

# OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY'S SUPERFUND PROGRAM

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## HEARING BEFORE THE SUBCOMMITTEE ON SUPERFUND, TOXICS AND ENVIRONMENTAL HEALTH OF THE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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JUNE 22, 2010

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ONE HUNDRED ELEVENTH CONGRESS  
SECOND SESSION

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## **OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY'S SUPERFUND PROGRAM**

**TUESDAY, JUNE 22, 2010**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON SUPERFUND, TOXICS  
AND ENVIRONMENTAL HEALTH,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:30 p.m. in room 406, Dirksen Senate Office Building, Hon. Frank R. Lautenberg (Chairman of the Subcommittee) presiding.

Present: Senators Lautenberg, Inhofe, Baucus, and Merkley.

### **OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. We are ready to go. We welcome everyone here.

I want to say that we are here today because there are hundreds of highly dangerous Superfund sites across the country that sit unabated in our neighborhoods. These sites continue to contaminate the environment, endanger the health of our children, and sabotage communities that want to strengthen their economies.

To note just one statistic on the potential health impacts, a 2009 study found that children in school districts near Superfund sites are 1.5 times more likely to have autism than those that do not live near Superfund sites. Yet GAO reports that there are at least 75 Superfund sites that pose—and I quote here—unacceptable human exposure.

These sites have soil that is poisoned by chemicals, groundwater that is contaminated, or air that is toxic. The health effects are alarming. Birth defects, development disorders, and cancer all have been linked to chemicals found at Superfund sites.

Yet the work to clean up these properties has slowed to a crawl since the polluter pays fee expired and the Fund ran dry. Since 2003 funding for Superfund clean ups has depended entirely on taxpayers. In the 1990s, when the fee on oil and chemical companies was in effect, EPA was cleaning up more than 80 sites a year. Last year it cleaned up only 20.

And as we will hear from the GAO today, the EPA simply does not have the funding to get the job done. In fact, when adjusted for inflation, funding for Superfund clean ups has plummeted by 35 percent since the polluter pays fee expired in 1995.

Our families, children, and nearby small businesses have been shouldering the pain and punishment of these blighted sites for too

long. We are going to hear today from Lois Gibbs, who experienced the tragedy of Love Canal firsthand. Her experience and the experience of others across the country show us that we have to make cleaning up these Superfund sites a bigger priority.

Once these sites are free of pollutants an albatross will be lifted from their shoulders. Children's health will be protected, parents will have greater peace of mind, and entrepreneurs will be encouraged to invest once again in these communities. We have got two witnesses here today who will tell us that eliminating Superfund sites turns community plagues into sources of community pride.

And I want to say something to my colleagues on the Subcommittee. It is fair to say that we agree on some basic principles. But we have got to clean up these festering sites, and when the responsible party can be found—the responsible party, and I do not speak I am sure for all of us, but the responsible party must pay.

Here is the problem. Many of the most egregious Superfund sites are orphan sites. That means there is nobody there that we can go to. The original polluters are no longer around. So, we have before us a couple of choices for these orphan sites—force taxpayers to foot the bill for the clean up or get the polluting industries to pay. Well, it is pretty obvious, I think, where I stand and I have for a long time, against the polluters and I am with the taxpayers.

And that is why I introduced the Polluter Pays Restoration Act which will reinstate the fee on chemical and oil companies to fund Superfund clean ups. And I am pleased that the Obama administration officially endorsed this proposal yesterday and that Senators Cardin, Sanders, Whitehouse, Merkley, Levin, Murray, and Menendez have joined me in co-sponsoring the bill.

I look forward to hearing from our witnesses today about the future of the Superfund program, and I also look forward to working with Senators on both sides of the aisle to tackle the problem.

And before we hear from this important panel, I will turn to the Ranking Member on the Committee and Subcommittee for their opening statements.

Senator Inhofe.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman.

This oversight hearing on the EPA Superfund program, it is important that we have this, and as Ranking Member of both the whole Committee and the Subcommittee, it is important for me to be here.

I have noted before that the Obama administration has exploited the BP spill to pursue its radical agenda to shut down America's domestic production of oil and gas. Of course, there is ample evidence for that. Just consider its recent support for legislation to reimpose the Superfund tax.

The Obama administration has consistently supported that tax. They have supported that tax since before the Obama administration. It goes back several years. But until recently, other than mentioning it in budget documents, its public support was muted.

But the spill has changed that. Now they feel the political climate is right to tax oil and gas companies. And not just to tax oil

and gas companies. I went down to the floor last week when they had the Bernie Sanders bill which would have just put all oil and gas out of business, large and small. Many forget how broadly the Superfund tax applies if you own a business with over \$2 million in revenue. Regardless of what you manufacture, you would pay the tax.

In other words, the Superfund tax is also, it is a small business tax effecting thousands of such businesses across the country and their employees. If the Obama administration is serious about finding ways to stimulate the economy and create jobs, imposing a new tax on businesses is not the right way.

I should also note that the responsible parties under Superfund already pay approximately 70 percent of the clean ups. I would challenge the EPA to show me one site where a viable, potentially responsible party has not been made to pay their share. And that is the way it should be.

You know, when the Chairman said we want the responsible parties to pay, I do, too. We want them to pay. There is, in 70 percent of the cases they are doing it. The only ones where they are not are the ones that are referred to by the Chairman as the orphan sites. And so they cannot locate the responsible parties. They no longer exist.

Now again, some think re-imposing a Superfund tax means more sites will be cleaned up faster. But that is not true. As the Government Accountability Office noted last year in a report I requested, quote, and I am quoting out of the Accountability Office, the balance in the Superfund Trust does not affect the funds available for current or future annual appropriations.

Now, I would like to turn to something more positive. I would be remiss if I did not mention the Region 6 of the EPA, once again how pleased I am with the progress on the Tar Creek sites. And the Tar Creek site was the most devastating Superfund site in America. It was in my State of Oklahoma, and we are on schedule to completely resolving that. There is still some work to be done.

According to the Agency for Toxic Substances and Disease Registry, one in four Americans lives near a Superfund site. For example, the Washington Naval Yard is the closest Superfund site to the Capitol, right down here on the Anacostia River.

The pace of cleaning up Superfund sites has been a prominent issue and remains with us today. However, the logical reason for this is not due to a lack of funding, as some of my colleagues may argue. This is due to the fact that the EPA is addressing larger and much more complex sites such as Tar Creek. By their very nature these larger sites take more time and resources to complete. The EPA prioritizes these sites, and for those of us who have been waiting patiently while other States had multiple sites cleaned up in a given year it is frustrating to hear these complaints.

Now, if you want to expedite the pace of clean ups, and ultimately reducing costs, in some cases we should give more latitude to local and State officials who know the sites firsthand. I remember one—and I think both of you remembered one also—that was in Bossier City, Louisiana, just a few years ago. It was a site where the responsible party agreed that they should clean it up. They

went to the State of Louisiana and to the province or what do they call them there?

Senator LAUTENBERG. Parishes.

Senator INHOFE. Parishes. Very good. And they all agreed that they were going to, that they should be the ones to do it. And they would have done it at a fraction of the costs that the EPA would have done it in a timeframe less than half as long. And it was objected to by the EPA, and so consequently that clean up took longer, cost twice as much, and there was no reason for it.

So, I think that we need to, the EPA is essentially using taxpayers' hard earned dollars to create public relations tools, and I think that is wrong.

So, Mr. Chairman, I do have a great interest in this program, and I do want to reemphasize that the polluter is paying today. By saying the polluter must pay it implies that they are not paying. They are paying today. To impose a tax on everybody else who is not polluting is just the same as the taxpayers doing it, in my estimation.

So, with that, I look forward to the hearing.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA

Good afternoon.

Chairman Lautenberg, as always, it's good to see you, and I continue to hope for your speedy recovery.

We are here today to hold an oversight hearing on EPA's Superfund program. As the Ranking Member on the EPW Committee and as the Ranking Member on this Subcommittee I am glad to be here to discuss this important program.

As I've noted before, the Obama administration has exploited the BP spill to pursue a radical agenda to shut down America's domestic production of oil and gas. Of course, there's ample evidence for that—just consider its recent support for legislation to re-impose the Superfund tax.

The Obama administration has consistently supported that tax—but until recently, other than mentioning it in budget documents, its public support was muted. But the spill has changed that—now they feel the political climate is right to tax oil and gas companies.

Yet many forget how broadly the Superfund tax applies. If you own a business with over \$2 million in revenue—regardless of what you manufacture—you would pay the tax. In other words: the Superfund tax is also a small business tax affecting thousands of such businesses across the country and their employees.

If the Obama administration is serious about finding ways to stimulate the economy and create jobs, imposing a tax on small businesses is obviously the wrong remedy.

I should also note that responsible parties under Superfund already pay for approximately 70 percent of the clean ups. I would challenge EPA to show me one site where a viable, potentially responsible party has not been made to pay their share. That's as it should be. The other 30 percent are orphan sites—that means EPA can't locate the responsible parties because they no longer exist. Now again, some think reimposing the Superfund tax means more sites will be cleaned up faster. But that's not true. As the Government Accountability Office noted last year in a report I requested, "the balance in the Superfund trust fund does not affect the funds available for current or future annual appropriations."

Now, I'd like to turn to something more positive. I would be remiss not to mention EPA Region Six and once again say how pleased I am with the progress that we have achieved at Tar Creek. There is much more to be done, but I am very pleased with the progress we have made so far.

According to the Agency for Toxic Substances and Disease Registry one in four Americans lives near a Superfund site. For instance, the Washington Naval Yard is the closest Superfund site to the Capitol, located on the Anacostia River. Superfund sites are all around us, making this a program of great importance.



The pace of cleaning up Superfund sites has been a prominent issue and remains so today. However, the logical reason for this is not due to a lack of funding as some of my colleagues may argue. This is due to the fact that EPA is addressing larger and much more complex sites, such as Tar Creek. By their very nature these large sites take more time and resources to complete. EPA prioritizes these sites, and for those of us who have waited patiently while other States have had multiple sites cleaned up in a given year it is frustrating to hear these complaints.

If we want to expedite the pace of clean ups and ultimately reduce costs in some cases we should give more latitude to local and State officials who know these sites first hand. That's because sometimes, unfortunately, EPA can get in the way.

A prime example of this is the Highway 71/72 Refinery in Bossier City, Louisiana. This was a former refinery that was redeveloped for private residences and that eventually became contaminated. This was a site where the local and State governments and the company jointly worked out a viable solution. EPA, however, to the dismay of those involved, objected and overruled it.

One other Superfund issue that I would like to address is the need for EPA to reduce its administrative costs. A perfect example of this is EPA's new Integrated Cleanup Initiative. This initiative attempts to remarket EPA's progress at Superfund sites. This will provide new metrics to measure progress at Superfund sites. So EPA is essentially using taxpayers' hard earned dollars to create a public relations tool.

I believe that this makes no sense, and I hope that my colleagues on this Committee will agree with me. Even if we disagree on Superfund issues we will always use the same metrics that have been used for the past 30 years to measure progress at Superfund sites. So no one except EPA will be using this initiative. This is money that could be used on the ground to fund clean ups; instead it's being used to wage a public relations campaign. This is exactly the type of administrative cost that EPA should be reducing instead of increasing, and I hope that they will redirect their funds to actually cleaning up these sites.

I look forward to hearing from the witnesses, especially Dr. J. Winston Porter testimony on panel two.

Thank you.

Senator LAUTENBERG. Thanks.

Just one correction, if I might, to my friend from Oklahoma. And that is that it was not \$2 million worth of revenue, it was \$2 million worth of taxable income so that the revenue had to be substantially higher than that before a tax was imposed.

Senator BAUCUS.

**OPENING STATEMENT OF HON. MAX BAUCUS,  
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Thank you, Chairman. And again, I want to thank you very much for you and you, also, Senator Inhofe, for your Superfund concerns.

As I sit here, I am reminded when you were sitting right over there of all the work that you did on brownfields, and brownfields in my State have made a huge difference. It helped develop certain areas that otherwise would not be developed, and I just want you to know that, on behalf of all the people in the State of Montana, they very much appreciate the brownfields legislation because it has advanced development.

Chairman, also, I want to speak today not just about the bill you have introduced but about Libby, Montana. I know you have heard a lot about Libby, and Senator Inhofe, I am sure you have, too. But there may be other Committee members who may not be here at the moment but who indirectly should hear about the story of Libby, Montana.

Libby is way up in the northwestern part of Montana. It is close to Idaho. It is close to Canada. It is a beautiful little town in northwestern Montana. It is also a place where, to date, 291 people in

a community of under 3,000 have gotten sick and died due to the pervasive presence of asbestos spewed from vermiculite mining and mine operations of the company of W.R. Grace.

I do not know if you have read the book *A Civil Action*. It is about W.R. Grace's actions in Woburn, Massachusetts. But when I read *A Civil Action*, man, it was just—it is powerful. And basically the story is repeated up in Libby, Montana, by the same company, W.R. Grace.

This community is a community with a death rate from asbestos at their sources at 40 to 60 times greater than the national average. The people of Libby were coated every day for decades with 5,000 pounds of asbestos dust released every day into the air by W.R. Grace mining and building operations. They brought asbestos dust home with them, the miners did.

I can remember going up, as we often do, to mine sites and standing at the gate and talking to the miners as they would come off shift, going up to the site and seeing these miners coming off, out of the bus, and they are just so caked with this white dust. And I knew, intuitively, something is wrong here. We did not know precisely what it was, but intuitively, something is wrong here because they were just so caked with dust.

These folks—these guys mostly, I do not think any women worked up at the mine site at the time—they brought the asbestos home with them on their clothes. They would embrace their spouses. Their kids would jump into their laps. Many of them were already infected and did not know it was asbestosis, and they gave it to their spouses, and they gave it to their kids unknowingly. Afterwards it turned out their spouses get diagnosed, and their kids would be diagnosed, and just think how bad they felt for transmitting this disease off onto their family.

They normally used vermiculite that was contaminated with asbestos to fill their gardens. The stuff was used to fill their gardens. In the town of Libby, it was used on driveways, it was used on the high school track, the Little League field, it was up in attics, it was everywhere.

The people of Libby are just basic, ordinary wonderful folks like my friend Les Skramstad. I first met Les in 2000 in the living room of a good friend of Les and a bunch of other people, Gayla Bennifield, it was their home, and they are just very, very concerned about all the asbestos in Libby. No one is paying attention to it. And I was in the living room there talking to Gayla and Les and all of their friends, and it is just one of those moments in life that, boy, this is something, you just got to pay attention to, it is just rare to see something this tragic. And this was one of those.

Les said to me, he looked me straight in the eye afterward, and he said, Senator, you know, a lot of people have come to Libby, and they promise they are going to help, but they come and they leave. And I will be watching you. I promised myself at that moment that I am not going to let Les down, like whatever I do in life, I have got to make sure that the people of Libby get justice for this travesty that has been imposed upon them. And I—we have taken lots of actions since then. I will not enumerate them here right now, but we have got a long ways to help bring justice to the people of Libby.

I am sorry to say that Les passed away from asbestos-related disease in January 2007. I have kept a photograph of Les. Whenever I meet a new EPA Administrator, whenever I meet a new HHS Secretary, I ask them, I show them the photograph of Les, and I explain to them that this photograph is on my desk right now. And I do not know if they have done this, but I have encouraged them to keep a copy of Les' photograph as well just as a reminder not just of the people of Libby but also a reminder of ordinary folks who have been faced with such pollution.

We are making some headway up in Libby. In 2000 Libby was declared a Superfund site. In 2009 Administrator Jackson declared a long delayed public health emergency in Libby. This is monumental. It will go a long, long way. It has never been done before. And I applaud EPA Administrator Jackson for that effort.

The Healthcare Reform Package also enacted this year contains some requirements for medical care at sites where there has been a public health emergency declaration, and that was the main point for putting that in that legislation.

But in some ways we are in the same spot as we have been for years. I am concerned that the Agency may not be taking appropriate steps to protect public health in Libby. There is a health, there is a screening, but there is also the Superfund clean up which is the subject of this hearing, and I am a bit concerned that that has not been addressed fully. I am also concerned with some of the lack of communication between EPA and the people of Libby as well.

The people of Libby want justice. And I want justice. They want something very simple. They want to know that their community and their schools are safe for them, safe for their families. It is EPA's responsibility to get this clean up right so that life in Libby can get back to normal. And I thank you, Senator, for holding this hearing because it gives us an opportunity to talk to the Agency and make sure we are doing all we can properly for the people of Libby.

I thank you.

Senator LAUTENBERG. Thanks very much, Senator Baucus. That beautiful State of yours looks like it is exempt from any pollution or things of that nature, but I know that—

Senator BAUCUS. Would that that were true.

Senator LAUTENBERG. But I know that Libby, Montana, is.

Senator BAUCUS. Thank you.

Senator LAUTENBERG. I went to high school in Patterson, New Jersey, where several of the students would work part-time in an asbestos factory nearby. And the story that you told about your friend and his family, a man came to see me with wife and son. He worked in the asbestos factory, and the son has mesothelioma, as did the wife, just from laundering the clothes that he brought home. So, we are looking at this toxic material and saying my gosh, we have to do something, something serious about protecting our families.

I now call on Mathy Stanislaus, the Assistant Administrator for the Office of Solid Waste and Emergency Response which oversees the Superfund program at the Environmental Protection Agency,

and John Stephenson, Director for Natural Resources and Environment at the Government Accountability Office.

We welcome both of you, and Mr. Stanislaus, you may begin with your testimony at this time.

**STATEMENT OF MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Mr. STANISLAUS. Good afternoon, Chairman Lautenberg, Ranking Member Senator Inhofe, and Senator Baucus. My name is Mathy Stanislaus. I am the Assistant Administrator for EPA's Office of Solid Waste and Emergency Response.

Thank you for the opportunity to appear today to discuss the Superfund program, including the progress that has been made, actions to address, program challenges and EPA's response to GAO's recently released Superfund report. Mr. Chairman, I particularly appreciate your longstanding support of the Superfund program.

Prior to my arrival at EPA I had long recognized the importance of the Superfund program in protecting communities from the risks posed from hazardous waste sites. After my Senate confirmation one of my first priorities was to assess the Superfund program and identify ways to improve program performance.

I also took it upon myself to visit some of the most impacted Superfund sites around the country. I visited Libby. I met with community members, and I fully appreciate the impacts from W.R. Grace's activities. I went to Oklahoma, and I visited the Tar Creek facility and addressed the need for relocation of residents in Tar Creek as well as in Treece. I visited Coeur d'Alene and Bunker Hill. Because I believe that my responsibility is not only set in DC but to see how communities are burdened and are impacted by Superfund sites.

The Superfund program has a variety of tools to protect human health and the environment. These include shorter term removal options to mitigate immediate threats to human health and the environment and remedial actions which address more complex and long-term clean up of hazardous waste sites.

EPA conducts time critical and non-time critical removal actions to protect human health and the environment by either funding response actions directly or overseeing and enforcing actions conducted by potentially responsible parties. Through shorter term actions the Superfund program mitigates imminent threats to human health and the environment and controls exposure to hazardous substances so human health is protected while long-term clean up is underway.

For example, where EPA determines that existing water supplies are unsafe due to releases from contaminated sites we provide alternative sources of drinking water. To date EPA has provided more than 2.1 million people near or on Superfund National Priorities List sites with alternative sources of drinking water.

I also want to mention EPA's successful Superfund enforcement efforts. One of EPA's main priorities is to identify the parties responsible for the contamination of hazardous waste sites. In fiscal year 2009, EPA secured commitments from potentially responsible parties to perform clean ups and reimburse EPA for past costs

worth nearly \$2.4 billion. EPA's enforcement efforts have allowed the program to focus EPA's appropriated funds on sites where responsible parties cannot be identified or are unable to pay for or perform the clean up.

While Superfund continues to make progress cleaning up hazardous waste sites, we still face numerous challenges. One such challenge involves ensuring that our clean up activities are conducted in an accountable and transparent fashion so that communities have the information they need to be active and engaged participants in the clean up process. This challenge has become especially critical as returning Superfund properties to productive use has become an integral part of the clean up process.

Another challenge is the need to more effectively leverage clean up resources to compensate for the largest and most complex sites that have come to demand an increasing proportion of EPA's Superfund resources. Over the past decade this has meant some new construction projects could not be immediately funded.

One of the ways to address these challenges is to effectively utilize every dollar and resource available to clean up contaminated sites and protect human health. In fiscal year 2009 EPA's Superfund program obligated more than \$1.1 billion to conduct clean up, construction and post-construction work at Superfund sites. Of that amount \$563 million were American Recovery and Reinvestment Act funds while \$402 million came from appropriated funds, State cost-share contributions, and responsible party settlement resources. EPA used \$247 million of the total obligated amount to fund 26 new construction projects at 26 new NPL sites.

Notwithstanding the past program efforts my assessment of the program indicated that we could do more to address Superfund performance. EPA recently has started a new effort called the Integrated Cleanup Initiative. Under this initiative we have begun to examine and identify programmatic improvements across all stages of the clean up process from assessment through clean up completion for all of our land clean up programs.

By looking across all of our land clean up programs we seek to integrate and leverage the Agency's clean up authorities to accelerate clean ups, address a greater number of contaminated sites, and put these sites back into productive use while protecting human health and the environment.

I see I am out of time. If you would indulge me until I finish my comments?

Senator LAUTENBERG. [Off microphone.] We will have your full statement for the record.

Mr. STANISLAUS. OK. Thank you.

[The prepared statement of Mr. Stanislaus follows:]

**TESTIMONY OF MATHY STANISLAUS  
ASSISTANT ADMINISTRATOR  
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE  
SUBCOMMITTEE ON SUPERFUND, TOXICS,  
AND ENVIRONMENTAL HEALTH  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE**

**June 22, 2010**

Chairman Lautenberg and members of the Subcommittee, I am Mathy Stanislaus, Assistant Administrator for EPA's Office of Solid Waste and Emergency Response (OSWER). Thank you for the opportunity to appear today to discuss the Superfund program, including the progress that has been made, actions taken to address program challenges, and EPA's response to GAO's recently released Superfund report.

**THE SUPERFUND PROGRAM**

The Superfund program was established under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), which Congress passed in December 1980 to respond to the risks posed by Love Canal and other toxic waste sites. The Superfund program has a variety of tools to help protect human health and the environment. These include shorter term removal actions to mitigate immediate threats to human health and the environment and remedial actions, which address more complex and long-term clean up of hazardous waste sites

Each year, more than 20,000 emergencies involving the release (or threatened release) of oil and hazardous substances are reported in the United States, with emergencies ranging from

small scale spills to large events requiring prompt action and evacuation of nearby populations. EPA coordinates and implements a wide range of activities to ensure that adequate and timely response measures are taken in communities affected by hazardous substances and oil releases, where state and local first responder capabilities have been exceeded, or where additional support is needed. EPA conducts time-critical and non-time-critical removal actions when necessary to protect human health and the environment by either funding response actions directly or overseeing and enforcing actions conducted by potentially responsible parties.

Through shorter term actions, the Superfund program controls exposure to hazardous substances so human health is protected while long-term clean up is underway. For example, where EPA determines that existing water supplies are unsafe due to releases from contaminated sites, we provide alternative sources of drinking water. To date, EPA has provided more than 2.1 million people near or on Superfund National Priorities List (NPL) sites with alternative sources of drinking water.

The Superfund removal and emergency response programs conducted 214 emergency response and removal cleanup actions and provided oversight for 154 responsible party emergency response and removal actions for a total of 368 actions in FY 2009. To date, more than 10,000 removals at both NPL and non-NPL hazardous waste sites have been completed to reduce the immediate threat to human health and the environment.

The Superfund Remedial program continues to protect human health and the environment by addressing high priority, more complex, often multimedia, longer term cleanups. To date, 1,620 sites have been listed on the NPL. Through FY 2009, EPA and its state and tribal partners

completed final assessment at 40,558 contaminated sites. Through FY 2009, cleanup construction had been completed at 1,080 NPL sites, which represents approximately 67% of the sites listed on the NPL, and all appropriate response actions under CERCLA have been completed for 338 sites (21% of the sites listed on the NPL), thereby removing them from the NPL. In addition, the Superfund program continued its focus on controlling potential human exposure at NPL sites. In FY 2009, EPA exceeded its target (10) by adding another 11 sites where human exposure was brought under control. EPA also exceeded its target (15) in FY 2009 by adding another 16 sites where ground water migration was brought under control.

Further, EPA has been very successful in leveraging federal enforcement dollars to secure private party cleanups. In FY 2009, EPA secured commitments from Potentially Responsible Parties (PRPs) to perform cleanups and reimburse EPA for past costs worth nearly \$2.4 billion. The cumulative value of private party cleanup commitments and cost recovery settlements is \$30.8 billion. EPA's enforcement efforts have allowed the program to focus EPA's appropriated funds on sites where PRPs cannot be identified or are unable to pay for or perform the cleanup.

