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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. Mark Whitney
Principal Deputy Assistant Secretary
for Environmental Management
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Whitney:

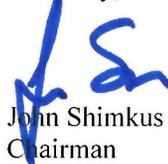
Thank you for appearing before the Subcommittee on Environment and the Economy on Friday, September 11, 2015, to testify at the hearing entitled "Oversight of Federal Facility Cleanup under CERCLA."

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.

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. At the hearing on September 11, 2015 you testified that for Department of Energy sites, while DoE is the lead agency for cleanup, that DoE does not have a regulatory role. Will you please explain what you mean by that.
 - A. Please explain what it means when DoE asserts “lead agency authority” pursuant to E.O 12580.
 - B. You noted in your testimony that the regulatory role is assumed by EPA and/or the States. Does that mean then that EPA and/or the state has control over cleanup decisions?
 - C. When DoE asserts “lead agency authority” please explain how assessment and cleanup decisions are made.
2. Does DoE allow EPA or a State to provide regulatory oversight over DoE cleanups at non-NPL sites when DoE invokes lead agency authority under E.O. 12580?
3. Of the DoE sites being cleaned up under CERCLA, for what percentage of sites has DoE 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?
4. Does DoE recognize and comply with State land use control laws and regulations related to environmental cleanups? Why or why not?
 - A. Does DoE 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?
5. How does DoE address and comply with State environmental laws that are more stringent than Federal laws?
 - A. Does DoE recognize a role for State environmental agencies in determining what State requirements are applicable and relevant and appropriate to DoE’s environmental assessment and cleanup activities?
6. Does DoE 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?

7. Explain the role State environmental agencies have in the decision-making process regarding prioritization, assessments and cleanups conducted by DoE for sites not listed on the NPL?
 - A. Your written testimony noted that jointly-arrived at decisions with the States are memorialized in Federal Facilities Agreements. What is DoE's policy regarding changes to the FFAs? Are changes made unilaterally?
 - B. What about decisions where there is not a jointly-arrived at decision and DoE disagrees with a recommendation made by the State – what happens then?
 - C. Does DoE have any non-NPL sites where EPA provides oversight or other assistance? If so, what kind of assistance does EPA provide?
8. DoE's written testimony identified the cleanup at Rocky Flats as a success story, what was different about that cleanup that made it successful?
 - A. Is Rocky Flats a model for other cleanups why or why not?

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?