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RPTR BAKER

EDTR HOFSTAD

OVERSIGHT OF FEDERAL FACILITY CLEANUP UNDER CERCLA

FRIDAY, SEPTEMBER 11, 2015

House of Representatives,

Subcommittee on Environment and the Economy,

Committee on Energy and Commerce,

Washington, D.C.

The subcommittee met, pursuant to call, at 9:02 a.m., in Room 2123, Rayburn House Office Building, Hon. John Shimkus, [chairman of the subcommittee] presiding.

Present: Representatives Shimkus, Harper, Murphy, Latta, Johnson, Bucshon, Hudson, Upton (ex officio), Tonko, Schrader, Green, DeGette, and Pallone (ex officio).

Also Present: Representative Lujan.

Staff Present: Will Batson, Legislative Clerk; David McCarthy, Chief Counsel, Environment/Economy; Tina Richards, Counsel,

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Environment; Chris Sarley, Policy Coordinator, Environment and Economy; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Oversight; Christine Brennan, Minority Press Secretary; Jacqueline Cohen, Minority Senior Counsel; Tiffany Guarascio, Minority Deputy Staff Director and Chief Health Advisor; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; and Alexander Ratner, Minority Policy Analyst.

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Mr. Shimkus. We are going to call the hearing to order.

I want to thank everyone for the early start time, both from the agencies and my colleagues. As we know, Friday fly-out days are challenging for Members, so it is good to get started.

Just, also, a point of notice is that there are really two panels. This is the first panel of our hearing, and then we will have other stakeholders later on.

So, with that, I will recognize myself for an opening statement, 5 minutes.

I welcome today's witnesses, and thank you all for appearing to discuss protection from and cleanup of hazardous waste at Federal Government facilities. Today we will hear perspectives of the Department of Defense, the Department of Energy, the Environmental Protection Agency, and the Government Accountability Office.

Thousands of ordinary citizens in private-sector companies face the daily challenge of controlling costs and making a profit without leaving behind a trail of hazardous waste. The same citizens and companies must meet both Federal and State prevention and cleanup standards.

In meeting all these challenges, they face distinct disadvantages when compared with their Federal agency counterparts. One, they can't rely on the U.S. taxpayer to cover either their compliance or their cleanup costs. They also can't always choose their own remediation

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options. And they can't fall back on the defense of sovereign immunity when they are taken to court.

While those private-sector companies focus on making a profit while complying with the environmental protection standards, the Defense and Energy Departments focus on national security. And national security can be a messy business, involving everything from motor oil to munitions waste. And even national security is no excuse for leaving a mess in your neighbor's backyard.

As we drill down into specifics on an agency-by-agency basis, we will learn that some of our Federal partners are more successful than others in juggling these dual responsibilities to their core mission and to protecting land and water. The agencies' challenges are not uniform, and neither are their budgets.

We have four objectives today. The first one is to get a detailed update on where agencies stand on meeting their good-neighbor obligations. The second one is to find out what the challenges are and how those challenges vary from agency to agency. The third one is to understand what the resource management relationship is between each of these agencies and the EPA. And, finally, to get GAO's perspective on who is doing a good job, who is not, and what they can do to improve.

Next week, a second panel for this hearing will provide the State perspective. Under our system of government, States have primary

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responsibility for protecting their own natural resources, including land and water, from environment degradation. But a State's challenge is made more difficult, if not impossible, to meet if the entity responsible for the environmental mess is a Federal agency, with all the power that status implies.

After the episode last month in Colorado with the release of contaminated water into the Animas River, I wouldn't be surprised if some in our audience thought first of EPA when they heard the phrase "Federal agency responsible for an environmental mess," but the Colorado mine release is not the focus of this hearing.

Since we first got the news of the blowout, our committee has been looking into the Colorado mine incident on a separate track from this hearing. At the beginning, we had lots of questions and almost no answers. Gradually, we have been piecing together the facts as best we can. We are not finished yet. I trust our friend Mr. Stanislaus and everyone in the administration will cooperate with our committee as we pursue that inquiry.

Correct, Mr. Stanislaus?

And he shakes his head "yes."

Thank you.

Today I hope that we can focus on the Federal facilities issue and whether important agencies such as the Department of Defense and the Department of Energy are good neighbors and good stewards of the

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land and water that they touch wherever they have a presence.

I will now just end with -- you know, my background is also as a military officer, understanding national security and the challenges that face us. So the balancing of that and also being a good neighbor toward folks is very important to me, but I would also want to say I appreciate the work that the DOE and the Department of Defense does in protecting our citizens.

With that, I yield back my time and yield 5 minutes to the ranking -- unless someone else wants my final -- I yield now 5 minutes to the ranking member, Mr. Tonko.

[The prepared statement of Mr. Shimkus follows:]

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Mr. Tonko. Thank you, Mr. Chair.

And good morning, and thank you to our witnesses for participating this morning.

And I thank the chair for holding a hearing on this very important topic.

Congress enacted the Comprehensive Environmental Response Compensation and Liability Act, commonly known as Superfund, some 35 years ago, but communities across the country are still dealing with the legacy of toxic waste. After a rough start, the Superfund program has had success in containing and cleaning up serious contamination problems in many of our communities, but there is still much work to do and too few dollars available to do it.

The good news is that sites are being cleaned up. When sites are cleaned up, the surrounding community benefits from a cleaner, healthier environment, and returning abandoned, contaminated land to productive use improves the local economy.

In addition to the sites on private or State land, there are many Superfund sites on Federal land. The Federal Government operates facilities across our country on millions of acres of land. Some of the Federal site contamination is due to the government's activities, but there are also many areas where mining, drilling, and industrial activities by private parties took place decades ago, leaving a legacy of contamination.

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The Federal Government is subject to the Superfund law, and the government spends billions of dollars annually to clean up hazardous contamination at Federal facilities.

A few years ago, I asked the Government Accountability Office to look at the status of cleanup activities on Federal lands and to focus on the agencies and departments other than the Departments of Defense and Energy. These department sites are generally well known and have received considerable oversight and attention. The situation for the United States Department of Agriculture, the Department of the Interior, and other Federal agencies was less clear.

Under the Superfund law, Federal agencies are required to identify, assess, and clean up contamination on the properties that they administer, but cleanups cannot begin if sites have not been identified and characterized. As Mr. Gomez and his team found, this first crucial step has not been completed in the case of these other departments. And because of the nature of the sites on Department of Interior and Department of Agriculture lands and the limited budgets for these activities, it does not appear we will have a complete, reliable inventory in the near future.

We spend a lot of time these days worrying about how much the government is spending. I worry about that, as well, but I also worry about how we are distributing these dollars that we do spend. Across-the-board cuts and arbitrary caps are preventing us from doing

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some of our most important and difficult tasks: setting priorities and ensuring that we are providing funds to programs that deliver sustained benefits to our citizens. And returning contaminated land to productive use, preventing pollution migration, and reducing people's exposure to dangerous toxins certainly is a sustained benefit.

With the passage of Superfund, we made a commitment to identify and clean up contaminated properties. We should fulfill that commitment. I don't know that new legislation is required to do this. I do believe that additional oversight of this program, however, would be very useful. This hearing makes an important contribution to that effort.

Mr. Gomez, thank you and your team for your work on this issue. You have given us a lot to consider and provide some constructive recommendations.

I do appreciate the opportunity for the subcommittee to examine our Superfund program. The citizens living in communities with these sites are anxious, and they are anxious to have them cleaned up and returned to safe, productive use. The responsible parties, whether public or private, want to accomplish those cleanups in a cost-effective manner. These are goals that we can all support, so I do hope to work with you, Chairman Shimkus, and the other members of the subcommittee to achieve these goals.

And I thank all for participating in the hearing this morning and

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next week, and I look forward to your testimony on what is a very important issue.

With that, I yield back.

[The prepared statement of Mr. Tonko follows:]

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Mr. Shimkus. The gentleman yields back his time.

I would like to submit, with unanimous consent, a statement for the record from Chairman Upton for his opening statement.

[The prepared statement of Mr. Upton follows:]

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Mr. Shimkus. Is there anyone on the majority side wishing to seek time?

Seeing none, the chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman and our ranking member, for calling this hearing on the Superfund program.

Superfund has been an incredibly important tool for protecting public health and the economy in my home State of New Jersey and throughout the country, and thousands of contaminated sites have been cleaned up and revitalized, including many former Federal sites.

As successful as Superfund has been, there is still so much important cleanup work to be done. I expect we will hear from today's panel about the staggering number of abandoned mine sites -- just a subset of Federal sites and even smaller subset of contaminated sites nationwide. And I hope that my colleagues on this subcommittee will join me in working to ensure that EPA, other Federal agencies, State and local communities, have the resources needed to get these cleanups done.

Superfund sites are contaminated with toxic substances that can make their way into drinking-water wells, creeks and rivers, backyards, playgrounds, and streets. Communities impacted by these sites can face restrictions on water use and recreational activities as well as economic losses as property values decline due to contaminated land.

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In the worst cases, residents of these communities can face health problems such as cardiac impacts, infertility, low birth weight, birth defects, leukemia, and respiratory difficulties.

The major environmental laws that are truly the powerful legacy of this committee have consistently held that polluters must pay for environmental harms. The principle is the heart of the Superfund program and should be preserved. For Federal facility cleanups, that means that we in Congress have a duty to ensure funds are appropriated to cover cleanup needs. For private facilities, that means we have a duty to reinstate the Superfund tax and stop charging taxpayers for cleanups.

In 1995, despite opposition from myself and other Democrats, a Republican Congress allowed the Superfund tax to expire. Before its expiration, the collected taxes were placed into a Superfund trust fund that was used for the cleanups of so-called orphan sites, where the party responsible for the pollution either no longer existed or could not afford the cost of the cleanup. The thousands of abandoned mines across the Western United States are examples of such sites. Without those revenues, important Superfund cleanups have been delayed, the backlog of sites needing cleanup has grown, and the costs have shifted to the taxpayers.