As the Superfund program has continued to mature and evolve, EPA has looked for additional ways to assess remedial program progress beyond the number of sites that have reached construction completion and help keep the public informed about site cleanup milestones. To better measure long-term progress, in 2007 the program adopted a Site Wide Ready for Anticipated Use (SRWAU) measure. This measure tracks the number of NPL sites where the remedy is constructed (construction complete) and all of the engineering and



institutional controls are in place to ensure that the land is protective for reasonably anticipated uses over the long term. Those anticipated uses and needed controls are outlined in the site Record of Decision (ROD). EPA expects to designate at least 65 sites ready for anticipated use in 2010. Through FY 2009, EPA had determined 409 sites to be SWRAU.

Finally, EPA is continuing its efforts to efficiently utilize every dollar and resource available to clean up contaminated sites and to protect human health. In FY 2009, EPA's Superfund program obligated more than \$1.1 billion to conduct cleanup construction and post-construction work at Superfund sites. Of that amount, \$563 million were American Recovery and Reinvestment Act (ARRA) funds while \$402 million came from appropriated funds, state cost-share contributions and responsible party settlement resources. EPA used \$247 million of the total obligated amount to fund 26 new construction projects at 26 NPL sites.

EPA has been particularly successful in leveraging its appropriated funding through the use of responsible party settlements to establish site-specific special accounts. Through the end of FY 2009, EPA has collected more than \$2.9 billion (including earned interest) in more than 900 site-specific special accounts. Of this amount, EPA has obligated \$1.6 billion for site-specific response actions, and developed multi-year plans for using more than 95% of the \$1.3 billion that remains available to help fund response actions.

In addition, EPA continues its work to make sure ARRA funding is used effectively and efficiently. Of the \$600 million in ARRA funding that the Superfund program received, \$582 million was used to start and accelerate cleanup at NPL sites and support job creation and retention while protecting human health and the environment, and the remaining \$18 million was

set aside for management and oversight of Superfund activities. As of the end of May 2010, EPA obligated \$575 million in ARRA funding for remedial action and design projects at 51 NPL sites and 46 of those sites had started on-site construction. EPA expects the remaining 5 sites to start construction with in the next two months.

### **INTEGRATED CLEANUP INITIATIVE**

While Superfund continues to make progress cleaning up hazardous waste sites, we still face numerous challenges. One such challenge involves ensuring that our cleanup activities are conducted in an accountable and transparent fashion so that communities have the information they need to be active and engaged participants in the cleanup process. This challenge has become especially critical as returning Superfund properties to productive use has become an integral part of the cleanup process. Another challenge is the need to more effectively leverage cleanup resources to compensate for the largest and most complex sites that have come to demand an increasing proportion of EPA's Superfund resources. Over the past decade, this has meant some new construction projects could not be immediately funded.

In general, communities affected by Superfund sites are often actively engaged in the Superfund cleanup process. They have become active participants in future land use determinations at Superfund sites as site redevelopment has become a standard facet of the Superfund process. This participation has built on communities' overall interest to better understand and engage with EPA on cleanup decisions. Communities are also seeking greater accountability in the cleanups that affect their lives. They often want more meaningful ways to assess cleanup progress than the long-term milestones the program currently uses to evaluate site

progress—milestones that can take years to materialize. Communities' interests also encompass more than just Superfund cleanups; they are concerned about a range of contaminated sites, regardless of the cleanup authorities being used to accomplish the cleanup. Understandably, communities' number one concern is that a site be cleaned up; whether under CERCLA authority or some other federal, state or tribal environmental statute.

The Superfund program continues to clean up a mix of NPL sites with varying degrees of complexity and challenges, however, those sites that have not achieved construction completion, when compared with those that have achieved construction complete, are generally larger, costly, and more complex than the sites EPA has completed in the past. This means that the cleanup work we are doing today overall is more difficult, is more technically demanding, and consumes considerable resources at fewer sites than in the past.

Regarding the resource issues that these sites impose on the program, statistics from FY 2008 are illustrative of the problem. In FY 2008, nearly 57 percent of Superfund obligations for construction and post-construction activities went to only 17 sites. In that same year, EPA was unable to fund 10 out of 26 new construction projects ready for funding due to the resource needs for ongoing construction work. In FY 2009, we were able to fund all of our new construction starts due to the more than \$563 million in ARRA funding; in the absence of such funding, we would not have been able to do so.

To address these and other challenges, EPA recently started a new effort called the Integrated Cleanup Initiative (ICI). The goal of ICI is to improve transparency, accountability

and efficiency in the Superfund program and other cleanup programs throughout the cleanup process. Under this initiative we have begun to examine and identify programmatic improvements across all stages of the cleanup process - from assessment through cleanup completion - for all of our land cleanup programs. By looking across all of our land cleanup programs, Superfund, Brownfields, Federal Facilities, Resource Conservation and Recovery Act, and Underground Storage Tanks, we seek to integrate and leverage the Agency's land cleanup authorities to accelerate cleanups, address a greater number of contaminated sites, and put these sites back into productive use while protecting human health and the environment. In addition, the ICI will also examine opportunities to improve our cleanup enforcement activities as a means to address the funding challenges that our program faces. By obtaining responsible party participation in conducting and/or financing cleanups, we preserve Superfund monies to address sites where there are no viable responsible parties.

As one of the first steps in the ICI, starting in FY 2011, EPA will begin reporting on a new Superfund NPL site cleanup performance measure called "remedial action project completions." These projects represent discrete actions and by more closely tracking project completion, EPA will be able to better monitor incremental progress toward the complete construction of long-term remedies at NPL sites. They are defined to address specific problems, such as a given media (e.g., ground water contamination), areas of a site (e.g., discrete areas of contamination, building demolition, etc.) or particular technologies (e.g., soil vapor extraction). By highlighting this more focused aspect of the cleanup process as a performance measure, EPA can provide communities with greater opportunity to evaluate and hold EPA accountable for

specific work conducted in the field in addition to overall progress toward risk reduction and reuse at Superfund sites.

Further, under ICI we are working closely with clean up programs in other federal agencies, notably the Department of Defense and the military services which account for approximately 140 out of 170 federal facilities on the NPL. Many of these are large and complex sites with strong community interest. EPA and DoD are working to harmonize the performance measures at NPL sites to improve consistency in reporting, improve transparency in setting goals for important clean up milestones, and reduce potential site level disputes (and potential delays) arising from different accountability systems between EPA and DoD and the military services.

#### **COMMUNITY ENGAGEMENT INITIATIVE**

As part of EPA's commitment to increase transparency, participation and collaboration in government, and pursue Administrator Lisa Jackson's priorities of cleaning up our communities and expanding the conversation on environmentalism, OSWER has launched its Community Engagement Initiative. The Initiative is designed to help communities effectively participate in EPA decision-making processes and provide them with better information and opportunities to understand and have input on environmental cleanups. Transparency, access and public involvement are essential to meaningful and deliberate decision-making at EPA. Getting a diverse group of citizens involved – all with their own unique experiences and expertise – will better inform our decisions and actions to protect Americans where they live, work, play and learn.

In December 2009 EPA announced the Community Engagement Initiative and released draft principles, goals, and objectives for public feedback. We received many good comments and ideas from community stakeholders, local governments, states - and our own EPA programs and regions. Based on this input, we developed an OSWER Implementation Plan that lays out specific actions that EPA will undertake to achieve the goals and objectives of the Community Engagement Initiative. An Implementation Plan was released in May, 2010 and we will continue to seek public input and ideas on the plan and Initiative as we evaluate and publicly report on the results of our community engagement activities.

#### **GAO REPORT ON SUPERFUND PROGRAM FUNDING**

Let me turn now to GAO's findings in its report "EPA's Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels, and More Sites Are Expected to be Added to the National Priorities List." In the draft report reviewed by EPA, GAO issued several findings regarding EPA's past, current, and future funding levels and included one recommendation. One finding is that EPA's future costs to conduct remedial construction at fund-lead NPL sites will likely exceed recent funding levels. GAO also concluded that there will be more sites added to the NPL on average within the next five years than over the previous five years, and as a result, GAO recommended that EPA determine the extent to which EPA will consider vapor intrusion as part of the NPL listing process and how this will affect the number of sites listed on the NPL in the future. Finally, GAO determined that, based on data generated by a survey of regional and state Superfund program personnel, more than half of the non-federal sites designated as

“Human Exposure Not Under Control” and “Human Exposure Insufficient Data” require all or most of the work remaining to be completed in order to achieve construction completion.

With respect to the report’s recommendation, EPA agrees that assessing the extent to which vapor intrusion will play a role in listing NPL sites and the effect it will have on the number of future listings is important. EPA does currently consider vapor intrusion impacts in both the remedial and removal cleanup programs but this potential exposure route may not be sufficiently accounted for in the Hazard Ranking System. Another component of the ICI includes an evaluation as to whether the Hazard Ranking System should be modified to capture these types of developments in environmental assessments, as well as lessons learned and recommendations for improvements based upon years of user feedback. The application of the System to include evaluation of vapor intrusion is one of the key focus areas. In addition to the ICI’s focus on vapor intrusion, my office is developing a number of vapor intrusion resources including finalizing OSWER’s Draft 2002 vapor intrusion guidance, a topic-specific website and technical papers to improve our ability to address this issue.

Regarding the report’s conclusions tied to the overall funding situation, EPA recognizes that the Superfund remedial program—like many programs across the federal government—has the capacity to use additional resources if and when they become available, as is evident in the utilization of the \$600 million provided through the Recovery Act. Nonetheless, EPA, like Congress, has to allocate scarce resources by achieving the best balance across many priorities. Given currently available resources, EPA will continue to use its Superfund resources efficiently and effectively to complete work at sites as expeditiously as possible. Toward that goal, the ICI,

as I've already described, contains a specific focus on improving efficiencies and accelerating progress where possible.

In addition to the ICI, the President's FY2010 and FY2011 budgets both proposed reinstatement of the Superfund tax, which expired at the close of calendar year 1995. EPA has transmitted to Congress proposed legislative language. This draft legislation would ensure that parties who benefit from the manufacture or sale of substances commonly found in contaminated sites contribute to the cost of cleanup and would provide a stable, dedicated source of revenue to be placed in the Superfund Trust Fund where the revenues would be available for appropriation by Congress to support the cleanup of the Nation's most contaminated sites. In addition, EPA's Special Accounts Senior Management Committee is overseeing the implementation of management improvements and increasing coordination and transparency related to special accounts among EPA's Headquarters and Region offices. We are also reporting special account financial and planning information in EPA's annual Congressional Justification to increase transparency regarding our use of special accounts funds.

With respect to the findings related to environmental indicators, the report includes conclusions about the indicators, "Human Exposure Not Under Control" and "Human Exposure Insufficient Data." EPA assigns sites to the "not under control" category when: 1) contamination has been detected at a site at an unsafe level, and 2) a reasonable expectation exists that people may be exposed to the contamination. Sites EPA assigns to the "insufficient data" category are those at which the Agency does not yet have sufficient information to determine whether there are any current, unacceptable human exposure pathways at the site. Therefore, no immediate determination is possible. EPA typically assigns sites to this category when response actions



have not yet been initiated or when response actions have been initiated but have not yet generated sufficient, reliable information to make a human exposure determination.

I would like to identify several issues associated with the human exposure measure that require more clarification. It is important to note that the designation of a site as “human exposure not under control” should not be construed to mean that people are at risk of imminent harm. When EPA identifies imminent threats, we take immediate action to address them using our emergency removal authorities.

In addition, EPA has made significant progress not only in responding to “not under control” sites, but also reducing the number of “not under control” sites. Since this measure’s inception in 2002, EPA has reduced the “not under control” sites from 120 to 84, even though almost 90 sites were added to the reporting universe during that time. Further, EPA expects to make significant progress in further reductions under current funding levels. At the end of Fiscal Year 2009, the EPA Regional Superfund Programs estimated that within 5 years, by the end of Fiscal Year 2015, 50% (42 sites) of the sites currently categorized as “not under control” will move into the Under Control Category.

Further, GAO focused on cleanup progress necessary to achieve construction completion at the “not under control” and “insufficient data” sites. Based upon its survey of regional and state Superfund personnel, GAO determined that more than half of the non-federal sites with either of these two designations at the time the survey was conducted require all or most of the work remaining to be completed before these sites reach the construction completion milestone.

Such a characterization of progress can be misleading in that it suggests that it can be years before a site achieves “human exposure under control” (HEUC) status when, in fact, this can be accomplished long before the site reaches construction completion. Of the 536 NPL sites that are not yet construction complete, 299 (or 56%) have already achieved HEUC.

### CONCLUSION

In conclusion, the Superfund program continues to make progress in the face of several challenges and will continue protecting human health and the environment through the cleanup of hazardous waste sites. EPA believes the new ICI initiative will be important in helping address critical aspects of Superfund program challenges particularly in terms of increasing transparency, accountability and efficiency. Let me also note that we appreciated the constructive working relationship and dialogue with GAO as they developed their report; and we commend GAO for undertaking this important study with respect to budget issues in the Superfund remedial program. Thank you for the opportunity to discuss these important issues with you today; I am happy to answer any questions you may have.

Senator LAUTENBERG. Thank you.  
Mr. Stephenson.

**STATEMENT OF JOHN B. STEPHENSON, DIRECTOR, NATURAL  
RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT AC-  
COUNTABILITY OFFICE**

Mr. STEPHENSON. Thank you, Mr. Chairman, Ranking Member Inhofe, and Senator Baucus. I am pleased to be here to discuss GAO's report on Superfund issues being released to the full Committee today.

The Superfund program, as you know, has been around for three decades. Since that time over 47,000 sites nationwide have been assessed, and the most severely contaminated have been placed on the National Priorities List or NPL. There are currently about 1,270 sites on the list with New Jersey, California, and Pennsylvania having the most. About 160 of the sites are Federal, primarily Department of Defense facilities, but the remaining 1,100 are industrial or non-Federal facilities.

With the expiration of the Superfund tax in 1995 the size of the Trust Fund has dwindled from \$5 billion in 1997 to a little over \$130 million today. Currently funding for site assessment and clean up if no responsible party can be identified or made to pay comes primarily from appropriations averaging about \$1.2 billion a year.

The report we are releasing today in part focuses on the 75 sites that still pose a risk of unacceptable human health exposure. We reasoned that these sites should be receiving the highest priority for clean up as quickly and efficiently as possible. However, we found that EPA has spent over \$3 billion on these 75 high risk sites, an average of about \$40 million per site, and many have been in clean up for over a decade, yet more than half of the work remains for over 60 percent of these sites.

This is because the EPA spreads limited resources thinly across a large number of States and sites in an effort to make everybody happy. And this approach results in lengthier, more costly, and more inefficient clean ups. These inefficiencies also mean that people around these sites potentially will be exposed to health risks far longer than would be the case if clean up were completed more quickly. In fact at the current rate 41 of the 75 sites will still pose a risk of human health 5 years from now. EPA did receive \$600 million in Recovery Act funding, which has been mentioned, and this did enable them to speed up clean up at 51 more sites.

We also found, based on our survey of regional site coordinators, that EPA's Remedial Action funding needs are 2 to 2.5 times greater than the funds it typically receives for that purpose. EPA uses a collaborative system to allocate Superfund resources among its regions and States. But according to our survey, which collected data on fiscal years 2000 through 2009, most regions have sites that have experienced delays in starting clean up because of insufficient funding. Over one-third of the sites are not funded in the year they are ready and often wait 1 to 3 years until funds become available.

While it seems clear that EPA will need more resources for remedial actions at sites than it currently has, the exact amount is dif-

difficult to determine. Unknowns such as the status of responsible parties, their ability to pay, and the status and scope of the clean up once remedial action is underway make out-year projections very difficult.

For example, we recently reported that for the Federal Creosote Superfund site in New Jersey the greater than expected quantities of contaminated material found during clean up contributed to a \$233 million increase in remedial costs over EPA's original estimate, and the total cost ballooned to nearly \$350 million for this site alone.

Finally, Mr. Chairman, we found that the number of new sites listed on the NPL over the next 5 years will likely be greater than the number listed over the past 5 years, further increasing the need for resources in the future. EPA regional and State officials we interviewed estimated that from 100 to 125 sites, an average of 20 to 25 sites per year, will be added to the NPL over the next 5 years in contrast to the about 16 sites per year that were added in the past 5 years.

The current economic conditions in the States and the inability of responsible parties to pay for clean up are contributing factors to the expected increase in newly listed sites. In addition the number of new sites listed in the future could further increase by up to 37 sites if EPA implements our recommendation to include the risk of vapor intrusion into homes and commercial properties as criteria for listing. EPA does not currently recognize these risks in the listing process and thus cannot use remedial program funding to clean up these sites.

In conclusion, we found that limited funding for the Superfund program has caused delays in cleaning up Superfund sites and that more resources would likely result in quicker, more efficient, and less costly clean up in the long run. More importantly, this could remove the risk of unacceptable human exposure from these sites sooner than would be possible at the current funding levels.

Mr. Chairman, that concludes a summary of my statement, and I would be happy to answer questions.

[The prepared statement of Mr. Stephenson follows:]

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United States Government Accountability Office

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GAO

Testimony  
Before the Subcommittee on Superfund,  
Toxics and Environmental Health,  
Committee on Environment and Public  
Works, United States Senate

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## SUPERFUND

# EPA's Costs to Remediate Existing and Future Sites Will Likely Exceed Current Funding Levels

Statement of John B. Stephenson, Director  
Natural Resources and Environment



GAO-10-857T

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here to summarize the findings of our report on funding issues related to the Environmental Protection Agency's (EPA) Superfund program, which is being released today.<sup>1</sup> To protect human health and the environment from the effects of hazardous substances, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980, which established the Superfund program.<sup>2</sup> Since 1980, EPA has identified more than 47,000 hazardous waste sites potentially requiring cleanup. As of the end of fiscal year 2009, 1,269 of the most seriously contaminated sites were included on EPA's National Priorities List (NPL): 1,111 nonfederal sites and 158 federal facilities.<sup>3</sup> At the time of listing, EPA had determined that these sites posed relatively high risks to human health or the environment from releases or threatened releases of hazardous substances, such as lead and polychlorinated biphenyl. These substances can cause a variety of health effects—such as birth defects, cancer, and developmental disorders—in people exposed to them. Of the nonfederal sites listed on the NPL at the end of fiscal year 2009, EPA identified 75 that have “unacceptable human exposure”—actual or reasonably expected exposure of an individual to hazardous substances, pollutants, or contaminants at levels that present an unacceptable risk—to contaminants for people living, recreating, and/or working in the surrounding areas. In addition, another 164 of the sites listed on the NPL at the end of fiscal year 2009 may potentially pose serious risks since EPA is in the process of determining if there is unacceptable human exposure at these sites.<sup>4</sup>

The Superfund cleanup process begins with the discovery of a potentially hazardous site or the notification to EPA of possible releases of hazardous

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<sup>1</sup>GAO, *Superfund: EPA's Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels, and More Sites Are Expected to Be Added to the National Priorities List*, GAO-10-380 (Washington, D.C.: May 6, 2010).

<sup>2</sup>Pub. L. No. 96-510 (1980), codified, as amended, at 42 U.S.C. §§ 9601-9675 (2010).

<sup>3</sup>The 158 federal facilities are owned and operated by federal agencies, such as the Departments of Defense, Energy, and the Interior.

<sup>4</sup>At the remaining 872 sites, EPA has determined that human exposure has been controlled, but additional work to clean up the sites may still be needed. EPA refers to sites with unacceptable human exposure as “current human exposures not under control” and sites with unknown human exposure as “insufficient data to determine human exposure control status.”

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substances that may threaten human health or the environment. EPA regional offices use a screening system called the Hazard Ranking System (HRS) to numerically assess sites' relative potential threat to human health and the environment. The HRS scores sites on four possible pathways of exposure: groundwater, surface water, soil, and air. Those sites with sufficiently high scores are eligible for proposal to the NPL.<sup>5</sup> EPA regions submit these sites to EPA headquarters for possible listing on the NPL on the basis of a variety of additional factors, including the availability of alternative state or federal programs and concurrence from the governor of the state or environmental agency head in which the site is located. Sites that EPA decides should be listed are proposed in the *Federal Register*. After a period of public comment, EPA reviews the comments and decides whether to formally list the sites as "final" on the NPL.

Once EPA lists a site, it is typically cleaned up through EPA's Superfund remedial program. EPA or a responsible party will begin the remedial process by conducting a remedial investigation and feasibility study to identify the nature and extent of contamination, quantify potential risks, and evaluate potential remedies.<sup>6</sup> The culmination of these studies is a Record of Decision (ROD), which identifies EPA's selected remedy for addressing the site's contamination.<sup>7</sup> The selected remedy is then designed during remedial design and implemented with construction activities in the remedial action phase, when actual cleanup of the site generally begins. When all physical construction at a site is complete, all immediate threats have been addressed, and all long-term threats are under control, EPA generally considers the site to be "construction complete." Of the

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<sup>5</sup>While the HRS is the principal mechanism EPA uses to place sites on the NPL, two additional mechanisms can also be used. First, a site can be listed regardless of its HRS score if a state or territory designates the site as its single top-priority site. Second, a site may be listed if (1) the Agency for Toxic Substances and Disease Registry of the U.S. Public Health Service has issued a health advisory that recommends removing people from the site, (2) EPA determines the site poses a significant threat to public health, and (3) EPA anticipates it will be more cost-effective to use its remedial authority than to use its emergency removal authority to address contamination at the site.

<sup>6</sup>For certain remedial actions, additional work at a site may be required after construction is completed, such as continuing groundwater restoration efforts or monitoring the site to ensure that the remedy remains protective. For EPA-lead remedial actions that have a groundwater or surface water restoration component, EPA funds the necessary activities—known as long-term response actions—for up to 10 years before turning over these responsibilities to the state.

<sup>7</sup>Cleanup at a site is often divided into smaller units (operable units) by geography, pathways of contamination, or type of remedy.

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1,111 nonfederal sites listed on the NPL as of the end of fiscal year 2009, 695 had reached EPA's construction complete milestone, while the remaining 416 had not. Most sites then enter into the operation and maintenance phase, when the responsible party or the state maintains the remedy and EPA ensures that the remedy continues to protect human health and the environment. Eventually, when EPA and the state determine that no further site response is needed, EPA may delete the site from the NPL.<sup>8</sup>

NPL cleanup efforts are typically expensive and can take many years. While responsible parties are liable for conducting or paying for site cleanup of hazardous substances, in some cases, parties cannot be identified or may be unwilling or financially unable to perform the cleanup. To fund EPA-led cleanups at nonfederal NPL sites, EPA uses the Hazardous Substance Superfund (trust fund) from which EPA receives annual appropriations. Historically, the trust fund was financed primarily by taxes on crude oil and certain chemicals, as well as an environmental tax on corporations based on their taxable income; however, the authority for these taxes expired in 1995,<sup>9</sup> and shortly thereafter the balance in the trust fund started diminishing. Since 2001, appropriations from general revenues have been the largest source of funding for the trust fund. At the start of fiscal year 2009, the trust fund had a balance of \$137 million. Superfund program appropriations have averaged about \$1.2 billion annually since 1981, although the annual level of these appropriated funds has generally declined in recent years when adjusted for inflation.

In fiscal year 2009, EPA received about \$1.29 billion for the Superfund program, of which approximately \$605 million was for the remedial program.<sup>10</sup> Of this amount, EPA allocated \$125 million for preconstruction activities—remedial investigation, feasibility study, and remedial design activities—as well as other nonconstruction activities, including conducting prelisting activities through cooperative agreements with states, oversight of all responsible party-lead activities, and providing general support and management. In addition, EPA allocated \$267 million

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<sup>8</sup> Although most sites progress through the cleanup process in roughly the same way, EPA may take different approaches based on site-specific conditions.

<sup>9</sup> The budget proposed by the administration for fiscal year 2011 reflects legislative proposals to reestablish a tax to support the Superfund program.

<sup>10</sup> The remaining \$680 million was for other activities, such as emergency response and removal, enforcement, and operations and administration.



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for remedial actions. EPA allocated the remaining \$213 million for headquarters and regional personnel to implement and oversee the overall program; for site management; and for providing technical and analytical support for all non-NPL sites as well as proposed, final, and deleted NPL sites. In addition, as part of the American Recovery and Reinvestment Act of 2009 (Recovery Act), EPA's Superfund remedial program received an additional \$600 million.<sup>11</sup>

My testimony today summarizes highlights from our report. Specifically, I will discuss (1) the cleanup and funding status at currently listed nonfederal NPL sites with unacceptable or unknown human exposure, (2) what is known about the future costs to EPA to conduct remedial actions at nonfederal NPL sites that are not construction complete, (3) the process EPA uses to allocate remedial program funding, and (4) the number of sites EPA and selected state officials expect will be added to the NPL over the next 5 years, and what they expect the costs of cleaning up those sites will be.

The findings of our report are based on an electronic survey of branch chiefs from the 10 EPA regions; data from EPA's Comprehensive Environmental Response, Compensation, and Liability Information System and Integrated Financial Management System; EPA guidance and planning documents; and interviews with officials from EPA headquarters and regional offices, 10 selected states, and the Association of State and Territorial Solid Waste Management Officials. The report contains a detailed overview of our scope and methodology. This work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>11</sup>Of the \$600 million, EPA allocated \$582 million to remedial cleanup activities and \$18 million to internal EPA activities related to the management, oversight, and reporting of Superfund Recovery Act funds.

