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**Hearing
"Oversight of CERCLA Implementation"**

**U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and the Economy
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**Testimony of
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Main Points:

- States should be included early when EPA is determining which State environmental regulations are potential Applicable or Relevant and Appropriate Requirements (ARARs). There needs to be transparency and consistency on these decisions.
- Every Superfund site with complex long term remedies, such as ground water remediation systems, should be evaluated for potential remedy optimization before transfer to 100 percent State funding.
- EPA regions should improve management of Superfund State Contracts to ensure better documentation of EPA costs that States have to match and timeliness of final financial reconciliations.

Good morning Chairman Shimkus, Ranking Member Tonko, and Members of the Subcommittee. I thank you for the opportunity to speak at today's hearing. My name is Amy Brittain and I am an Environmental Programs Manager at the Oklahoma Department of Environmental Quality. ODEQ is a member organization of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO). I am also the Chair of the Remedial Action Focus Group within the Association's CERCLA and Brownfields Subcommittee, and in this capacity I have been asked to represent ASTSWMO at today's hearing. ASTSWMO is an association representing the waste management and cleanup programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes managers from the State environmental protection programs, including those responsible for overseeing the cleanup of Superfund sites.

States play a key role in the Superfund process, and it is only through working closely with the U.S. Environmental Protection Agency (EPA) that risks to human health and the environment are mitigated and appropriately addressed. Our Association is committed to ensuring that this is done in an efficient, cost effective manner. Additionally, the Association works to address inconsistencies on how the program is implemented from EPA region to region.

An ongoing concern for our State members is the process EPA follows to identify State regulations as potential Applicable or Relevant and Appropriate Requirements (ARARs), as well as State guidance that may be included as to-be-considered (TBC) requirements for Superfund remedial actions. States across the country have raised concerns to EPA including: (1)

inconsistencies in ARAR determination from one site to another, (2) the lack of written documentation on the rationale used to determine ARARs, and (3) the lack of early opportunities for States to have a say in the ARAR list of a site.

Over the past year, EPA has invited representatives from States to participate as members of a workgroup that is developing tools to improve the ARAR identification process that will help ensure meaningful and substantial State involvement. ASTSWMO appreciates EPA inviting representatives from States to participate in this important effort. As a next step, EPA must continue to engage States in the ARARs process discussions, which includes an open direct dialog with States on policy decisions on whether or not a State regulation is an ARAR.

Another growing concern for States is the financial burden that we face with Operation and Maintenance costs on complex long term remedies such as ground water remediation systems. Now that Superfund has reached the 35 year mark, a significant number of sites are complete and States are required to pay 100 percent of the Operation and Maintenance costs. States are working with EPA to find ways to optimize remedies, increase the effectiveness, and/or reduce the cost without sacrificing long-term protection of human health and the environment. EPA has implemented a remedy optimization program to perform systematic site reviews. It is important for EPA to require that these optimizations be performed as early as possible so that cost saving and efficiencies are realized before the financial burden falls entirely to the States.

Over the past 2 years the ASTSWMO Remedial Action Focus Group has been working with States and EPA to evaluate and improve Superfund State Contracts. A Superfund State Contract is a binding agreement between the EPA and an individual State that defines the terms and conditions for both parties to share remedial action costs at a specific site. States have concerns with the lack of detailed line-item documentation on what EPA has spent on site remedies. Too often, States get little information on how the cleanup money was spent by EPA, yet are expected to pay for 10% or 50% of the costs incurred. Another issue is the lack of timeliness for final financial reconciliation of these contracts. Many existing contracts have never been reconciled, therefore States have received invoices for EPA expenses that go back 10 or 20 years or find that EPA over invoiced States and owe the States money. Additionally, States have experienced lack of adherence to the contract requirements by EPA.

With input from States, EPA revised the Superfund State Contract model provisions in late 2015. The new model provisions address several concerns from States including the ability to set up payment plans for State match and providing a timeline for final financial reconciliation of the contract. However, many existing contracts already in place will continue to cause problems for States. It is important that EPA make it a priority to provide detailed cost documentation to States and perform final financial reconciliations on open contracts.

Superfund is a very important program that provides a mechanism for cleaning up properties that pose a threat to human health and the environment. In the nearly 36 years since Congress passed the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) States have worked diligently to develop and implement environmental

regulatory programs to investigate and cleanup hazardous substance releases. State participation in this program is critical to its success; States are important stakeholders because of the financial obligations of match and long term operations and maintenance. As co-regulators, States want to be a real and meaningful partner in this process and will continue to work with EPA to address challenges.

Thank you for this opportunity to offer testimony. I would be pleased to answer any questions you may have.