



September 8, 2015

TO: Members, Subcommittee on Environment and the Economy
FROM: Committee Majority Staff
RE: Hearing entitled “Oversight of Federal Facility Cleanup under CERCLA”

I. INTRODUCTION

On Friday September 11, 2015, at 9:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Environment and the Economy will hold a hearing entitled “Oversight of Federal Facility Cleanup under CERCLA.” The Subcommittee will reconvene for a second panel of witnesses on Wednesday September 16, 2015, at 4:00 p.m. in 2322 Rayburn House Office Building.

II. WITNESSES

Day 1

- Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency (EPA);
- Mark Whitney, Principal Deputy Assistant Secretary for Environmental Management, U.S. Department of Energy;
- John Conger, performing the Duties of the Assistant Secretary of Defense for Energy, Installations, and Environment, U.S. Department of Defense; and
- Alfredo Gomez, Director, Natural Resources and Environment, U.S. Government Accounting Office.

Day 2

- Environmental Council of the States
- The Association of State and Territorial Solid Waste Management Officials

Witness names and any additional witnesses for Day 2 will be announced later.

III. BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires Federal agencies to identify, assess, and clean up hazardous waste contamination at facilities that they own or use. Nationwide, thousands of Federal facilities are contaminated with hazardous waste, military munitions, radioactive waste, and a variety of other hazardous contaminants. These facilities include sites such as active, realigning, and closed military installations; nuclear weapons production facilities; landfills; abandoned mines; and Formerly Used Defense Sites (FUDS).

There are unique issues associated with the cleanup of Federal facilities relative to other Superfund sites, such as:

- **EPA's role in the cleanups** – Typically, EPA's Office of Solid Waste and Emergency Response is responsible for overseeing the Superfund program under CERCLA. However, EPA's oversight role in CERCLA cleanups performed by its sister agencies is limited. In general, EPA does not oversee responses performed by other Federal agencies at sites that are not on the National Priorities List (NPL);
- **Delegation of primary CERCLA cleanup authority to other Federal agencies** – Executive Order 12580 delegates the President's authority to conduct cleanups under CERCLA to the Federal agency with jurisdiction over the facility. As a result, the Federal agency that is a potentially responsible party (PRP) at the site is also the lead agency in charge of the cleanup. This may present the appearance of conflict in that the Federal PRPs, who are responsible for paying for cleanups, are also responsible for making decisions regarding the appropriate remedial actions;
- **Funding for cleanups at Federal facilities** – The Federal agency with administrative jurisdiction over a Federal facility is responsible for paying for the cleanup of contamination out of its own budget, subject to appropriations by Congress which leads to issues such as setting cleanup priorities and the fact that Federal PRPs who must pay for the remedy also will have control over the selection of the remedy;
- **Sovereign immunity** – Section 120 of CERCLA specifically requires that Federal facilities comply with the requirements of the statute to the same extent as other facilities. However, Federal agencies invoke sovereign immunity under CERCLA to limit or preclude State involvement and to prevent the application of certain State laws. CERCLA, to some extent, has waived the United States' general sovereign immunity, but the waiver is limited to certain requirements and is limited to currently owned and operated facilities;
- **Role of the States in the cleanup of Federal facilities** – While CERCLA, to some extent, allows the States to oversee the cleanup of Federal facilities, certain provisions of the law limits States' ability to guide how the cleanup process may be carried out, and

CERCLA does not give States decision-making authority with respect to Federal facilities.

IV. ISSUES

The following issues may be examined at the hearing:

- Federal agency efforts to identify contaminated and potentially contaminated sites;
- Funding levels for addressing contaminated and potentially contaminated sites;
- EPA's involvement in addressing contaminated and potentially contaminated Federal sites;
- Transparency of the process regarding site identification, assessment, and cleanup;
- Federal agencies track progress in identifying and assessing sites and conducting cleanups;
- Executive Order 12580 and the delegation of lead agency authority to other Federal agencies;
- Whether cleanups of Federal facilities are being completed;
- How Federal agencies involve States in the site identification, assessment, and cleanup process.

V. STAFF CONTACTS

If you have any questions regarding this hearing, please contact Tina Richards or Dave McCarthy of the Committee staff at (202) 225-2927.