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**Considerable Work  
Remains at Most  
Nonfederal NPL Sites  
with Unacceptable or  
Unknown Human  
Exposure, and Some  
Site Cleanups Have  
Not Been Funded at  
the Most Efficient  
Level**

As detailed in our report, over 60 percent of the 75 nonfederal NPL sites with unacceptable human exposure have all or more than half of the work remaining to complete remedial construction. According to EPA regional officials' responses to our survey, EPA has plans to control human exposure at all of the 75 sites with unacceptable human exposure; however, our survey results also show that EPA regional officials expect 41 of the sites to continue to have unacceptable exposure until fiscal year 2015 or later.<sup>12</sup> Similarly, over 60 percent of the 164 nonfederal NPL sites with unknown human exposure have all or more than half of the work remaining to complete remedial construction, according to EPA regional officials' responses to our survey. The majority of the sites with unknown human exposure that have all of the work remaining to complete construction are in the remedial investigation phase, which is when EPA usually determines a site's human exposure status, according to EPA guidance. EPA may also designate a site as having unknown human exposure during the construction phase of work, or after a site has met the construction complete milestone, if new information suggests that there may be risk at the site, or if an investigation is under way to assess a potential exposure pathway not previously analyzed.

Since CERCLA was passed in 1980 through the end of fiscal year 2009, EPA expended a total of \$3 billion in constant 2009 dollars on the 75 sites with unacceptable exposure and \$1.2 billion in constant 2009 dollars on the 164 sites where exposure is unknown, based on EPA data.<sup>13</sup> However, despite the relatively high level of expenditures at sites with unacceptable human exposure, EPA regional and headquarters officials told us that construction has not been conducted in the most timely and cost-efficient manner at some of these sites because EPA had to balance limited annual resources among various program activities. At the Eureka Mills site in Utah, people who are in contact with soil and dust contaminated with lead from mining activities face human health risks. From 2003 to 2008, the site received \$6.6 million to \$10 million a year for construction, even though regional officials said that an additional \$3 to \$5 million per year would have allowed them to complete construction at the site 3 to 4 years earlier.

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<sup>12</sup>Thirty of the 41 sites that EPA regional officials expect will continue to pose unacceptable risk until fiscal year 2015 or later are "teenager sites"—sites that have been on the NPL for at least 13 years.

<sup>13</sup>These totals include construction costs and all other appropriated site-specific Superfund expenditures through fiscal year 2009, except for reimbursable and homeland security supplemental expenditures.

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at a reduced overall cost. However, with the addition of \$26.5 million for the Eureka Mills site in fiscal year 2009 from Recovery Act funding, officials said that they will be able to complete construction at least 1 year earlier than planned and control human exposure at the site. In response to our survey, EPA regional officials noted that they are using Recovery Act funding to partially or completely control the unacceptable human exposure at 20 NPL sites. However, despite EPA's use of Recovery Act funds to control human exposure at these sites, EPA officials noted that EPA's constrained funding has caused delays in the control of human exposure at some sites.

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**EPA's Costs for  
Conducting Remedial  
Construction at  
Nonfederal NPL Sites  
Will Likely Exceed  
Recent Funding  
Levels for These  
Activities**

As we noted in our report, EPA's annual costs to conduct remedial construction in the most efficient manner at nonfederal NPL sites for fiscal years 2010 through 2014 may range from \$335 million to \$681 million, according to EPA regional officials' estimates (see table 1).<sup>14</sup> These estimates include EPA's costs to conduct remedial actions at 142 of the 416 nonfederal sites that are not construction complete. For the remaining 274 sites, EPA regional officials were unable to provide cost estimates for 57 sites, expect responsible parties to fully fund remedial actions at 206 sites, and do not expect to incur additional costs to complete construction at 11 sites because these sites are already fully funded.

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<sup>14</sup>Our survey asked EPA regional officials to provide the approximate projected costs to EPA to complete construction at a site in the most efficient manner, given what is currently known about contamination at a site. EPA regional officials provided cost estimates based on various information, including ROD estimates, estimates developed during remedial design or construction, and estimates developed during remedial investigations and feasibility studies. According to EPA officials, cost estimates for individual fiscal years for a site may change because of a number of factors, such as a site's construction readiness and contracting delays.

**Table 1: EPA Regional Officials' Estimates of Costs to EPA to Conduct Remedial Construction in the Most Efficient Manner at Existing Nonfederal Sites on the NPL, as of September 30, 2009**

Dollars in millions	
Fiscal year	Cost
2010	\$412
2011	681
2012	520
2013	420
2014	335
2015 and beyond	\$3,036

Source: GAO analysis of EPA regional officials' responses to our survey.

Note: These data include EPA's cost estimates for 142 of the 416 nonfederal sites that are not construction complete. For the remaining 274 sites, EPA was unable to provide annual cost estimates for 57 sites, EPA indicated that responsible parties are fully funding remedial actions at 206 sites, and EPA does not expect to incur additional costs to complete construction at 11 sites. Unless otherwise specified, these numbers are as reported by EPA, and are not adjusted for inflation by GAO.

These annual cost estimates for remedial construction at these sites exceed past annual funding allocations for such actions. For example, EPA regional officials' cost estimates for remedial construction for the next 2 years—fiscal years 2011 and 2012—are \$253 million to \$414 million greater than the \$267 million in annual funding that EPA allocated for remedial actions in fiscal year 2009. From fiscal years 2000 through 2009, EPA allocated \$220 million to \$267 million in annual funding for remedial actions. According to EPA headquarters officials, however, funds from additional sources—such as prior year funds, settlements with responsible parties, and state cost share agreements—may also be available to fund remedial construction from year to year. While the amount of funding available through these sources may vary substantially from year to year, according to EPA headquarters officials, approximately \$123 to \$199 million was available from additional sources for remedial actions in fiscal years 2007 through 2009. Our analysis indicates that, even if this level of funding were available in future years, it would not supplement EPA's annual funding allocation enough to cover the estimated costs for conducting remedial construction in fiscal years 2011 and 2012. Therefore, despite funding from additional sources, EPA's estimated costs to conduct remedial construction will exceed available funds if funding for remedial construction remains constant.

Furthermore, these annual cost estimates are likely understated. These officials were not able to provide annual construction cost estimates for 57

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of the 416 nonfederal sites that are not yet construction complete because they are in the early stages of the remedial process, and EPA does not yet know the extent of the contamination and/or has not chosen a cleanup remedy for them.<sup>15</sup> For some additional sites, EPA regional officials were unable to provide cost estimates for construction at some of the operable units at the site. In addition, EPA regional officials' estimates did not include costs for conducting long-term response actions—such as operating groundwater treatment facilities—which are considered part of the remedial action, or for performing 5-year site reviews, both of which EPA funds from its remedial action allocation and would, therefore, increase the cost estimate for remedial actions.

EPA's estimates also did not include construction costs for sites that currently have a potentially responsible party that may be unable to fund the cleanup. EPA officials told us that EPA has identified one or more potentially responsible parties at 206 of the 416 nonfederal NPL sites that are not yet construction complete. However, officials also said that they were slightly or not at all confident that a responsible party would fund future remedial actions at 27 of these sites.

EPA headquarters and regional officials also told us that EPA's actual costs for construction are typically higher than its cost estimates because of a number of uncertainties. Most importantly, according to EPA officials, the extent of contamination at a site is often greater than EPA expected when it developed the cost estimate, which can expand the scope of work and remedies needed and increase overall construction costs. For example, we recently reported that at the Federal Creosote Superfund site in New Jersey, the greater-than-expected quantities of contaminated material contributed to a \$111 million increase in construction costs over EPA's estimates.<sup>16</sup> Another factor that can increase construction costs is a change in acceptable contaminant levels. In addition, according to EPA, the actual costs of goods and services—such as energy, construction materials, and labor—may increase above estimated prices, causing an increase in the actual construction cost. EPA officials noted that there may be some instances when construction costs are overestimated because, for

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<sup>15</sup>For 9 of the 57 sites, EPA officials did provide a broad range of costs for construction, but we did not include those costs in our analysis because EPA officials were unable to provide more precise, annual cost figures for those sites.

<sup>16</sup>GAO, *Superfund: Information on Cost and Other Issues Related to the Cleanup of the Federal Creosote Site*, GAO-10-277 (Washington, D.C.: February 25, 2010).

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example, there is less contamination at a site than previously thought or the prices of goods and services decrease; however, the officials commented that this is rare. The frequent occurrence of additional unexpected costs enhances the likelihood that EPA's costs for remedial actions over the next several years will exceed recent funding levels for these activities; and EPA may be forced to choose between funding construction at some sites in the most efficient manner or funding construction at more sites less efficiently.

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**EPA Allocates  
Remedial Program  
Funding Separately  
for Preconstruction  
Activities and  
Remedial Actions, and  
Limited Funding Has  
Caused Delays at  
Some Sites**

As explained in our report, EPA allocates funds separately for preconstruction activities—such as remedial investigation and remedial design—and remedial actions. EPA headquarters allocates funds for preconstruction activities to the regions for them to distribute among sites. EPA headquarters determines the amount of resources that the Superfund program will allocate to the regions by using a model that distributes available funding based on a combination of historical allocations and a work-based scoring system that scores each region based on projects planned for the upcoming year.<sup>17</sup> According to EPA's *Superfund Program Implementation Manual*, at the initiation of the planning process, headquarters provides general projections of funding for preconstruction activities that will be available to the regions. On the basis of these projections, each region then develops a plan for allocating these funds to sites. Before finalizing this plan, each region holds planning discussions with headquarters to discuss actions that can be accomplished during the year and alters its plans, as needed, based on refined projections of available funding from headquarters.

To allocate funding for remedial actions, EPA headquarters works in consultation with the regions to allocate funds on a site-by-site basis. EPA's *Superfund Program Implementation Manual* states that sites with ongoing construction receive priority for funding over new construction work. Headquarters develops the initial plan for ongoing construction based on regional funding requests, projections of available funding, and discussions with regional officials. According to EPA, the agency's goal in allocating funds is to ensure that all sites with ongoing construction

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<sup>17</sup>As part of this allocation, EPA headquarters includes funding for other nonconstruction activities, including conducting prelisting activities through cooperative agreements with states, oversight of all responsible party-lead activities, and providing general support and management.

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continue to progress toward construction completion while also funding some new construction projects.

According to EPA headquarters and regional officials, the funds for both preconstruction activities and remedial actions have not been sufficient to clean up some sites in the most timely and cost-efficient manner. EPA officials from several regions told us that their regions currently receive about half or less than half of the funding they could use for preconstruction activities. As a result, according to our survey, which collected data on fiscal years 2000 through 2009, most regions have sites that have experienced delays in the preconstruction phase because of insufficient funding. Similarly, sites with ongoing construction have experienced delays caused by limited funding, according to EPA officials. Since fiscal year 2000, most regions have experienced delays because of insufficient funding at one or more sites with ongoing construction, according to responses to our survey. According to several EPA regional officials, delays in funding for sites with ongoing construction increase the length of time it takes to clean up a site; the total cost of cleanup; and, in some cases, the length of time populations are exposed to contaminants. In addition, funding limitations have caused delays at sites that were ready to begin new construction. According to EPA *Superfund Accomplishment Reports*, between fiscal years 2004 and 2008, 54 sites, or over one-third of all sites ready for new construction funding, were not funded in the year that they were ready to begin construction, and some sites were not funded for several years after they were construction-ready.

EPA officials told us that EPA prioritized sites to receive the \$582 million in American Recovery and Reinvestment Act funds allocated to remediation in a manner similar to the way EPA prioritizes sites for remedial actions. According to EPA headquarters officials, 25 sites needing new construction funding in fiscal year 2009 would most likely not have received funding had Recovery Act funding not been available.

**Most EPA Regional and Selected State Officials Expect an Increase in the Number of Sites Added to the NPL over the Next 5 Years but Cannot Estimate the Cleanup Costs**

Our report also notes that most of the EPA regional officials and state officials we interviewed told us they expect the number of sites listed on the NPL over the next 5 years will be greater than the number listed in the past 5 years. EPA regional officials estimate that from 101 to 125 sites—an average of 20 to 25 sites per year—will be added to the NPL over the next 5 years. This is higher than the 79 sites—an average of about 16 sites per year—added from fiscal years 2005 through 2009. As table 2 shows, all EPA regions expect that the number of sites added to the NPL over the next 5 years from their region could increase. According to EPA headquarters officials, the number of sites proposed for listing over time has decreased as a result of the expanded use of other cleanup programs, including state programs. Most of the officials who expect an increase in listings noted that current economic conditions—which can limit states' abilities to clean up sites under their own programs and responsible parties' abilities to pay for cleanup—are a contributing factor to the expected increase in listed sites.

**Table 2: Comparison of the Number of Sites EPA Listed from Fiscal Year 2005 through 2009 and the Number of Sites Projected to Be Listed from Fiscal Years 2010 through 2014, by Region**

EPA region	Number of sites EPA listed from fiscal year 2005 through fiscal year 2009	Number of sites EPA regional officials project will be added to the NPL over the next 5 years	Projected change in the number of sites listed
1	3	3 to 5	0 to + 2
2	12	15 to 20	+ 3 to 8
3	8	10 to 15	+ 2 to 7
4	14	20 to 25	+ 6 to 11
5	14	20	+ 6
6	9	10 to 15	+ 1 to 6
7	8	10	+ 2
8	4	5	+ 1
9	4	3 to 5	-1 to + 1
10	3	5	+ 2
All regions	79	101 to 125	+ 22 to 46

Sources: GAO analysis based upon EPA data and regional officials' projections.

Most of the officials we spoke with in the 10 selected states also expect that the number of sites listed from their states over the next 5 years could increase above the number of sites listed over the past 5 years, as table 3 shows. For example, officials from the Michigan Department of Natural



Resources and Environment said that they expect EPA to list five sites in Michigan to the NPL over the next 5 years, even though no sites have been listed from their state since 1996. These officials noted that the Superfund program has traditionally been a program of last resort, but declining resources in their state's cleanup program have renewed Michigan's interest in cleaning sites up through the federal program.

**Table 3: Comparison of the Number of Sites EPA Listed from Each of the 10 States from Fiscal Years 2005 through 2009 and the Number of Sites State Officials Project May Be Listed from Fiscal Years 2010 through 2014, by State**

State	Number of sites EPA listed from fiscal year 2005 through fiscal year 2009	Number of sites state officials project will be added from their states to the NPL over the next 5 years	Projected change in the number of sites listed
Maine	0	1 to 2	+ 1 to 2
New Jersey	6	15 to 25	+ 9 to 19
Virginia	1	1	0
Kentucky	0	0 to 1	0 to + 1
Michigan	0	5	+ 5
Louisiana	0	1	+ 1
Iowa	0	0	0
Montana	1	1 to 2	0 to + 1
California	3	5	+ 2
Washington	2	1 to 4	-1 to + 2

Sources: GAO analysis based upon EPA data and state agency officials' projections.

Neither EPA regional officials nor state officials we contacted were able to provide cost estimates for many of the sites they expect to be added to the NPL over the next 5 years. Furthermore, when these officials were able to provide cost estimates, most of them were imprecise figures based on limited knowledge and best professional judgment. Officials also explained that they could not provide cost estimates for some of the sites, because either the type and extent of contamination are not yet known, or officials have not yet identified the actual sites that may be listed. Therefore, it is impossible to accurately estimate what the cost may be to clean up these sites. However, we reported in July 2009 that the average amount EPA spent to clean up individual sites has increased in recent

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years.<sup>18</sup> For example, EPA spent an average of approximately \$7.5 million at sites that reached EPA's construction complete milestone in fiscal year 1999. EPA's expenditures increased to an average of about \$10.2 million in total expenditures per site at sites reaching construction complete in fiscal year 2007. In that report, we noted that individual site costs may have increased because the sites on the NPL now are more complex than in the past, construction costs have been rising, and EPA has not been able to identify as many responsible parties to fund site cleanups as in the past, leaving a higher share for EPA to fund.

In addition to the number of sites that could be listed, the number of sites eligible for the NPL could increase if EPA begins to assess, as a part of its listing process, the risk of vapor intrusion caused by subsurface hazardous substances that have migrated via the air into homes and commercial properties. Although sites with vapor intrusion can pose considerable human health risks, EPA's HRS—the mechanism used to identify sites that qualify for NPL listing—does not currently recognize these risks; therefore, unless a site with vapor intrusion is listed on some other basis—such as groundwater contamination—EPA cannot clean up the site using remedial program funding. Many EPA regional officials and state officials noted that vapor intrusion is a concern, and several of these officials told us that they believe additional sites would be eligible for listing if assessments of vapor intrusion were included as part of the listing process. According to an EPA headquarters official, based on recent discussions with regional officials, up to 37 sites could be eligible for NPL listing if EPA includes vapor intrusion assessments as part of the listing process. However, according to EPA headquarters officials, EPA must first determine whether or not it can consider the vapor intrusion pathway under its existing HRS regulations, and it has not yet made such a determination. While these sites are not currently eligible for NPL listing, the EPA headquarters official noted that EPA is addressing vapor intrusion at 13 of these sites through its Superfund removal program; however, this official also told us that, when conducting removal actions, EPA is limited in its ability to fully remediate the source of contamination. For example, according to an official from the Montana Department of Environmental

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<sup>18</sup>GAO, *Superfund: Litigation Has Decreased and EPA Needs Better Information on Site Cleanup and Cost Issues to Estimate Future Program Funding Requirements*, GAO-09-656 (Washington, D.C.: July 15, 2009).

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Quality, preliminary data collected at the Billings PCE site<sup>19</sup>—which the official noted is not eligible for NPL listing—indicated vapor intrusion in buildings, and EPA conducted a removal action at this site. However, according to this official, it is unclear whether the removal action was effective in mitigating the vapor intrusion contamination, and people may continue to be exposed.

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In conclusion, we found that limited funding for the Superfund program has caused delays in cleaning up some sites in recent years. This limited funding, coupled with increasing costs of cleanup, has forced EPA to choose between cleaning up a greater number of sites more slowly at higher cost and cleaning up fewer sites more quickly at lower cost. Compounding these challenges, EPA does not currently assess the relative risk posed by vapor intrusion when deciding which sites to include on the NPL, and assessing this risk could lead to an increase in the number of sites listed on the NPL. However, if these sites are not assessed and, if needed, listed on the NPL, some seriously contaminated hazardous waste sites with unacceptable human exposure may not be cleaned up. In our report being released today, we are recommending that the Administrator of EPA determine the extent to which EPA will consider vapor intrusion as part of the NPL listing process and how this will affect the number of sites listed in the future. EPA agreed with our recommendation.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or Members of the Subcommittee may have at this time.

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## GAO Contact and Staff Acknowledgments

For questions about this statement, please contact John Stephenson at (202) 512-3841 or [stephensonj@gao.gov](mailto:stephensonj@gao.gov). Individuals making key contributions to this testimony include Barbara Patterson and Vincent P. Price, Assistant Directors; Deanna Laufer; and Kyerion Printup. Elizabeth Beardsley, Pamela Davidson, and Mehrzad Nadji also made important contributions.

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<sup>19</sup>PCE is perchloroethylene, which is a manufactured chemical used for dry cleaning and metal degreasing. Potential health effects from exposure to PCE include dizziness, headaches, sleepiness, confusion, nausea, difficulty in speaking and walking, loss of consciousness, and death.

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**Environment and Public Works Committee Hearing  
June 22, 2010  
Follow-Up Questions for Written Submission**

Question from  
Senator James M. Inhofe:

If the Superfund tax were re-imposed on U.S. manufacturers, as the EPA has proposed, is it correct that the burden would fall upon goods, made from certain chemicals that are produced in the U.S.? And is it correct that, although imported products subject to the tax would pay the tax, imported finished products would not bear the tax because the taxable products are already incorporated into products? Do you agree, then, that products imported into the U.S. would be less expensive to produce and would have a market advantage? What do you think the effect would be on U.S. jobs?

GAO's Response:

GAO has not assessed the potential impacts of any proposals to either reinstate the Superfund tax that expired in 1995 or to impose a new tax that may be structured differently. Therefore, GAO cannot address the effects that any of these tax proposals might have on the costs to produce imported products, whether these products would have a market advantage, or the potential effects on U.S. jobs.

Senator LAUTENBERG. Thank you very much.

Mr. Stephenson, at the end of your remarks you talked about the kind of delays et cetera that would result if we do not have a more, a larger fund available. If we do not provide more resources for EPA, how long might it take to clean up all of the currently listed Superfund sites, despite the fact that a lot more are expected in the next 5 years? Just look at the present list. How long might it take to clean them up if all the resources that we have are those that we have allocated annually for the last few years?

Mr. STEPHENSON. It will be decades. But it is impossible to really determine because of a number of uncertainties. As Senator Inhofe mentioned 70 percent of the funds come from responsible parties to clean up sites. There is no way of estimating how that will play out in the future.

Senator LAUTENBERG. Well, the obvious is the question, where does the funding for the clean up come from now?

Mr. STEPHENSON. Right now it comes almost exclusively from appropriations each year, so it is dependent upon you, the Congress, to provide the money for the clean ups.

Senator LAUTENBERG. The taxpayers.

Mr. STEPHENSON. We did some analysis of completed sites, and you can see that the completed sites peaked while the Superfund was in place and has dwindled since then.

Senator LAUTENBERG. But it is the taxpayers' responsibility if we do not have the polluters paying for what they have done. If the polluters are gone, as many of them are, sites orphaned, who pays for it? You and me and the rest of the people sitting in this room and across the country. Is that correct?

Mr. STEPHENSON. That is the case today.

Senator LAUTENBERG. Thank you.

GAO found 75 Superfund sites with unacceptable human exposure. EPA regional officials expect unacceptable human exposure to continue between, beyond 2015 for 41 of these sites. If we reinstated the Superfund Polluter Pays Fee to help get at those sites, what might it do to get them done quicker? Is it a question, what is the thing that delays cleaning up these sites?

Mr. Stanislaus.

Mr. STANISLAUS. There are a number of sites where human exposure is not under control. Let me first set forth that those sites that have imminent risk, that is acute risk, we address through a separate program. It is called the Removal Program. So, what is at imminent risk of acute exposure we address that through the Removal Program. Where you have longer term risk, we address that through the Remedial Program. So, of those sites, there is a subset—

Senator LAUTENBERG. I do not mean to cut you off, but we have time constraints. Could reinstating the Superfund Polluter Pays Fee, would it help to get these sites cleaned up faster? If we had more resources?

Mr. STANISLAUS. Well, reinstating the Superfund tax would provide a dedicated source of dollars for the Congress to appropriate funds. So, it is a combination of a dedicated source of money and an increase in appropriations from the Trust Fund.

Senator LAUTENBERG. Mr. Stephenson, would more resource help get these sites cleaned up faster? Does a lack of resource mean anything in terms of the pace of clean up?

Mr. STEPHENSON. Of course it does. Let me say that these 75 are NPL sites, and that is EPA's designation that they pose an unacceptable human risk. The site coordinators that we talked to who know each of these sites are the ones that told us that the resource need to clean up these sites quicker is 2 to 2.5 times what they currently have. So, whether the sources come from responsible parties or from taxes or from appropriations, more money would result in cleaning them up faster as was evidenced by the Recovery Act—

Senator LAUTENBERG. These sites grow ever more dangerous.

Mr. STEPHENSON. Well, they still pose a risk. I do not know whether they increase in danger, but if they are not cleaned up people are exposed to the contamination for longer than—

Senator LAUTENBERG. So, to me, that is the danger.

Mr. Stanislaus, GAO's report finds that EPA does not take vapor intrusion into account in determining whether a site should be listed for Federal clean up. GAO said some seriously contaminated hazardous waste sites with unacceptable human exposure may not otherwise be cleaned up. When will we get a plan to this Committee to address this shortcoming?

Mr. STANISLAUS. Well, we are currently evaluating the inclusion of vapor intrusion in the hazardous ranking system as part of the Integrated Cleanup Initiative. Separately we do in fact currently include in our clean up activities the addressment of vapor intrusion. So, it is true that it is not currently a factor for listing on the NPL, but once a site is listed we do in fact address vapor intrusion in the site clean up.

Senator LAUTENBERG. So, vapor intrusion is a serious factor as we look at these—

Mr. STANISLAUS. Absolutely.

Senator LAUTENBERG. Senator Inhofe.

Senator INHOFE. OK, let me just restate again—and again if necessary—the polluter is paying now. It is not a matter of the polluter has to pay. The polluter is paying. Now, there is one recent exception to that, and that is one that I think, I do not know how my colleagues voted on the \$700 billion bailout, I voted against it, I suspect that they voted for it—

Senator LAUTENBERG. I was glad I voted for it. It turned the economy around.

Senator INHOFE. OK, I need a little more time if that is going to—

[Laughter.]

Senator INHOFE. Two of the bailouts were General Motors and Chrysler. Now, the way this was structured, they were turned into two, kind of an old corporation and a new corporate entity. Under the new corporate entity they did not have any assets from the old corporate entity. The old corporate entity was responsible for problems, clean up problems. And they, however, since they passed that sweetheart deal they no longer are forced to pay for the pollution that they caused. That is the only exception that I know of. Can either of you think of another exception where the polluter has just not paid and had the assets to pay and could be found?