As many of you know, I have routinely introduced legislation, the Superfund Polluter Pays Act, which would replenish the Superfund trust

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fund by reinstituting the taxes that the oil and gas companies paid between 1980 and 1996. The legislation reinstates a 9.7-cents-a-barrel tax on petroleum, a tax on 42 chemicals, and a corporate environmental income tax of 12 percent on taxable income in excess of \$2 million. This would help ensure that the EPA has sufficient funds available for the costs of investigation and cleanups of these toxic sites.

Reinstating this tax should be a part of any conversation we have in Congress about Superfund, but the tax itself is not enough. We need higher appropriations for Federal agencies with responsibility for cleanups, and we need financial responsibility requirements to stop the proliferation of abandoned mines and other orphan sites.

Under section 108 of Superfund, EPA has been working to establish such requirements for hard-rock mining and eventually for other polluting industries. Financial responsibility requirements would ensure that any company undertaking the dangerous practice has the resources necessary to cover the costs of anticipated cleanup needs.

Republicans have blocked these requirements in recent years through appropriation riders, a practice that I hope will stop in the wake of the Gold King Mine spill last month.

Removing public health hazards by cleaning up contaminated sites is incredibly important for the surrounding communities. Cleaning up toxic Superfund sites not only reduces human health risks, it helps

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create jobs during the cleanup and, through newly uncontaminated and productive land, makes it ready for redevelopment. So we should all support cleanup efforts and should ensure that those efforts are funded.

Again, I look forward to today's testimony. I thank both the chairman and Mr. Tonko for calling this hearing.

I yield back.

[The prepared statement of Mr. Pallone follows:]

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Mr. Shimkus. The gentleman yields back his time.

I would now like to recognize -- and I will introduce you when your time comes to speak.

First would be the Honorable Mathy Stanislaus, Assistant Administrator, Office of Solid Waste and Emergency Response at the U.S. Environmental Protection Agency.

Your full statement is in the record. You have 5 minutes. And welcome back.

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STATEMENTS OF MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY; 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 ACCOUNTABILITY OFFICE

STATEMENT OF MATHY STANISLAUS

Mr. Stanislaus. Okay. Thank you.

Chairman Shimkus, Ranking Member Tonko, Congressman Pallone, and members of the subcommittee, I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response. And, again, thank you for inviting me here to talk about the Superfund program.

In specific, I want to talk about the Federal facilities component of it, which is the focus of this hearing. The cleanup of Federal facilities is led by the Federal agencies who have delegated authority with properties under their responsibility, with the EPA having a discrete role, which I will get into in a second.

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CERCLA section 120 provides a framework for identifying contaminated Federal facility sites, assessing actual or potential environmental risks from these sites, and assuring cleanup and other actions to protect public health and the environment. Under section 120, Federal facilities are required to comply with CERCLA in the same manner and to the same extent, both substantively and procedurally, as private entities.

Section 120 includes provisions and timetables that apply to Federal facilities only, including requiring the EPA to establish a Federal agency hazardous waste docket, requiring completion of a preliminary assessment by a Federal facility after docket listing, requiring a Federal agency to commence a remedial investigation and feasibility study within 6 months of that facility being placed on the National Priorities List, and requiring that the EPA and the Federal facility agency enter into an interagency agreement referred to as a Federal facility agreement at all NPL sites. Also, there are specific provisions that govern the transfer of Federal facilities to private entities.

Under Executive Order 12580, Federal agencies are designated as the lead agency for carrying out many of CERCLA's statutory requirements at their facilities. However, EPA retains the final decision authority over a small subset of these. These are remedial action sites and National Priorities List sites. If the Federal agency

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and department and EPA are unable to reach agreement on the selection of remedial action at these NPL sites, the EPA's Administrator makes the final decision.

The shared responsibility of program implementation under CERCLA has unique challenges for EPA and other Federal agencies but has generally worked effectively. Currently, there are 157 final Federal facility sites on the NPL, and another 17 Federal sites have been deleted from the NPL. Approximately 80 percent of these 174 sites are DOD component sites.

The CERCLA framework has worked effectively for helping to ensure appropriate cleanup for more than 20 years. Moreover, because States are often parties to a Federal facility agreement and State laws and regulations may apply to State site cleanups, States and EPA work together to ensure that the NPL cleanups meet statutory requirements, protective of public health and the environment, and incorporate pertinent State requirements.

The EPA is engaging with other Federal departments and agencies on a range of activities to maintain and accelerate cleanup progress at Federal facilities. For example, we are working collaboratively with DOD on tools for advancing geophysical classification to allow for more accurate and efficient cleanup of munitions sites, a fairly significant issue; improving site-level data quality; and resolving technical issues associated with emerging contaminants.

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Ensuring that people have environmental information about their communities is a top priority of my office. In 2010 and 2011 as part of ongoing efforts to enhance community engagement, my office reached out to diverse stakeholders through the Federal Facility Dialogue, as well as the Federal agencies represented here today. What we heard from stakeholders is that there is a need for more transparent and easily accessible information on cleanup progress and long-term protectiveness.

We have begun to move forward on some of these issues. For example, for the past 5 years, the EPA has led an interagency working group to make improvements to the 5-year review process that would force a greater transparency and participation from impacted communities. When wastes are left in place, EPA assesses whether remedies continue to be protective of public health and the environment through a 5-year review. And we are continuing to modernize the Federal Agency Hazardous Waste Compliance Docket and exploring ways to make the program data more accessible to communities and other stakeholders, as required by CERCLA.

In 2012, in the EPA, in collaboration with other Federal agencies and departments, we completed a Federal facilities site evaluation project. This project evaluated the disposition of 514 federally owned sites that EPA identified as potentially stalled in their progress. Through this process, EPA has been able to make an activity

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determination on 491 of the 514 sites on this list. Initiatives like this allows EPA to ensure the Federal facility information is up to date and communities have the most pertinent information on that site.

I will close, and looking forward to your questions.

[The prepared statement of Mr. Stanislaus follows:]

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Mr. Shimkus. Thank you.

The chair now recognizes Mr. Mark Whitney, Principal Deputy Assistant Secretary for Environmental Management with the U.S. Department of Energy.

Sir, you are welcome. You are recognized for 5 minutes.

STATEMENT OF MARK WHITNEY

Mr. Whitney. Thank you, and good morning, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee. I am pleased to be here today to represent the Department of Energy's Office of Environmental Management and to discuss the Comprehensive Environmental Response, Compensation, and Liability Act.

The Environmental Management program was established in 1989 with the mission to clean up the largest and most complex nuclear waste sites in the world as safely, effectively, and quickly as possible. This involves some of the most dangerous materials known to humankind, and it is no simple task. But the EM has completed cleanup activities at the 91 sites across 30 States since their inception, leaving the remaining cleanup work at 16 sites in 11 States. That is approximately \$150 billion worth of cleanup work completed since the inception of

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the program.

Sites like Fernald in Ohio and Rocky Flats in Colorado have been cleaned up and are now wildlife preserves. We have decommissioned and demolished more than 2 million square feet of excess facilities and removed all EM special nuclear material from the Idaho National Laboratory. We produced nearly 4,200 canisters of vitrified high-level waste at Savannah River site and the West Valley sites combined, and we have closed 6 underground storage tanks at the Savannah River site. We demolished the K-25 building at the Oak Ridge site, which was once the largest building under a single roof in the world.

The Federal Government's investment in EM is resulting in safe and secure nuclear waste and reduced risk to the American people and environment.

One of the great success stories of the program is the cleanup of the Rocky Flats site, which is listed on the National Priorities List, and cleanup was guided by a tri-party interagency agreement. In October 2005, EM completed the cleanup significantly under estimated cost and schedule.

A number of factors were important contributors to the success of the Rocky Flats cleanup, including a collaborative working relationship with the regulators, both the State regulators and Environmental Protection Agency; an incentivized and motivated management and operations contractor; consistent and reliable budget

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appropriations; a closure managed as a finite project; involved stakeholders; and engaged workers and public.

The Department has a balanced approach under the regulatory frameworks of the applicable environmental regulations, including CERCLA, also the Resource Conservation Recovery Act, or RCRA, the Atomic Energy Act, and the National Environmental Policy Act. And this guides and directs our cleanup actions.

EM continues to pursue its cleanup objectives safely within a framework of regulatory compliance, and the Department has 19 sites currently listed on the EPA's National Priorities List. EM is responsible for the cleanup of 11 DOE NPL sites which are located across 7 States.

Under CERCLA, EPA oversees the Department's cleanup actions at NPL sites, and, although States are not a delegated authority for oversight of DOE's NPL site cleanup under CERCLA, State regulators are active participants in the CERCLA process. We work with EPA in the States to determine site priorities, evaluate cleanup approaches, develop a schedule for cleanup activities, and specify the requirements the site cleanup actions and activity must meet.

These collaborative decisions are memorialized as binding commitments in a Federal Facility Agreement or a tri-party agreement between the State, EPA, and DOE. And these regulatory frameworks set cleanup standards and govern our cleanup activities. Generally,

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cleanup levels are directly tied to the expected future land uses of our sites. We have nearly 40 agreements at the 16 sites where we are working.

Largely EM has had success working with State regulators when it comes to negotiating, updating, and improving compliance agreements. Our site office have weekly, often daily, interactions with our regulators, State and EPA, to keep them apprised of site activities.

We also currently have one Federal Advisory Committee Act-chartered Site-Specific Advisory Board, with eight local advisory boards organized under that umbrella. Members of these advisory boards include people directly affected by site cleanup activities, such as stakeholders from local governments, tribal nations, environmental and civic groups, labor organizations, universities, industries, and other interested parties and citizens.

A collaborative relationship with State and Federal regulators and the public is essential to successfully completing our cleanup at our sites.

In addition to the collaborative relationships with regulators and stakeholders, there is also a need for continued investment in research and development for our program. We believe through strengthening the scientific basis for decisionmaking, the improvement in the effectiveness of cleanup technologies, as well as development of new technologies that address difficult and one-of-a-kind, unique

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issues and challenges, it is our hope that costs and project timelines can be reduced.

Mr. Chairman, Ranking Member Tonko, and members of the subcommittee, I am again honored to be here today representing the Office of Environmental Management. I appreciate your interest in our work, and I appreciate the funding provided by Congress for EM each year.

We are committed to achieving our mission within a framework of regulatory compliance and will continue to comply innovative environmental cleanup strategies and to complete our work safely and efficiently, thereby demonstrating value to the American taxpayers.

