



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 11 2015

OFFICE OF  
CONGRESSIONAL AND  
INTERGOVERNMENTAL  
RELATIONS

The Honorable John Shimkus  
Chairman  
Committee on Energy and Commerce  
Subcommittee on Environment and Economy  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the September 11, 2015, hearing titled "Oversight of Federal Facility Cleanup under CERCLA."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Carolyn Levine in my office at [Levine.Carolyn@epa.gov](mailto:Levine.Carolyn@epa.gov) or (202) 564-1859.

Sincerely,

A black rectangular redaction box covering the signature of Nichole Distefano.

Nichole Distefano  
Acting Associate Administrator

Enclosure

**House Committee on Energy and Commerce  
Subcommittee on Environment and Economy  
Hearing on**

**“Oversight of Federal Cleanup under CERCLA”**

**September 11, 2015**

**Questions from Chairman John Shimkus to Assistant Administrator Mathy Stanislaus**

1. Does EPA have difficulty in monitoring and evaluating individual federal agency compliance with the Federal Agency Hazardous Waste Compliance Docket requirements under CERCLA?
  - A. If so, please identify the difficulties and identify what tools EPA needs, if any, to assure effective and consistent compliance among the various federal agencies in implementing the Hazardous Waste Compliance Docket requirements?

**Response:** Section 120(c) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket (Docket) which contains information reported to the EPA by federal facilities that manage hazardous waste. Those federal facilities that have submitted information under the following reporting requirements are added to the Docket:

- i. All information submitted under section 3016 of the Solid Waste Disposal Act [42 U.S.C.A. § 6937] and subsection (b) of section 120 of CERCLA regarding any federal facility and notice of each subsequent action taken under this chapter with respect to the facility;
- ii. Information submitted by each department, agency, or instrumentality of the United States under section 3005 and 3010 of such the Solid Waste Disposal Act [42 U.S.C.A § 6925, 6930];
- iii. Information submitted by the department, agency, or instrumentality under section 103 of CERCLA.

The EPA relies on notifications by other federal agencies in order to maintain the Docket. If the EPA learns about a site that has had a release, or threat of a release, of hazardous substances through other means, the EPA has the authority to list the site on the Docket. Executive Order 12580, Superfund Implementation, delegated the authority to conduct federal facility assessments, and when warranted the site inspections, to the other federal agencies.

The EPA is required to assure a preliminary assessment is conducted for each facility on the Docket. Subsequently, the EPA has responsibility to evaluate the assessments and determine

the priorities among releases and, further, if the site meets the criteria for the National Priorities List (NPL). CERCLA section 120(d)(3) requires that evaluation and listing be completed in accordance with a reasonable schedule. The EPA has determined that completed federal facility assessment reports should be submitted within 18 months of inclusion on the Docket (OSWER Directive 9200.3-15-1G-Z).

2. What oversight role does EPA have with respect to cleanup at non-NPL sites where another federal agency has asserted lead agency authority under EO 12580?

**Response:** The EPA exercises lead agency authority pursuant to the National Contingency Plan, rather than Executive Order 12580. In general, the EPA does not have explicit oversight authority under CERCLA at non-NPL federal facilities. Typically, the states oversee cleanup at these facilities. EO 12580 gives the EPA CERCLA cleanup authorities that are not otherwise granted to other federal agencies. Consequently, consistent with section 120, the EPA exercises its CERCLA oversight authorities at federal facility cleanup sites on the NPL, and can exercise its emergency removal action authority at non-Department of Defense or non-Department of Energy facilities.

3. What authority does EPA have to compel assessment or cleanup of federal facilities that are not on the NPL?

**Response:** In general, the EPA does not have explicit CERCLA authority to unilaterally compel assessment or cleanup of CERCLA federal facilities that are not on the NPL where another agency has asserted lead cleanup authority. The EPA does have authority to issue a unilateral administrative order under CERCLA Section 106, but that action is limited to instances of imminent and substantial endangerment to public health, welfare, or the environment and requires concurrence from the Attorney General. The EPA may also issue emergency orders pursuant to section 7003 of the Resource Conservation and Recovery Act and section 1431 of the Safe Drinking Water Act. These orders provide the state with the ability to enforce actions against the federal agencies.

