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ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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October 8, 2015

Mr. John Conger  
Performing the Duties of Assistant Secretary  
of Defense for Energy, Installations and Environment  
U.S. Department of Defense  
1000 Defense Boulevard  
Washington, DC 20301

Dear Mr. Conger:

Thank you for appearing before the Subcommittee on Environment and the Economy on Friday, September 11, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

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

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Monday, October 22, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed to [Will.Batson@mail.house.gov](mailto:Will.Batson@mail.house.gov).

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

Sincerely,



John Shimkus  
Chairman

Subcommittee on Environment and the Economy

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

Attachment

## Additional Questions for the Record

### The Honorable John Shimkus

1. Of the DoD sites being cleaned up under CERCLA, for what percentage of sites has DoD asserted lead agency authority under E.O. 12580?
  - A. What is the role of EPA at those sites?
  - B. What is the role of the States at those sites?
2. How does DoD address and comply with State environmental laws that are more stringent than Federal laws?
  - A. Does DoD recognize a role for State environmental agencies in determining what State requirements are applicable and relevant and appropriate to DoD's environmental assessment and cleanup activities?
3. What role do State environmental agencies have in the decision-making process regarding environmental assessments and cleanups conducted by DoD?
4. Does DoD invoke sovereign immunity with respect to cleanups under CERCLA:
  - A. with respect to deciding what is an Applicable or Relevant and Appropriate Requirement (ARAR)?
  - B. with respect to determining the appropriate cleanup standards?
  - C. with respect applying land use controls or restrictions?
5. With respect to federal facilities agreements, what is DoD's policy with respect to making changes to the agreements?
  - A. Does DoD unilaterally make changes to a federal facilities agreement?
  - B. Is the length of time for completion of the cleanup something DoD would change in a federal facility agreement?
6. How many formerly used defense sites are known to exist in the United States and its Territories?
  - A. How many have been reported to the Hazardous Waste Compliance Docket?
  - B. Why haven't more of these sites been added to the docket?

**The Honorable Frank Pallone**

During the second day of this hearing, state witnesses testified about potential issues related to agencies that are responsible parties asserting “Lead Agency Authority”

1. Can you explain what this authority is and why your Department makes use of this authority?
2. Does this authority apply differently at National Priority List sites and non-NPL sites?

According to state testimony, assertions of lead agency authority were more of a problem before 2008.

3. Please explain what your Department has done since 2008 to improve working relationships with states when your Department leads cleanups?

Similarly, state witnesses expressed concerns that, primarily before 2008, agency claims of sovereign immunity frustrated cleanup efforts.

4. When and why might your Department or employees of your Department claim sovereign immunity in the context of Superfund cleanups?
5. What has your Department done since 2008 to limit claims of sovereign immunity?

Lastly, state witnesses at the second day of this hearing raised the concern that priorities for cleanups are not always determined based on risk. Obviously, limitations on resources for cleanup make prioritization necessary and important.

6. What factors does the Department consider in making funding decisions for cleanups across your inventory of contaminated sites?
7. What does your Department do to ensure that contaminated sites posing serious or immediate threats to human health are cleaned up quickly and effectively?
8. How does your Department ensure that budget requests will be sufficient to cover pressing cleanup needs?
9. Did the 2013 government shutdown affect your ability to meet your cleanup obligations on schedule?

**The Honorable Richard Hudson**

1. What percentage of DoD’s hazardous waste facilities have been identified on the Federal Facilities Hazardous Waste Compliance Docket as required by CERCLA?
  - A. Why would a DoD site not be listed on the Docket?

**The Honorable Robert Latta**

1. Does DoD recognize and comply with State land use control laws and regulations related to environmental cleanups? Why or why not?

- A. Does DoD view State land use control laws related to environmental cleanups, such as those requiring restrictive covenants and restrictive notices, as being applicable and relevant and appropriate requirements under CERCLA? Why or why not?

**The Honorable Diana DeGette**

For the purposes of these questions, Construction Complete is defined as any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; or EPA has determined that the response action should be limited to measures that do not involve construction. The closest equivalent terminology under DoD cleanup would be Last Remedy In Place (LRIP), as identified through the EPA-DoD Goal Harmonization Project.

1. How many sites were closed under BRAC I-IV?
  - A. Of those sites, how many have achieved construction completion of all environmental cleanup?
  - B. What was the median length of time for site cleanup to be reach construction completion at BRAC I – IV sites?
  - C. with respect applying land use controls or restrictions?
2. How many sites were closed under BRAC V?
  - A. Of those sites, how many have achieved construction completion of all environmental cleanup?
  - B. What was the median length of time for cleanup to be completed at BRAC V sites completion of the cleanup?
3. For BRAC sites that are not cleaned up yet, what stage of the cleanup process are they at?
  - A. Please provide a list of each BRAC site and stage of cleanup it is in (investigation through construction completion).

**The Honorable Tony Cardenas**

For the purposes of these questions, Construction Complete is defined as any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; or EPA has determined that the response action should be limited to measures that do not involve construction. The closest equivalent terminology under DoD cleanup would be Last Remedy In Place (LRIP), as identified through the EPA-DoD Goal Harmonization Project.

1. What is the Department doing to develop new technologies for groundwater remediation?
2. Does the Department have any ongoing activities aimed at improving remediation for perchlorate contamination?
3. How can affected communities make use of the technological advancements DOD discovers?