Mr. STANISLAUS. There are a number of circumstances where a responsible party does not have adequate resources——

Senator INHOFE. I understand. I said has the ability to pay and can be found.

Mr. STANISLAUS. Well, I mean there are cases where PRPs, it is difficult to get some PRPs to settle with the EPA, and where that circumstance arises and there is no other recourse EPA does in fact move forward——

Senator INHOFE. Well, it is obvious if you want to raise taxes on people to do it, you can go out and tax anyone. The tax you are charging here, I say to my friend the Chairman, is a tax on corporations, on businesses. It could be a tax on churches; that would also provide revenue if you wanted to go that way, to do it. I am just trying to think of the justification, because I have not heard it yet, on why you go out and pass taxes on corporations that had nothing to do with any type of a spill.

Let me ask you something, I ask my good friend on the GAO, because you heard my example of Bossier City. Do you remember that case by chance?

Mr. STEPHENSON. I do not.

Senator INHOFE. OK. Would you do me a favor, just for the record, go back and research that because I am going from memory now. But sitting right here in the chair where I am sitting, although Republicans were a majority at that time so I was Chairman of this Committee, I remember that was the typical case in Louisiana where everybody, the parishes, the States, the responsible parties, all wanted to do it, and they were going to do it for X dollars. Now, I would like for you to fill in that X for me by going back and researching that. And then, also, it would have taken less time.

I guess what I am saying to you, my friend from the GAO, is maybe that is another area we should be looking at to make sure that we get people, we do, we clean these up effectively and do so in the most efficient manner. In that case, if there are many others like that, that would be a lot of money, an awful lot of money. Is that worth looking at?

Mr. STEPHENSON. It is. I agree that right now the resources that are available are spread very thin in the effort to make States happy and the site clean up folks happy, but that it not an efficient way to do this.

Senator INHOFE. Yes. Well, let me ask you another question. If we have a tax on chemical companies, regardless of whether or not there is any problem with polluting and all that, and that tax would go into the products, that would raise the, obviously raise the price of those products. However, if you had imported the same products from another country that would be a finished product, so they would not have been subjected to that. Would that not mean that we are actually putting our manufacturers at a competitive disadvantage from those under that particular scenario?

Mr. STEPHENSON. Well, as I understand it, the tax is subject to imports as well.

Senator INHOFE. Subject to imports on the raw materials. I am talking about finished products.

Mr. STEPHENSON. Yes, well, the third component of the Superfund tax is a general corporate tax.

Senator INHOFE. Yes, sir.

Mr. STEPHENSON. Well, we have not studied that.

Senator INHOFE. Well, this concerns me. We are talking about tax, as I understand it, 9.7 cents per barrel, 22 cents, I am not sure how that is calculated, on chemicals, and then a corporate tax of .12 percent. It is still a tax increase, and there is no relationship between the tax increase, the person on whom this tax is levied, and on any type of pollution or any type of a damage that was incurred by that party. I mean, there is not a relationship between the person, that entity that is being taxed, and any type of problem that they have created.

Mr. STEPHENSON. Well, the Trust Fund is a form of financial assurance for an industry—

Senator INHOFE. Yes, I understand that.

Mr. STEPHENSON. To try to provide a funding source, a steady, routine funding source to clean up, similar to the Underground Storage Tank Trust Fund where it is taxed based on .1 cent per gallon. That is a fund that exists to clean up old gas stations that have been abandoned. So, the principle is sort of the same for any trust fund.

Senator INHOFE. Yes, I know. We have talked about this for a long period of time. In fact it has been proposed that I know of now for about 10 years, and where you might be successful in this particular political atmosphere in getting this tax increase, it seems like it is pretty easy to increase taxes nowadays, but perhaps that will just be a temporary one.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

I would just like to confirm, frankly, Mr. Stanislaus, the Agency's policy with respect to certain sites in Libby, Montana. As I understand it, there are either 8 or 10 total, 8 total, 2 of which are industrial, the rest are residential. The question is, I want to establish and make certain that the Agency has no plans to move forward with a record of decision, either interim or final, prior to the full completion of risk assessment and toxicity studies at Libby. Can you confirm that?

Mr. STANISLAUS. Well, just to be clear, there are different operable units in Libby. There are a number of operable units that are depending upon the toxicity studies. There are the first operable units that are not dependent upon the toxicity studies, and the reason is because a risk assessment was performed, and the first operable units will create a barrier to prevent any exposure. So, that is why we believe that we can move forward and to protect residents as quickly as possible in Operable Units 1 and 2 because it is not dependent on the toxicity study.

The toxicity study, what that will inform is the level of exposure that is appropriate and make a decision for some of the commercial properties. But that is not necessary for Operable Units 1 and 2. That is why EPA has recommended Operable Units 1 and 2 to move forward, and again Operable Units 1 and 2 is to create a barrier to prevent exposure.

Senator BAUCUS. All right. But what if the toxicity studies show that the clean up should be at a higher level, a higher standard, than a record of decision might otherwise provide?

Mr. STANISLAUS. The toxicity studies will not really inform Operable Units 1 and 2 because even if the toxicity studies show there should be a greater level of protection, that would inform the other operable units. The reason that it will not inform Operable Units 1 and 2 is because Operable Units 1 and 2 the proposed remedy is to prevent or create a barrier between the asbestos and potential exposure.

Senator BAUCUS. Could you explain that? What is the barrier?

Mr. STANISLAUS. It is basically a clean barrier. You create a soil barrier between where the asbestos is contained and any potential for exposure. This is used around the country as a technique to prevent exposure.

Senator BAUCUS. I just want to just confirm that where record decisions are appropriate that the Agency not proceed until toxicity studies are complete.

Mr. STANISLAUS. Yes. I mean, for those operable units where toxicity study will be dependent on those decisions, absolutely. But those operable units where we do not believe it is dependent on it, we believe in order to move forward and protect people in the shorter term that we should move forward on those operable units.

Senator BAUCUS. Do you commit not to implement a record decision for residential operable units until a risk assessment is done?

Mr. STANISLAUS. Yes. Based on our science and the risk assessment we believe that the most scientifically sound decision on Operable Units 1 and 2 was to actually move forward on 1 and 2, which will again create a barrier to prevent exposure. And the toxicity studies, again, will not affect that decision. It will affect other operable units.

Senator BAUCUS. All right.

Another subject is protecting the kids, the children of Libby. There is a school there. It has got lots of asbestos in it, and I am just asking whether the Agency will commit to a cumulative effects study on child, on childhood exposure in evaluating your risk assessment.

Mr. STANISLAUS. In the Libby specific risk assessment?

Senator BAUCUS. Yes, in Libby.

Mr. STANISLAUS. There are ongoing risk assessment studies, and let me commit to go back, and I believe that is a sub-component of that study. But I will commit to go back and look at the components of that study.

Senator BAUCUS. Would you, please? Because clearly kids are more vulnerable, and it is just that much more important to make sure that there is a cumulative effects study at Libby. It is at the school, I have toured the school, and it needs help. So, I just, we are trying all we can to make sure that, Libby is my thing, to make sure Libby is protected. Thank you.

By the way, do you have a photograph of Les, Mr. Skramstad?

Mr. STANISLAUS. I do not. But I will take it.

Senator BAUCUS. OK. I will get you a photograph of Les Skramstad.

Mr. STANISLAUS. OK.

Senator BAUCUS. I just ask you to consider putting it on your desk in your office.

Thank you very much.

Senator INHOFE. Mr. Stanislaus, I was distracted when you made a reference to Tar Creek. Did you say you made a visit there?

Mr. STANISLAUS. Yes, sir.

Senator INHOFE. To the Picher-Cardin area?

Mr. STANISLAUS. Yes.

Senator INHOFE. You know, that is really a marvel of how things can be done right. That was a devastating site and to look at it and to consider that we had been trying to do something, or they had been, I was not here then, for 30 years, and they had never done any mapping under the ground, and now it appears that if we had not gotten in when we did, several structures, such as an elementary school house, could very well have dropped down, killing every child that was in there at that time.

I mean, it was, and I like to get on record whenever I can, to compliment everyone who is involved in it. Of course the EPA was, the Department of the Interior was, the Department of Justice was, and the Corps of Engineers and others. But that was, I think you can kind of hold that up as model of the way things should happen. Great job.

Mr. STANISLAUS. Thank you.

Senator LAUTENBERG. Yes. Thanks for that confirmation, Senator Inhofe. Senator Inhofe is a very skilled Senator, and while we disagree, his arguments for things as he sees them are cogent, put together in a view that differs from mine obviously, but are respectfully noted.

Who did the clean up at the, what's that name?

Senator INHOFE. Tar Creek.

Senator LAUTENBERG. Tar Creek. Who did that clean up?

Mr. STANISLAUS. That was a Federal-led clean up.

Senator LAUTENBERG. Hooray for the Federal Government.

Senator INHOFE. It did an excellent job.

Senator LAUTENBERG. And it was a, well, I am pleased to hear it. But also, Senator Inhofe, I note with some understanding as to what the risks were had that not been cleaned up, and therefore I hope that as time goes by, I hope to persuade you that we ought to do the same thing all over this country of ours and move things along.

Senator INHOFE. Let me make one other comment about that, Mr. Chairman. The, since there is a record being made of this, of this meeting, that there are two other parties were a part to this too, the University of Oklahoma and the State of Oklahoma. And it was put together, really, by the Governor, who happens to be Democrat, and myself. And it is a very successful program.

So, it is a three part program. You had your Federal, that was the EPA; State, the State of Oklahoma; and then, of course, the University of Oklahoma provided some of the engineering leadership.

Senator LAUTENBERG. The public is not here to listen to our debate, but the fact of the matter is that I cannot imagine any site that is cleaned up that does not have its State Department of Environmental Protection, or whatever it is called, participating in that.

We, unfortunately, in New Jersey are the recipients of the largest number of sites across the country, over 112 sites, a salute, unfortunately in reverse, to our industrial past.

I am not sure I understood the response from either of you when we talk about more resources. How many sites were we cleaning up when we had the funds, the Fund itself, fairly robust, where it was up to \$5 billion at one point? Am I correct?

Mr. STANISLAUS. The total of the Trust Fund itself?

Senator LAUTENBERG. Yes.

Mr. STANISLAUS. I do not have that number in front of me.

Senator LAUTENBERG. All right. Well, I can tell you. It was \$5 billion. I am surprised that neither one of you knows that. But the fact of the matter is that when we had more money, by God we cleaned up more sites. Is that correct?

Mr. STANISLAUS. If you have more money—

Senator LAUTENBERG. How many sites did we clean up in those days?

Mr. STANISLAUS. From 1992 to 2000, we averaged about 80 sites per year.

Senator LAUTENBERG. And how many are we doing now?

Mr. STANISLAUS. We did 19 last year.

Senator LAUTENBERG. Well, if that does not tell you something about the exposure that we are willing to let people have who unfortunately live near these Superfund sites. If you see that I am aggravated, you are right. The fact of the matter is that the biggest concern for our Government has to be how we take care of the children, the future generations. And to let them languish around Superfund sites and not be exercised by the fact that we do not have enough money to do this.

If we look at the Administration's request, they ask for \$1.29 billion for the program, a decline from previous years after adjusting for inflation. And I remind my colleague here, he is an intelligent fellow, the fact is that very often corporations, and I ran a very large one, the company I ran today has 46,000 employees, a company we started, three of us, ADP, and we all paid taxes for various services that the Government supplies including FAA and highways and you name it. The money that I pay, we pay, the corporations pay, goes to those programs. And if it is a program that affects national health, by God, whether it is confined to a community here or there, we ought to be paying for it by the polluter. And what happens?

The questions that Senator Inhofe was asking you I thought, very frankly, were evaded in terms of the answer. There is something called an orphan site where it says there is no one around who has the direct responsibility for the pollution. And so it is an orphan site, and therefore we all have to kick in for the well being of many thousands, and maybe more, of our citizens.

Just as a reminder, and I know that you are aware of this, I do not know whether you are suggesting that as a corporation was reforming, reincorporating, it certainly could not have been to escape liability, but you cannot escape liability under the process of an obligation like that and leave the obligation behind.

Senator INHOFE. No, I was referring to the bailout. The source of that was the \$700 billion bailout. But it was General Motors and

Chrysler. In that case, they divided them into two corporations, the past corporation and a current corporation. The new corporation would not be subjected to the types of, the penalties or to clean up, because they did not accept any of the obligations and liabilities of the old corporation.

So, it should not been done that way, but it was done that way. I was only pointing that out as the only example I know of where the polluter has not paid if he has the resources and you can find him.

Senator LAUTENBERG. Yes. But General Motors and the other companies were not responsible for killing or maiming children, or pediatric cancers or other diseases that befell their past behavior because otherwise there would have been no TARP, no recovery, and no jobs.

I thank you very much for your testimony and for your answers. We will keep the record open, and I would expect a relatively speedy return on any questions that are submitted in writing. Thank you.

Next panel, please.

Ms. Gibbs, Lois Gibbs, long time advocate for cleaning up dangerous sites, known as the Mother of Superfund for work in uncovering toxic exposures in Love Canal, New York. Helene Pierson, Executive Director of Heart of Camden, a non-profit community development in the State of New Jersey. This is a relatively poverty stricken—no, not relatively, it is a poverty stricken community, and they need guidance and support to make their citizens more comfortable in their existence and their families. Dr. Porter, Dr. Winston Porter, President of The Waste Policy Center and former EPA Assistant Administrator for Solid Waste and Emergency Response. Your hairstyle has changed. It has gotten grayer; mine has disappeared. And Dr. John Stumbo, Mayor of Fort Valley, Georgia.

We welcome all of you here, and we invite Ms. Gibbs to begin your testimony at this point.

**STATEMENT OF LOIS MARIE GIBBS, EXECUTIVE DIRECTOR,  
CENTER FOR HEALTH, ENVIRONMENT AND JUSTICE**

Ms. GIBBS. I want to thank you and the members of the Committee for inviting me here. My name is Lois Gibbs, and I am Executive Director for the Center for Health, Environment and Justice. It is a national organization that has worked with over 10,000 community groups faced with environmental health threats over the past 30 years. I also was a resident and community leader at Love Canal in Niagara Falls, New York.

And as I began preparing my testimony for this afternoon it occurred to me that 31 years ago I spoke to a congressional Committee just like this, at a table just like this, asking for funding designed for the assessment and the clean up of hazardous waste sites. My community at Love Canal in Niagara Falls, New York, was in part the impetus for creating the Superfund program after 20,000 tons of chemicals buried in the middle of my neighborhood leaked into the surrounding yards and the school playground.

I spoke then about the need of the program because at Love Canal 56 percent of our children were born with birth defects, and

my daughter and my son were home at the time with liver, urinary, and central nervous system diseases.

Another speaker at that same hearing was Jim McCarthy from Jackson Township, New Jersey. And Jim, with tears running down his face, shared his story with the Committee. He explained that the water his family used every day was contaminated. Jim then told the Committee how his 9-year-old daughter died from a kidney disease that he believed was a result of her drinking and bathing in that contaminated water.

It is tragic that now, three decades later, while the same crisis exists within hundreds of communities or thousands of communities probably, I have been asked again to speak to the need of an adequate Superfund program.

Over the past 30 years Superfund has had its successes and failures. And I believe there were many more successes than failures when the program was adequately funded and the polluter pay fees were in place. There is no question about the need for the Superfund program and the need to have reliable, adequate funding in place to protect the American people and their communities.

Let me explain to you what it is like to live in a community that is a Superfund community. And I will give you the example, you actually have a copy of this, a pretty colored copy of this, in your copy of my testimony. This is Behr Dayton Thermal Products. It is a manufacturing plant located in Dayton, Ohio. This facility made vehicle air conditioning and engine cooling systems. The Chrysler Corporation, now in bankruptcy, owned and operated this facility from 1937 until April 2002.

The groundwater beneath this plant was tested in 2003 and found to be contaminated with volatile organic compounds including the solvent trichloroethylene or TCE. Polluted groundwater from beneath the plant has migrated underground into residential, commercial, and industrial areas.

More testing happened in October and November 2006, and the EPA, at that time the Ohio EPA, asked U.S. EPA Region 5 Superfund Division to come in and help. And what they said, and I quote this, TCE concentrations in soil gases were as high as 160,000 parts per billion, and the U.S. samples of TCE showed concentrations of 62,000 parts per billion, and they were as high as 3,900 parts per billion beneath the residential area.

Now, ATSDR says exposure to this chemical, the safe level, is .4 parts per billion, and the action level is 100 parts per billion. They also go on to say that breathing small amounts may cause headaches, lung irritation, dizziness, poor coordination, and difficulty concentrating. Breathing large amounts can impair your heart function, cause unconsciousness and death. The diseases in this community are related, the cancer is increased related to TCE exposure.

People in this community remain in their homes as TCE vapors evaporate from the ground and are going into their homes. They put a vapor intrusion pipe up the side of their houses to take it from beneath their homes and into the ambient air.

This community is a typical Superfund community. Families are told that their vented homes are safe. However, parents worry about the safety of their children sitting in the grass in their back-

yard breathing the chemicals as they evaporate from the soil on a hot summer day like today.

The neighborhood school was closed, and the children were transferred to another school outside the plume. ATSDR reviewed the cancer incidence and found it to be high. Residents asked ATSDR what does this mean for my family, and nobody can tell them.

These hardworking American families' homes are worthless. They cannot sell them, they cannot improve them, they cannot abandon them, and they do not feel like they can live in them. No bank will give the families a loan against their homes, so their families cannot fix the roof, improve the property, or even use the equity from their homes to send their children to college. Property values have already dropped 50 percent.

These are not people looking for a free ride or a handout. They are hardworking, churchgoing American families. They have been victimized by no fault of their own. This is not the way our country should treat its citizens.

For 30 years I have urged, begged, pleaded with Congress to take care of these innocent families who have fallen victim to corporate negligence and carelessness. As you continue to discuss the Superfund program please remember the people, their dreams, their hopes for their families to be able to reach their potential.

Restore the polluter pays fees so that there is a reliable source of funding to provide the necessary assistance to protect the innocent American people.

Thank you.

[The prepared statement of Ms. Gibbs follows:]



**Senate Committee on Environment and Public Works  
Subcommittee on Superfund, Toxics and Environment**

***Oversight of the Environment Protection Agency's Superfund Program***

Testimony by Lois Marie Gibbs

I want to thank the members of the Senate Committee on Environment and Public Works for inviting me here to speak about a program that is very near and dear to me. My name is Lois Gibbs and I am the Executive Director of the Center for Health, Environment & Justice a national organization that has worked with over 10,000 grassroots groups faced with an environmental health threat over the past 30 years. I was also a resident and community leader at Love Canal in Niagara Falls, NY.

As I began to prepare my testimony for this afternoon, it occurred to me that 31 years ago I spoke to a congressional committee, at a similar table, about the need for funding a program designed for the assessment and cleanup of hazardous waste sites. My community at Love Canal in Niagara Falls, NY was in part the impetus for creating the Superfund program after 20,000 tons of chemicals buried in the middle of my neighborhood leaked into surrounding yards and a school playground. I spoke then about how at Love Canal 56% of our children were born with birth defects and how my daughter and son were home sick with liver, urinary and central nervous system diseases.

Another speaker at that hearing was Jim McCarthy from Jackson Township, New Jersey. With tears running down his face, Jim shared his story. He explained that the water his family used every day was contaminated. Jim then told the committee how his 9 year old daughter died from a kidney disease that he believed was the result of her drinking and bathing in that contaminated water.

Thirty years ago, soon after the federal government agreed to temporarily relocate all 900 Love Canal families, I spoke before another committee about the details that should be included in what soon became the Superfund program.

It is tragic now three decades later, while the same crisis exists within hundreds of American communities, I have been asked once again to speak to the need for an adequate Superfund program. Over the past thirty years, Superfund has had its successes and failures. I believe there were many more successes than failures when the program was adequately funded and the polluter pay fees were in place. There is no question about the need for the Superfund program,

and the need to have reliable adequate funding in place to protect the American people and their communities.

Today with limited funds and uncertainty about the level of next year's funding, the Superfund program is constrained. And, as we come to understand the new science around environmental chemical exposures and their impacts on human health, especially children, our country needs a robust cleanup program to protect families from exposures.

Let me explain to you what one community is living with today, while we all sit in this room and discuss the depth of this problem. Often it is the citizens of this great country who get lost in the discussions of resource allocations and control of federal programs.

Living in a Superfund community which there has been limited abatement and no clear commitments for how the area will ever be livable again is a nightmare.

Here's an example of a typical Superfund community.

The Behr Dayton Thermal Products is a manufacturing plant located in Dayton, Ohio. This facility made vehicle air conditioning and engine-cooling systems. Chrysler Corporation (now in bankruptcy) owned and operated this facility from about 1937 until April of 2002.

The ground water beneath this plant was tested in 2003 and found to be contaminated with volatile organic compounds, including the solvent trichloroethylene, or TCE. Polluted ground water from beneath the plant has migrated underground into residential, commercial and industrial areas.

In October and November of 2006, the Ohio EPA and the US EPA installed soil gas probes to evaluate the potential risk posed by vapor intrusion from the polluted groundwater below. That November, the Ohio EPA asked the USEPA Region 5, Superfund Division, Emergency Response Branch for help stating in a letter:

"TCE concentrations in soil gas were as high as 160,000 parts per billion by volume. U.S. EPA samples collected contained TCE at concentrations up to 62,000 parts per billion by volume and were as high as 3,900 parts per billion beneath the residential area."

The Agency for Toxic Substance & Disease Registry (ATSDR) residential indoor air screening level for TCE is 0.4 parts per billion (ppb) and the action level is 100 ppb. ATSDR's published TCE human health impacts include:

- Breathing small amounts may cause headaches, lung irritation, dizziness, poor coordination, and difficulty concentrating.

- Breathing large amounts of trichloroethylene may cause impaired heart function, unconsciousness, and death. Breathing it for long periods may cause nerve, kidney, and liver damage.
- The International Agency for Research on Cancer (IARC) has determined that trichloroethylene is “probably carcinogenic to humans.”

By September 2008 (five years after discovery), the US EPA had completed the installation of a vapor abatement mitigation systems for block vapor intrusion from entering 250 homes.

People remain in their homes today as the TCE vapors evaporating from groundwater are captured from beneath their homes and vented into the open air that they breathe. Sounds bad but that's only half the story.

In this community everyday Americans have placed every penny they have in their homes. They work hard, pay their taxes, go to church, stay out of trouble and believed, as I did at Love Canal, that they can achieve the American dream.

Then without their consent or knowledge they find that their property is contaminated with the dangerous toxic chemical TCE. Their family's health is placed at significant risk. The 250 homes in this community have a ventilation pipe running from the ground to the roof. The neighbors, who don't have a pipe, wonder every day when the chemicals will reach their home. All the testing that has been concludes that the chemicals are continuing to move through the neighborhood.

Families are told that their vented homes are safe. However, parents are worried about the safety of their children sitting in the grass in their backyard breathing the chemicals as they evaporate from the soil on hot summer days.

The neighborhood school closed and children were transferred to another school outside of the toxic plume area.

ATSDR reviewed the cancer incidence in the area and found that cancers related to TCE were higher than expected. Residents worry and ask, “What does that mean for my family?” No one can tell them.

These hard working American families' homes are worthless. They can't sell them, can't improve them, they can't abandoned them, don't feel safe living in them.

No bank will give families a loan against their homes. So families cannot fix the roof, improve their property or even use the equity from their home to send their children to college. Property values have already dropped 50%.

Consequently, the neighborhood begins to spiral downward. Soon the homes will deteriorate and so will the neighborhood. No one will move in, no one can move out and economic development comes to a screeching halt.

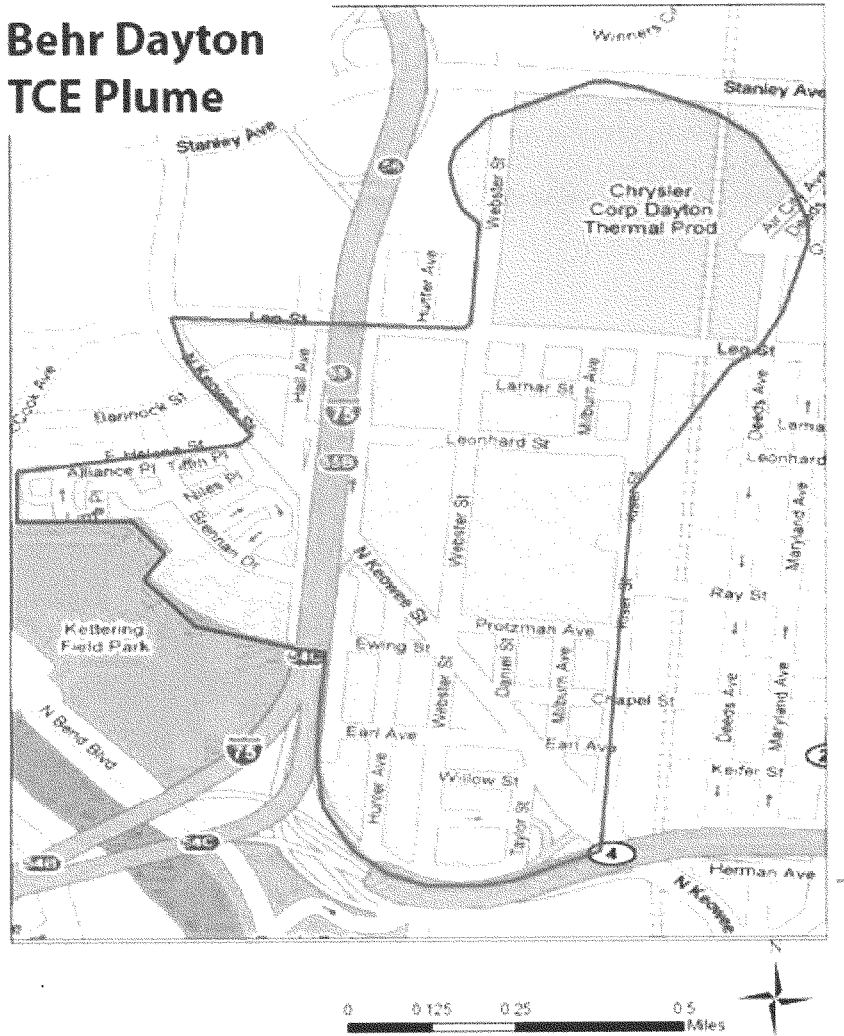
These are not people looking for a free ride, or a hand-out; they are hard working, church going American families; they are victimized by no fault of their own.

