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ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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June 12, 2013

The Honorable Mathy Stanislaus
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Mr. Stanislaus:

Thank you for providing testimony to the Subcommittee on Environment and the Economy on Friday, May 17, 2013, hearing on three legislative proposals entitled the "Federal and State Partnership for Environmental Protection Act of 2013"; the "Reducing Excessive Deadline Obligations Act of 2013"; and the "Federal Facility Accountability Act of 2013."

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

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Wednesday, June 26, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Nick.Abraham@mail.house.gov and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

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

Sincerely,



John Shimkus
Chairman

Subcommittee on Environment and the Economy

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

Attachment

The Honorable John Shimkus

1. Does EPA routinely accept State institutional control laws as legally applicable or relevant and appropriate requirements under CERCLA section 121? Does that vary from Region to Region?
2. Do other federal agencies routinely accept State institutional control laws as legally applicable or relevant and appropriate requirements under CERCLA? Please provide details responding to this question for each separate federal agency for which you have information.
3. Does EPA require compliance with State institutional control laws and regulations when CERCLA remedies do not achieve unrestricted use standards? Does that vary across the Regions?
4. Please provide documentation regarding EPA's policy of seeking State concurrence before proposing a site to the National Priorities List – including: regulations (if applicable), guidance, memoranda, and any correspondence with or among the Regions.
5. Please describe in detail EPA's current policy and practice regarding proposing a site to the National Priorities List – including all of the steps for listing a site to the NPL and identify the State role, if any, in each step.
 - a. Please also describe EPA's practice, if any, of providing information to a State that proposes a site for listing regarding the decision to list/not list a site.
 - b. Is the documentation regarding the listing decision – including correspondence with the Office of Management and Budget – available to the State that proposed the site for listing?
6. Is it EPA's policy to automatically list a site that a State proposes to the NPL under Section 105(a)(8)(B)? Why or why not?
 - a. What is EPA's policy and practice for deciding whether sites that are proposed by States will be listed on the NPL?
 - b. Does the policy and practice for listing sites proposed by States vary from Region to Region?
7. Please describe in detail EPA's current policy and practice regarding consultation with States in selecting a remedial action and also respond to the following:
 - a. Does interpretation or implementation of the Agency's policy regarding consultation with States in selecting a remedial action vary among Regions?
 - b. Please describe EPA's interpretation of Section 104(c)(2) that requires that the Agency consult with affected States *before* determining an appropriate remedial action. Identify the specific point(s) in the remedy selection process that EPA consults with an affected State and describe, in detail, the consultation process.
 - c. Your written testimony states that shifting the statutory timeframe for EPA-State consultation could “potentially generate uncertainty and delays” – please explain what the potential uncertainty and/or delays that may result and explain why it is the Agency's position that uncertainty/delays may result.
 - d. Describe the State role in the *selection* of the remedial action.

- e. How are the long-term operation and maintenance costs which will be borne by the States calculated? for what duration of time? and how is this information communicated to the States for their consideration during the remedy selection process? to what extent and how is the long-term financial burden to the State taken into account as a part of the remedy selection? Does the State have the authority to reject a remedial alternative from consideration due to long-term operation and maintenance costs?
 - f. During the hearing, the ASTSWMO witness provided an example of a remedy component (a corroded pipe) that was in poor operational condition at the time the State became responsible for the operation and maintenance, which resulted in the State incurring unanticipated maintenance costs at the outset of the operation and maintenance period. Does EPA ensure that all remedy components are in proper working order and condition *before* turning the remedy over to the responsibility of the State to prevent such occurrences? If so, please describe in detail how.
8. Please describe in detail EPA's current policy and practice regarding consultation with States in selecting a removal action.
 - a. Does interpretation or implementation of the Agency's policy vary among Regions?
 9. To what extent do individual Regions consistently apply EPA Headquarters' policies and interpretations regarding: (1) listing sites on the National Priorities List; (2) consulting with affected States in selecting the appropriate remedy; (3) consulting with affected States in selecting a removal action; and (4) providing credit toward 10% cost share under section 104(c)(5) for State in-kind contributions. Please provide detailed examples and explanations for each of the items listed in (1) through (4) for each Region.
 10. If a State conducts a removal-type action (at State expense) or provides assistance to EPA in conducting a removal action (when under no obligation to do so) such that EPA either does not need to do a removal action and/or the State action ultimately reduces the long-term remedial cost, following EPA's current policy and practice would it be possible for States to get credit for these actions (under 104(c)(3)) towards the State's *10% cost share for the remedial action*?
 - a. Please identify, by Region, whether and to what extent has such credit been granted.
 11. Does the Agency anticipate changes to the role of States/State participation in the CERCLA process in FY14 and beyond due to economic and budgetary pressures?
 12. Of the three bills – what would EPA anticipate would need to be changed in the National Contingency Plan (NCP) to implement the changes?
 - a. *Could* EPA implement the changes in the legislation without changing the NCP – please be specific regarding the specific provisions of the Federal-State Partnership for Environmental Protection Act and the Federal Facilities Accountability Act
 - b. *Would* EPA implement the changes in the Federal-State Partnership for Environmental Protection Act and the Federal Facilities Accountability Act without changing the NCP?
 13. In the late 1990's/early 2000's, EPA Office of Solid Waste and Emergency Response and States reformed the RCRA Corrective Action process to address lessons learned, to streamline the administrative processes, and to improve remedy effectiveness and efficiency. What similar reforms to the CERCLA remedial process and the NCP have been made to address these same issues?