Mr. Chairman, I know you have had the opportunity in the past to visit the Savannah River site fairly recently and get a firsthand look at the magnitude and the challenges that we face on a day-to-day basis in implementing our cleanup work at our sites.

I would invite and encourage every member of the subcommittee to visit our sites and would be happy to assist in arranging tours and those visits as appropriate.

With that, I am pleased to answer any questions as we move forward that you may have. Thank you.

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[The prepared statement of Mr. Whitney follows:]

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Mr. Shimkus. Thank you very much.

Next, I would like to recognize Mr. John Conger, performing the duties of the Assistant Secretary of Defense, Energy, Installations, and Environment, U.S. Department of Defense.

You are recognized for 5 minutes, and welcome.

STATEMENT OF JOHN CONGER

Mr. Conger. Thank you, Mr. Chairman. Good morning.

Chairman Shimkus, Ranking Member Tonko, distinguished members of the subcommittee, thank you for the opportunity to discuss the Department of Defense's cleanup activities and the progress we have made to date.

The Department has long made it a priority to protect the environment. From a mission perspective, we want to ensure that we have the land, water, and air space that we need for military readiness. Moreover, we must protect the health of the military and civilian personnel and their families who live and work on our bases, to ensure our operations don't affect the health and environment of surrounding communities, and to preserve resources for future generations.

While we are here to talk about cleanup of past contamination, I want to emphasize that we are committed to rigorously complying with current laws to minimize new contamination. Our funding requests, our

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strong relationships with Federal, State, and local stakeholders, and our continued progress reflect that commitment.

The Department of Defense is responsible for approximately 39,000 cleanup sites across hundreds of active and closed bases. And, if I could, I have heard the term "site" used by other witnesses, and I think they use it differently than I do. I am talking about specific instances of pollution. Multiple sites can occur on a single installation. So I think the numbers that I have heard earlier reflect that an entire installation would be a single site, and we break it out differently. But, in any case, 39,000 cleanup sites across hundreds of installations.

In order to make the most impact, we continually reassess DOD's cleanup program to ensure that we address the highest-risk sites first, a process we conduct in collaboration with EPA and with the States. At the same time, we are committed to completing cleanup or achieving "response complete" and "no further action required" at all of our sites.

We appreciate Congress' support for the roughly billion-and-a-half dollars a year we spend on cleanup. At this point, more than 80 percent of our 39,000 sites have reached "response complete." I am proud to say that we remain on track to meet our internally set goals of 90 percent "response complete" by the end of 2018 and 95 percent by the end of 2021.

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None of our successes would have been possible without investments in groundbreaking research and development in environmental technology. These are aimed at tackling our most difficult cleanups. Recent successes include bioremediation techniques for groundwater cleanup and detection technology to help find buried munitions. We are beginning to focus our R&D on capabilities needed to accelerate cleanup of the complex sites that will remain after we achieve our 2021 goals.

Finally, I would like to highlight the contributions of our State, local, and Federal partners. State and local stakeholders help us to develop site management plans, play an active role in remedy selection, and have important oversight responsibilities. To that end, we have established three high-level working groups and approximately 200 restoration advisory boards for local input to provide forums for local communities, State regulators, and other Federal regulators to discuss cleanup issues and concerns with us.

We are also committed to interagency efforts. For example, my staff and senior leaders from the three military components meet with EPA headquarters staff quarterly to ensure our programs are on track and moving forward.

In conclusion, our focus remains on continuous improvement in the restoration program. We have been identifying cleanup sites since the 1970s and have come a long way. Still, we are fully aware of the

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magnitude of our mission, and we look forward to continuing our partnerships and making smart investments in technology to meet our outlined goals.

Thank you again for the opportunity to testify today, and I look forward to answering your questions.

[The prepared statement of Mr. Conger follows:]

***** INSERT 1-3 *****

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Mr. Shimkus. Thank you very much. And, again, we welcome you here.

Now, Mr. Alfredo Gomez, no stranger to this committee, Director of Natural Resources and the Environment at the U.S. Government Accountability Office.

Welcome. You have 5 minutes.

STATEMENT OF ALFREDO GOMEZ

Mr. Gomez. Thank you, Mr. Chairman.

So, Chairman Shimkus, Ranking Member Tonko, and members of the subcommittee, good morning. I am pleased to be here today to discuss our work on hazardous waste cleanup at Federal facilities.

The Federal Government owns over 700 million acres of land. Some of this land is managed by the Department of Agriculture, Interior, Department of Defense, and Department of Energy and is contaminated with hazardous waste that poses serious risks to human health and the environment. The cleanup of these sites can require substantial time and expense, as you have heard already.

In response, Congress passed CERCLA, also known as Superfund, which requires owners and operators of hazardous waste to notify the Environmental Protection Agency of the existence of their facilities. Based on the risks a site poses, EPA may place the site on the National

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Priorities List, a list that includes some of the Nation's most seriously contaminated sites. As of September this year, there are 158 Federal sites on the list.

So my statement today summarizes the results of several reports on the topic. I will talk about three key points: first, the number of contaminated and potentially contaminated Federal sites for the four departments; and, two, spending on and estimates of future costs for cleanup at these sites; and, number three, EPA's role in maintaining the list of contaminated and potentially contaminated Federal sites and ensuring that preliminary assessments of such sites are complete.

The first point is that, while the four departments have identified thousands of contaminated and potentially contaminated sites, they do not have a complete inventory of sites, in particular for abandoned mines.

Specifically, while the U.S. Department of Agriculture had identified over 1,400 contaminated sites and many potentially contaminated sites, the Department did not have a reliable centralized site inventory for abandoned mines. The Department's Forest Service estimated that there were from 27,000 to 39,000 abandoned mines on its land. The Department of the Interior had an inventory of 4,722 sites with confirmed or likely contamination. However the Department's Bureau of Land Management had identified over 30,000 abandoned mines that were not yet assessed for contamination, and this inventory was

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not complete.

The Department of Defense reported to Congress in June of 2014 that it had 38,804 sites in its inventory of sites with contamination. The Department had the greatest number of sites on the National Priorities List. The Department of Energy reported that it had 16 sites in 11 States with contamination, and, as you have heard already, the Department is responsible for one of the world's largest environmental cleanup programs.

Second, with regards to the cost of cleanup at these sites, the four departments reported allocating and spending millions of dollars annually on environmental cleanup, an estimated future cost in the hundreds of millions of dollars or more in environmental liabilities.

For example, the Department of the Interior allocated for fiscal year 2013 about \$13 million for environmental cleanup efforts and reported \$192 million in environmental liabilities. The Department of Energy received annual appropriation of about \$5.9 billion in fiscal year 2015 to support cleanup activities, and, in 2014, the Department estimated its total liability for environmental cleanup at almost \$300 billion.

So, third, as of August 2015, EPA had compiled a docket of over 2,300 Federal sites that may pose a risk to human health and the environment. EPA has noted that it is difficult to know about a site if the agencies have not reported it. EPA is also responsible for

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ensuring that Federal agencies assess the sites for contamination and has established 18 months as a reasonable timeframe for agencies to complete preliminary assessments. However, some agencies may take 2 or 3 years to complete an assessment.

So, in summary, there are thousands of contaminated sites, and the list is not complete. The four Departments have spent millions annually for cleanup and have estimated future costs in the billions of dollars. And, lastly, EPA has compiled a docket of over 2,300 Federal sites that may pose a risk to human health and the environment.

Mr. Chairman, Ranking Member Tonko, members of the subcommittee, that concludes my statement, and I would be happy to respond to questions.

[The prepared statement of Mr. Gomez follows:]

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Mr. Shimkus. Thank you very much.

Before I start with my questions, we are going to have two panels. The second panel is going to have the States kind of represented, along with another person, who we don't know who that is yet. But it was the intent to maybe have it all on one panel so you could hear the concerns posed by the States. And it is my hope that you all will follow up and at least listen to the second panel.

You know, there are always 10 legislative or business days with followup questions, so a lot of maybe the followup questions that we will present in writing will be based on the second panel testimony. I think it is going to be instructive and educational, and I hope you pay attention to that also.

Having said that, let me start with my questions.

Mr. Stanislaus, do you think that Executive Order 12580, in delegating lead cleanup status to agencies that may have caused contamination at a Federal facility and which are responsible for paying for cleanups, creates a potential conflict?

Mr. Stanislaus. So all I can really speak about is those sites within our responsibility. So, of those sites within our responsibility, we do have an ability, EPA, to oversee that subset of sites. Those are sites on the National Priorities List. Other sites, we don't have that ability. It has been delegated directly to the other Federal agencies.

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Mr. Shimkus. So let me ask this again. Do you think that the funding mechanism -- okay, so you have a Federal agency; they have a contaminated site. They are, because of the Executive order, given the authority for remediation, but the funding also comes out of their own budget.

Does that cause a conflict? Does that make it difficult? Do they then make up -- are they making a cost-benefit analysis based upon budgetary outlays?

Mr. Stanislaus. Well, with respect to how the other agencies make that decision, I don't really know. But I can tell you from where EPA is involved in overseeing sites by the various Federal agencies, there is really a real value to have independent review of everything from the scope of work and the implementation of the work.

Mr. Shimkus. So let me go to Mr. Whitney.

This is really the genesis of the questions that I am going to have for all the panelists. In the situation where DOE is both the primary responsible party and the lead agency making remedial decisions, can you understand -- that is the question -- the potential conflict, concern about conflict, and the worry that remedial decisions may be based on budgetary considerations?

Mr. Whitney. Thank you, Chairman.

So, for the Department of Energy sites, while we are the lead agency for the cleanup, we do not have a regulatory role. That

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regulatory role is by the EPA and the States. And so, sir, I don't see an conflict of interest. We work very closely and --

Mr. Shimkus. But you are still the lead agency, whether there is an oversight role or not?

Mr. Whitney. Yes, sir.

Mr. Shimkus. Okay.

And, really, Mr. Conger, same question.

Mr. Conger. Yeah, no, I don't see a conflict. Most of the contamination that we are cleaning up, it dates from a long time ago, and it is not like there is a conflict at a particular location between the person cleaning something up and whoever had made the spill or whatever.

