

March 31, 2013

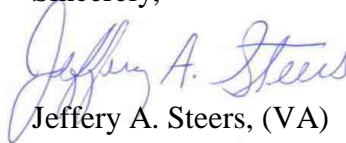
The Honorable John Shimkus, Chairman
Subcommittee on Environment and the Economy
United States House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Shimkus:

Thank you for allowing the Association of State and Territorial Solid Waste Management Officials to testify at the hearing on “The Role of the States in Protecting the Environment Under Current Law”. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is an association representing the waste management and remediation programs of the fifty States, five Territories and the District of Columbia (States). Our membership includes State program experts with individual responsibility for the regulation or management of wastes and hazardous substances, including remediation, tanks, materials management and environmental sustainability programs.

We respectfully offer the attached response pursuant to the request by the Subcommittee for additional written responses to members’ questions. Please do not hesitate to contact me should you need additional information.

Sincerely,

A handwritten signature in blue ink that reads "Jeffery A. Steers". The signature is written in a cursive style with a large initial "J".

Jeffery A. Steers, (VA)
President

The Role of States in Protecting the Environment Under Current Law
Written Responses to Questions

The Honorable John Shimkus

1. **You mentioned in your written testimony that the Virginia Department of Environmental Quality (DEQ) successfully brought parties together and using only the authorities of the Virginia Voluntary Cleanup Program, was able to successfully redevelop a blighted area in Roanoke, VA.**

a. Would you say that your Agency's local expertise and knowledge of the area and the stakeholders helped you successfully complete this complex cleanup.

Virginia's knowledge of local stakeholders' needs and area wide environmental concerns played a significant role in the success of the project. The *South Jefferson Redevelopment Area* located in Roanoke consisted mainly of abandoned and underutilized property which has been remediated by completion of enrollment of six different sites in Virginia DEQ's Voluntary Remediation Program. The Carilion Riverside Clinic and the Virginia Tech Carilion School of Medicine are among the redeveloped properties now valued at over \$200 million. Curtis Mills, Executive Vice President of the Carilion Clinic, applauded this private-public working relationship, when he said, "We were impressed by the practical approach the DEQ (Virginia's Department of Environmental Quality) took in partnering with us on the cleanup of one of the worst areas in Roanoke. We couldn't be more pleased with the results."¹ It is likely that little progress would have been made on this remediation if this property had been the subject of the traditional CERCLA project using federal authorities because of the prolonged level of uncertainty regarding legal liabilities and remediation plans associated with projects subject to CERCLA. An often overlooked, but important point is that economic development projects are dependent upon the time critical actions of environmental regulators and delay and legal uncertainty can have adverse impacts on the viability and success of these projects.

b. Do you think that States may be better suited to deal with some of these complicated cleanup sites under state voluntary cleanup programs and state Brownfields programs than EPA is under federal law?

Yes, when there are viable parties that have an economic interest in redeveloping Brownfields, it makes sense to defer to the states' voluntary cleanup programs to take the lead in overseeing remediation of property that ensures risk management decisions are commensurate with the future planned use of the property. This is not meant to imply that the use of federal authority under RCRA and CERCLA is not an appropriate approach to address contaminated sites. However, it should not preclude the use of state authorities where appropriate.

¹ <http://www.epa.gov/reg3hwmd/bf-lr/newsletter/2010-Winter/03-scrapstoscrubs.html>

c. Can States achieve cleanups faster and more efficiently than EPA and why (or why not)?

In certain circumstances, States can achieve cleanups faster and more efficiently than EPA. Although not all states operate a federal equivalent Superfund program, having states take a lead role in overseeing non-fund lead sites involving a potentially responsible party (PRP), can be more efficient as state regulators are closer to the issues and recognize local environmental conditions early in the process that may impact future risk management decisions. The same can be said for cleanups following the RCRA Corrective Action process. As illustrated in the above responses, neither RCRA nor CERCLA should preclude states from using voluntary cleanup programs to address the remediation of pollution on properties that have viable redevelopment opportunities.

d. What changes to current federal law would make the cleanup process quicker and more efficient?

One suggested change relates to RCRA Corrective Action authority. Under certain circumstances, a responsible party should be allowed to enroll in a state's voluntary cleanup program in lieu of using RCRA to advance remediation, deferring cleanup decisions and targeted remedial goals to such programs when appropriate. Such deferment could also contemplate the use of a state's voluntary remediation program's administrative process in lieu of the federal process under RCRA. Operating under the state program when a viable and motivated party is able to facilitate a more cost efficient cleanup creates a win-win situation that protects human health and the environment while facilitating faster remediation.

2. If EPA has authority to assume control of a state permit program when the permit program isn't meeting minimum federal requirements, would you consider that backstop authority for EPA?

Yes. With that authority, if a state was not meeting minimum requirements, EPA could assume control and this provides backstop authority.

