



July 8, 2016

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

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## I. INTRODUCTION

On July 13, 2016, at 10:00 a.m. in 2123 Rayburn House Office Building, the Subcommittee on Environment and the Economy will hold a hearing entitled “Oversight of CERCLA Implementation.”

## II. WITNESSES

### Member Panel

- The Honorable Ann Wagner; and
- The Honorable Lacy Clay.

### Panel I

- Mathy Stanislaus, Assistant Administrator for the Office of Land and Emergency Management, U.S. Environmental Protection Agency.

### Panel II

- Amy Brittain, Environmental Programs Manager, Site Remediation Section, Land Protection Division, Oklahoma Department of Environmental Quality (*on behalf of the Association of State and Territorial Solid Waste Management Officials*);
- Steve Nadeau, Partner, Honigman;
- Marianne Horinko, President, The Horinko Group; and
- Robert Spiegel, Executive Director, Edison Wetlands Association.

## III. BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act – (CERCLA or Superfund) – governs the cleanup of hazardous waste sites, as well as accidents,

spills, and other emergency releases of pollutants and contaminants into the environment.<sup>1</sup> Congress enacted CERCLA in 1980 in response to growing concerns over the health and environmental risks posed by hazardous waste sites. The law was enacted in the wake of the discovery of toxic waste dumps such as the Love Canal and Valley of the Drums in the 1970s.<sup>2</sup>

## IMPLEMENTATION

On August 20, 1980, President Carter issued Executive Order 12316, which delegated primary responsibility for managing the cleanup and enforcement activities under the Superfund program to the Environmental Protection Agency (EPA). On January 23, 1987, President Reagan revoked the previous Executive Order and issued Executive Order 12580, which is the current delegation of the President's authority under CERCLA to EPA and other Federal agencies.

CERCLA allows EPA to clean up hazardous waste sites and to require responsible parties to perform cleanups or reimburse the government for cleanups led by EPA. CERCLA imposes both strict and joint and several liability for all response costs incurred by a government or private party as a result of actual or potential releases of hazardous substances. This means that in most cases, any one potentially responsible party (PRP) can be responsible for the entire cost of cleanup.

The Superfund program is administered by EPA in cooperation with State and tribal governments. States are encouraged by EPA to participate in the Superfund process and States are formally involved in almost all phases of Superfund decision-making. CERCLA requires EPA to coordinate with the States and political subdivisions while the Federal government leads or oversees the response. EPA also authorizes the States to act as the lead agency and carry out most of the cleanup efforts at some sites. States are also responsible for overseeing future maintenance of all remedial and removal actions.

EPA also implements CERCLA by delegating certain authority to the Regional Administrators, including remedy selection, authority to enter contracts and cooperative agreements with States, and enforcement.<sup>3</sup>

## CERCLA PROCESS

CERCLA authorizes two kinds of response actions:

- **Removal actions.** Removal actions are short term or emergency response actions designed to stabilize or cleanup a hazardous site that poses an immediate threat to human

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<sup>1</sup> <https://www.epa.gov/laws-regulations/summary-comprehensive-environmental-response-compensation-and-liability-act>

<sup>2</sup> *Id.*

<sup>3</sup> National Service Center for Environmental Publications, OSWER Directive Number 9260.2-11; Title: Delegation of Authority under the Comprehensive Environmental Response, Cooperation, and Liability Act (CERCLA) (April 1984).

health or the environment. Removal actions are classified as: (1) emergency, (2) time-critical, and (3) non-time critical.

- **Remedial actions.** Remedial actions are usually long-term response actions that seek to permanently and significantly reduce the risks associated with releases or threats of releases of hazardous substances. Response actions are generally larger, more expensive actions that may include such measures as preventing the migration of pollutants with containment or removal and/or treating or neutralizing hazardous substances.

The National Priorities List (NPL) represents the priority hazardous substance sites nationwide. These sites are eligible for long-term remedial actions financed through the Superfund program. Remedial actions can be conducted with federal funding only at sites listed on the NPL. Remedial action by responsible parties under consent decrees or unilateral administrative orders with EPA oversight may be performed at both NPL and non-NPL sites.

A PRP is a party who may eventually be held liable under CERCLA for the contamination or misuse of a particular property or resource. Four classes of PRPs at a Superfund site include:

1. the current owner or operator of the site;
2. the owner or operator of a site at the time that disposal of a hazardous substance, pollutant, or contaminant occurred;
3. a person who arranged for the disposal of a hazardous substance, pollutant, or contaminant at a site; and
4. a person who transported a hazardous substance, pollutant or contaminant to a site, and who also has selected that site for the disposal of the hazardous substances, pollutants, or contaminants.

CERCLA also required the revision of the National Oil and Hazardous Substances Pollution Contingency Plan 9605(a)(NCP). Following the passage of CERCLA in 1980, the NCP was broadened to cover releases at hazardous waste sites requiring emergency removal actions.<sup>4</sup> The NCP is used to order and guide cleanup activities, and it establishes the process that must be followed when conducting a cleanup under CERCLA. Over the years, additional revisions have been made to the NCP to keep pace with the enactment of legislation. The latest revisions to the NCP were finalized in 1994 to reflect the oil spill provisions of the Oil Pollution Act of 1990. However, with respect to hazardous substance cleanup, the NCP has not substantively changed since the early days of CERCLA.<sup>5</sup>

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<sup>4</sup> <https://www.epa.gov/emergency-response/national-oil-and-hazardous-substances-pollution-contingency-plan-ncp-overview>

<sup>5</sup> *Id.*

Since CERCLA was enacted, the types of sites requiring cleanup have changed and the less difficult sites have been cleaned up. Cleanup technology has changed and improved. State regulatory and voluntary cleanup programs did not exist as they do. In addition, other cleanup programs like RCRA corrective action, Brownfields, and State programs have developed, matured, and changed to improve efficiency, reduce cleanup costs, and expedite cleanups. The CERCLA program however, has not undergone similar revision and refinement. The question facing the CERCLA program is whether, 36 years later, the statute and resulting cleanup program are a good match for today's contaminated sites and cleanup issues.

#### **IV. ISSUES**

The following issues may be examined at the hearing:

- What are the problems associated with EPA's implementation of CERCLA? And what improvements can be made to make the program more efficient and effective?
- Is there too much process associated with cleanups under CERCLA? Does the existing CERCLA process encourage or impede timely cleanups? Are there process changes that would facilitate more timely and efficient cleanups under CERCLA?
- Is the process that EPA has set out being followed?
- Is the level of delegation of decision-making authority for CERCLA cleanups from EPA headquarters to the regions appropriate?
- Is the role of the States in CERCLA cleanups appropriate? Would it make CERCLA cleanups more effective and efficient to have a more substantial role for States?
- Many of the "easy" cleanups have been completed and what remains are the complex sites – is the statute adequate to direct EPA to implement a cleanup program that can effectively and efficiently address these cleanups?

#### **V. STAFF CONTACTS**

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