We are pretty successful in getting appropriations for this cleanup. We have a very stable roughly billion-and-a-half dollars a year that we get into this program. We have schedules that have been fairly stable over the years worked out with the EPA and the States. I don't see any conflict or any problems on this.

Mr. Shimkus. Let me go back to Mr. Whitney.

What happens if two different Federal agencies assert lead agency authority?

And, Mr. Conger, you can address it too.

For example, if one agency currently owns the property but another agency caused the contamination, which agency, in fact, has the lead

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agency authority?

Mr. Whitney. Sir, I am not aware of that with respect to DOE sites. We --

Mr. Shimkus. Mr. Conger, are you aware of that?

Mr. Conger. I can think of an example or two. So here is the dynamic. Where we cause the contamination and then transfer a property, through BRAC or whatever other mechanism -- we have a responsibility for cleaning up all the contamination that we know about. That is the dynamic that we are dealing with. We have CERCLA responsibilities, and we uphold them.

Mr. Shimkus. And we are not trying to play gotcha. I mean, a lot of this stuff is way before we were better environmental stewards, more focused on it. And so this is not an attempt at gotcha. It is just clarifying the record, trying to get answers for our questions.

I want to make sure I get to Mr. Gomez for my last question.

In your written testimony, you recommend that Congress should change section 120 of CERCLA to add a deadline for Federal agencies to complete their preliminary assessments. Can you explain that? Please explain that.

Mr. Gomez. Certainly. So, yes, we did note that in the report.

So EPA has essentially said 18 months as a reasonable timeframe for agencies to complete preliminary assessments. And what we found was that some agencies were taking 2 to 3 years to complete. So what

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we suggested then for Congress was to consider giving EPA the authority to actually enforce that requirement. And we don't specifically set what that requirement should be, but we do note that EPA has already set a reasonable timeframe of 18 months.

Mr. Shimkus. So your recommendation is that the EPA have an enforceable deadline, and in your analysis you don't really choose what that is.

Mr. Whitney. Correct.

Mr. Shimkus. Okay. Great. Thank you very much. I appreciate it.

My time has expired, and I yield to the ranking member of the subcommittee, Mr. Tonko, for 5 minutes.

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[9:42 a.m.]

Mr. Tonko. Thank you. And, again, I thank the chair for convening this panel to provide us with a progress report on Federal facility cleanups under Superfund.

Last Congress, this committee considered legislation to change the treatment of Federal facility cleanups under Superfund. That bill was not based on an oversight record and included several misguided provisions. I did indeed oppose that legislation, as did all of my Democratic colleagues on the committee. So I welcome this opportunity to build the committee's record on these issues and hear from some of our agencies involved in Federal facility cleanups.

I would like to start by asking about Federal responsibilities under current law.

Mr. Conger and Mr. Whitney, under current law, are you subject to the liability and cleanup requirements of Superfund at sites where you are a responsible party?

Mr. Whitney. Maybe I will go first, if that is okay.

Yes, sir. The Department of Energy is subject to the same requirements as private entities under CERCLA.

Mr. Tonko. Thank you. And --

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Mr. Conger. Yes.

Mr. Tonko. -- Mr. Conger, you are in agreement.

Mr. Stanislaus, under current law, are all Federal agencies subject to the liability and cleanup requirements in Superfund?

Mr. Stanislaus. Yes.

Mr. Tonko. In fact, section 120 of Superfund imposes additional requirements on Federal agencies that private parties do not face, I believe.

Mr. Conger, what obligations does Superfund place on the Department of Defense and other agencies before you can transfer land?

Mr. Conger. Before we transfer -- I mean, so it is a little complicated. We can transfer lands that is contaminated with a guarantee to clean it up after the transfer; we can have that set up in the agreement. We have a responsibility for cleanup regardless of when the transfer occurs.

Mr. Tonko. Okay. And is that true also in regard to the BRAC process where, you know, we are addressing the realignment and closure of bases?

Mr. Conger. Yeah, that is generally true.

I want to be careful not to -- I am not going to pretend to be an attorney here. And so, as we go into the finer points of the law, I am not going to -- I will double check for the record the answers to your questions.

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But, in a broad sense, we have responsibilities to perform the cleanup at BRAC sites or whatever other transferred sites we have. We have on occasion not let that hold up the transfer of property, but rather, you know, with eyes open to whoever is receiving the property either agreed to clean it up after the fact or made an agreement or arrangement to have it cleaned up after transfer.

Mr. Tonko. And, Mr. Gomez, do private parties face these given obligations?

Mr. Gomez. That is something I would have to get back to you, also not being a lawyer, Mr. Tonko. So I have to get back to you on that.

Mr. Tonko. Okay.

I am sure that our ranker, Mr. Pallone, and others on the subcommittee will delve into the details more. But it is clear that there are a lot of potentially contaminated sites on Federal land that still need to be assessed and cleaned up, but a good deal already has been done, as I indicated earlier.

Mr. Conger, can you describe the progress that DOD has made in cleaning up its inventory of Superfund sites?

Mr. Conger. Certainly. And I won't just limit it to Superfund, because we track all of our cleanup sites together in a fairly large -- you know, it is 39,000 sites together in a single database. And I could probably break it out, but I don't have that available.

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I can get that for the record.

But, frankly, we are complete with cleanup at 80 percent of our sites. We set fairly aggressive goals a few years ago to get to 90 percent by 2018. We are on track for that. We are looking at getting 95 percent of our sites cleaned up by 2021.

We will have some complex sites that are left over at that point. I am not going to pretend that it is going to be done in a few years at that point, those last 5 percent. But that is why we use R&D. We attack the difficult problems with some of our research funding to try and figure out how we are going to be able to accelerate timelines or to clean it up better.

And when we do come up with something, like the bioremediation techniques that we came up for cleaning up groundwater, that is applicable to the private sector, as well, and they use those techniques, as well, once we figure it out for our own purposes.

Mr. Tonko. Uh-huh.

And, Mr. Whitney, can you describe the progress with DOE?

Mr. Whitney. Yes, sir. As I mentioned, we have cleaned up 91 of our sites, and we have 16 sites remaining, but 91 sites in 30 States.

We have reduced the footprint, the cleanup footprint, in Environmental Management, the DOE complex, by 90 percent. And when we talk about our sites, we talk about square miles and not square acres. And we are down to about 250 square acres, and we were previously near

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3,000 square -- or 250 square miles, excuse me, and we were previously around 3,000 square miles when we started with the program.

So we have had significant accomplishments across the complex. Now, as my colleague here has stated for DOD, we have some complex challenges remaining ahead of us. And probably the most difficult challenges remain ahead of us.

Mr. Tonko. Uh-huh.

I see my time is up, so I will yield back, Mr. Chairman.

Mr. Shimkus. Thank you.

The chair now recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. Harper. Thank you, Mr. Chairman.

And thanks to each of you for being here.

And I am just curious, Mr. Stanislaus, how many times have you now testified before a committee or subcommittee?

Mr. Stanislaus. I think I should get an honor of some type.

Mr. Harper. Surely.

Mr. Shimkus. Oh, you are going to get one.

Mr. Harper. Have you kept up with the number of times that --

Mr. Stanislaus. I have to get back to you.

Mr. Harper. Yeah, yeah. That was the answer I was looking for.

Thank you very much.

Mr. Gomez -- I am going to remember that one, Mr. Stanislaus.

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Mr. Gomez, you just testified, and, obviously, your 2015 report noted that, while Interior and USDA have identified thousands of contaminated and potentially contaminated sites, they don't have a complete inventory of sites. Can you elaborate on that a little bit? And then tell me, how do you remedy that?

Mr. Gomez. Sure.

So, as I noted in the opening statement and also in our report, Interior and Agriculture have identified thousands of contaminated sites, but their inventory, particularly for abandoned mines, is incomplete, in some cases not reliable. In the case of the Forest Service, the different regional offices have different ways of gathering information.

And just one example on the Interior side is, for example, the Bureau of Land Management estimated an additional 100,000 mines that have yet to be inventoried in three States. And those are the States of California, Nevada, and Utah. So they have, we believe, quite a bit of work to do when it comes to abandoned mines.

Mr. Harper. And, also, Interior and USDA disagree over some of the docket listings that exist now. Tell us what the disagreement is about or if that is significant.

Mr. Gomez. Sure.

So the disagreement is between -- one disagreement is between EPA and Interior with regards to the overall approach to listing sites on

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the docket that are not reported to EPA by the agencies. And Interior believes that CERCLA does not give EPA the discretion to list sites unless Interior reports those sites to EPA and that EPA should limit listing only sites that agencies report to it.

Now, both Interior and USDA also believe that abandoned mines should not be listed on the docket. And the idea there is that these are contamination that wasn't caused by the agencies. EPA's view on that is that, regardless of whether the contamination was caused by someone else or the Federal agency, that these sites are now under the ownership of the Federal Government, and the Federal Government needs to take responsibility for it.

Mr. Harper. So how do we get one list? How do we ever get to one list?

Mr. Gomez. It is a work in progress at the moment. And that is why we call attention to it, that we don't think that -- well, the inventories are not complete, and there is disagreement about what should be added to the docket.

Mr. Harper. And this is not necessarily -- assuming we had a uniform list, it is not necessarily static, because you can have new sites that develop or become --

Mr. Gomez. Correct.

And, also, on the docket, for example, the docket also includes sites that no longer need to be addressed. So it has sites that are

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contaminated sites, that are potentially contaminated, and then sites that don't need to be addressed. So there is no method currently to remove those sites from the docket.

Mr. Harper. Gotcha.

Mr. Gomez. The docket is more of a historical record.

Mr. Harper. In your written testimony, you had mentioned that there is a lack of interagency agreements between DOD and EPA. Can you elaborate on that and explain why this could be a problem or is a problem?

Mr. Gomez. So work that we did a number of years ago where we looked at 11 DOD installations, those installations have yet to enter into interagency agreements with the EPA, even though they had already been listed in the National Priorities List, in some cases for years. And we found that the lack of these interagency agreements have resulted in delays of cleaning up those sites.

Now, as of March 2013, when we looked into the issue again, most of those sites had already gotten interagency agreements. There were only two that had not. And, currently, there is only one site that doesn't have an interagency agreement.

