a pilot scale application at their facility.

7. **What is adaptive management and do you think it would make Superfund cleanups faster and more efficient?**

   Adaptive management is a structured, iterative process of robust decision making in the face of uncertainty with an aim of reducing uncertainty over time through performance monitoring.

   The concept has been applied in water quality monitoring for many years, but has been used rarely on federal CERCLA or RCRA sites. As applied to an NPL site, the concept would allow greater flexibility on the scope and phasing of remedial action elements and decision-making process during remedial design and remedial action to achieve the remedial action objectives set out in a Record of Decision. The level of uncertainty on remedy performance can be evaluated as remedies are implemented to provide greater certainty and clarity for future decision-making. After remedial actions are implemented, adjustments to the remedy can be made based on performance monitoring during remedy operations and maintenance.

   The State of Oregon has some experience applying adaptive management for various situations. Groundwater cleanups often reach a point of diminishing returns and not predicted to meet cleanup standards in a reasonable time. Because these conditions can be anticipated, the Record of Decision (ROD) issued by DEQ include contingencies that

allow transitioning from an active groundwater pump and treat to in-situ treatment. In one case, passive control of the groundwater contamination required under the ROD was achieved using poplar trees that also provided other environmental benefits. The inclusion of contingency options in RODs to avoid rework saves time and money and facilitates getting the site cleaned up more efficiently.

8. **Why is it important that EPA incorporate flexibility in cleanup design and implementation?**

NPL sites are notorious for the slow pass in reaching the Record of Decision. Time is needed to characterize the site, conduct human health and ecological risk assessments and prepare the feasibility study. Interpreting site data often results in differences of opinion between EPA, PRPs, Tribes, stakeholders and the public. This has the tendency to lead to more data collection and additional cycles of interpretation and debate before EPA is comfortable enough with the uncertainties that a ROD can be issued. Yet, a vast amount of data is gathered during remedial design, particularly at complex sites. Providing more flexibility during remedial design may accelerate the overall schedule, reduce the cost of unnecessary data collection, result in a more site-specific remedy and garner a more collaborative working relationship between EPA and the PRPs.

A more constructive approach using interim actions and adaptive management strategies to facilitate measured and constructive progress in achieving remedial action objectives could avoid long delays in negotiation due to remedial action implementation uncertainties.

9. **Your testimony stated that "EPA should develop tools that give PRPs enough certainty so they can settle-out in ways that will allow cleanup to move forward, while maintaining the government's need for prudent reopeners." Can you explain what you mean by that?**

The data and information upon which EPA establishes a ROD for a Superfund Site should also be adequate for the PRPs to resolve the allocation of cleanup costs. This will allow de minimis, de micromis, and other PRPs to settle their respective liabilities soon after issuance of the ROD. The remaining PRPs will comprise the Performing Parties (i.e., the PRPs committing to conduct the Remedial Design/Remedial Action).

It is recognized that RODs are typically based on 20-30% design (e.g., a conceptual design of the final cleanup). Additional data and information is collected during the Remedial Design phase of the project (post-ROD), to refine the delineation of contaminants and support the final remedial design of cleanup. EPA should ensure the ROD is clear enough to promote timely settlement for non-performing PRPs, yet flexible enough so that the Performing Parties can incorporate innovative approaches and

technologies into the final cleanup design, including serious consideration of area-specific conditions and future land use(s). Flexibility in ROD implementation provides the performing parties an avenue to develop cost-effective, efficient, timely, and protective cleanup actions, without obviating EPA's rights for prudent reopeners necessary to protect human health and the environment.

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