Summary of Testimony of Marianne Lamont Horinko

July 13th, 2016

Before the House Energy and Commerce Committee
Subcommittee on Environment and the Economy

Hearing on Oversight of CERCLA Implementation

- The Superfund statute is now over 35 years old.
- It was designed to address contaminated soil and groundwater challenges and was largely successful in doing so over the years.
- It is time for Congress to update the statute to make it more effective and efficient in addressing the current environmental challenges facing the country.
- We should reexamine the role that States have in implementing the program.
- We should examine the National Priorities List and ensure that Superfund is the right tool to address the issues presented by those sites.
- Superfund is in need of much more flexibility so that regulators can more timely and effectively manage complex cleanups.
- The Agency should look at the success of the LEAN program in RCRA and take the lessons-learned and apply them to Superfund.
- It is important to tailor the future of Superfund in order to take advantage of the significant technological advancements of the last 35 years and update the program accordingly.

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I. Introduction

Thank you, Chairman Shimkus; ranking member Pallone and distinguished members of the committee. I commend all of you for holding an oversight hearing with respect to this important program. I appreciate the opportunity to engage in the dialogue. It is certainly time for reasoned insight and potential changes to the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) Program.

II. Backdrop

CERCLA was enacted by congress in 1980 in response to the threat of hazardous waste sites, such as Love Canal in New York. In the early years of the program, our nation came to understand the scale of the challenge. Since 1980, EPA has taken actions to control potential or actual exposure risk to humans at 1,439 sites. EPA actions have also controlled the migration of contaminated groundwater at 1,138 sites. EPA has obtained billions of dollars in commitments from responsible parties to clean up Superfund sites, including two billion dollars in 2015 alone. Not only has Superfund averted many potential tragedies in communities, but fear of Superfund liability has also dramatically changed corporate social responsibility. Today, private

companies carefully review their management of secondary materials to ensure that future Superfund sites are not inadvertently created.

At the same time, it has been over thirty-five years since the Superfund program was created, and many important aspects of environmental policy have evolved enormously since 1980. Now is an opportune point for this committee to examine this program in the light of today's circumstances.

III. Proposed Changes to Superfund

There are a number of potential changes to the Superfund program that I would propose for consideration. For purposes of today's hearing, I am going to divide them into three categories: Legislative Changes; Programmatic or Policy Changes; and Cultural Changes.

Legislative Changes

First of all, I would like to recommend several potential statutory amendments to this committee.

The role of the states in implementing Superfund needs to be seriously reexamined, in my view. In 1980, very few states (perhaps except for New Jersey) had robust cleanup programs under their own statutory authority. That situation has evolved toward the present day, where virtually every state has a strong and capable cleanup program. Every other environmental

statute, of which I am aware, has a strong state delegation authority. Examples include the Clean Air Act, the Clean Water Act, and the Safe Drinking Water Act. The other federal environmental cleanup statutes and such programs as the Resource Conservation and Recovery Act, the Underground Storage Tank Program, and the Brownfields Act feature a strong state authorization capability. Yet the Superfund cleanup program only features a state review component. It is time to consider authorizing states for all of our federal cleanup capabilities.

Next, I believe that it is time to take a hard look at the National Priorities List (NPL). I would ask the Government Accountability Office to undertake a widespread stakeholder dialogue surrounding the constitution of properties added to the NPL every year and what types of sites are arising by each region of the country. Such a dialogue might consider the types of sites being added to the NPL. Are we adding contaminated watersheds and large mining sites or dry cleaners and auto body shops? We need to decide which sites are most appropriate for management under Superfund. Another relevant inquiry is to better understand the impact the recession had on the Superfund pipeline generally. There has been no cradle to grave review of the NPL since the 2001 report conducted by Resources for the Future. I think if we examine the nature of the properties being added to the NPL today, we could determine whether some of these sites could be more ably handled by the states, or even by communities under the Brownfields Program.

As part of its oversight function, I recommend that Congress require some accountability from the Agency.

Additionally, I would recommend that congressional appropriators provide EPA with much more flexibility in the manner by which Superfund dollars and Full-Time Equivalent (FTE) positions are deployed around the country. Currently, EPA is constrained from mobilizing resources towards different parts of the country even as the depth of the challenges in these regions grows and ebbs. I would recommend that EPA have the flexibility to manage its resources towards the greater environmental challenges it faces. This change is common sense, in my view.