Mr. Harper. Okay.

Are there similar problems with other Federal agencies conducting cleanups under CERCLA?

Mr. Gomez. So the work that we did had focused on the Department

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of Defense because they have the majority of National Priorities List sites on the NPL. We didn't look at the other agencies, so we don't know if that problem also exists there. Perhaps our witness from EPA might be able to shed some light on that.

Mr. Harper. Thank you, Mr. Gomez.

And thank you, Mr. Chairman, and I yield back.

Mr. Shimkus. Thank you.

The chair now recognizes the ranking member of the full committee, Mr. Pallone, for 5 minutes.

Mr. Pallone. Thank you, Mr. Chairman.

Superfund cleanups are essential for public health, the environment, and the economic vitality of communities around these sites. And, unfortunately, in many of these communities, the wait for a cleanup drags on because funds and resources are limited, and the backlog of potentially contaminated sites is huge.

So I wanted to ask Mr. Gomez, with that in mind, can you share some recent estimates of the number of potentially contaminated sites with regard to USDA and Department of Interior?

Mr. Gomez. Sure. Thank you.

So, with regards to the Department of Agriculture, they have identified almost 1,500 sites that are contaminated or potentially contaminated. Also, the Forest Service estimates that from 27,000 to 39,000 abandoned mines on its land, and approximately 20 percent of

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those may pose some level of risk to public health or the environment.

Now, on the Interior side, Interior has identified over 4,700 sites with confirmed or likely contamination. And the Bureau of Land Management has also identified over 30,000 abandoned mines that were not yet assessed for contamination.

And I would also mention that, in addition to that, there was those additional 100,000 mines that need to be inventoried in three States.

Mr. Pallone. What about the number of sites under control of Defense or Department of Energy?

Mr. Gomez. Sure. So the work that we did, which was issued in January of this year, focused on the Department of Agriculture or the Department of the Interior. We have not looked at what the Department of Energy or Department of Defense have in its inventory.

Mr. Pallone. Okay.

Are there additional Federal sites controlled by other agencies?

Mr. Gomez. Yes. There are some, for example, NASA sites that are out there. There was some work that the NASA IG was doing. So we didn't look at NASA in our work.

Mr. Pallone. I mean, these numbers are staggering themselves, not to mention, you know, the departments that you haven't looked at, but I think they are only part of the story.

Can you share recent estimates of the cost to clean up these Federal sites?

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Mr. Gomez. Sure. So the estimates, as I noted also, are in the hundreds of millions of dollars.

And just to give you some examples, maybe some examples that I didn't mention, is the U.S. Department of Agriculture, for example, allocated in fiscal year 2013 over \$22 million to do environmental cleanup and then also reported \$176 million in environmental liabilities.

The Department of Defense spent almost \$30 billion from 1986 to 2008 across all environmental cleanup and restoration activities at its installations. And then in fiscal year 2014 financial report, DOD reported \$58.6 billion in environmental liabilities.

Mr. Pallone. So, I mean, if you look at the amount of money that is being spent versus what is needed, there is a huge gap, obviously.

Let me turn to the three agencies on the panel.

Are consistent and reliable appropriations important for completing cleanups in a timely manner, in your opinion?

Mr. Conger. I will start.

Mr. Pallone. Sure.

Mr. Conger. I think they are, and I think that is what we have had. As I have noted before, we spend about a billion-and-a-half dollars a year. That is a very stable amount of money. And we have able to plan with that amount of money, where we work out schedules with the EPA and the States. Everybody knows the pace of the work that

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is going to be going on, and I think there is a comfort level with that.

And just a clarification point on the environmental liabilities that were mentioned earlier. The cleanup liability is smaller than the number that was cited. That is the entirety of all of our liabilities that include all of our nuclear ships and the eventual cleanup for those and a variety of other items. But the cleanup liability is closer to \$27 billion.

Mr. Pallone. Let me just ask quickly "yes" or "no," because then I want to ask one last question, could more cleanups be completed with greater resources? Just yes/no.

Mr. Conger. I think that there are also possibilities, but we have a stable program right now, and I think --

Mr. Pallone. How about the other two guys? Yes or no?

Mr. Whitney. Yes, sir. I think it could be -- we know what our cleanup, you know, lifecycle is. So I don't know if more cleanups could be completed, but the cleanups that we have could be completed quicker.

Mr. Pallone. And your --

Mr. Stanislaus. Well, I would say yes. And we have been subject to about a 20-percent cut of our resources to oversee the subset of sites that we have direct responsibility for, so that has, in fact, impeded the pace of work.

Mr. Pallone. All right.

Let me just ask quickly, because I know my time is up. I just

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wanted to know if more investment in -- I will ask Mr. Stanislaus.

Could more invest in Federal cleanup efforts lead to the development of new technologies and best practices that can improve the cleanups nationwide? Quickly.

Mr. Stanislaus. I mean, I would say generally the answer is yes. And I think, as Mr. Conger noted, there are unique issues at the DOD and DOE sites. So, clearly, some technologies would help in some cases.

Mr. Pallone. All right.

Thank you, Mr. Chairman.

Mr. Shimkus. The gentleman's time has expired.

The chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. Latta. Well, thank you, Mr. Chairman.

And to our panel, thanks very much for being here.

If I could start with you, Mr. Stanislaus, since I guess you have won the record as being here the most, so I will start with the questions.

Do you believe that current and formerly owned Federal facilities should have to comply with the same State requirements as a private entity conducting a cleanup under CERCLA?

Mr. Stanislaus. Well, I think CERCLA does, in fact, provide for that.

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Mr. Latta. How often do you -- let me just follow up. How often do Federal facilities comply with State laws and regulations? Is it all the time?

Mr. Stanislaus. Well, yeah, I could only speak about those that we have direct responsibility for. So we do, in fact, engage the States continuously with respect to their role throughout the process of the investigation, the application of State requirements. So, with respect to those sites, the States play a partnership role.

Mr. Latta. When you say that it depends on what your role is, what is the percentage that you would be involved in those sites then?

Mr. Stanislaus. I will get you the exact percentage. It is relatively small, because we only have direct oversight responsibility on just those sites that are listed on the National Priorities List, which, as I described earlier, there are lots of other sites under the responsibility of DOD, DOE, and the Department of Interior and Forest Service and --

Mr. Latta. Okay.

Let me ask this. Is sovereign immunity often invoked by Federal agencies?

Mr. Stanislaus. Well, we have not found -- from our role in oversight, that has not been an issue, from our perspective, but that is as much as I know.

Mr. Latta. Okay.

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And, also, do you believe that section 120 of CERCLA is evidence that Congress intended to waive sovereign immunity under CERCLA and to require Federal entities to comply with State cleanup laws?

Mr. Stanislaus. I may have to get back to that. I don't know the answer to that question. Let me get back to you on that.

Mr. Latta. Okay.

Let me ask this then. Do you think that section 120 of CERCLA needs to be amended to make sure that Federal agencies do comply with State regulations and laws dealing with cleanup?

Mr. Stanislaus. Well, again, just within the sliver of sites within our responsibility, you know, one, we largely have the States as a party to Federal facility agreements so they have equal rights as the EPA. And, at least from where we are involved in Federal facility sites, we view the States as a partner. And I really can't speak to those sites that we don't have a role in.

Mr. Latta. Okay. Thank you.

Mr. Conger, if I could turn to you, if I could ask, does DOD recognize and comply with State land use control laws and regulations related to environmental cleanups?

Mr. Conger. So the answer is it depends. It is complicated, and my lawyers will, I am sure, hope that I don't give a simple answer to your question. So I will take that for the record formally, but let me give a sort of first-level answer to the question.

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Yes, of course, on those sites that we know longer own -- on BRAC sites, on flood sites, all of that. Those are not Federal property, generally, and so those controls would apply. Where it is Federal property, it gets more complicated. And, again, not being a lawyer, I will take that specific instance for the record.

Mr. Latta. Do you all look at, when you are doing your reviews, do you look at the State land use laws and how that deals with the environmental cleanup?

Mr. Conger. Yeah. And we are partners with the States when we do our cleanups. And, as Mathy indicated, most of the sites that we have, or at least a significant number, are regulated by the State regulators. We work with them. We work schedules out together, we work remedies out together. This is something we do in partnership. I am unaware of significant discontent in the States with how we are doing our program.

Mr. Latta. Okay.

Let me follow up with another question, if I may. Would you please describe in detail how DOD measures success or, to the use of the term you used in your written testimony, achieves "response complete"?

Mr. Conger. Yes.

So, in every cleanup, there is a process, as you well know. There is an investigation, which includes the preliminary assessment, the

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site inspection, the RI, the FS, et cetera, et cetera. The actual remediation, once we have a remedy in place and once we have conducted all of the operations, all the remedial operations, and satisfied the regulators at a particular site, then we have achieved "response complete."

We will have some long-term monitoring in some places so that we go back and double check that the contamination hasn't recurred. But once we have taken all of the actions that we are supposed to take at the site, we achieve "response complete."

Mr. Latta. One last real quick question. Do you measure that cleanup, then, with respect to the acres you clean up? Or how do you do that on --

Mr. Conger. With respect to -- I am sorry.

Mr. Latta. On the amount of acres you have cleaned?

Mr. Conger. No. Because not everything is about acres. Sometimes it is about groundwater. There are a whole variety of ways to measure, so we don't normally think of it just in terms of acres.

Mr. Latta. Thank you, Mr. Chairman. My time has expired, and I yield back.

Mr. Shimkus. The gentleman's time has expired.

The chair now recognizes the gentleman from Oregon, Mr. Schrader, for 5 minutes.

Mr. Schrader. Thank you, Mr. Chairman.

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Mr. Stanislaus, I would like to kind of move -- you know, in our area, one of the biggest sites we have to deal with is the Portland Harbor as a Superfund site. And defense industry, big partner in contaminating that during World War II and now not so much of a partner in cleaning the thing up at the end of the day, for a lot of the reasons that have been mentioned here.

But I am concerned about EPA's approach to that harbor. You have a number of businesses that have stepped up, formed this Lower Willamette Group, trying to figure out a way to actually clean this up or be a partner in cleaning it up without the Federal Government, frankly, at this stage of the game. And I am worried about the science that is involved in this.