This is not the way our country should treat its citizens. For 30 years I have urged, begged and pleaded with Congress to take care of the innocent families' who have fallen victim to corporate negligence and carelessness. As you continue to discuss the Superfund program please, remember the people, their dreams, and their hopes for their families to be able to reach their potential. Restore the polluter pay fees so that there is a reliable source of funding to provide the necessary assistance to protect innocent American families.

Lois Marie Gibbs  
Executive Director  
Center for Health, Environment & Justice  
P.O. box 6806, Falls Church, VA 22046  
703-237-2249

Attached:  
The Eye of The Storm Report on Superfund  
Plume Map Behr Dayton Thermal Products

## Behr Dayton TCE Plume





**Center for Health, Environment & Justice**  
P.O. Box 6806 • Falls Church, VA 22040 • Phone: 703.237.2249 • Fax: 703.237.8389 • [www.chej.org](http://www.chej.org)

September 15, 2010

Heather Majors  
Majority Staff  
U.S. Senate Environment and Public Works Committee  
410 Dirksen Senate Office Building  
Washington, DC 20510

Dear Ms. Majors:

Below is my response to Senator Barbara Boxer Follow up Questions

**1.) Ms. Gibbs, could you please describe the importance that communities place on having a strong federal role in ensuring that cleanups occur quickly and thoroughly at Superfund sites?**

For communities it is critical to have a strong federal role in ensuring that cleanups occur quickly and thoroughly at Superfund sites. Communities depend on the federal Superfund program to protect their families and their communities from toxic chemical exposures. In many if not most cases the state and local government cannot provide the funds needed for a thorough cleanup. The potential responsible parties will take years before the courts decided who is responsible for what and at abandoned sites there is no other alternatives for adequate funds. If sites are not properly cleaned up public health, especially for children the most vulnerable, is placed at risk of disease, cancers or learning disabilities.

Additionally, the community as a whole will spiral downward economically. An uncontrolled superfund sites will discourage corporations from located there. Because of a superfund site location property owners cannot obtain loans on their property, banks are concerned about property values. Without the ability to obtain home improvement loans, people cannot fix broken roofs or other problems. The homes deteriorate, the community deteriorates. Property value is key to American families who need funds to send their children to college.

A thorough clean up avoids all of these negative impacts and provides opportunities for community improvement that will attract businesses and protect the family's, the children's health. Superfund comes from Love Canal and I can tell you first hand that it is unimaginably difficult to sit in the hospital with my three year old having a bone marrow test for leukemia and listen to the local, state and federal agencies all saying they don't have the money to protect our families. A strong Superfund is the answer to protect American families.

**2.) Ms. Gibbs, in your view, what are the most serious impacts of the federal government's limited ability to provide adequate funds to clean up toxic waste sites in communities?**

Superfund is funded through taxpayers' dollars for abandoned sites and those dollars don't even come close to what is needed to protect American families near toxic sites. Consequently, sites are not adequately cleaned up leaving behind uncontrolled releases of dangerous toxic chemicals. Communities around these sites are suffering adverse health impacts from exposures to these chemicals and suffering from an economic downturn.

Stable and equitable funding is long overdue for this critically important pollution prevention program. The lack of funds in Superfund due to the industry fees not being reauthorized has created a program that's totally impotent. It's disingenuous to pretend a program exists without the funding to address the problems that are still out there. Sites that should be on the NPL are not, simply because the agency doesn't want to expand the list. Children in such communities future is altered forever, through disease or disabilities. The parents and children's hopes, their dreams are often destroyed because our government will not provide adequate funding to protect them from harm.

Senator LAUTENBERG. Thank you. Out of order. Was Senator Moynihan in one of these seats when you testified?

Ms. GIBBS. Senator Moynihan was, as was Senator Gore, or Congressman Gore. I think he was a Congressman at the time.

Senator LAUTENBERG. Thank you.

Ms. Pierson.

**STATEMENT OF HELENE M. PIERSON, EXECUTIVE DIRECTOR,  
THE HEART OF CAMDEN, INC.**

Ms. PIERSON. Good afternoon. Thank you for the opportunity to speak to your Committee. And thank you, Senator Lautenberg, for your long service to the State of New Jersey's constituents.

My name is Helene Pierson, and I am the Executive Director of The Heart of Camden, Inc., a first-time testifier. I am with a non-profit community development corporation dedicated to improving the quality of life in an old, formerly booming industrial neighborhood called Waterfront South in Camden, New Jersey.

The industrial boom left many environmental hazards behind after the decline and eventual shut down of a variety of industries in our neighborhood. In Waterfront South, we have two active Superfund clean up sites. They are known as the Welsbach Gas Mantle site and the Martin Aaronsite. One is to our north, and one is to our south. In addition we have 26 other known contaminated sites in a 1-mile area that fall below the standard of the Superfund criteria.

I am here today not from a scientific perspective, not from a time nor money perspective, as I certainly have been around debates over best clean up practices, I certainly feel like clean ups take too long, missing entire generations of people growing up near clean up sites, and certainly take much money. What I am here for is to say that clean ups should not stop and should not slow down.

And I am here to say that from the perspective of working in an urban city environment there is much clean up needed and many people living near clean up areas. And that will not change.

Our overriding mantra for our neighborhood is that we are part of America. There is money and there is capacity here in America to ensure that no one is living in substandard conditions. We all need to work hard to get the money and the capacity in the right place to ensure the balance.

We have worked closely at times with the professionals assigned to both clean ups, both U.S. Environmental Protection Agency employees and their consultants. From our experience the process has been transparent, professional, and careful.

But I will say to an oversight committee that from a neighborhood perspective, and this is a recommendation for more than just the Superfund process, please focus the oversight on examining the length of time, problems, or inefficiencies during the phases where no actual clean up is taking place. There is nothing more exciting than when actual clean up work is occurring. After all, is that not the point?

Government intervention too often becomes more about the jobs that it creates and maintaining their need versus the original intent for which the jobs were created. And I will say, Senator Lautenberg, to your earlier questions, that I often see the EPA waiting



to see, slowing down, because they are not sure if more money is coming. And that does not help.

Julian, Dayonnie, Octavia and Arties, to put some children's names to the point, are part of Waterfront South's current generation of children that have a right to improved conditions. Most certainly being born into a lower income family has challenges of its own. They do not need the Government to fail them.

My understanding of this Committee is that it is to examine the EPA's progress in cleaning up Superfund sites and its effects on the economy, the environment, and public health. The work is not done. Examining this system, and all systems, is prudent and constantly required.

But if there is anything that I came for today, it is to urge you not to stop the work when there are places like my neighborhood where the most exciting part, actual clean up, is taking place, finally.

From our close proximity to the issue we think that Superfund is working more than any other local or State vehicle. Included in your brief are some suggestions for specific opportunities for improvement for Superfund, including is the EPA ranking clean up priorities in a manner that is most protective of public health? That is, are they making Superfund sites that are in close proximity to residential communities the very highest priorities?

In addition, given our 26 other contaminated sites, you know, we want to add more to the list when we do not have money to clean up what is there. Can something be created along the lines of a Superfund junior program, or perhaps bundle sites in close proximity, to qualify? Again, our point being we have 26 more contaminated sites.

I appreciate the time. Thank you for the opportunity to speak to your Committee today.

[The prepared statement of Ms. Pierson follows:]

6/20/2010

Written Testimony of Helene M. Pierson, Executive Director, The Heart of Camden, Inc.  
[www.heartofcamden.org](http://www.heartofcamden.org)

To the:

Senate Committee on Environment and Public Works

@ 2:30pm on 6/22/2010

Good afternoon:

My name is Helene Pierson and I am the Executive Director of The Heart of Camden, Inc. A non-profit community development corporation dedicated to improving the quality of life in an old, formerly booming, industrial neighborhood called Waterfront South in Camden, New Jersey. The industrial boom left many environmental hazards behind after the decline and eventual shutdown of a variety of industries in our neighborhood.

In Waterfront South, we have two active superfund cleanups to my knowledge. They are known as the Welsbach Gas Mantle site to our south and the Martin Aaron site to our north. In addition, we have 28 other contaminated sites in the area.

In a sense, I feel like this is the most childlike and brief report that I have ever written as an adult, which is appropriate, because it is for the children that I am here.

I'm here today not from a scientific perspective, not from a time, nor money perspective as I certainly have been around debates over best cleanup practices, I certainly feel that cleanups take too long missing entire generations of people growing up near cleanup sites, and certainly take much money.

What I am here for is to say that cleanups should not stop and should not slow down. And I am here to say that from the perspective of working in an urban City environment, there is much cleanup needed and many people living near cleanup areas and that will not change.

Our overriding mantra for our neighborhood is that we are part of America, that there is money and there is capacity here in America to ensure that no one is living in a substandard environment. We all just need to work hard to get the money and the capacity in the right place to ensure the balance.

We have worked closely at times, with the professionals assigned to both cleanups, both United States Environmental Protection Agency employees and their consultants. From our experience, the process has been transparent, professional, and careful.

What I will say, to an oversight committee from a neighborhood perspective, and this is a recommendation for more than just the Superfund process, please focus the oversight on examining the length of time, problems or inefficiencies, during the phases where no actual cleanup is taking place. There is nothing more exciting than when actual cleanup work is occurring. After all, isn't that the point. Government intervention too often becomes more about the jobs that it creates and maintaining their need versus the original intent for which the jobs were created.

Julian, Dayonnie, Octavia, and Arties to put some children's names to the point, are part of Waterfront South's current generation of children that have a right to improved conditions. Most certainly, being born into a lower-income family has challenges of its own. They don't need the government to fail them.

My understanding of this committee is that it is to examine the EPA's progress in cleaning up Superfund sites and its effects on the economy, environment, and public health.

The work is not done. Examining this system and all systems is prudent and constantly required, but if there is anything that I came for today, it is to urge you to not stop the work when there are places, like my neighborhood, where the most exciting part—actual cleanup is taking place, finally.

Addendum: The Heart of Camden has a scientific advisory board (SAB) to help us decipher all that goes on environmentally in the area. It is composed of our own Environment Director, knowledgeable persons from academic institutions, and knowledgeable personnel of a variety of government entities. We use the SAB to help us be more productive and helpful in situations such as the opportunity to testify before this committee. The following are some suggestions from one of the members who is very close to our neighborhood's issues:

Suggestions for specific opportunities for improvement of the Superfund program:

All are focused on how to get MORE cleanups done MORE quickly as follows:

- 1) Are they ranking Superfund cleanup priorities in a manner that is most protective of the public health? That is, are they making Superfund sites that are in close proximity to residential communities the very highest priority?
- 2) Obviously, funding is a very important prerequisite to proceeding with Superfund cleanups. Based on my own experience with two Superfund projects, it seems as though one hold up is that when they have identified a responsible party, they have to fight it out with those parties to determine who pays how much, BEFORE they proceed with the cleanup. That process could be accelerated if the USEPA could enter into an agreement with the disputatious responsible parties that would allow EPA to proceed with the cleanup, IN PARALLEL with the dispute resolution over responsibility, and then backbill the responsible parties in accordance with a mediated settlement.

- 3) Could Superfund cleanup funds be supplemented via a “Supplemental Environmental Project” program allowing funds to be allocated to local agencies with expertise such as non-profits or local government entities known for superb work to do the work. We have an existing program in our neighborhood where the New Jersey Department of Environmental Protection has allowed local industry violation fines to go toward local neighborhood cleanup projects. While it has only been used once, it led to the cleanup of a small abandoned neighborhood gas station, but one that contributed significantly to blight. By allowing the agency that was fined to execute the cleanup (in this case a local county municipal utility authority), the process from idea to execution went faster and more efficiently than with complicated government processes.
- 4) Lastly, is there anything that USEPA can do to accelerate the cleanup of contaminated sites that fall just below the Superfund criteria, like a “Superfund Jr.” program? We have 28 other contaminated sites that fall below the Superfund criteria but still pose a significant barrier to the full recovery, and safety, of the residential community. In addition, there is a case where the State of New Jersey took over the responsibility of an adjacent plot of land to the Martin Aaron Superfund site, seemingly for economic development reasons that never materialized. It is pretty widely rumored, or likely factual to USEPA personnel working on the Martin Aaron project, that the Martin Aaron contamination is also present on some parts of the adjacent parcel, but is being ignored due to jurisdictional reasons, and indeed, now, not being addressed at all. There should be a forum to make sure politics does not prevent known problems.

Senator LAUTENBERG. Thank you.  
Dr. Porter.

**STATEMENT OF J. WINSTON PORTER, PH.D., PRESIDENT,  
WASTE POLICY CENTER**

Mr. PORTER. Good to see you, Senator. I am glad to be here today.

I want to take a few minutes to discuss Superfund. I have been at Superfund for about 20 or 25 years myself, including as one of the early Assistant Administrators. I want to, sir, tell you what I have learned about how to finish sites. What we are talking about now is completing sites, and I have a little different view that I am going to present today than some of the things you have heard.

Simply stated, money is not always the major problem. What I see is lack of management focus on results and on completing sites. There is a huge variety in the time it takes to clean up sites around the country. For similar sites, one might take 5 years, one might take 10 or 15 or 20 years.

About two-thirds of the sites have been completed. Now is the time to focus like a laser on the remaining one-third. And that means some dollars and a lot of emphasis. I am all for more dollars, but I am not for just throwing money at the problem and increasing EPA's overhead.

There is a lot of overhead in Superfund. As near as I can tell, about a third of the money goes to clean up for the sites for which there are no responsible parties, and the other two-thirds goes for other aspects of the program.

One of the things that I would like to see the Congress do is push harder on the EPA to show us why we should not be spending more of your current budget on actual site clean up. I see a lot of peripheral issues going on, a lot of administrative things, etc. I think we can do much more about directing money at direct clean ups.

One of the specific things I would recommend to Mathy and the other folks at EPA is to have a completion manager appointed at the highest levels of EPA, reporting to the Assistant Administrator. This person's major role would be to see that sites are completed. We are doing a lot of things with committees and so forth. I grew up in the project management role in a large engineering/construction company in San Francisco, and I learned that you have to focus hard to finish anything. So, I would like someone at a high level in EPA who focuses only on cleaning up and completing sites.

One thing they used to say at EPA is many people can say no; only a few can say yes. One of the things that I did when I was Assistant Administrator was to write to the regional administrators every quarter and reconfirm a date for clean up of every site. I personally asked questions of them, and we got a lot done, frankly.

Tim Fields of the Clinton administration, a colleague of mine who had a similar job, did a super job in the early 1990s of finishing sites by his own personal efforts. It was not the money so much, frankly, as it was him pushing hard to complete sites.

Some sites have gone well. One of the things that I would like to see the EPA do is to take these sites that have gone well, sort

of lessons learned, and say why did this site take X number of years and this site took 2X or 3X?

My favorite example is Rocky Flats, which is a huge nuclear weapons site near Denver, which I was responsible for at EPA in getting it going in terms of clean up. Then later I came back as a consultant and helped them figure out how to clean it up.

When a new contractor, Kaiser-Hill, came on board in about 1995, they signed a contract in which they agreed to clean up that huge site in 10 years. Before that the Department of Energy was talking numbers like 20, 30, or 40 years, and \$20 billion, \$30 billion, \$40 billion. It was then finished in 10 years, totally finished in 10 years. The contractor actually got a bonus for doing the work in that time period. But the point was they focused like a laser, they spent billions and billions less than was anticipated, because time is money. So, I think that is a really good example of how to complete complex sites.

That is the reason why, I must say, I am not too enamored with bringing back the tax on Superfund. It was good, I think, in the early days when Superfund was starting. But as Senator Inhofe said, most of the work, about 70 percent, is being done directly by private parties. I started that. When I left we had 50 percent that was being done by private parties directly, and that, soon after I left, got up to 70 percent.

So, I think the problem with just giving EPA more funds in a tax is that a lot of it will not go to clean up. A lot of it will go those overheads I mentioned earlier and other things. If you really want to give EPA money, I would give it directly, perhaps on a site-by-site basis.

I go around the country and work on sites, trying to help people finish. I am frustrated by the lack of focus on finishing sites. And that is a hard thing to do. It takes a lot of cooperation between the States, EPA, and others. I would just like to see more of that.

As far as polluter pays, I am all for it. I pushed that hard during my days. But the, restoring the tax is what I call "some polluters must pay twice." The chemical and petroleum companies are already paying for their own sites. They now are being asked to pay for sites they had nothing to do with. Much less than half of all sites were produced by oil and chemical people. Automobile companies produced sites. Telephone companies produced sites. Many sites have been produced by non-oil and non-chemical companies.

So I cannot for the life of me see why it is fair to ask them to pay for their own sites plus pay for ones they had nothing to do with. Also, what we need is more focus and management than just more tax money.

So, that is my focus on this, and I would be happy to answer your questions.

[The prepared statement of Mr. Porter follows:]

**Testimony of Dr. J. Winston Porter**  
**Subcommittee on Superfund, Toxics**  
**and Environmental Health**  
**Senate Committee on Environment and Public Works**  
**June 22, 2010**

Mr. Chairman, my name is J. Winston Porter, and I am president of the Waste Policy Center in Leesburg, Virginia. The WPC is an independent research and consulting organization which deals with management, policy, and technical issues in the areas of solid and hazardous waste management, as well as other environmental matters. From 1985 to 1989, I was the EPA's Assistant Administrator for Solid Wastes and Emergency Response.

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 pace of these remedial activities.

In my testimony I will draw on over 20 years of Superfund experience, including management of the 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. I will start with a brief background statement and key recommendations, and then provide more detail on Superfund's study, remedy selection, and remedy construction phases in relation to improving the pace of the cleanup program.

**Background and Recommendations**

Briefly, the current status of EPA's Superfund program is that about two-thirds of the 1,500 national priority list sites have reached the construction completion (remedy installed) phase, about 370 sites are in the remedy design or construction phases, and approximately 120 sites are in the study phase.

In addition, many thousands of "emergency removals" have been conducted at Superfund sites in order to directly and cost effectively deal with obvious problem areas. This program has been perhaps Superfund's biggest success story.

In addition to the EPA, both the Departments of Energy and Defense have major Superfund-related programs underway. The DOE work primarily involves a few dozen very large facilities, most of which have been components of the nuclear weapons program. The DOD sites are much more numerous, although usually less complex, and include both Superfund and base closure activities.

So, a large amount of work is underway or has been completed by dedicated federal and state personnel as well as potentially responsible parties (PRPs) and various private contractors. For the remaining work it is important to improve program efficiency, as site study and remedial activities often take too long and cost too much.

In order to complete the remaining Superfund sites, the following **recommendations** are made to improve program efficiencies:

1. The focus of the Superfund program should increasingly be on the completion of existing sites. The various administrative and support services should be reduced as sites are completed in order to provide more funding for site completion work.
2. Consideration should be given to designation of a senior member of the assistant administrator's office to oversee and promote site completions.
3. Completion dates should be set for all current study and cleanup work. A "culture of completion" should replace the current "culture of deliverables." Program reports and other paperwork should be streamlined.
4. Some Superfund sites have been completed in a timely and cost effective manner. It is suggested that a sampling of such sites be identified and used to inform the timely completion of other sites.

Perhaps the most dramatic use of target setting has been the DOE Rocky Flats Closure Project, near Denver. For this site the "completion contractor," Kaiser-Hill, and the DOE agreed upon a 2005 target date for all study and remedy implementation work to be completed. If successful, the contractor was to receive a completion bonus. Not only was the project completed on time, but billions of dollars and many decades of time were saved. This work, of course, required good cooperation among the DOE, EPA, the State of Colorado, local stakeholders, and the contractor. The firm completion target date greatly focused this cooperation.

I will now provide more detailed comments or recommendations on the three major Superfund components, study, remedy selection, and construction phases.

### **The Study Phase**

While the study projects related to Superfund sites are a decreasing part of the overall program, such activities are still very important to overall program success. Superfund projects usually begin with a "remedial investigation/feasibility study" (RI/FS). This complex study process is described in some detail in Superfund's primary regulation -- the National Contingency Plan.



Very briefly, the RI portion calls for characterization of the site in terms of its natural features, as well as the amount and location of contamination and likely risks of such contamination to public health and the environment. The FS part involves identification of alternative remedial actions, and then comparison of such alternatives against a set of nine remedy selection criteria.

Based on the RI/FS process, as well as substantial stakeholder input, EPA then selects a remedy for the site through a “record of decision” (ROD) process.

In general, the RI/FS process has become steadily more complex and lengthy over the years, for almost all types of sites. My recommendations for conducting faster, less costly, and more technically sound RI/FSs are as follows:

**1. Most importantly, timeframes for completing the study phase should be agreed to by the EPA and other key participants, such as States and PRPs.**

Unfortunately, at many sites the study work simply meanders around for many years without much focus on alternative remedies, leading to wasted time and money, and, in some cases, an unimaginative or non-cost-effective remedy selection. Frankly, part of this lengthy process has to do with the fact that Superfund has become a lucrative source of work for various consultants, lawyers, and other participants. All of these specialists are needed, but their work needs to be more directed toward the timely selection of a sound site remedy rather than complex and lengthy work processes and paperwork.

Stated differently, there is often little sense of urgency in completing the study phase due, in part, to the lack of a senior “champion(s)” to complete the work. This is, of course, very frustrating to the communities involved. I would like to see such “completion champions” developed in both the governmental and private sectors at Superfund sites.

Some very complex federal and private sites will require longer study periods, but for most sites about 2-3 years should be adequate to produce a sound RI/FS.

To improve matters, early in the RI/FS process the EPA, PRPs, and other relevant organizations, should work together to set a clear goal to complete the study activities. This end date can be modified if necessary, but it is important for all to understand that, like almost every other type of engineering project, schedule (and budget) are key factors and should be adhered to.

**2. When the RI/FS process begins one of the first orders of business should be to use experienced staff and key stakeholders to quickly identify about 4-7 major remedial action alternatives.**

During this phase use should be made of EPA’s list of “presumptive remedies” for many types of problems, as well as experience gained at similar Superfund sites.

The selected set of alternatives can always be modified during the study phase, but the current process which often involves “taking data” for many years before detailed focus on remedial options often leads to overly costly information, much of which may not be needed. Also, since the data collection is often not focused on comparing alternative remedies, the key information to compare such alternatives is sometimes missing.

An iterative approach should be used where information collection and analysis of remedial alternatives work cooperatively to achieve sound comparisons of options, leading to good remedy selections.

Even more importantly, the identification of key options early in the study process allows the decision-makers and stakeholders to begin their dialogue on non-technical factors which are contained in the remedy selection criteria. These include such items as cost-effectiveness, implementability, and state and community acceptance. Many times these types of factors are at least as important as the strictly technical matters, such as very precise measurement of numerous contaminants, many of which are present at near-zero levels.

### **3. Significantly streamline the process for developing the myriad of deliverables at Superfund sites.**

While certain documents are clearly needed to guide the RI/FS activities, the long, tedious process of developing complex draft and final work plans, for example, should be expedited. This is also true of dozens of other “deliverables” which take so much time at Superfund sites, many of which should be quite standard by now. It might be helpful to revisit the need, or at least the complexity, of such deliverables.

There are several perverse effects which have led to such lengthy periods for document development and review. One has to do with the fact that Superfund is about the only federal environmental program where responsible parties have to pay for additional oversight beyond that which salaried regulators normally provide. Thus, if a group of PRPs are forced to give EPA, say, \$ 3-5 million for oversight, then EPA can retain contractors to provide hundreds of pages of “comments” on such items as the aforementioned work plans. So, we now have dueling contractors battling over many pages of detailed text, before work can even begin.

One near term answer would be for review periods and oversight dollars to be reduced substantially, so participants can focus more on results than elaborate processes. PRPs should usually be encouraged to conduct the RI/FSs themselves with their own contractors and under EPA’s overall supervision.