3. Your boss, Governor McDonnell, wrote to us two years ago in support of the coal ash bill, H.R. 2273, which sets a minimum federal standard for regulating coal ash but gives States the authority to develop and implement their own permit programs based on the needs of the State. Governor McDonnell noted that Virginia's program would need to make some improvements in order to meet the requirements of our bill and called the bill a "sensible approach for the management of CCR." Since that time the Senate has introduced legislation, that we support, which provides additional pollution prevention focused initiatives.

a. How has EPA's current rulemaking impacted the regulation of coal ash in Virginia?

EPA's current efforts have resulted in uncertainty for Virginia's regulation of coal ash. Virginia suspended action to amend its regulation due to the EPA rule making and continued efforts to amend the regulation are difficult with the uncertainty regarding federal regulation. Virginia stakeholders, including coal ash generators, permitted disposal facilities and those beneficially using this material recognize that Virginia's regulations should be enhanced. We were working together to develop an efficient yet protective CCR program at the time that EPA began its proposed rulemaking. The longer this uncertainty exists, the more difficult it becomes to continue the positive momentum and consensus on changes to Virginia's regulations.

b. Does Virginia still support the approach in the bills based on the fact that States are in a better position to regulate coal ash?

Yes. Virginia continues to support this approach. Virginia believes that allowing states to implement their own programs provides the best approach to regulating coal ash. It also provides the best approach for addressing individual states' circumstances and resources.

4. In June 2010, EPA proposed a rule for coal combustion residuals with multiple regulatory scenarios. Now, almost 3 years later EPA is not close to picking one. What has Virginia done in the meantime? How do you and other States know what direction to take with making improvements to your coal ash programs?

Virginia has not moved forward with any regulation revision due to the uncertainty of EPA action on coal ash. Virginia and other states cannot be sure of what direction to take given that any EPA action may supersede or conflict with state action.

The Honorable Henry Waxman

1. What, if any, requirements does your state apply to drilling mud and other wastes from the exploration and production of oil and gas when generated, stored, transported, or disposed of within the state?

The handling and disposal of these in-state generated wastes are regulated by the Virginia Department of Mines, Minerals, and Energy. In Virginia, requirements for the handling, management, and disposal of these wastes are set forth in the Virginia Gas and Oil Act as well as the Virginia Gas and Oil Regulations, which are found in 4 Virginia Administrative Code (VAC) 25-150 *et. seq.* For example, a site must submit a plan

for approval addressing permanent disposal of fluids from an extraction well pursuant to 4 VAC 25-150-420. All disposal of drill cuttings and solids must be addressed in an approved operations plan pursuant to 4 VAC 25-150-430.

- 2. What, if any, authority or ability does your Department have to address the interstate movement of drilling mud and other associated wastes and to track such wastes entering the state?**

All such wastes entering the state are subject to Virginia's Solid Waste Management Act. Federal courts have determined that the interstate movement of solid waste shall not be restricted under the Interstate Commerce Clause. Once these wastes enter Virginia, they are subject to proper management and disposal which includes reporting under the Commonwealth's Solid Waste Information Assessment reporting as enumerated in 9VAC21-81-80.

- 3. What, if any, requirements does your Department impose to ensure that drilling mud and associated wastes from the exploration and production of oil and gas that enter the state are properly disposed?**

As discussed in response to Question #2, wastes associated from oil and gas exploration and production are considered solid wastes. As such, they must be managed and disposed of by a facility permitted by the Virginia Department of Environmental Quality.

- 4. What, if any, requirements does your state apply to coal ash when generated, stored, transported, or disposed of within the state?**

Virginia considers coal ash to be a solid waste, and thus it must be managed and disposed of as such. Current disposal design criteria require coal ash disposal facilities to meet the state's industrial landfill criteria which includes performance based liner systems, groundwater monitoring and post closure care. Virginia also has separate regulatory requirements for the safe beneficial reuse of coal ash; both as an ingredient in a material and for use in land based fill projects.

- 5. What, if any, authority or ability does your Department have to address the interstate movement of coal ash and to track coal ash entering the state?**

Coal ash is a solid waste. Please refer to the response to Question #2.

6. What, if any, requirements does your Department impose to ensure that coal ash that enters the state is properly disposed?

While the Commonwealth of Virginia cannot prohibit the transportation of coal ash into the state, we do maintain authority to regulate this material as a solid waste. The management and disposal of solid waste is subject to the Virginia Solid Waste Management Act. Please refer to the response to Question #4 regarding specific management requirements

7. How many investigators are employed by your Department to identify and investigate illegal dumping of drilling mud, other wastes from the exploration and production of oil and gas, and coal ash within the state and ameliorate the potential risks posed by any such dumping?

The Department's Pollution Response Program (PReP) is a statewide program to receive complaints from the public regarding potential illegal dumping or discharges that pose a threat to human health and the environment. Staff in each of DEQ's six regional offices staff this program and as necessary refer complaints to inspectors in the Department's solid and hazardous waste programs for further investigation. Statewide, the Department employs approximately 30 staff as inspectors.