And, particularly, I guess I wanted to know from you, is it common practice to a qualitative and not a quantitative analysis of the cleanup alternatives?

Mr. Stanislaus. Well, I think we have, in fact, done a quantitative analysis of --

Mr. Schrader. See, I would disagree with that. There is not a quantitative analysis done. In the report I saw on the feasibility study, there is no evaluation of what the concentrations of various contaminants would be, you know, after different remedial actions have been taken.

I think most of the businesses that are going to be funding this,

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anybody that is doing any scientific analysis, you are supposed to do a cost-effectiveness analysis. Once you have determined the health risk, then what are the most cost-effective ways to take care of this stuff? And that is not what I am seeing in the report.

I guess I would like you to get back to me with that information, where there is a quantitative analysis of that.

The other question I had is regarding natural recovery. You know, is it common for natural recovery to be ignored by EPA when they do remedial action analyses?

Mr. Stanislaus. No, if I can give a broad answer. So we have conducted a remedial investigation that identifies --

Mr. Schrader. I am asking about natural recovery. What --

Mr. Stanislaus. Yes. So as part of the alternative analysis, we would look at the various alternatives, including that kind of alternative --

Mr. Schrader. Well, I appreciate you saying that, because that is not what is done in this particular feasibility study on the Portland Harbor. The natural recovery aspects, the quantitative aspects of what natural recovery are, are not being included at all.

As a matter of fact, you can't, I would argue respectfully, scientifically evaluate, you know, how a particular remedial action, capping dredging, is going to work, what benefit you are going to get from that, unless you know what the natural recovery benefit is going

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forward.

As a matter of fact, just down the river -- or up the river, actually, at Willamette Falls, there is a site that was grossly contaminated. It was a paper mill. And environmental agencies have determined that it does not pose any real contaminate risk because natural recovery has completely wiped that out. Admittedly, it is a higher-flowing river at that particular point.

So I am not seeing, you know, that going forward.

The other thing I am worried about is, in this particular case, is how they have evaluated these alternatives. Is it normal for EPA to assume that dredging is going to go on 24 hours a day, 6 days a week, in a water work window? Is that the normal way you would evaluate?

Mr. Stanislaus. Well, it would depend on the facts of the particular circumstance, you know. So we evaluate alternatives, be it --

Mr. Schrader. Would you assume that the dredging operation would go 24 hours a day, 6 days a week, in a recovery action?

Mr. Stanislaus. Well, I can't say a generalized rule. It would depend --

Mr. Schrader. I think most people -- I apologize for interrupting you, but, you know, I would think most people would say that is unrealistic. That is not the way any operation works, at the end of the day. And what happens with that is then you are

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underestimating the costs of some particular remedial actions. And I see that in this particular feasibility study. I think that is unfair and unrealistic, and you end up skewing the results of your feasibility study and the effectiveness of different remedial actions when you do that.

Question, also, on principal threat waste. How do you determine the levels of different contaminants so that they constitute a principal threat waste? What procedure do you use?

Mr. Stanislaus. Let me get back to you regarding that. But, you know, the whole purpose of the draft feasibility is actually to entertain --

Mr. Schrader. The reason I ask that particular question -- again, sorry to interrupt; I only have a limited amount of time -- is that, you know, I think that is important. What we are seeing here now is that there are low and unprecedented levels, I would argue, of determining these principal threat waste levels in this feasibility study for the Portland Harbor, and, as a result, you are doing treatments in addition to removal, in addition to capping, I mean, without any analysis as to is that treatment of this so-called principal threat waste going to give you any additional benefit.

Again, the science that I see EPA not using in this group, with this willing set of businesses wanting to step up and do the right thing without any Federal largesse, and they are being cast aside. I think

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it is a very -- it is a terrible reputation that the EPA is developing, unfortunately, in our region.

And it could drive the cost -- we have heard costs of hundreds of millions of dollars. You know, the whole defense industry, maybe a billion dollars a year. They are talking billions of dollars for this one little Superfund site. And I think that there are estimates by others that it could be in the millions to maybe hundreds of millions of dollars.

So there is a big difference, respectfully, between what EPA is looking at and the assumptions they are using that their reasonable business and scientific experts would get to to do the same amount of cleanup at the end of the day. So I appreciate you getting back to me on some of that information.

And I yield back.

Mr. Stanislaus. Yeah, I will get back to you. And I can assure you that we have discussed the science with all the stakeholders. And, in fact, we really appreciate the responsible parties stepping up. You know, from the very beginning of the process, we looked at the scope of the science, conducted the science in an open and inclusive way, and we will continue to do so.

Mr. Shimkus. The gentleman's time has expired.

The chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

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Mr. Johnson. Thank you, Mr. Chairman.

And I want to thank the panel for being here.

Mr. Stanislaus, I was thinking earlier, as we were talking about how times you have testified, if this were baseball, your number of at-bats and your own base percentage would be one of the highest in the league. So I commend you for continuing to step into the batter's box. I know these are tough issues.

Mr. Whitney, I represent many of the hardworking people that are helping to clean up the former Portsmouth Gaseous Diffusion Plant in Piketon, Ohio, and many others who are dependent upon that work getting done so that they can reindustrialize that site and make it a productive, job-creating site for the people that live there.

I am shocked that the Department of Energy has now extended the deadline or the timeline for completing that cleanup approximately another 30 years. It makes absolutely no sense to me. The people who the commitments were made to, many of them could possibly be dead by the time the Department of Energy gets done doing what they committed to do.

And it is very unfortunate that, for the third year in a row, jobs are at risk because the administration has failed to request adequate funding to complete this work. The Ohio delegation has repeatedly urged the administration to present a fully funded, comprehensive plan for decontamination and decommissioning activities at the site.

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Unfortunately, financial instability continues year after year. Back in May, the House of Representatives approved full funding, \$213 million, for D&D operations, which surpassed the administration's request by \$48 million, and yet we see this dragging-out process again.

We are ready to work with the administration and you folks again this year on funding, but we got to have a willing partner here and a commitment on the part of DOE to move this project forward and meet the commitment, stand up and honor the promises that were made to the people of southern Ohio.

So, with that said, what are DOE's plans to address this issue?

Mr. Whitney. Thank you, sir.

Yes, and we are committed to the cleanup of Portsmouth, and it is unfortunate that WARN notices had to be issued at the end of August.

Our request for 2016 is actually a little bit more than the President's request for 2015 for Portsmouth, and it is about \$227 million for 2016 in our request.

Unfortunately, the request, as well as the House -- even though the House mark was a very large increase over the President's request -- and the Senate mark did put us in a position where we had to provide funding guidance that was lower than the 2015 request.

Now, as you know, sir, on top of the \$227 million request, we were able to take advantage of barter of uranium, which probably the proceeds, depending on the price of uranium at the time, is another

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\$160 million approximately. So that is almost a \$400 million investment in the --

Mr. Johnson. I get that. I get that. But, see, the citizens of southern Ohio, they were not party to developing the formula that determined how this was going to be funded. They were the recipient of a promise by the Federal Government and the Department of Energy. I think the Department of Energy has a responsibility, as does Congress, to work together to figure out a formula.

And I understand that the sale of uranium has caused a wrinkle, but we need to resolve the wrinkle and develop a new formula, if we have to, and not make it at the expense of the workers and the folks that live there.

So, you know, I would urge you to take back to your leadership, at least from my perspective -- and I can't speak for all of the Ohio delegation, but I feel very, very certain that they would agree -- this is unacceptable, to think and ask the people of southern Ohio to wait another 30 years to trickle this process along. It is just not right.

Mr. Conger, in your written testimony, you state that DOD works together with Federal and State environmental regulatory partners to prioritize sites for cleanup based on worst first.

Would you please explain the process that DOD uses to determine which sites are the worst?

Mr. Conger. So, generally, it is a risk-based process that is

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looking at the risk to human health and the environment.

Well, I say "generally." I have heard the term "risk plus." And what that means is there are other factors that we take into account, as well. If there is a low-risk site that happens to be collocated with a high-risk site, we might do them both because it is economical to do them both at the same time. So that low-risk sight might be lumped in and done earlier.

But, generally, as we rack and stack this list, it is based on risk to human health and the environment.

Mr. Johnson. Okay.

Mr. Shimkus. The gentleman's --

Mr. Johnson. Mr. Chairman, I have a lot more I could ask, and I appreciate the committee's indulgence to ask that first question, but I yield back.

Mr. Shimkus. And the gentleman knows that you can submit questions for the record in written form.

Mr. Johnson. And I will.

[The information follows:]

***** COMMITTEE INSERT *****

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Mr. Shimkus. Thank you.

The chair now recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DeGette. Thank you, Mr. Chairman.

Thanks, everybody, for coming today.

As you know, in Colorado, we not only have contaminated Federal munitions and chemical sites, but we also have legacy mines on Federal lands. And there is often questions of liability regarding the abandoned mine lands since many companies might have had those properties over the course of decades.

Of course, a prime example of this is the Gold King Mine, which we saw this summer. And this is what -- you all saw this on the national news. This is what the Gold King Mine looked -- this is what the Animas River looked like. Why those people are kayaking there I don't know. But the Animas River was orange as it flowed down through Durango and down into New Mexico, and Cement Creek was also turned orange.

So this is kind of the backdrop for the questions that I am going to be asking today.

I want to ask you, Mr. Stanislaus, if the EPA is going to be pursuing reimbursement from the companies that left these millions of gallons of contaminated water at Gold King Mine to pay for the remediation of the site.

Mr. Stanislaus. Yes.

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Ms. DeGette. That is good news to hear.

I would like to kind of know, if there were private owners, which there were, of that site and the adjoining mine, why was the EPA cleaning up the site in the first place?

Mr. Stanislaus. Because there was a risk identified by the State of Colorado and the stakeholders that -- State of Colorado and stakeholders identified that risk to be addressed immediately. Roughly about 330 million gallons on a yearly basis was going into the Animas River.

Ms. DeGette. And that is before it all came --

Mr. Stanislaus. That is right.

Ms. DeGette. -- rushing out and turned the river orange.