While this concept has been largely accepted and successfully promoted by the EPA, more could be done to encourage PRPs to do the study work, particularly where PRPs would commit to shorter timeframes than EPA often takes for its own studies.

A key aspect of PRP-conducted studies has to do with selection of appropriate consulting firms to conduct the necessary RI/FS activities. Such contractors have a difficult role in that they need to be responsive to their client, the PRPs, but must also provide the objective and professional work needed by EPA to allow selection of a sound and cost-effective remedy for the site in question.

The key is for the EPA, the relevant State, and the PRPs and their consultants to develop a cooperative and results-oriented relationship for the site work.

### **The Selection of Remedy Phase**

The RI/FS process discussed above presents the decision-maker with detailed comparisons of alternative remedial actions, from which this person must select a remedy, present it to the public for comment and make a final determination. The selection of protective, cost-effective remedies is, of course, a key to the overall success of the Superfund program. My suggestions in this area are as follows:

**1. The decision-maker should be a very senior EPA official who can oversee all of the considerations which go into remedy selection.** As noted earlier, technical factors are very important in this process, but non-technical factors are also key. For example, if there is very strong community opposition to a particular remedial action, or if a remedial option is not cost-effective, such factors must be considered by the decision-maker.

During my tenure as an EPA assistant administrator I made a number of ROD decisions, mainly at "nationally significant sites." Most decisions I delegated to the ten EPA regional administrators (RAs). However, over the years the ROD decision responsibility has, in most cases, been delegated further down the line in the EPA regions.

My own view is that the RA should usually be the decision-maker in this important process since he or she is the one who can speak for the region and has the position and stature to consider all aspects of the problem, while "pushing" the staff to provide the necessary information to complete remedy selection expeditiously.

**2. The role of expected land use should be an important factor in selecting a remedy.**

While all remedies should be protective, it does not make much sense to demand that a cleanup be sufficient for, say, a children's daycare center, when the site is slated for use as a golf course, or a factory, or a wildlife preserve. All of these uses have their own requirements, so we do not need a one-size-fits-all approach to waste sites. The goal should be for a site to always be protective, so the remedial action may need to be modified at a later date if the site use changes significantly.

During Superfund's history one of the better examples of the role of land use in remedy selection had to do with the DOD's Rocky Mountain Arsenal in Colorado. For this site,

the DOD decided ultimately that the land use would be for a wildlife refuge, not residential housing. Once this decision was made the DOD, Shell Oil, EPA, and the state and local stakeholders worked together to select the remedy and move quickly into the implementation phase, and a important wildlife refuge is the result.

Another DOD example may also be instructive with respect to the land use issue. This has to do with the DOD's Superfund-related remediation sites versus those conducted under the base closure program. Simply stated, the base closure cleanups, including the selection of remedy, seem to proceed much faster than those related to Superfund. One of the reasons, I believe, has to do with the fact that local communities and others are usually highly motivated to finish base closure cleanups in order to bring the affected land into productive use. The same time pressure often does not exist with Superfund remedial activities.

### **The Construction Phase**

As noted earlier, the major activity these days has to do with the construction phase at Superfund sites. About 370 sites are in the phase where the selected remedy is being either designed or constructed. Currently, this is also the most controversial phase in that EPA may not have sufficient funds to expeditiously complete all of the construction work now planned.

This is particularly true for so-called fund-financed sites where EPA must install the remedy itself as there are insufficient willing and able PRPs to conduct this work at some sites.

The following are my recommendations on these construction-phase issues:

1. The roughly \$1.2 billion dollars which is annually appropriated to EPA by Congress should be looked at very carefully by EPA senior management to ensure that the highest priority is given to protecting human health and the environment by ensuring that Superfund sites are completed.
2. If Congress is satisfied that EPA has done all it can do to squeeze out funding for as many construction sites as possible, then it might consider a supplemental appropriation to EPA to focus on additional construction activities.
3. The EPA might selectively revisit the ROD decisions made at selected sites to see if some savings can be made based on new information or technology.
4. Although I suspect that this is already being done, that portion of the site which may provide actual, near term risk to the community should receive very high priority for funding.

5. While aiming at the highest risks is always the most important priority, I personally believe that where sites can be finished for modest sums of money, such funding should be considered, as there are usually site "carrying charges" which can then be reduced.
6. The EPA and others should be creative in finding non-federal funds for completing sites. In some cases, local developers or others may be so interested in having access to a completed site that they may be interested in helping financially. This type of financial driver has, of course, been instrumental in dealing with brownfields sites, which can often be very valuable when cleanup measures are completed.
7. Other creative measures should be pursued in the future to minimize costs and to develop more creative financing. A good example is the joint EPA and Army Corps of Engineers eight pilot programs referred to as the "urban rivers restoration initiative." In this program the EPA and the Corps, along with state and other agencies, work together to achieve a better and more cost-effective restoration program than by using Superfund alone.
8. Finally, it was mentioned earlier in this testimony that the emergency removal program has been one of Superfund's major successes. This program can deal with obvious contamination problems anytime during the Superfund process, with much less process costs than the remediation program. Given, this program's success, Congress might consider allowing EPA to spend more than the current limit on individual removal actions.

Implicit in all the above is the fact that I don't believe that the chemical and petroleum feedstock taxes should be renewed on Superfund. These taxes are unfair in that they target only two industries, which together account for much less than half of Superfund's contamination problems. Also, Superfund sites are a broad societal problem which has been created by many types of industries; local, state, and federal agencies; and even individuals.

Therefore, I believe the current process of requiring directly responsible parties at a site to fund the necessary work at that site is the best approach. For those sites, where responsible parties are not available to conduct the work general revenues are the most equitable approach, given the widely varied causes of contamination at such sites. EPA also has strong legal authorities to seek reimbursement from known responsible parties who are able, but not willing, to do the work in question.

Mr. Chairman, I hope my remarks will be helpful to Congress in dealing with this important program, and I will be happy to answer any questions which you might have.

**Environmental and Public Works Committee Hearing**

**Superfund Hearing - June 22, 2010**

**Follow-Up Questions from  
Senator M. Inhofe  
for  
Dr. J. Winston Porter**

**1. What do you think is primarily holding up the completion of Superfund sites ? Is it mostly lack of funding ?**

No, it is not mostly lack of funding. First, about 70 percent of Superfund sites are dealt with by potentially responsible parties (PRPs). Second, EPA receives about \$1.2 billion per year from general revenues. Thus, considerable funds are on hand to complete projects. Superfund cleanups are primarily held up by the following:

(a) Firm deadlines for site studies, selection of remedies, and installation of the remedies are rarely set, and there is often little consequence when sites take too long or cost too much. These deadlines need to be visible and should require senior management approval before they are changed.

(b) Study work often does not focus on the information needed to conduct tradeoff studies between alternative remedies, as called for by the National Contingency Plan. Indeed, alternative remedies are often not even developed until site investigation work is nearing completion.

(c) Senior management in the EPA regions and headquarters do not spend enough time in "forcing the pace" of cleanups, nor in making key project decisions. Similarly, PRPs and their consultants and other advisors often place little emphasis on completing sites in a timely manner.

**2. What are the main attributes of timely and cost-effective site cleanups ?**

The main attributes include the setting of firm and visible deadlines early in the process for such matters as completion of the study phase, selection of the remedy, and installation of the remedy.

Timely and cost-effective cleanups usually involve strong senior management (both regional and headquarters) interest in keeping the project on schedule and within budget. Key management decisions are made in a timely fashion.

Another key attribute is the use of strong management and technical consulting firm(s) who have shown the ability to complete projects in a timely, practical, and cost-effective manner.

**3. Do you have any ideas as to how EPA could organize more effectively to expedite cleanups ?**

The most important organizational activity would be to give more Superfund site completion authority to a senior member of the office of the EPA assistant administrator for solid waste and emergency response. The EPA regions would continue to implement Superfund studies and cleanups, but the senior official would ensure that all projects have firm deadlines and would be briefed when projects are in danger of missing key deadlines, such as ROD selection or construction completion. Emphasis should also be placed on ensuring that a cost-effective remedy is selected, as called for in the Superfund statute.

Also it is important to note that some Superfund sites have been completed in a timely and cost effective manner. It is suggested that a sampling of such sites be identified and used to inform the timely completion of other sites.

**4. What did you mean in your testimony about developing a “culture of completion” regarding Superfund sites ?**

Most Superfund work is done now under what might be called a “culture of deliverables.” Superfund activities do involve the production of numerous deliverables, such as work plans, quality assurance plans, sampling protocols, etc., etc. These items are important, but do not magically cause a site to be completed, and usually take a large amount of time and money.

The “culture of completion” to which I refer means that the primary focus should be on site completion, and deliverables should be streamlined and conducted only as needed to allow the site to be properly investigated and remediated. All members of the project team should understand that the goal is satisfactory and timely site completion, and all work should be directed toward this goal.

**5. What do you think about bringing back the Superfund taxes, which some refer to as the “polluter pays” principle ?**

The “Superfund Taxes” should not be restored by Congress and the Administration for two primary reasons: (1) it is an extremely unfair tax, and (2) it would not expedite Superfund cleanups. Such taxes would also pervert the “polluter pays” principle, particularly as it relates to “orphan” sites.

These taxes would be paid mostly by chemical and petroleum firms, although a large majority of Superfund sites were caused by other industries and even governmental units. For example, Superfund sites have been caused by automobile manufacturing, electronics firms, recyclers of used oil and batteries, mining operations, military and energy facilities, municipal solid wastes management, individuals, and many others.

Thus, if the taxes are restored a new principle would be enacted: “some polluters must pay twice.” A small fraction of responsible parties would pay for their own sites, and then for orphan sites for which they may have had almost no involvement. For this broad societal problem, general revenues should be used where viable responsible parties cannot be identified.

Before further consideration of new taxes it is important to look carefully at two key factors: (1) the projected costs and time needed to deal with all remaining orphan sites, and (2) other management approaches to expedite all



site completions, thus saving both time and money. Recommendations for improved approaches follow.

Instead of increased funding, what is needed in EPA is more focus on timely site completions (with more senior management attention), as well as increased use of EPA's annual \$1.2 billion appropriation to support site completions, as opposed to the current "siphoning off" of many dollars for administrative and "process" activities.

**6. Do you think there are many more Superfund sites to be discovered ?  
What about the long term picture for Superfund ?**

I do not believe there are many more Superfund sites to be discovered. One of the major accomplishments of the Superfund program has been to screen tens of thousands of waste sites, leading to the selection of only a very small percentage of such sites to be proposed for Superfund status. Thus, I believe that we have probably identified most of potential sites in the country.

In addition, we now have many other programs to be used to deal with the vast majority of waste sites. For example, almost all the states have their own superfund-type programs, which can be used for most hazardous waste sites, at usually less cost and money. We also have national and state brownfield programs which can deal with less-contaminated sites. Finally, there are also many "voluntary" cleanup programs which use the threat of Superfund or other programs to leverage cleanups.

I think the long term picture for Superfund is a steady decline in the number of sites requiring Superfund cleanups. The Superfund program has had many good outcomes, but has proven to be increasingly complex and expensive. Probably the best part of Superfund has been the emergency removal program, whereby immediate and usually less costly problems are dealt with in an expeditious manner. This program should be continued.

The focus of the Superfund program should increasingly be on the completion of existing sites. The various Superfund administrative and support services should be reduced as sites are completed in order to provide more funding for direct site completion work.

**Funding of the Superfund Program**

The Superfund Program is funded by two major sources. The first source consists of annual appropriations by Congress, usually amounting to about \$1.2 billion. The other sources are provided by PRPs and include the following: (1) PRP payment to EPA and/or State for their oversight of PRP site activities, (2) site work performed directly by PRPs and their contractors, and (3) reimbursement by PRPs to EPA to pay for work performed by EPA at PRP sites.

### **Why not restore the Superfund Taxes ?**

The two main reasons for not restoring Superfund Taxes have to do with (1) the basic unfairness of the currently propose plan and (2) this would be throwing large amounts of money at a program whose real problem is the need for fundamental management changes.

The fairness issue. The tax program favored by the Administration and some in Congress would put most of the financial burden on only two industries, chemicals and petroleum. This makes no sense as these two industries have been involved in only about ten percent of all Superfund sites. This makes even less sense when the tax is promoted as the answer to dealing with orphan sites, where chemicals and petroleum are involved with about three percent of all such sites.

This totally perverts the "polluter must pay" principle in that the vast majority of "polluters" would be asked to pay very little beyond their own sites, while a small slice of industry, chemicals and petroleum, would essentially pay for everything. In other words, some industries would come under a new theory: "some polluters must pay twice."

To illustrate an approximate breakdown of all of the industries and other entities involved in Superfund are shown in Figure 1.

### **Summary and Recommendations**

A major issue facing Superfund has to do with completing all categories of sites in a more timely fashion. A second major issue relates to the funding of orphan sites, which are currently funded out of EPA's annual appropriation from Congress.

It is important to understand that the currently considered restoration of Superfund Taxes would not only help with completion of orphan sites, but would almost double the funding of the Superfund program, which is presumably a program which is steadily running out of sites in need of remediation.

Before serious consideration of new taxes it is important to look carefully at two key factors: (1) the projected overall costs to deal with all remaining orphan sites needing remediation, and (2) other management approaches to expedite all site completions, thus saving both time and money.

In order to complete the remaining Superfund sites, the following **recommendations** are made to improve program efficiencies:

1. The focus of the Superfund program should increasingly be on the completion of existing sites. The various administrative and support services should be reduced as sites are completed in order to provide more funding for site completion work.
2. Consideration should be given to designation of a senior member of the assistant administrator's office to oversee and promote site completions.
3. Completion dates should be set for all current study and cleanup work. A "culture of completion" should replace the current "culture of deliverables." Program reports and other paperwork should be streamlined.
4. Some Superfund sites have been completed in a timely and cost effective manner. It is suggested that a sampling of such sites be identified and used to inform the timely completion of other sites.

**6. Do you think there are many more Superfund sites to be discovered ?  
What about the long term picture for Superfund ?**

Senator LAUTENBERG. Thank you.  
Dr. Stumbo.

**STATEMENT OF JOHN E. STUMBO,  
MAYOR, FORT VALLEY, GEORGIA**

Mr. STUMBO. Mr. Chairman, members of the Committee, my name is John Stumbo. I am a 13-year Mayor of Fort Valley, Georgia, which has a Superfund site. I am going to bring a couple of different perspectives today because I am from small town America.

My town has all of 9,000 people, if you count all the cats and dogs. And we have about an 11-acre Superfund site in the middle of our city, two blocks from our downtown commercial district. We have some unique situations because of that. It is in the middle of residential neighborhood. The pollutant there was arsenic, heavy concentrations of arsenic that were produced over 70 years in the operation of two pesticide companies.

My first purpose in being here today is to compliment the Environmental Protection Agency. We, after 13 years—it kind of parallels my tenure I guess—are just within 2 months of finishing up. We probably spent about \$30 million on that site.

And now the third leg of the stool, if you will, has to be done. The first leg is of course testing and developing records on decision. The second phase is to remediate. And the third phase is going to be up to the local communities and others to help with redevelopment. I do not have a choice about redevelopment. I cannot put a chain link fence around my site in the middle of my town and put a no trespassing sign on it. I have got to redevelop it.

One of the things that I would suggest to EPA is that we have taken, Mr. Chairman, we have taken and extensively made use of the brownfields program, and I appreciate that very much. We have been the recipient of two of those, and I appreciate your history in that movement.

We need to suggest to EPA that communities like mine need help on redevelopment. Obviously, you have done for us, they have done for us, what we could not have done for ourselves. I am an old, worn out law professor of 150 years ago, and I am being facetious, but one of the criticisms I have about our system, and this really speaks to State law, in Region 4, at least that I am more familiar with than the other regions, and certainly in my case, the potentially responsible party was at the bottom of a corporate ladder of parent and subsidiary corporations that we saw all the way up to a multinational holding company.

This corporation that contaminated my site was created for the sole purpose of operating that site. And we looked very hard at trying to pierce the corporate veil and go upstream to assess liability because we had a multinational corporation at the top.

But part of our problem is that when we have corporations formed under State law that potentially could be polluters we do nothing about ensuring their capital wherewithal or a protection, if you will, against that corporate liability shield that attaches. And I would suggest to you that in several places, including in Florida, Alabama and Georgia, we have lost the potentially responsible

party because they simply take bankruptcy, which is what happened in our case.

Another thing I want to speak to you about, in my particular goal, is the role and the involvement of the community. There is comment made throughout these documents about transparency. We set up something for which we have been given recently a national award by EPA. That was that 12 years ago, I called together all the stakeholders, about 70 of them, in a room, and we started meeting. And they were shouting at each other and yelling at each other because we had citizens from the community and all the agencies, both State and Federal there, all of the stakeholders. And there was a lot of anger in the room.

The potentially responsible party had opened up the meeting and had hired a firm to conduct the meetings. And finally somebody said, after the third meeting, which was chaos, well, the only person in the room the people trust is the Mayor. And I presided over that meeting.

We have met every 6 weeks for 12 years. And I discovered that if we ate together over the noon hour, that people would begin to talk about other things besides the affairs of the day, and they would get to know each other's family, and we would build a community.

And that alliance, as we called it, I have talked about it at two prior EPA meetings around the country, because I suggest to you that it is an ideal way to engage the community in an ongoing way because every 6 weeks my people could ask questions of the agency representatives, State and Federal.

And every 6 weeks we could determine what needed to be done, what the progress was, what the expected completion was, and we were able to hold everybody's feet to the fire. And we had some blessings. We had outstanding staff people from the agencies who were with us the whole 12 years. But sure enough a community developed. And we had a couple of members that died; we had a couple of members who got married and had children. We rejoiced in that. And we ate a meal together every time we met.

I would suggest to you also in these Superfund sites, at least in small town America, that the involvement of the elected leaders of the community is critical to the success of community acceptance of a Superfund process. If that leader has been elected to serve then he ought to be able to engender the support of the people for the process.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Stumbo follows:]

**Prepared for:**

United States Senate  
Committee on Environment and Public Works

**By:** Dr. John E. Stumbo

Mayor of Fort Valley, Georgia

Memorandum regarding the Woolfolk Superfund site in Fort Valley, Georgia

The Woolfolk Superfund site in Fort Valley, Georgia was placed on the National Priorities List (NPL) on August 30, 1990. The site is approximately eleven acres in size. After years of testing, plans for remediation were set forth in a number of Records on Decision. The testing included drilling monitoring wells to test subsurface ground water. A water treatment plant was built on site to clean the water after testing. Thereafter the water was pumped to the city's waste water treatment plant.

The source of the contamination was from two pesticide manufacturing companies located at the site since the 1920s. The last of those companies ceased operations in approximately 1985. They mixed powdered components to produce pesticide for the farming industry. One of the principal ingredients and, therefore, the principal contaminant, was arsenic.

**Presence of large aquifer:** Our city is located in the recharge area for the large Tuscaloosa aquifer. In addition, there are other smaller aquifers closer to the surface. The concern that the ground water could have been contaminated with arsenic by percolation provided the rationale for the site being designated as a Superfund site.

**Potentially Responsible Party:** The last company producing pesticide at the site was Canadyne Georgia, which became the "potentially responsible party." There was a civil lawsuit filed against that company by a number of citizens alleging personal damages from health issues arising from arsenic poisoning and loss of value to real estate in the area. That case was settled

more than twelve years ago and the court ordered the distribution of the damages paid.

In the early years of the testing the Canadyne Georgia corporation was involved with providing information and paying some costs. However, the corporation declared bankruptcy. It was a subsidiary of a holding company, but it was not legally possible to assert liability up the corporate ladder to the parent corporations. Therefore, the EPA has provided the funds to test and remediate the site. That process has been very active for the last thirteen years.

In addition to the eleven acre site extensive testing was done in house attics and yards of nearby neighborhoods for excessive levels of arsenic. In early years the mixing of the powdered chemicals was done in the open air which caused arsenic to be spread by the wind. After testing the EPA contractor cleaned over sixty house attics and yards to acceptable levels. The acceptable levels permitted depend on the use being made of the property, with residential property having the most stringent cleanup requirement. Another complicating factor was that the EPA would periodically lower the acceptable level permitted.

**Value of citizen advocacy group:** When the nature of the contamination became known a group of citizens formed the Woolfolk Citizens Response Group. Their purpose has always been to oversee the testing, development of the records of decision and finally the remediation. They have been very diligent in their efforts to protect the citizens of our city throughout the process. To their credit they did not take to the streets to protest or cause difficulty. They worked constructively within the process.

I have served as Mayor for the last twelve years and, therefore, have been very involved in this project. It became apparent that we needed to establish a method by which the citizens could voice their concerns, serve as advocates, and receive progress reports from EPA and its contractors, engineers etc. We also needed a periodic opportunity for all of the state and federal agency staff to speak with other and to the community.



**Provision for a Technical Assistance Advisor:** As a part of the process, EPA has provided the city and our citizens group with a technical assistance advisor. Dr. Claude Terry, a well known and outstanding toxicologist, has served in that capacity for us for over fifteen years. The willingness of the EPA to provide the technical expertise is very important to the Superfund program. The issues are so complicated that lay people would not otherwise even know what questions to ask. Certainly the provision for a technical advisor is expensive. However, those persons are so important to a community who does not otherwise have that expertise available to it. Our small city could not afford the cost. That expert's presence levels the playing field.

It will always be important that the technical advisor understand their role. They are to represent the community. They need to ask the important questions of the agencies, engineers and contractors. They need to explain and interpret the process and the technical issues to the community. However, they must also be judicious and not unnecessarily create animosity. The process has enough conflict without artificially adding more. Dr. Terry did an exceptional job for us and for the process.

**The Establishment of the Alliance:** Earlier I spoke about the need for a forum in which all interested parties could participate. We established a meeting group which we called the Alliance. We brought together representatives from EPA, other federal agencies, several state agencies, local elected officials, the citizens' advocacy group and any private citizens who wanted to attend. The first couple of meetings twelve years ago were disasters because there was a great deal of anger, frustration and mistrust among the citizens, the potentially responsible party and the agencies. The potentially responsible party had brought in an outside firm to preside. However, after the difficulty of the first few meetings the group asked me, as Mayor, to preside.

This Alliance group has met every six weeks for twelve years! I have never missed a meeting to preside in those twelve years. We were able to

quiet the anger and encourage people attending to ask their questions and make their comments in a respectful way. We would meet for about four hours and break for lunch in the middle. Sometimes we would lose some citizens due to the break for lunch. I have paid for lunch for all the attendees these twelve years out of my personal funds. I felt that if our attendees could eat together, they would get better acquainted with each other, talk about their families or whatever, and a community would be developed. If the members of the group were asked about that today, and we are still meeting, I think that they would say that indeed a community of people from varying backgrounds has been formed.

We have been blessed through the years that there has been little change in the persons attending. Because the individual people have remained the same the forming and maintenance of the community feeling has been easier. Obviously some engineering people have changed. One of the agency representatives has died and we mourned his loss; others have gotten married and had children and we have celebrated those times in individual lives.

**Requirements for outside contractors:** Another element in the process which is utmost importance is that the engineers and contractors that EPA chooses must be able to relate to the people, be trustworthy in their reports and advice and be competent. Those outside persons for our site have all been outstanding. The contractor from Nicholasville, Kentucky, who has been here doing remediation for more than five years was excellent. As Mayor I have not received one single complaint in those five years about their work.

**Local Elected Leadership:** Another important strategy with community Superfund site work is be sure and get the local elected leadership involved. In cities and towns, the Mayor needs to be involved and committed. Our Woolfolk site has always been a high priority for me. The elected leadership ought to be able to bring the community on board with the process and act as an interpreter of the issues and progress.

**Patience, Perseverance, and Gratitude:** The attitude of the community is very important. They can be a hindrance. In Fort Valley we stressed constantly three essentials to our citizens. We must always have patience. A Superfund project will always be a long process. Secondly, persevere; stay involved and interested through the long term. And finally, be grateful for all of the assistance and financial resources that EPA is providing. The agencies do for us what we could not do for ourselves.

**Brownfields program:** Another important resource to Superfund site cities is the Brownfield program. Fort Valley has received two of these grants which were used for testing outside of the Superfund area in order to alleviate psychological fears of contamination. Agency staff in the department need to reach out to cities with a superfund site, evaluate the needs and assist with the procurement of the grants. Often the local community does not know what resources are available. We have received excellent cooperation from the Brownfield staff.

**Adequate funding:** Obviously, there are three major segments to Superfund work. The testing must be done to determine the nature and extent of contamination. Following the establishment of a Record on Decision, the cleanup plan, remediation follows. The final phase is redevelopment. How fast the testing and remediation phases proceed is primarily determined by funding. If EPA is having to provide the funding, in the absence of a potentially responsible party, then each site has to compete with many other sites for financial allocations.

Our city has been blessed to receive enough money to do the testing and all of the remediation with only one ROD remaining unfinished. One of our fears was that the process would get started but would then be abandoned or delayed in midstream for want of continued funding. If we are determined to locate contaminated sites for the protection of water through the Superfund process then it will be imperative for Congress to provide adequate funding. We cannot open up holes to excavate contaminated soil and then walk away without finishing because there is no money left. If that

occurred in our city of 9,000 people we would never be able to finish the work ourselves.