4. Is there consistent compliance with CERCLA among the federal agencies which are conducting cleanups at non-NPL sites and which have asserted lead agency authority?

A. What tools, if any, does EPA need to assure effective and consistent compliance among the various federal agencies which have asserted lead agency to conduct cleanups at non-NPL sites?

**Response:** The authority to conduct cleanup of contaminated sites that are not listed on the NPL is delegated to other federal agencies pursuant to EO 12580. At non-NPL sites, where another federal agency has asserted lead agency authority, the EPA generally does not track federal agency CERCLA response actions.

5. Is there a conflict or potential conflict when a federal agency is a potentially responsible party because it caused the contamination or is the owner of the contaminated property

but that same agency is also the lead agency for making cleanup decisions? Please explain why or why not.

**Response:** No. The response action at federal facilities is governed by the same standards and requirements regardless of whether the lead response agency is also a potentially responsible party. Moreover, at NPL sites, the EPA jointly selects the remedy with the lead federal agency, and states have the opportunity to concur. If the EPA and the other federal agency are unable to agree on the final remedy, CERCLA gives the EPA the sole, non-delegable authority to make the final remedy selection. At non-NPL sites, the state generally exercises oversight responsibility.

6. Does EPA oversee the assessment and cleanup of abandoned mines on federal property?

A. Does EPA oversee the assessment and cleanup of abandoned mines on non-federal property?

**Response:** Abandoned mine lands exist across private, federal, state, and/or tribal lands. A number of federal statutes address environmental contamination issues associated with abandoned mine lands, and federal statutory authority is spread among several agencies with no one agency having overall statutory responsibility. Six federal agencies, including the Department of the Interior's Bureau of Land Management, Fish and Wildlife Service, Office of Surface Mining Reclamation and Enforcement, and National Park Service, the Department of Agriculture's Forest Service and the Environmental Protection Agency may be authorized to fund the cleanup of some of these hardrock mine sites based upon jurisdiction, need, and state concurrence.

While the EPA has the authority to oversee the assessment and cleanup of abandoned mines on non-federal property and NPL sites, other federal agencies maintain oversight of assessment and cleanup work on federal lands. The Superfund National Priorities List (NPL) Mining and Mineral Processing website contains information about mining sites and mineral processing in general. The information can be found at:  
<http://www2.epa.gov/superfund/abandoned-mine-lands-site-information-1>.

## Questions from the Honorable Frank Pallone to Assistant Administrator Mathy Stanislaus

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?

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

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.

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

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.

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

4. When and why might your Department or employees of your Department claim sovereign immunity in the context of Superfund cleanups?

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

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.

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

6. What factors does the Department consider in making funding decisions for cleanups across your inventory of contaminated sites?

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

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?

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

8. How does your Department ensure that budget requests will be sufficient to cover pressing cleanup needs?

**Response:** The EPA defers to the other federal departments who also testified on September 11, 2015, to respond to this question.

9. Did the 2013 government shutdown affect your ability to meet your cleanup obligations on schedule?

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**Questions from the Honorable Richard Hudson to Assistant Administrator Mathy Stanislaus**

1. How much contaminated mine drainage discharges from abandoned mines on federal lands on:  
A daily basis?  
A weekly basis?  
A monthly basis?  
An annual basis?

**Response:** The EPA does not maintain this level of detailed information regarding abandoned mines listed on the NPL. The EPA defers to the federal land management departments/agencies to address this request.

## Questions from the Honorable Robert Latta to Assistant Administrator Mathy Stanislaus

1. Do you believe that section 120 of CERCLA is evidence that Congress intended to waive sovereign immunity under CERCLA and to require federal agencies to comply with State cleanup laws, including state land use controls?

**Response:** Federal agencies must comply with CERCLA as provided in section 120(a)(1). With respect to the applicability of state laws to federal agencies, CERCLA section 120(a)(4) provides that certain state laws respecting the control or abatement of hazardous substances apply at NPL sites that are currently owned or operated by the United States. State land use controls may apply at such federal facilities if they qualify as applicable relevant and appropriate requirements (ARARs) under CERCLA section 121(d) and provided they are consistent with section 120(a)(1).



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Subcommittee on Environment and Economy  
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