Now, that site was not listed on the Superfund National Priorities List, correct?

Mr. Stanislaus. That is right.

Ms. DeGette. What the National Priorities List does, it targets the cleanup of sites without viable responsibility orders, and it puts it in priority for funding. Is that right?

Mr. Stanislaus. That is correct. It identifies those sites that have the most risk in the country. It also makes that site eligible for Superfund resources.

Ms. DeGette. And do you think the Gold King Mine would be a candidate for the National Priorities List?

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Mr. Stanislaus. Well, there have been discussions, and I was just in Silverton last week at the invitation of local stakeholders to continue that conversation.

Ms. DeGette. So the decision has not yet been made?

Mr. Stanislaus. No. We are continuing to have those conversations.

Ms. DeGette. When do you think you will make that decision?

Mr. Stanislaus. Well, again, we are engaged in that conversation. There is also kind of a technical evaluation of data, so we are in the process of evaluating that right now --

Ms. DeGette. Right. So would that, like, 6 months? Twelve months?

Mr. Stanislaus. I will get back to you on the timeframe.

Ms. DeGette. That would be really fabulous. And what would be even better is if we had a very short timeframe to get that on the list.

You know, there are thousands and thousands of mines, as all of you have said, that are similar to the Gold King Mine across the West.

Mr. Gomez, in your testimony, you note that both the USDA and DOI have significant inventories of abandoned mines that could potentially pose threats to health and the environment. Do either of these agencies have a system for prioritizing their most contaminated mines?

Mr. Gomez. Yes. They go through the process of identifying the mines, and they are making their own assessments of it. But we didn't

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look specifically at that process. We were looking mainly at identification. Those are good questions that we can follow up with.

Ms. DeGette. I would appreciate that, because it is my understanding that they actually don't have a priority list, and that would be really helpful.

Gold King is the perfect example of a mine where everybody knew it needed to be cleaned up. But I think everybody could now stipulate that, in hindsight, the preparation for the cleanup, the recognition of the seriousness of the problem was grossly underestimated.

Now, based on GAO's analysis of contaminated sites on USDA and DOI properties, do each of the agencies have sufficient environmental expertise of their own to plan and oversee cleanup of the sites?

Mr. Gomez. So, for those cases that do end up on the National Priorities List, EPA does oversee those sites --

Ms. DeGette. Right.

Mr. Gomez. -- and so EPA does provide that expertise.

Ms. DeGette. To USDA and DOI?

Mr. Gomez. Do they have that expertise?

Ms. DeGette. Right.

Mr. Gomez. Again, that is something that we weren't looking at the workforce of the agencies to see if they have the expertise or not. But, as I said, for those sites that end up on the National Priorities List, EPA is doing the oversight.

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Ms. DeGette. Okay.

Now, I want to ask you, Mr. Stanislaus, it is my understanding that USDA and DOI don't want mines that were Superfund cleanup to be listed on the National Priorities List. Does that impede the EPA's ability to oversee and ensure proper cleanup at the sites?

Mr. Stanislaus. Our only ability to oversee sites are those sites that on the National Priorities List.

Ms. DeGette. Okay. So if they are not on that list, then we can't clean them up.

Mr. Stanislaus. That is right.

Ms. DeGette. So I guess, Mr. Gomez, I would like you to supplement your testimony to see what, in fact, the position of those two agencies is of putting their mine sites on that list.

Mr. Shimkus. Would the gentlelady yield for a second?

Ms. DeGette. I would be happy to.

Mr. Shimkus. So we invited --

Ms. DeGette. I am out of time.

Mr. Shimkus. That is right. I am the chairman.

Ms. DeGette. Yeah. Seize control.

Mr. Shimkus. We invited Department of Interior to testify. They, in essence, said they wouldn't. They did say they would submit a statement. They only sent it when we reminded them that they said they would send a statement. So maybe some followup on the Department

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of Interior might be appropriate.

Ms. DeGette. Yeah, Mr. Chairman, I think that is a great idea. Because if you can't list these on the list, then the agency with the expertise to clean it up won't be able to do it.

Thank you.

Mr. Shimkus. And maybe they will reconsider coming back next time we ask them.

So thank you.

Now I would like to recognize my colleague from North Carolina, Mr. Hudson, for 5 minutes.

Mr. Hudson. Thank you, Mr. Chairman.

And I would like to thank the witnesses for being here today. Really appreciate your testimony. It has been very informative and helpful for me to understand this process.

I would like to start with Mr. Conger.

What percentage of DOD's hazardous waste facilities have been identified on the Federal Facilities Hazardous Waste Compliance Docket as required in CERCLA?

Mr. Conger. So I can't tell you what percentage of our sites are actually on the docket because we track all of them as a larger group. The 39,000 sites that I have talked about during my testimony include those on the docket, but we have far more sites than those that are on the docket.

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A couple years ago, we did a docket scrub. We went and looked at our database and EPA's database, the docket, to make sure that everything that needed to be on the docket was on there. And so we have done that reconciliation. But I couldn't tell you, out of all the sites we have, exactly how many are on the docket.

Mr. Hudson. Would you mind following up with us with that number?

Mr. Conger. Sure.

Mr. Hudson. I would appreciate it.

What percentage of DOD sites that you have identified have the required preliminary assessments been completed on?

Mr. Conger. Well, out of the 39,000 sites that we have, I think only 4 percent of them are still at the preliminary assessment and site inspection phase. The breakout between PA and SI we can get you, but it is -- so I would say, by definition, it is less than 4 percent are still in that phase.

Mr. Hudson. Great.

For those that you have completed the required assessment, have copies of those assessments and other relevant information been provided to the State and the EPA?

Mr. Conger. Absolutely.

Mr. Hudson. Great.

What is the typical, on average, length of time it takes for DOD to complete one of these initial assessments?

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Mr. Conger. So I actually pulled the data out of the database because I saw that question coming. We have an average of 1.6 years for a preliminary assessment out of all the sites that we have cataloged.

Mr. Hudson. So you would disagree with the assessment from GAO that it takes 2 to 3 years typically for --

Mr. Conger. It can. So that is an average, 1.6 years. There are sites that are longer, without a doubt. It depends on the complexity of the analysis that you are doing. So some are shorter, some are much shorter; some are longer.

Mr. Hudson. Gotcha.

If Congress were to establish a deadline, as has been recommended, for completion of these assessments, would that help DOD complete these in a more timely fashion? Or do you think it is more just a factor of the complexity of --

Mr. Conger. I think it is a factor of the complexity. I don't have a lot of folks coming back to us and saying that we are dragging our heels. We work out these schedules with the regulators, and so I think everybody is comfortable with the pace at which we are doing the assessments.

Mr. Hudson. Well, thank you for that.

Mr. Conger. But if there are specific cases, we can look into it.

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Mr. Hudson. Thank you.

Mr. Whitney, I will sort of go down the same line of questioning with you. What percentage of DOE hazardous sites are actually on the list?

Mr. Whitney. Yes, sir. I think it is a little easier for DOE because we do know the universe of our facilities, and, while the sites are large, the number of sites are not. And so all of our sites have been through that preliminary assessment process, the site evaluation process, and they either ended up on the National Priorities List or they did not.

Mr. Hudson. Great.

Well, for those that have gone through and completed the assessments, you know, have copies of those been passed on to the relevant agencies -- State, EPA, others?

Mr. Whitney. Yes, sir.

Mr. Hudson. Great.

And how many of the sites that have been assessed required some level of cleanup?

Mr. Whitney. Well, the 21 sites that were on the National Priorities List, all of those sites require some level of cleanup. And we have 11 of those sites remaining. Ten of those have been completed already.

Mr. Hudson. Okay. I appreciate that.

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Mr. Stanislaus, going back to the issue of abandoned mines on Federal properties, how does EPA oversee the cleanup of these if they are on Federal property?

Mr. Stanislaus. Only those sites that rise to the level of being Superfund sites. So we have 130 on the National Priorities List that are abandoned mine sites, but, clearly, there are a lot more, as other individuals talked about it. So we would only have oversight of just that small number.

Mr. Hudson. Okay. Well, of those, does EPA have a sense of how much contaminated mine drainage discharges from these mines on a daily, weekly, monthly, yearly basis?

Mr. Stanislaus. I don't have that information in front of me, but I can see what I can pull together.

Mr. Hudson. Okay. Thank you.

What steps do the various Federal agencies routinely take to prevent and stop these types of discharges?

Mr. Stanislaus. Yeah, I really can't speak for the other agencies. You know, when we get involved, we would do what are called removal actions, which are kind of shorter-term actions, to abate some of the most immediate risks to short-term projects, and, when there are longer-term risks, looking at listing on the National Priorities List for a more permanent solution.

Mr. Hudson. Gotcha.

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What are the impacts on stream water quality from these discharges?

Mr. Stanislaus. Well, tremendous. In the Gold King Mine, about 330 million gallons were being emitted into the Animas River on a yearly basis. Basically, for a 10-mile distance on the Animas River, you basically have severely degraded water quality. Basically, fish survival was seriously compromised.

Mr. Hudson. So who is legally responsible for cleaning up when you have these discharges on these sites that you have the jurisdiction over?

Mr. Stanislaus. Well, when we have jurisdiction over that, we oversee the work. Sometimes it is by responsible parties, sometimes through Superfund resources. And the complexity of these sites makes it quite challenging.

Mr. Hudson. So who is legally responsible?

Mr. Stanislaus. Oh, who is legally responsible? I am sorry. If there is a responsible party, meaning the owner or operator, that party would be responsible for doing the cleanup.

Mr. Hudson. Great. Thank you.

And, Mr. Chairman, I believe I have exceeded my time.

Mr. Shimkus. Your time has expired.

Just a point of clarification. This Executive Order 12580 is kind of an answer to why we have -- and Mathy is talking about items

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on the National Priorities List, but there are many that aren't on there. And then the question is, who is responsible for those? That is part of the hearing.

Now I recognize the gentleman from Texas, Mr. Green.

Mr. Green. Thank you, Mr. Chairman and Ranking Member, for holding the hearing on Superfund today.

I represent a district in Houston, and, up until recent redistricting, my district bordered in east Harris County one of the more significant Superfund sites, on the San Jacinto waste pits bordering our district. At that time, Congressman Poe had the site, but I got the downstream.