**Difficulties for our city in redevelopment:** Redevelopment is the process left primarily to the community. EPA did provide to our city a redevelopment planning consultant who helped us understand how to develop a redevelopment plan. In order to better understand the challenges of this last phase of the process I want to mention some peculiarities facing our city.

- 1. Small population:** We are a city of only about nine thousand people. However, we are the location for Fort Valley State University. The small population means, among other things, that we cannot generate internal capital from public funds to spend on redevelopment. We also have a higher than average rate of unemployment and a below average level of income per household.
- 2. Proximity to larger cities:** We are not a suburb city and yet we are only 30 minutes from over 250,000 people in Macon and Warner Robins, Georgia. Therefore, it is very difficult for us to maintain a viable commercial district because of our proximity to larger shopping areas. The result is that it will be very difficult to attract commercial businesses into our eleven acre Superfund site. Private development pays property taxes and rent, both of which could be used by our development authority to develop and market the property.
- 3. Limited Uses:** Therefore, our city will probably have to redevelop the site for recreational, educational and government purposes. None of those uses pay property taxes or rent. Without a revenue stream, it will be difficult to amortize development loans.
- 4. Location of Site:** Some Superfund sites are outside of town or located in remote industrial parks. However, the eleven acre Woolfolk Superfund site is only two blocks from our commercial downtown district and in the middle of a residential neighborhood.

Therefore, we do not have the option of putting a chain link fence with no trespassing signs around the site and leaving it as is. The Region Four and national EPA staffs have been very helpful to us in our effort to locate funds. Much of our redevelopment will have to be done with grant dollars

- 5. Redevelopment already begun:** Adjacent to the Superfund site we have already built a beautiful community library and restored an antebellum house for the housing of our quasi-public agencies. These facilities were built and restored using grant dollars without the city having to borrow any of the cost.

**Some suggestions:**

1. EPA staff could develop an **all-inclusive manual** for community leaders and citizens that explains the typical process of a Superfund project. Using an outside facilitator, there ought to be a series of **community meetings** for information and to receive questions. These meetings do not need to be defensive sessions for the agencies. Therefore, the answers to questions or concerns raised need to be made after the meeting. Otherwise people's angry emotions will control the meeting making it less productive.
2. The agency has many different departments. A team of people from the various EPA departments needs to be with the community periodically to respond to concerns. For example, the legal issues with a Superfund site are very important to the community especially in redevelopment. When and how should legal title to the site be changed? Will there be remediation liens placed against the property for the benefit of EPA that might inhibit development? When will prospective purchaser agreements be available to ensure against later liability for historic contamination? Will covenants have to be prepared and recorded on the chain of title if some property has

limitations on future development due to subsurface membranes? Therefore, EPA regional legal staff needs to be present in the community to help us with the legal issues.

3. Given the difficulty that some small cities will have with redevelopment, see the earlier comments *supra*, the EPA needs to develop more extensive assistance for the third leg of the project, redevelopment. The eligibility for assistance either with money and/or from staff could be based upon qualification criteria. The costs and difficulties of redevelopment may not be any greater in a large city than for us. But there is a great difference in our ability to internally finance.
4. A mandate needs to be established requiring local elected leaders to be involved. I cannot imagine that they would not want to be, but I understand there are some sites in Region Four where they are not involved.

It ought to standard regulatory procedure that an

Alliance system, see my discussion *supra*, be established at all Superfund sites. EPA staff should be provided that can enable a constructive process over the long period of time. Such an effort will greatly facilitate the process and lead to a more successful project. The Woolfolk project and our city are very good examples of what can be achieved by community building around the task rather than fractured outrages.

**Awards to Fort Valley:**

- Chosen as one of only thirty **Cities of Excellence** in Georgia.
- Chosen as a **“Top City”** by a statewide magazine publication.
- Awarded the United States Environmental Protection Agency’s Region Four **Excellence in Site Reuse Award**.

- As just announced, Fort Valley has been named a national award winner for **“Excellence in Community Involvement”** for years of collaboration and coordination between agencies, including EPA, and the community.

**In Conclusion:** On behalf of my city, thank you very much for this opportunity to provide this memorandum and to testify. Our experience with the United States Environmental Protection Agency has been outstanding. I hope that after more than twelve years of experience I have been able to provide some useful observations.

Respectfully submitted,

Dr. John E. Stumbo, Mayor  
Fort Valley, Georgia

Senator LAUTENBERG. Thank you.

I would like to start with my 5 minutes and ask a couple of questions here of those of you here. And one of them, Dr. Porter, is money a bad thing to have in the program?

Mr. PORTER. Absolutely not. You certainly need money.

Senator LAUTENBERG. I am glad to hear that, thank you, because I was not sure where you were going. I know you were critical of the funds spent, you were critical of the efforts made. The fact is that we were cleaning up sites at a heck of a rate. I am not sure you were here then. I do not think so. Did you have a business career before you worked for Government?

Mr. PORTER. That is right, yes.

Senator LAUTENBERG. What was that, please?

Mr. PORTER. Engineering and construction.

Senator LAUTENBERG. And you were with EPA—

Mr. PORTER. From 1985 to 1990.

Senator LAUTENBERG. From 1985 to 1990. You must have done a pretty good job. We were cleaning up a lot of sites.

Mr. PORTER. Well, a lot of the sites were cleaned up, remember, by responsible parties. They were not all cleaned up by the—

Senator LAUTENBERG. Yes. What about the orphan sites?

Mr. PORTER. Yes, well—

Senator LAUTENBERG. What do you do about those? How do we pay for them?

Mr. PORTER. You have to pay for them with Federal money.

Senator LAUTENBERG. You and I and the people in this room. We pay for it with Federal money.

Mr. PORTER. That is because you give \$1.2 billion a year.

Senator LAUTENBERG. Yes, except that more was needed. The pace that we had. And how do you dismiss the fact that one site took this long, and one site took that long? Does it matter if the site was large, deeply contaminated, or one that is almost a brownfield? Does it matter?

Mr. PORTER. Certainly.

Senator LAUTENBERG. Well, I am pleased to hear you say that, because I was not sure where you were going before that. You say that you are opposed, oh, I already asked that question. There was so much on my mind.

Ms. Pierson and Mayor Stumbo, it sounds like you created a large family circle in that small town of yours. And I think that you make a good point about involving the local officialdom and the people who have been elected. But getting the people who are affected in the community is a critical, critical issue.

Ms. Pierson, what kinds of jobs have been created as a result of the Superfund clean up in your communities?

Ms. PIERSON. If you come to our neighborhood now, you will, with two active Superfund sites and a neighborhood that is the recipient of stimulus funds for housing, you will see jobs on the ground going on all over the place, almost in every block. So, there are the construction jobs.

But there are also the Government jobs, there are the consultant jobs, there are the engineer jobs, there are the community liaison jobs. So, certainly, in a time where the middle class is hurting in



addition to the low income communities, the jobs that cleaning up Superfund sites creates are most needed.

Senator LAUTENBERG. Ms. Gibbs, thank you for your persistence in trying to help other people because of your own experience. How much can it be worth to take care of children, to prevent them from that kind of exposure? You know, you have been there, you have seen it from the beginning. What are the costs of failure to clean up sites in terms of healthcare, lost productivity, and other consequences?

Ms. GIBBS. The costs are huge to not do anything or to, which has been happening because of the constraints on the money, is to do a Band-Aid-on-cancer type approach. So, I mean, if you look at the community I am talking about here, those families are exposed to chemicals that bother their ability to learn. Now, these children may not be able to learn. Their school, there are other schools on top of the plume, too. It just has not reached the capacity to be closed.

So, now these children cannot reach their mental capacity. So, they may have been an airplane pilot, or they may have been a doctor or a lawyer. My goodness, they might have even been a politician. But going to the school and living in a community that causes them to miss school because they cannot breathe with asthma or to have learning disability has far reaching—I do not think anybody can sort of get their arms around the cost of that. And that is the financial cost.

I guess one of the points I was trying to make is that we have got to look beyond finances. To live in a community day after day, you worked your whole life—your whole life—for that house, for that car, for that kid who would go to college. And now your child cannot breathe, your child cannot learn, your house is worthless. I mean, it is just the emotional costs. You just cannot put dollars and cents on it.

And I do want to add one thing that I think you have been saying, Senator Lautenberg, which is that people in these communities are paying with their health, they are paying with every penny they have of personal cash, and they are paying to clean up the sites because the taxpayers right now are paying. So, they are paying for EPA to come in and do a half-built job to clean up the sites.

So, they are paying and they are paying and they are paying and they are paying and they are paying, and they are not people who have lots of money. They are hardworking, churchgoing, law abiding folks. They are paying not only for their own clean up, but they are paying for the clean up in Georgia, they are paying for the clean ups in New Jersey, they are paying. And this is just unfair.

Senator LAUTENBERG. Thank you.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

I have to say this, Mayor, I was listening to you. That is exactly what happened to me. When we first went in there, they had been working on that Superfund site called Tar Creek for 20 years. They poured, I cannot tell you how much, I used to know how much money they paid. But we had little groups against different types of resolution to the problem. They had never been in the same room before. I forced them into the same room, and it ended up

being, to this very day they are very close, personal friends, and the problems have been resolved.

I had the same problem with the bureaucracy in Washington. They, we had the DOI, the DOJ, the Corps of Engineers, the EPA, none of them would talk to each other. And I got them in my office, too. So, we experienced the same thing that you did.

Dr. Porter, you heard me tell this story, and I am just going from memory, on the Bossier City case. Now, you were there during parts of the Reagan and Bush I administrations. Is that correct?

Mr. PORTER. That is correct.

Senator INHOFE. That is the earlier years of this program.

Mr. PORTER. Yes.

Senator INHOFE. Did you have many cases like that? As I recall, just from reading about it at that time, I was not here, that when you had someone who was a polluter and was willing to clean up the pollution, and that was acceptable by the various levels of government, local and State government, they did it. There was more of a propensity for them to clean up at that time, was there not?

Mr. PORTER. That is right.

Senator INHOFE. Can you think of some cases, when, do you remember that, was it during the time that you were working there, that the EPA would deny them that opportunity, even if they had the support of the local governments?

Mr. PORTER. Well, they certainly did not do it during my day too much because one of my major thrusts was that I wanted the responsible party to pay and to do the work. I used to, I do not need to teach DuPont how to do engineering, or Exxon, or any other large company. We needed to push on them hard. And so what we did is, I remember telling the folks at Love Canal, to Occidental, that, you know, the train has left the station. You can either pay for it, or we are going to pay for it and come after you. So, they ended up paying a lot of money and so forth to do it.

I think it is, you make a good point, because there is another thing that has been done now that is even more creative, I think, than in the mid-1990s, and that is they are beginning to come after companies and saying, if you will clean this site up to the Superfund standards, we will not even put it on the Superfund list. I think that is probably the best of all worlds.

There is a lot of bureaucracy in the Superfund, a huge amount of bureaucracy and so forth. So, one of the hammers, so-called, was to tell people if you will clean it up yourself, and we certainly, we are going to come after you anyway, we will keep you off the list if you will meet the same criteria.

So, I think that is the best way to do it. I have certainly seen cases where people, where the Government, not too often anymore, simply will not let people clean it up. They are willing to—

Senator INHOFE. And there can be a huge differential in the costs, the ultimate costs. Now you, in your written testimony, talked about the culture of completion. You briefly addressed that in here vocally. Is there anything you wanted to, I am not sure I quite understand what that is.

Mr. PORTER. Well, what I think, and I worked a lot with the Department of Energy, the Department of Defense, and of course EPA and private parties on the Superfund for a long time with my

thrust trying to be let us clean the sites up. I will yield to no one in terms of trying to get results. I want to clean the sites up, maybe almost to a fault.

What I invented a while back was the term called, we need a culture of completion, which the Mayor has talked about and others. We are going to finish this site, and we are going to set deadlines, and we are going to stick the deadlines, and we are going to do it, as opposed to what we have now to some extent, which is what I call a culture of deliverables.

That means you have 20 reports at every Superfund site, roughly 20 reports, work plans, all kinds of things. EPA will pay \$100,000 to a contractor to review a work plan of another contractor, and they will create 300 pages of comments which work cannot even start until that is finished.

So, what I am trying to promote a little bit if I can is rather a culture of delivering, just saying well, if I do all these reports the site will magically be finished; no, it will not be magically finished until you push very hard to do it. So, what I am trying to create or help create is a culture of completion where from like Mathy on down we want to finish these sites as opposed to saying, if we had more money, if we just do more things. I am seeing \$20 million and \$30 million and \$40 million studies these days. Not the actual clean ups. The studies are \$20 million and \$30 million and \$40 million. I just think that is unconscionable.

Senator INHOFE. Yes, well, and I agree. And that is what I thought it was. And that is the reason that on the cases that we are familiar with in years past, there were, they just kept going on and on and on, and we would get reports back, and you could just tell that money was being spent when it could have been much more efficient.

And there is a basic concept here, too, and that is, you know, is Government more efficient as a general rule than the private sector, and there is a difference right here at this table.

Do you know, do you think there are many more Superfund sites to be discovered?

Mr. PORTER. Yes, I think there are. But I am not one who believes there are thousands of more sites out there or maybe many hundreds. I think that one of the good things about Superfund, we have screened through tens of thousands of sites. To get down to the 1,500, we have probably looked at 40,000 or 50,000 over the 30-year period. And I think we have done a pretty good job of finding the worst sites. There will be more, but I do not believe there will be a whole lot more.

And I also would add that we have many other programs now. We have the brownfields program, every State has its own Superfund program, various Federal agencies have their own programs. Most State programs clean up sites faster than the EPA because they do not have the bureaucracy and so forth.

I used to say, not long ago, to people, it is not the honor it used to be to be a Superfund site. People do not necessarily want to be a Superfund site. They know it is a long, drawn out process. So, if we have got another way to clean it up other than Superfund, that is not bad either.

Senator INHOFE. Well, you know, as a general rule, and I know there is disagreement probably at this table here, but I look at the Mayor, and I have got to tell you, Mayor, I had a hard job one time. I was the mayor of a city. If you are mayor, there is no hiding place, and I have often lived by the axiom that the closer the level of government to the people, the more efficiency, the more efficient it is. I still believe that.

Thank you, Mr. Chairman.

Senator LAUTENBERG. Thanks.

Dr. Porter, you were here until 1991?

Mr. PORTER. From 1985 until sometime in 1989, a little bit into Bush I.

Senator LAUTENBERG. In 1989. And you have kept an eye on EPA since that time because you have seen all the mismanagement, the mistakes. How about, does the management of the Agency matter as to how the Agency functions at all?

Mr. PORTER. Absolutely. In fact one of the people I am the most laudatory of happens to be a member of the Clinton administration. I have tried to be bipartisan in this. I think everybody that has had my old job has done generally a good job. But there is always room for improvement.

And just to take, you are talking about the 80 sites per year cleaned up in the 1990s, that was largely a fellow name Tim Fields who is a very good engineer who used to work for me. He was appointed by the President to that job. And he, unlike some of the Assistant Administrators, took direct responsibility for many of the sites.

Senator LAUTENBERG. We are not going to go through an exercise of who was at fault. You were at fault in some way. You did so well in cleaning up. So what happened? Do you mean after you left things fell apart?

Why was the funding, as it existed, the polluter pays, do you know why it was terminated?

Mr. PORTER. I do not think polluter pays was terminated. I think the goal is still to go after people who do the pollution if you can find them—

Senator LAUTENBERG. Yes, well what about the orphans? How should we have handled this?

Mr. PORTER. You have to deal with the orphans with some type, usually, of Federal money. You appropriate money each year. And I am not saying there should not be more money. In some ways, if you can identify specific sites—

Senator LAUTENBERG. Well, I think that is what you said.

Mr. PORTER. But not just adding to the overhead.

Senator LAUTENBERG. I think that is what you said.

The Committee recently passed, Ms. Pierson, a Cleanfields Investment Act of which I was the author, to provide grants to clean up properties that are less polluted than Superfund sites and place renewable electricity facilities on those sites. Would something like this be of benefit in a community like Camden that is so desperate for jobs, so desperate for improvement? Can we get any value out of something like that?

Ms. PIERSON. I just recently heard about your Cleanfields and will look at that more. We are excited to know that. Everyone real-

izes this is still a problem. We are excited to know that people are introducing solutions, and from what I know so far it sounds like a very good program to help us.

Senator LAUTENBERG. Yes, thanks. I was kind of fishing for an answer there, and I—just to make the point that jobs are available, and we should look at that side of things.

Dr. Porter, you offer some constructive advice on how to improve the efficiency of the Superfund program. But you advocate taking expected land use into account in deciding the level of clean up for a site, arguing it does not make sense to require the same level of clean up for a factory as it does for a daycare center. Does that not fail to take into account that land use can change over time?

Mr. PORTER. Absolutely. And what I would say is, you want the site to always be safe. If the land use changes you might have to change what you did there. I mention the site out in Colorado again, the Rocky Mountain Arsenal. When they turned it into a wildlife refuge they did something quite different than when they were planning on subdivisions there. But they have to go back and deal with that again if subdivisions do occur.

Senator LAUTENBERG. What we are going to do is we will keep this record open so that members of the Committee can submit questions in writing. And I would ask that if you do get any questions that you issue a prompt response, no longer than 10 days after you have gotten the inquiry.

I thank each of you for your contribution, and we will go on from here. And I will continue to fight to make sure that polluters pay for the work that they did. I ran, as I mentioned, a big company. And I know that we had a responsibility for everything we did. And when I was asked whether I would terminate somebody in the company for a relatively minor thing, I said no, because we had thousands of employees, thousands of customers, thousands of shareholders. And you have got to think about the community at large.

And one of the things that upsets me terribly is how corporate behavior, getting away from Government, can misbehave. And I am on the board of the Columbia University Business School, my alma mater. And in 2001, when I left the Senate for a couple of years, I founded a Chair in Corporate Governance and Business Ethics. And boy, I want to see it returned.

Thank you all very much for being here today.

[Whereupon, at 4:13 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

## SUPERFUND SETTLEMENTS PROJECT

### Why the Superfund Taxes Should Not Be Reimposed

Before the Subcommittee on Superfund, Toxics and Environmental Health  
of the Senate Committee on Environment & Public Works

July 6, 2010

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To the Members of the Subcommittee:

The Superfund Settlements Project ("the Project") appreciates the opportunity to share its perspective on the idea of reimposing the Superfund taxes. The Project is a not-for-profit association of major companies from various sectors of American industry. It was organized in 1987 in order to help improve the effectiveness of the Superfund program by encouraging settlements, streamlining the settlement process, and reducing transaction costs.

The Project's members share an extraordinary degree of practical, hands-on experience with the Superfund program. They have been involved at literally hundreds of Superfund sites across the country over the last 25 years. Representatives of the Project have testified before Congress on many occasions regarding various aspects of the Superfund program. The Project has also played a leadership role in the national policy debate over many Superfund issues, and has been a strong supporter of EPA's Superfund Administrative Reforms since they were announced in 1995.

Collectively, the Project's members have spent well over six billion dollars on site cleanups and site studies since 1980. That spending covered not only the companies' own shares of liability, but also sizeable "orphan" shares attributable to other parties that were defunct, insolvent, or otherwise unable to pay their fair shares. On top of that, these companies also paid hundreds of millions of dollars in Superfund taxes during the first 15 years of the program's life. All told, these companies have already paid far more than their actual responsibility for the contamination at these sites. Reimposing the taxes now would be unjust, as well as unnecessary.



## Why the Superfund Taxes Should Not Be Reimposed

### Executive Summary

- Taxes do not control the Superfund budget or the pace of EPA activity. On the contrary, the Superfund budget, which is set by Congress each year through the appropriations process, determines the pace of EPA activity.
- Most cleanups at NPL sites – roughly 70% – are performed by PRPs, not by EPA.
- The Superfund taxes are not needed to maintain the “polluter pays” principle, because the companies formerly targeted by those taxes have already paid their full share of cleanup costs.
- The companies formerly targeted by the Superfund taxes paid for Superfund not once, not twice, but three times. As PRPs, they paid directly to study, clean up and reimburse federal and state government for overseeing cleanup at the sites they contaminated. As relatively deep pockets, they paid again by absorbing the “orphan” shares of many exempt, defunct, and unknown parties at these same sites. And as corporate taxpayers from 1986 to 1995, they paid yet again.
- Only about one-fourth of EPA’s Superfund appropriation is spent on cleaning up NPL sites.
- EPA spends its Superfund budget on many other things, such as administration; management; interagency and intra-agency coordination; research; grants to other agencies; public outreach and education; worker training; policy development, review and publication; and other support functions. Comparable functions in most other federal agency programs are paid for by appropriations from general revenues.
- Funding decisions on the future needs of Superfund should be made by Congress through the normal appropriations process, with funding coming from general revenues. There is no persuasive reason why Superfund today should be treated differently than other EPA programs, or those of other federal agencies.

## Overview

It has been suggested in recent years that the Superfund taxes<sup>1</sup> that expired in 1995 should now be reimposed. The two rationales most frequently offered for this suggestion are (1) the need to increase the pace of Superfund cleanups and (2) the need to maintain the “polluter pays” principle.

Neither rationale is persuasive. The Superfund taxes do not control the pace of the cleanup program, so reimposing them would not mean faster cleanups. And Superfund is already a “polluter pays” program to an overwhelming extent, with or without the taxes, so reimposing them would not advance this principle either.

This written statement explains why reimposing the Superfund taxes would not be sound public policy.

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<sup>1</sup> There were actually three separate Superfund taxes that expired in 1995: (1) an excise tax on petroleum, (2) an excise tax on certain feedstock chemicals, and (3) a surtax on certain corporate income. Each tax was described separately in the Internal Revenue Code. Some who favor reimposing these three taxes call them the “polluter pays fees.” U.S. PIRG, “Empty Pockets” 5, 12 (December 2005). But in truth, they are taxes, not merely “fees.” See Robert M. Steele, *The Truth About Superfund Taxes*, *Envtl. & Energy Bus. L. Rep.* 4 (Dec. 2006) (ABA), available at <http://www.abanet.org/buslaw/committees/CL400000pub/newsletter/200612/steele.pdf>

## Introduction

The most fundamental point, and surely the one most subject to widespread confusion, is the relationship between the three Superfund taxes and the EPA cleanup program. On the one hand, those taxes formerly raised some of the money that was deposited into the Superfund Trust Fund.<sup>2</sup> On the other hand, the Superfund taxes did *not* control the amount of EPA spending for the Superfund program, and they did *not* control the pace of cleanup.

Specifically, the amount of EPA spending for the Superfund program is determined by Congress each year through the appropriations process. EPA receives a fixed amount of money for the Superfund program, usually something on the order of \$1.3 billion per year. *This annual appropriation is what determines the level of EPA activity.* The Superfund taxes, on the other hand, do not.

Moreover, the original rationale for the Superfund taxes has essentially evaporated as the program has evolved over the past quarter-century. In 1980, the Superfund taxes could be viewed as an aspect of the “polluter pays” principle. EPA would clean up contaminated sites, it was thought, using tax revenues collected from those industry sectors believed to have caused much of the contamination.

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<sup>2</sup> The term “Trust Fund” is somewhat misleading, because it suggests that money in the U.S. Treasury is being set aside to pay for EPA’s Superfund program. But the reality is quite different. Off-budget trust funds, such as the Superfund, do not represent money that is actually “locked up” for a particular purpose. Congress “can raise or lower trust fund collections . . . or change the purposes for which the collections are used[,] by changing existing laws.” U.S. General Accounting Office, GAO-01-199SP, *Federal Trust and Other Earmarked Funds* 7 (2001).

Today, however, the companies that formerly paid the taxes are cleaning up most of the sites on the National Priority List ("NPL")<sup>3</sup> by themselves. EPA performs relatively few NPL cleanups. In fact, EPA spends only about a quarter of its annual Superfund appropriation on NPL cleanups.<sup>4</sup>

Like many other government programs, Superfund today faces a variety of questions regarding its future workload and its funding needs. These include questions as to the relative health risks being addressed by Superfund, the efficiency of the program, and even its importance relative to many other competing priorities.<sup>5</sup> These questions should be addressed through the appropriations process, as is done with virtually every other federal program. The resulting appropriation for Superfund should be funded from general revenues, again just as is done with virtually every other federal program.

These points are addressed below in greater detail.

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<sup>3</sup> The NPL is EPA's list of the contaminated sites that are the highest priority for cleanup. 40 C.F.R. Part 300, App. B (2009). To date, EPA has listed about 1,600 NPL sites. Some sites have been deleted from the NPL following cleanup. Approximately 1,269 sites remain on the list today.

<sup>4</sup> In FY 2009, for example, EPA received \$1.285 billion for the Superfund program. Out of that total budget, EPA allocated just \$267 million – or 20.7% – for "remedial" activities, broadly defined. U.S. Gov't Accountability Office, GAO-10-380, *Superfund – EPA's Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels* 10 (May 2010).

<sup>5</sup> In FY 2006, for example, Congress appropriated just \$973 million for the Food Safety and Inspection Service, which protects the consumers of meat, poultry, and egg products from potentially fatal diseases that can result from salmonella and other forms of contamination, as compared to \$1,239 million for the Superfund program.

