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Hearing

“The Role of the States in Protecting the Environment Under Current Law”

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Testimony of

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On Behalf of the

Association of State and Territorial Solid Waste Management Officials

The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) is an association representing the waste management and remediation programs of the 50 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.

I would like to preface my remarks with commenting that our organization does enjoy a positive working relationship with the U.S. Environmental Protection Agency. Our collaborative efforts and problem solving should not be underestimated. However, it is appropriate to have a conversation about the significant role of States in environmental protection, which is oftentimes understated.

In implementing EPA delegated programs, such as hazardous waste and underground storage tanks, States develop regulatory programs, review and approve permits, monitor and assess permit and program compliance, provide compliance assistance and information to the regulated community and the public, conduct inspections, and take enforcement actions. States fulfill their responsibilities for these federal programs even though federal funds diminish each year.

These delegated programs often involve unnecessary State and federal duplication of effort. A strong State lead in environmental waste programs has many benefits. An Associate Professor at California State University, Northridge, wrote: “the redundancy in state and federal programs may have made more sense in the early days of the EPA, but such duplication is expensive as well as unnecessary in our more sophisticated era of environmental protection.”¹ The article was written in 1995 - nearly twenty years ago.

In carrying out their responsibilities under delegated federal programs, State waste management and cleanup programs have also identified opportunities for innovations and efficiencies in program implementation that alleviate the duplication of State and federal efforts. Risk based planning, an area-wide approach to remediation, and leveraging resources in voluntary cleanup programs provide three illustrations of the benefits of a strong State role in waste management and cleanup.

Value of State Risk Based Planning Expertise

States are in a unique position to evaluate site specific conditions and how those conditions relate to the surrounding area. Having the knowledge and experience to assess the environment, population and economic factors associated with a site make a risk based approach to planning and prioritization possible in a manner that is protective of human health and the environment. States are similarly better suited to assess risk and set priorities on permitting and inspections for regulated facilities. As such, it can result in more efficient and more effective results. Thus, States are able to make better use of limited resources. The regional knowledge and experience that State environmental programs possess is vital in establishing requirements for the protection of the State's citizens.

Case Study

Two States recently completed three year pilot projects on the benefits of risk based inspection (RBIS) planning. The study used a targeted approach to focus inspections at higher risk facilities (e.g., past compliance history, environmental sensitivity, multi-media transfers, sector initiatives) rather than using the traditional inspection strategy of considering all facilities the

same. The results indicate that targeting resources at higher risk sites resulted in the discovery of a greater number of violations. Over time, these riskier facilities were improving their compliance as inspectors focused more attention on them. Allowing States the flexibility to target certain facilities or sectors of industry in compliance assessments results in an overall improvement to compliance rates.

Area-wide approach to remediation

State specific knowledge of the natural and economic resources in areas surrounding contaminated sites can be particularly beneficial in another way. States have the expertise to evaluate how remediation at multiple sites can be integrated for an area-wide approach. Area-wide remediation planning encourages the development of an entire area so that full advantage can be made of economic and redevelopment opportunities. It also affords an opportunity to evaluate and recognize communities that are overburdened. It offers a more holistic approach to site cleanup and development.

Case Study

Several States have effectively leveraged resources and brought parties to the table to address contaminated properties and stream sediment using an area-wide approach. For example, in Ohio, two rivers within the Lake Erie watershed (the Ottawa and Ashtabula Rivers) are shining examples where federal, State, local governments, private parties and nonprofit organizations worked together using an area-wide approach to assess contamination, develop and implement remediation and restoration plans. The State of Ohio was a driving force in this collaboration, using its knowledge of the local issues along with an understanding of the economic

development interests to facilitate the investment of over \$50 million at dozens of sites and miles of river sediment. The result within the watershed includes restored habitat, creation of green spaces and the construction of a world class auto assembly plant on land that many had thought too blighted and contaminated to ever consider reusing. All of this was accomplished holistically by realizing the economies of scale in managing the costs associated with the large scale remediation of several sites and river sediment. This collaboration by all parties was accomplished without exerting burdensome federal authorities under RCRA and CERCLA.

Leveraging resources

States are able to develop voluntary cleanup programs, and in doing leverage federal funding to achieve results that benefit business, create parks, and build community resources.

Brownfields programs are highly successful due in large part to the flexibility that can be achieved when businesses, developers, local governments and the States work together in a cooperative manner. Contaminated properties are often more suited to be addressed through State voluntary cleanup programs in lieu of federal government authorities. While RCRA Corrective Action and Superfund programs remain important, the flexibilities inherent in State voluntary programs are better suited to address contamination when economic redevelopment is a driver. All too often, the long administrative process and cleanup standards associated with RCRA and CERCLA that are one size fits all inhibit reinvestment and job creation. One size fits all remediation does not work in these circumstances. Economic development projects are time critical and depend upon certainty with respect to future liability. State voluntary cleanup

programs inherently provide for this certainty through appropriate site specific risk management in a timely fashion.

Case Study

Virginia successfully leveraged federal Brownfield grant funds with State and local assistance, helping to redevelop an economically depressed area of Roanoke Virginia. The State played a critical role in bringing together the parties and creating synergies that transformed 23-acres of blighted and contaminated land into vibrant medical research facilities, with over \$200,000,000 in public and private investment. The time critical development project not only relied upon Virginia to help bring together the parties, but also necessitated the use of a flexible approach to address the assessment and remediation of pollution on the property. Using Virginia's Voluntary Cleanup Program, developers were given certainty with respect to future liabilities, thus allowing for the private funding of the project.

Conclusion

At a recent workshop highlighting the States' roles in environmental protection², a Massachusetts professor noted that "The role of states in environmental protection is more critical than ever, given the virtual stalemate at the federal level on many of the most pressing environmental issues of the day." The fact that States are taking the lead in developing policies and regulations for emerging issues, such as those that associated with the biotechnology industry, in the absence of federal guidance, at the same time they are fulfilling their responsibilities under federal delegated programs, attests to the benefits of State primacy in environmental regulation. Understanding the local communities allows States to apply risk

based approaches that maximize opportunities for area wide remediation and leveraging of resources that ultimately benefit the environment, economic development and the citizens of the States.

¹ Hatfield, Thomas H., "[California Environmental Goals and Policy, Part III: Federal and State Parallelism In Environmental Regulation](#)", Center for California Studies, California State University, May 1995.

² "[Environmental Policy in Massachusetts: Promoting Safe Development in a Time of Economic Uncertainty](#)", Northeastern University, October 2012.