And EPA was very quick in putting it on the Superfund site. The site has been polluted since the mid-1960s. It was a dumping ground for paper mill waste, and it was left undetected for over 40 years. The local community is very concerned about the fears it may negatively be impacting human health and the environment.

My questions are, Mr. Stanislaus, what opportunities will communities in east Harris County have to give input on the proposed cleanup plans?

Mr. Stanislaus. Opportunity throughout the process.

Mr. Green. Okay.

Dioxins are the primary hazard at the waste pits, which were used during the paper production process 50 years ago. Mr. Stanislaus, has

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the EPA taken any action to limit the use of dioxins and similar dangerous chemicals in paper production?

Mr. Stanislaus. Limit the use of dioxin in paper?

Mr. Green. Yeah.

Mr. Stanislaus. Well, that is outside of my office. I will get back to you on that.

Mr. Green. Okay.

Does the EPA have a timetable for when the feasibility study report would be released?

Mr. Stanislaus. Yeah, I don't have that timetable, but I should note that we put in place certain measures to abate the release of dioxin from the site itself.

Mr. Green. And I have been there; it is encapsulating. And what happened, because of subsidence in our area over the last 50 years, those containment facilities may have been great in 1965, but the subsidence, we actually have some of those containment facilities that are below water level in the San Jacinto River. And, so far, there is different evidence that the encapping of it is working. I think the last test I showed, it is doing well.

What are the primary factors for EPA in its determination for the cleanup of waste?

Mr. Stanislaus. You know, the exposure and the various options to address that exposure. In some cases, we would completely clean

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it up. In other cases, they put a barrier to prevent further -- it all depends on the factors at the site.

Mr. Green. Is the EPA taking under consideration the vulnerability? The site actually can be flooded because it is a tidal river, but, over my lifetime, we have also had floods coming down the river, and so it can dislodge it. Is that part of the EPA study also, the danger of a hurricane coming in or floodings upstream?

Mr. Stanislaus. Well, typically, we would look at all those factors, but let me get back to you specifically on how we would consider that at this site.

Mr. Green. Okay. I appreciate it. The site is now in Congressman Babin's district. It is a neighbor of mine. And, you know, we are getting him the information that we have been working on for a number of years.

These are questions for all the agencies on the panel.

How does your agency ensure that States and local communities are involved in every stage of the cleanup under your control?

Mr. Conger. I can start.

We work closely with the State regulators. As Mathy had pointed out, a lot of our sites are overseen directly by the State regulators, so we work with them on remedies and on timetables.

We also have restoration advisory boards that we set up with local communities to make sure that everything is transparent so that they

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know what is going on.

It is very important for us to work with local and State stakeholders.

Mr. Whitney. Yes, and we have a variety of avenues to achieve that type of involvement, as well, first and foremost, the States of course being coregulators on the cleanup that we do at our sites. But that relationship with the local communities and other folks in the State is also very important to us, and we have site-specific advisory boards made up of citizens of the surrounding communities around our sites.

We also provide grants to many organizations, such as ECOS, the Environmental Council of States, such as National Governors Association, the State and Tribal Government Working Group --

Mr. Green. I only have a few seconds. I need to get one more question in, though.

If a State preferred one cleanup remedy over another, how would the preference influence the decision over the cleanups? Would the Federal Government defer to the State agency?

Mr. Whitney. It truly is a tri-party. For us, it is tri-party.

Mr. Green. So it is a cooperative issue?

Mr. Whitney. Yes, sir.

Mr. Green. Okay.

I appreciate it, Mr. Chairman. Thank you.

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Mr. Shimkus. Let me just chime in with your last 10 seconds.

I think what we have heard is everyone views the States as a partner, but no one is required to treat the State as a partner. And that is part of what our hearing is trying to get to.

So, with that, now we would like to welcome a member of the full committee not on the subcommittee. We welcome here to the subcommittee Mr. Lujan from New Mexico.

And you are recognized for 5 minutes.

Mr. Lujan. Thank you, Mr. Chairman, and thank the ranking member for holding this important hearing today.

As you all know, where this breach ran into was in the Third Congressional District of New Mexico, into San Juan County, into the Animas River, which flows from Colorado to New Mexico, as well as to the Navajo Nation and to our brothers and sisters out in Utah and Arizona, as well as Colorado, that were all impacted.

One of the concerns that I had as we began to learn about this issue, it wasn't through an alert from law enforcement officials, from officials that work for the Federal agencies; it was through a news feed, may have even been a Twitter feed, that our office was alerted to.

And so we need to figure this out, to make sure that when there are disasters like this that are created, created by people as opposed to a natural disaster, that everyone is alerted promptly and timely.

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Since this incident, it appears that the State of Colorado is working to improve their communication systems to local governments, but I am not certain that we have seen what we are going to do with the EPA and, for that matter, for every Federal agency that there could be a system like this that sadly could hurt communities with a mistake that is made.

So, Mr. Stanislaus, according to an EPA memorandum, the release occurred on August 5 at 10:51 a.m. However, EPA headquarters, Region 6, and Region 9 were not notified until 11 a.m. the next morning. I just shared that my office found out through news accounts. San Juan County officials, Navajo Nation leaders, and the New Mexico Environment Department were not notified. They found out the same way that we did, is my understanding.

So that is unacceptable, and we need to fix this and learn from this. So what are we doing to improve notification procedures down to downstream communities as well as impacted communities?

One of the suggestions that I shared with Administrator McCarthy yesterday was looking to see what we could do to piggyback off of the AMBER Alert system for abducted children or to the national natural disaster alert system and weather disaster system, which notifies everyone with their mobile phones, on billboards, as everything happens. There is no reason that when something like this that tells people you can't drink water, you can't get in the water, you can't

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water your animals, you can't irrigate, that we can't use something like this.

So can you share a little bit with what we can do and how we might be able to work with you, with the committee, to see what we could do to work with a system like that for alerts in the future?

Mr. Stanislaus. Sure. Immediately after the event, I issued a directive to all the regions to work with States and local communities to make sure the notification is broad.

So we currently have a notification system in place. And in the State of Colorado we have a plan in place where the State of Colorado took leadership of notifying. They in fact notified Durango and other folks, and those decisions were made to close off the water intakes.

And you are entirely correct that the notification for New Mexico, for the Navajo Nation did not occur simultaneously, and we agree we need to do a better job of that.

Mr. Lujan. It didn't occur for days.

Mr. Stanislaus. It occurred the next day. Yeah.

And, just to be clear, all the notification occurred before the spill impacted any of those areas. In fact, we were able to do pre-incident sampling before any of the impact of the spill occurred in any of those areas.

Mr. Lujan. Ute Mountain tribal officials are the ones that reached out to their neighbors in San Juan County to say, this spill

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is passing us, you need to get ready for it, it is coming our way. That wasn't on the alert system that was put in place. That was one group of neighbors caring about another group of neighbors and doing their due diligence.

This was a dismal failure from a communication perspective, and we have to fix it. I hope that the urgency for this -- not just here but in any other part of the country. We need to just get this right so that people know what is coming their way.

The other urgency that I would suggest is we need to make sure that we are working with all of the impacted communities to the utmost degree: both of the Ute tribes that were impacted, the Navajo Nation, the County of San Juan in New Mexico, the State of New Mexico, as well as our brothers and sisters in the other impacted States.

There has been a frustration by the leadership of the Navajo Nation, and we need to make sure that we are working closely with them, that someone is appointed to work directly with them, whether it is from Region 9 or from headquarters, so we can make sure that all of their concerns are addressed.

One of the other concerns that I have, Mr. Chairman, is, it is my understanding that the EPA's work order at the Gold King Mine site called for the construction of a holding pond to capture and treat contaminated water but that the pond was not completed before the accident. In addition, EPA Deputy Administrator Meiburg said that

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provisions for a worst-case scenario were not included in the work plan.

I think it is important that we understand that, that we make sure that anytime work will be done in the future that we get to the bottom of that.

And then lastly, Mr. Chairman, as we get an assessment of all of the abandoned mines that we have in the United States and especially those that are in a condition like the Gold King Mine, where a breach or an accident can impact the water supply for millions of people in surrounding communities, we need to have a real conversation in the Congress to make sure that we are working to fix this.

Because this devastated not just the irrigators and water users in the district that I represent and in Colorado but entire water drinking supplies in the States of Nevada and Arizona that could be impacted depending on the kind of a breach that we see.

So just, Mr. Chairman, I look forward to working with you. Thank you for the time today. And I look forward to submitting some additional questions to the record and getting some responses.

Thank you, sir.

[The information follows:]

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RPTR BAKER

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[10:40 a.m.]

Mr. Stanislaus. I would just add, I share those concerns. And we did an internal review, and the pond, in fact, was constructed, from my internal review team. But, you know, again, we were there because of the very risk that was identified in the work plan, that the State of Colorado and local stakeholders identified that risk. That is the reason that EPA was brought to kind of address that risk.

Mr. Lujan. But, Mr. Chairman, if I may just there, if the pond was built, why didn't it work? Something didn't work. With the amount of stuff that came out of that, which was originally estimated at 1 million gallons and then it turned out to be 3 million gallons, someone didn't do their job. If something was built, then it wasn't built the right way, because the breach still went and all this garbage still went into the river.

So those are questions that we do need to get to the bottom of. If something was constructed, clearly it did not meet the means of what should have been done with an assessment of what was being held behind there. It didn't work. So, according to that mitigation plan, something needs to get better here, and that is what we are just trying to get to the bottom of.

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Thank you, Mr. Chairman.

Mr. Shimkus. The gentleman's time has expired. And we thank him for his attendance, look forward to working with him.

Again, the open question submissions for the record for about 10 business days, if you could get back to us. And I think there will probably be some followups.

[The information follows:]

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Mr. Shimkus. We appreciate it. We have a ways to go. And I do want to encourage you to stay tuned for the second panel, because I do think there is a -- you know, States are, in many cases, good partners and work well, but there are some concerns, as I think we will hear in the next panel.

So I appreciate it. And, with that, we will recess this hearing for the second panel next week.

[Whereupon, at 10:42 a.m., the subcommittee was adjourned.]