### Appropriations – Not Taxes – Control the Level of EPA Activity

The current interest in the Superfund taxes stems from the recent reduction in the average number of NPL sites reaching the “Construction Complete” milestone each year. It is said that the pace of cleanups is slowing, that the real problem is a lack of funding, and that the root cause of this lack is the expiration of the taxes in 1995.

In order to assess this claim, two important facts must be appreciated. First, the reduced number of “Construction Completions” each year is likely attributable to several factors that are fundamental to the Superfund program. These factors have nothing to do with taxes, and they may also have little to do with funding. This first point is addressed below in some detail.

Second, even if funding is a factor, funding is controlled by appropriations – not by the collection of taxes, nor by the amount of money in the Trust Fund at any given time. As explained above, the funds available for use by EPA each year depend entirely on how much money Congress appropriates.

### ***Why Fewer “Construction Completions”?***

Turning now to the debate over “Construction Completions,” it is a reality that EPA's process for investigating and cleaning up an NPL site is exceedingly long. This process – referred to as the “remedial pipeline” – was described by Resources for the Future in its July 2001 report to Congress (hereinafter “the RFF Report”).<sup>6</sup>

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<sup>6</sup> Katherine N. Probst & David M. Konisky, *Superfund's Future – What Will It Cost?* (RFF 2001). The “remedial pipeline” includes remedial investigation, feasibility study, remedial design, and remedial action, as well as numerous intermediate steps, draft and final reports, and opportunities for public participation.

EPA has calculated that the *average* duration of this process from start to finish (not counting post-construction operation and maintenance) is *8.1 years*. RFF calculated that a more accurate average duration is *over 11 years*. And even when "Construction Complete" is achieved, long years of operation and maintenance still lie ahead.

Thus, the number of sites that reach "Construction Complete" in any given year is only one measure of progress, and frequently not even the most useful one. An exclusive focus on that single factor can be very misleading. It can actually obscure an accurate evaluation of total progress being made, including the full range of intermediate and ultimate milestones being reached, at all of the Superfund sites where work is underway.

Superfund in fact has made great progress in cleaning up the NPL. After many years of tedious efforts to move sites through the initial stages of the remedial pipeline, EPA has achieved "Construction Complete" at more than 1,080 NPL sites. *With over two-thirds of the NPL sites now having accomplished this objective*, it should come as no surprise that at some point there would be a reduced number of sites reaching that particular milestone each year. This reduction in no way suggests that there has been a decline in the overall level or pace of cleanup activity across the program.

Another factor, perhaps less obvious, helps to explain the reduced numbers of "Construction Completes." EPA made a deliberate policy choice in the early 1990s to focus first on those NPL sites that could be completed relatively quickly – the "low-

hanging fruit" of the Superfund program – and to defer work on many of the larger, more complex NPL sites.

The payoff from this policy choice was record high numbers of "Construction Completes" throughout the 1990s. But in a way, EPA was robbing Peter to pay Paul. EPA now faces a portfolio of NPL sites that is dominated by larger and more complex sites -- and a public that has grown accustomed to those atypically high completion rates from the early years.

The numbers can be looked at in many ways. In the first 20 years of the program, 757 sites reached the point of "Construction Complete," 411 of them in the five years from 1996 through 2000. Those statistics yield an average of *82 completions per year* for those five years, but an average of *38 completions per year* for the 20-year period as a whole. Neither "average" is very meaningful, however, because at any given point in time, so much work is being done at so many sites that is just not reflected in the number of sites that happen to reach any single milestone in any particular year.

***Manpower and Funding Have Remained Stable***

A far better indicator of the total amount of work occurring in any single year is the total level of EPA manpower and expenditures. Significantly, the number of EPA officials and staff working in the Superfund program has remained relatively constant for more than a decade. So too has the level of spending. This fact was confirmed in 2005 by the U.S. Government Accountability Office ("GAO"), which reported that total funding for the Superfund and Brownfields programs and the Superfund-related programs of the ATSDR and NIEHS, in current year dollars, remained relatively constant from fiscal year 1993 to fiscal year 2005 <sup>7</sup>

In other words, *Congress appropriated roughly the same amount of money for Superfund in each of those 13 consecutive fiscal years.* Moreover, this trend has continued since the 2005 finding by GAO, with Superfund appropriations holding steady at roughly \$1.3 billion from FY 2000 through FY 2009.

Interestingly, Congress appropriated almost the same amount in FY 1995, the last year that the Superfund taxes were still in effect, as it did in FY 2009, nearly a decade and a half after the taxes expired. Those amounts were \$1.224 billion and \$1.285 billion, respectively.

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<sup>7</sup> U.S. Gov't Accountability Office, GAO-05-746R, *Hazardous Waste Programs: Information on Appropriations and Expenditures for Superfund, Brownfields, and Related Programs 2* (June 30, 2005).



There is also the matter of inflation. It is true that Superfund, like every other government program, is subject to inflation as the cost of goods and services rise over time. The FY 2009 Superfund appropriation of \$1.285 billion clearly cannot buy the same amount of goods and services as, say, the FY 2001 appropriation of \$1.270 billion. But whether inflation helps to explain the reduced average number of "Construction Completions" reported in recent years, or whether the reduced totals are due more to the greater challenges posted by the NPL sites remaining in the remedial pipeline, is a subject on which reasonable people may disagree.

The key point, however, is *that none of these issues is in any way related to the Superfund taxes*. As previously explained, EPA's expenditures for Superfund are controlled by appropriations, and not by taxes. Appropriations, not taxes, are what give EPA money to spend for this program.

We turn now to a brief review of the rationale behind the three Superfund taxes and a summary of why that rationale no longer exists.

No Persuasive Rationale Exists for Reimposing the Superfund Taxes

***The Original Expectation That EPA Would Perform Most Cleanups is No Longer Valid.***

When Congress enacted Superfund in 1980, it was widely assumed that EPA would perform most of the cleanups, using public funds to pay for them. The prototype of a typical Superfund site was visualized as an abandoned dumpsite.

In that context, imposition of the Superfund taxes seemed a natural mechanism to shift financial responsibility for the cleanups back onto the sectors of society that were perceived to have largely caused the problem. In the early 1980s, EPA in fact did perform most of the investigation and remediation work at contaminated sites. For many companies, their tax payments in those years far exceeded their payments for work at sites, and EPA used its Superfund budget to clean up many sites that had been contaminated mainly by industry.

During the 1980s, however, EPA began to successfully use the law's Draconian liability provisions both to recover EPA's costs from Potentially Responsible Parties ("PRPs") and, more importantly, to require PRPs to perform cleanup work themselves. This evolution in EPA's enforcement approach yielded a much better understanding of the problems that gave rise to Superfund sites in the first place.

As EPA began to identify and confront the responsible parties at sites, it became evident that the original assumption that Superfund sites were created by oil, chemical, and large manufacturing and service companies was incorrect. In fact, the responsible parties include many medium and small businesses and many industrial sectors not subject to substantial – or any – Superfund taxation, as well as local and state

governments, defunct and unidentifiable parties, and, in a surprising number of cases, the federal government itself. Indeed, the federal government has been aptly described as the biggest polluter of them all.<sup>8</sup>

In 1989, a Senate committee report urged EPA simply to find a few deep-pocket PRPs at each site and force them to do the work, using the strong-arm liability power of Superfund. At about that same time, EPA issued its “Enforcement First” policy, which put the responsibility for investigation and cleanup on industry at every site where PRPS could be found, and to reserve the Superfund budget for sites where no PRPs existed.

EPA’s dramatic change in practice was documented in a table printed in the RFF Report.<sup>9</sup> From 1980 to 1986, PRPs performed the key RI/FS studies at only 24% of the sites, and the cleanup remedy at only 33% of the sites. But from 1991 through 1999, when EPA’s “Enforcement First” policy was in effect, these figures roughly doubled. PRPs performed 46% of the RI/FSs, and 73% of the actual cleanups. EPA understood that this trend allowed it to leverage its Superfund budget far more effectively, and so EPA has worked hard to have PRPs do the work at every site where liable parties can be found.

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<sup>8</sup> The United States owns and manages half a billion acres of land containing more than 60,000 potentially contaminated sites. Federal Facilities Policy Group, *Improving Federal Facilities Cleanup* 17 (October 1995). The government estimates the total cleanup cost associated with these facilities to be between \$234 billion and \$388 billion. *Id.*

<sup>9</sup> Table 3-2, Comparison of Leads for Remedial Pipeline Actions by Time Period (Percentage), RFF Report at 43.

A recent update of the RFF table is reprinted below:<sup>10</sup>

Period (FY)	Remedial Investigation/Feasibility Study		Remedial Design		Remedial Action	
	Fund-Lead	PRP-Lead	Fund-Lead	PRP-Lead	Fund-Lead	PRP-Lead
1980-1986	76%	24%	63%	37%	67%	33%
1987-1990	52%	48%	49%	51%	54%	46%
1991-1999	54%	46%	28%	72%	27%	73%
2000-2008	66%	34%	51%	49%	36%	64%

Table 1: Comparison of Leads for Remedial Pipeline Actions by Time Period (Percentage)

As a result of "Enforcement First," nearly every existing large corporation whose operations generated contamination has been named as a liable party at nearly every NPL site to which it sent waste. At most of those sites, moreover, the PRPs have performed the cleanup themselves and have even reimbursed EPA for its oversight costs. In a smaller number of cases, most of which predate "Enforcement First," the PRPs have reimbursed EPA for its expenditures, including its oversight costs and its indirect costs.

*Today, virtually the only NPL cleanups that EPA actually pays for are those where no viable PRPs exist – the so-called "orphan" sites.* These sites were not contaminated by the companies formerly targeted by the three Superfund taxes. Instead, these sites were contaminated by companies that are now defunct or insolvent, or by other types of generators, such as municipalities. EPA's narrowly limited role in

<sup>10</sup> Table adapted from Martha Judy & Kate Probst, *Superfund at 30*, 11 Vt. J. Envtl. L. 191, 215 (2009) (available at <http://www.vjel.org/journal/pdf/VJEL10117.pdf>), and printed with permission of the Vermont Journal of Environmental Law.

paying for cleanups is a fundamental change from the original expectations. It has resulted from the tenacious and successful efforts of EPA to implement its "Enforcement First" policy. And it has eroded the basic rationale for levying the Superfund taxes in the first place.

***Companies Responsible for Contamination are  
Paying for Remediation Site by Site.***

It is sound public policy for the government to place the costs for correcting a problem on those who caused it. This often requires discerning judgment to determine when it is possible to identify those who have caused a problem and what costs are attributable to the problems they have created.

Today, existing companies whose wastes contaminated sites are being held directly responsible for cleanup costs, one site at a time. Through their payments to investigate and remediate sites at which they are PRPs, such companies are paying their fair share to address the national problem. In fact, a good argument can be made that most of them are paying far more than their fair share. That result is due to the joint and several liability feature of Superfund.

At most sites it is impossible to identify the origin of much of the waste, so the PRPs that are identified must divide up the total costs among those whose waste was identified. This means that each viable PRP typically pays far more than its proportionate share of the costs to investigate and remediate the site.

Another factor that increases each PRP's liability is that usually the allocations of responsibility are taking place 30 to 50 years after the waste disposal occurred, and a number of the PRPs that were identified no longer exist. The wastes generated by such

defunct parties are referred to as the “orphan” share. Under joint and several liability, the companies still in operation typically pay that share.

In 1995, EPA partially recognized the excessiveness of that result and agreed to absorb part of that cost, but subject to severe limitations. EPA now absorbs part of the orphan share in certain settlement agreements, but only up to 25% of the cost of the work to be performed under the settlements, and only if that amount can be written off against EPA’s claim for past costs at the same site. The Agency recognized that these constraints meant that responsible parties would still be asked to pay excessive shares.<sup>11</sup>

At the same time, EPA also committed to join parties in an equitable manner rather than focus on a few of the deep-pocket contributors. But a chemical industry report documented that EPA enforcement efforts continued to be focused on the larger private sector parties alleged to be involved at sites.<sup>12</sup>

In a nutshell, existing large corporations responsible for past disposal of hazardous waste are typically required to pay the full costs of cleaning up the sites where their wastes were sent – including the “orphan” share of those costs. Under this approach, their obligations are discharged in full and then some. Requiring payment of

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<sup>11</sup> U.S. EPA, “Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time-Critical Removals” (June 1996).

<sup>12</sup> Chemical Manufacturers Association, “A Chemical Industry Perspective on EPA’s Superfund Administrative Reforms” (April 1997).

Superfund taxes on top of that to pay for cleanups at sites contaminated by others would be unjust.

***The Superfund Taxes Are Not Required  
to Implement the "Polluter Pays" Principle.***

From the earliest days of environmental regulation, a fundamental principle has been that the polluter should pay the costs of controlling pollution. Recently, this "polluter pays" rationale has been advanced to support an argument that the Superfund taxes should be reimposed. It does not fit.

The Superfund taxes are not needed to maintain the "polluter pays" principle because, as explained above, *Superfund is already overwhelmingly a "polluter pays" program*. At most NPL sites, responsible parties (private companies, DOD, DOE, etc.) pay virtually all the costs themselves. Even at the relatively few sites where EPA pays up front, the Department of Justice typically recovers those costs from any viable responsible parties.<sup>13</sup> It is usually only at "orphan" sites, where no responsible parties exist, that EPA performs cleanups using general revenues.

As explained above, the companies formerly targeted by the Superfund taxes are already paying their share of the costs at the sites where they are responsible parties, and they are typically paying more than their fair share of costs at those sites. They also paid a large portion of the historic costs of the entire program (through the Superfund taxes) for the many years when the taxes were in effect. In other words,

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<sup>13</sup> As the Chief of DOJ's Environmental Enforcement Section told a D.C. Bar Association symposium, "The funding issue will have no direct impact on enforcement of Superfund sites." 24 *Hazardous Waste/Superfund Week* 151 (April 22, 2002).

these companies paid three times – once as PRPs to remediate their sites, again as the larger solvent parties forced to absorb the orphan shares, and yet again as corporate taxpayers to support the general program. They have more than paid their fair share.

Finally, it must also be recognized that there are other important limitations and exceptions to the “polluter pays” principle under Superfund. Notably, both Congress and EPA have elected to release certain groups of responsible parties from their full liability as PRPs, either by providing preferential settlements (as EPA has done in the case of municipalities and small private parties) or by granting full exemptions (as Congress has done in the case of scrap dealers, certain small businesses, and lenders). In many instances the liability of these parties has effectively been shifted to the remaining PRPs at the sites. These dynamics have distorted the “polluter pays” principle and substituted a “Deep Pocket-Easy Target” policy. It would be unjust to compound this distortion of “polluter pays” by reimposing the taxes on a group that has paid, and is paying, more than its fair share.

***Most of the Money that Congress Appropriates for Superfund  
Is Not Used to Clean Up NPL Sites.***

The logic that might once have justified imposing the Superfund taxes is that the money would be used to remediate NPL sites contaminated by the companies, or at least the industry sectors, paying those taxes. As explained above, however, that rationale was overtaken by “Enforcement First.”

With private parties performing most of the cleanups at NPL sites over the past 20 years, EPA performs relatively few of them. We would expect to find this long-



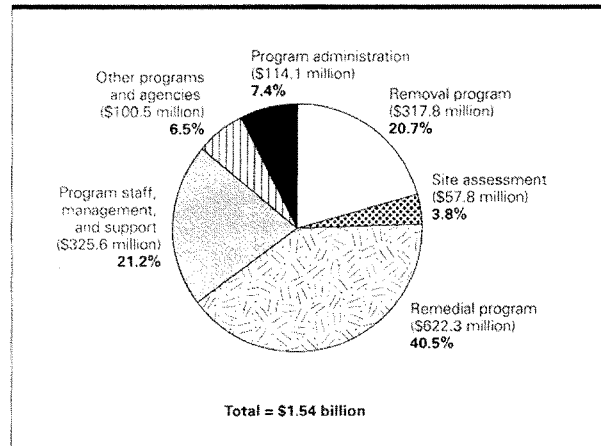
standing pattern reflected in EPA's budget, and in fact it is. *The majority of funds appropriated for the Superfund program are not being spent on cleaning up NPL sites.* This reality has two key features.

First, the annual Superfund appropriation is immediately reduced each year by transfers from the Office of Solid Waste and Emergency Response ("OSWER"), which runs Superfund, to other EPA offices that provide indirect support, such as the Office of Inspector General, the Office of Research and Development, and the Office of Environmental Information. In FY 2003, for example, these transfers to non-OSWER components exceeded 30% of EPA's total Superfund appropriation.<sup>14</sup> Thus, much of what Congress appropriates each year for Superfund is immediately diverted to EPA support offices that are not involved in cleaning up sites.

Second, of the money that remains within OSWER, only a limited amount is actually spent on NPL cleanups. This can easily be seen in the figure reprinted below from the RFF Report. In 1999, for example, EPA devoted 40.5% (\$622.3 million) of its Superfund appropriation to the NPL Remedial Program, most of it for orphan sites. In that same year, EPA spent 21.2% of the money (\$325.6 million) on program staff, management and support; 7.4% (\$114.1 million) on program administration, and 6.5% (\$100.5 million) on "other programs and agencies."

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<sup>14</sup> Final Report, Superfund Subcommittee of the National Advisory Council for Environmental Policy and Technology, at 21 (April 2004) (OSWER retained 68% of total amount appropriated by Congress for Superfund).

**Figure 1-2.** FY 1999 Expenditures for the Superfund Program

**Note:** Expenditures associated with federal facilities and brownfields are not included.

**Source:** RFF IFMS dataset.

The situation has not changed greatly over the last ten years. In FY 2002, for example, EPA spent even less of its Superfund appropriation – 31% (\$415 million) – on the NPL Remedial Program. In that same year, EPA spent 22% on program management and administration, and 10% on “other.”<sup>15</sup> More recently, in FY 2009, EPA spent just 20% of its total Superfund budget on remedial activities, as previously noted.<sup>16</sup>

<sup>15</sup> U.S. General Accounting Office, GAO-03-850, *Superfund Program – Current Status and Future Fiscal Challenges* (July 2003).

<sup>16</sup> U.S. Gov’t Accountability Office, GAO-10-380, *Superfund – EPA’s Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels* 10 (May 2010).

Importantly, a sizeable share of the Superfund budget is also spent on removal actions – 20.7% (\$317.8 million) in 1999, for example, and 15% (\$200 million) in 2002. Like those NPL sites where EPA performs the cleanups, these removal action sites also tend to be classic “orphan sites”:

The most common source of sites requiring removal activities cited by the regional program managers was a category of “economically marginal” facilities, often mom-and-pop operations that cannot afford to meet regulatory requirements for handling, storage, and disposal of the hazardous materials with which they work. Examples included small electroplating shops, secondary lead smelters, and waste oil recycling facilities.

RFF Report, p. 29.

In sum, EPA uses its Superfund budget for a variety of purposes. Because most NPL cleanups are performed by responsible parties, EPA typically pays for cleanups only at “orphan sites,” and these costs account for about a quarter of the Superfund appropriation. Whether a larger appropriation would produce more cleanups, or faster cleanups, can certainly be debated. What cannot be debated, however, is that reimposing Superfund taxes would have no such impact because (as explained above) the taxes do not control EPA’s Superfund budget.

### Superfund Should Run on Appropriations from General Revenues

Virtually every federal government program is funded from general revenues in the U.S. Treasury, with actual spending controlled by the congressional appropriations process. This mechanism can be cumbersome, but it provides the best opportunity for Congress to consider the competing priorities of many different national needs and then balance all expenditures against those priorities.

Whenever a special tax is proposed, one must examine the purpose for which the funds will be used, and the rationale for the special tax, to determine whether an exception to the general rule is justified. *There is no justification today for reimposing three special levies on selected categories of industry in order to raise money for Superfund.*

The federal Superfund program has been in effect for thirty years. Today, four key factors dominate the current state of the program and reinforce the wisdom of funding it through appropriations from general revenues.

#### ***Superfund Has Accomplished Most of its Original Mission.***

Without question the biggest impact of Superfund was that its Draconian liability provisions focused widespread attention on the potential risks of uncontrolled disposal of hazardous waste. That impact drove a transformation of daily practices throughout industry, government agencies, and the rest of American society. Moreover, since 1980, stringent controls have been imposed under RCRA and other federal and state programs to prohibit improper disposal, so that new high-risk sites are rare – a dramatic contrast to the century before 1980, when there were no controls at all.

In sum, this national problem of hazardous waste disposal is no longer out of control. Superfund is well on its way to cleaning up the sites listed on the NPL, with over two-thirds of those sites already "Construction Complete." Superfund has a variety of other continuing important functions, but it clearly has completed the biggest challenges assigned to it at its creation.

***Superfund Has Been an Extremely Costly Program.***

The total costs of administering the Superfund program have been huge. To date, Congress has appropriated some \$35 billion for Superfund, and responsible parties have spent many billions more.

From the outset Superfund has functioned with elaborate administrative procedures and costly standards. It soon became notorious for its enormous transaction costs. Despite numerous efforts at reform, it continues to be a very expensive and very inefficient mechanism for addressing contaminated sites. There are some sites where that approach may be needed, either because of the absence of alternatives or due to special circumstances, but serious questions are raised as to how many sites should be managed in the future through this exceedingly costly and slow program.

***Most Superfund Sites No Longer Present Any Immediate Risk  
to Human Health or the Environment.***

The most fundamental question in evaluating the priority of contaminated sites today is whether they present any immediate risk. In overwhelming numbers, the answer to that question today is "no."<sup>17</sup>

"Potential risk" or "future risk" is another story. The contamination at many sites is sufficiently serious that, if neglected, it could cause problems at some point in the future.<sup>18</sup> But in most cases those potential risks have already been brought under control through existing remedial measures, or can be with moderate activities and reasonable care. It is rare indeed today to "discover" a new site with risks that are truly imminent. These circumstances do not suggest that strong governmental programs will not be required for far into the future, but they do affect the scale and priority of those needed efforts.

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<sup>17</sup> As of September 30, 2009, EPA reported that 1,320 NPL sites (more than 83% of the total) had achieved the Environmental Indicator for "human exposure under control," meaning that no unacceptable human exposure pathways exist and EPA has determined that current conditions are under control sitewide. See <http://www.epa.gov/superfund/accomp/ei/ei.htm#sitewide>

<sup>18</sup> The Sierra Club has claimed that "hundreds of Superfund sites pose threats to people's health" because they have not yet achieved EPA's Environmental Indicator for "human exposure under control." See "Superfund's 25th Anniversary" (December 2005.). But not achieving this Environmental Indicator does not necessarily equate to risk. Under EPA's definition, even the mere "*possibility* . . . that humans *may* come into contact with the contaminated media" keeps a site from meeting this Indicator. So the sites that do not yet meet this Indicator may not "pose threats" to anyone.

***State Programs Now Normally Provide a Viable Alternative.***

During the past two decades, virtually all states have enacted legislation and have established programs to manage the cleanup of contaminated sites.<sup>19</sup> *The overwhelming majority of America's contaminated sites are in fact now being managed by those state programs.* As the emphasis has recently increased on returning sites to productive use, states and local governments closer to the plans and needs of local communities may be better able to manage growing numbers of such sites in the future. The point here is not that states should pay for all, or even most, of these cleanups, but rather that states should manage the process through which the PRPs pay for them.

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These four key factors affecting Superfund today implicate the same sorts of balancing questions that are raised by other federal programs and are routinely addressed through the annual appropriations cycle. These are questions of *relative* need and *relative* urgency. These are also questions that Congress deals with every single day. There is simply no reason to single out the Superfund program by levying additional taxes.

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<sup>19</sup> Environmental Law Institute, "An Analysis of State Superfund Programs: 50-State Study, 2001 Update" (2002).

### Conclusion

In conclusion, several factors combine to reinforce the view that reimposing the three Superfund taxes would be bad public policy:

***Taxes do not control the Superfund budget or the pace of EPA activity.*** On the contrary, the Superfund budget, which is set by Congress each year through the appropriations process, determines the pace of EPA activity.

***Most cleanups at NPL sites – roughly 70% – are performed by PRPs, not by EPA.***

***The Superfund taxes are not needed to maintain the “polluter pays” principle,*** because the companies formerly targeted by those taxes have already paid more than their full share of cleanup costs. As PRPs, they paid directly to study, clean up and reimburse federal and state government for their costs to oversee cleanup at the sites they contaminated. As relatively deep pockets, they paid again by absorbing the “orphan” shares of many exempt, defunct, and unknown parties at these same sites. And as corporate taxpayers up until 1995, they paid yet again.

***A small fraction of EPA’s Superfund appropriation is spent on cleaning up NPL sites.*** EPA spends its Superfund budget on many other things, such as administration; management; interagency and intra-agency coordination; research; grants to other agencies; public outreach and education; worker training; policy development, review and publication; and other support functions. Comparable functions in most other federal agency programs are paid for by appropriations from general revenues.

***Funding decisions on the future needs of Superfund should be made by Congress through the normal appropriations process, with funding coming from general revenues.*** There is no persuasive reason why Superfund today should be treated differently than other EPA programs, or those of other federal agencies.