- a. What changes *are needed* to the CERCLA Remedial process and the NCP to modernize and streamline these processes to implement the similar efficiencies and process improvements that were made to the RCRA CA processes?"
14. Your written testimony states that "since the inception of the Superfund program, EPA has continually evaluated program implementation and sought ways to improve the effectiveness of the cleanup program. Working with our state and tribal partners, we have instituted a variety of program changes and reforms over the years." Please list the program changes and reforms referred to in this statement and provide the specific year(s) that the changes were made.
- a. Please also indicate whether the changes referred to involved revision of the NCP and provide details regarding the timeframe (date of proposed rule, date of final rule and any other details regarding timing) for the regulatory change.
 - b. For program changes that did not involve regulatory changes to the NCP, please describe in detail the degree to which individual project managers and Regional Offices have implemented these changes consistently and in accordance with Headquarters' guidance and intent. Where there has been inconsistency in the application of Headquarters guidance and intent, what steps has Headquarters taken to identify and correct such inconsistencies?
 - c. For changes that did not involve regulatory changes to the NCP, please describe in detail the degree to which other federal agencies (by agency) have implemented these changes consistently and in accordance with EPA Headquarters guidance and intent. Where there has been inconsistency in the application of EPA Headquarters guidance and intent, what steps has EPA Headquarters taken to identify and correct such inconsistencies?
 - d. What authority does EPA currently (a) have and (b) utilize, to ensure that other federal agencies (by agency) rules, regulations, policies, interpretations and application to sites concerning the implementation of the CERCLA Removal and Remedial Program are consistent with EPA Headquarters rules, regulations, policies, interpretations, and application to sites including:
 - i. State involvement in decision-making?
 - ii. Identification of cleanup standards?
 - iii. Application of NCP requirements?
 - iv. Application of EPA Headquarters policies and procedures at NPL Sites?
 - v. Application of EPA Headquarters policies and procedures at non-NPL Sites?
 - e. To what extent has EPA utilized the authority described in question 13(d)? What difficulties has EPA encountered in exercising these authorities? Please provide specific examples by federal agency
15. In your written testimony regarding the Reducing Excessive Deadline Obligation Act you noted that the current statutory provision in 2002(b) of the Solid Waste Disposal Act could pose a "significant resource burden on EPA given the complexity and volume of EPA's RCRA regulations." Please explain why the current statutory provision would cause a "significant resource burden" on the Agency.

16. If EPA had to review and, if necessary, revise *each regulation promulgated under the Solid Waste Disposal Act*, would the Agency be able to accomplish such a review? Why or why not?
 - a. If revision of *each regulation promulgated under the Solid Waste Disposal Act* were necessary, would the Agency be able to accomplish such a revision? Why or why not?
 - b. What resources (fiscal and personnel) are or would be required to conduct such a review every three years? Does EPA have such resources at its disposal?

The Honorable Ralph M. Hall

I am aware of a very promising initiative involving the Superfund program of EPA and the Civil Works program of the Corps of Engineers that is focused on restoring contaminated urban rivers, which pose some of the most difficult challenges of all Superfund sites across the nation. That initiative, referred to as the Urban Rivers Restoration Initiative, gives States a much greater role in proposing and managing restoration at Superfund sites on urban rivers due to the Federal-State partnership relationship inherent in the Water Resource Development Authorities of the Corps. The proposal has been examined with positive results and recommendations for expansion by the EPA IG.

1. Might you provide what steps you might take in this Administration to provide greater support and more enthusiastic backing for this proposal?

The Honorable Henry A. Waxman

1. Please describe the review that EPA currently carries out under section 2002(b) of RCRA?
2. How many FTE's are currently used to carry out this requirement?
3. How many lawsuits have been filed, since 1976, to enforce the deadline in section 2002(b)?
4. EPA currently has in place a policy on seeking state concurrence before proposing a site to the National Priorities List. Please list all of the exceptions included in that policy.
5. What, if any, sites have been added to the National Priority List since adoption of that policy without state concurrence?
6. What is the current cost-share between states and the federal government for removal actions?
7. What is the current cost-share between states and the federal government for response actions?
8. Where the federal government carries out a removal action, does it apply the costs incurred in carrying out that action towards its cost share for the eventual response action at that site?
9. Under section 121 of Superfund, are federal agencies including EPA currently required to evaluate the cost-effectiveness of potential response actions?
10. Does section 121 require that analysis to look at the total short- and long-term costs, including operation and maintenance costs for the entire period during which those activities will be required?

11. Under section 121 of Superfund, are response actions which permanently and significantly reduce the volume, toxicity, or mobility of the hazardous substances preferred over other response actions?
12. What are the least preferred response actions under that section?
13. Please describe EPA's track record in meeting the requirements for evaluation of cost-effectiveness and selection of preferred remedies under section 121.
14. Can state institutional control laws qualify as legally applicable or relevant and appropriate standards, requirements, criteria, or limitations under section 121?
15. Please describe the rights granted to states under section 121 to require compliance with legally applicable or relevant and appropriate standards, requirements, criteria, and limitations.
16. When was the National Contingency Plan (NCP) last revised?
17. Please describe the revision process for the NCP, including the duration of the process.