Policy/Programmatic Changes

From a programmatic perspective, I would recommend that the agency revamp the National Contingency Plan (NCP) to remove many of the procedural elements that cause the remedial process to be so time-consuming. I would recommend the agency look carefully at the Superfund removal program, which is much more efficient and cost-effective. Initially designed to address hazardous material emergencies, the removal program has evolved to become one of the most capable cleanup programs I've ever witnessed. By streamlining the long-term remedial program to become less

process-intensive and more focused on near-term results, Superfund can deliver much more value to the communities it serves.

The second programmatic change I would recommend is implementation of the Six-Sigma or “LEAN” Program. The RCRA Program has enjoyed tremendous success with implementation of the LEAN (now called RCRA First Process) in the corrective action program in EPA Regions 3 and 7. Regions 4, 5, and 10 are eager to embrace RCRA First as well. This effort represents a significant change for EPA and the states in that it imposes deadlines and accountability around managing the cleanup process. The agency, communities, and responsible parties create a desired outcome for the cleanup process. For example, determine a specific number of acres at a site that are ready for reuse by a date certain. In the words of my distinguished colleague, John Paul Woodley (former Assistant Secretary for the U.S. Army Core of Engineers), “it is time to stop approaching these cleanup sites as if each one were a Swiss watch and time to start approaching them as if we were tuning our Toyotas”. After 35 years of experience, we should have a sophisticated understanding of the Superfund process and thus be able to build in efficiencies and reduce the resource-intensity of cleanups.

Cultural Changes

Cultural changes are perhaps the most challenging to implement. After all, in most large organizations, the perspective that “we’ve always done it this way” is hard to defeat. Nevertheless, I believe that we are doomed if we don’t try. Therefore, I recommend the following two cultural evolutions.

The first recommendation concerns technology in the way that it has transformed our lives and our business processes. Throughout the history of Superfund, we have been vexed by the issue of long-term stewardship. At many Superfund sites where the construction of the cleanup is completed, there remains some type of institutional controls in place. These controls may take the form of engineered barriers, such as a landfill cap or a long-term groundwater pump-and-treat operation. They may also take the form of a land use control, such as a deed restriction or some type of a local or state ordinance limiting the future uses of the property. Historically, the challenge for the EPA has been preserving the integrity of these institutional controls.

While the Superfund law contains a provision requiring EPA to go out in the field and conduct a review of the remedy every five years, that provision doesn’t address the efficacy of the remedy in between those periods. However, as with so many aspects of our lives, new technology is coming to the fore, which contains great promise for addressing these structural inequities. EPA’s mid-Atlantic office has pioneered a new Geographic Information System (GIS) tool, which contains a feature that will map the

parameters of every corrective action site in terms of latitude and longitude. These features are often incorrectly displayed in outdated paper maps. The GIS tool can also map the nature and extent of the contaminant plumes. Any individual with a smartphone can visit a corrective action site, map out the property boundaries, and determine which contaminants are contained in the soil and groundwater, their concentrations, and the extent and direction of the groundwater plumes. This technology has potential to provide for citizen enforcement of the environmental laws – a prospect both thrilling and daunting at the same time.

I recommend that EPA engage the states and local governments in planning how an enforcement program will best utilize the data available from these technological advancements.

The second cultural change that I would implement is robust institutional education. Over 3,000 employees have retired in the past few years from the federal EPA alone. There has been a concomitant wave of retirements at the state and local level. Correspondingly, EPA and the states have been recruiting young people out of colleges, graduate schools, and law schools at a brisk pace. It is incumbent upon all of us that these new hires are equipped with the skill sets; in particular, the risk assessment and risk management tools, to undertake their responsibilities well. Much has been learned after 35 years of experience in implementing the Superfund program. Educating these

young people about the program's successes, as well as the lessons learned over its history, will ensure that the Superfund program capitalizes on its next 35 years.

IV. Partnerships

The financial crisis of 2008 taught all of us, public and private sector alike, the value of leveraging. Examples of these successful partnerships abound in our environmental programs. The Brownfields Program demonstrates the value of working in collaborative fashion with developers, lenders, and communities to voluntarily investigate and remediate contaminated properties in order to revitalize them to their full economic value. In addition, many stakeholders are developing voluntary programs or incentives to recognize cleanup efforts that go above-and-beyond mere compliance with the Superfund law. The Wildlife Habitat Council has developed a voluntary standard for the creation of conservation projects such as habitat or wetlands beyond that mandated by the natural resources damages law. Also, ASTM International and the Interstate Technology and Regulatory Council have created standards and guides around green and sustainable remediation to make contaminated site cleanups more environmentally, economically, and socially beneficial. Recently, Boeing partnered with EPA Region 7 in Kansas City and the local community to create a pollinator garden at a former recycling site. These cooperative initiatives greatly leverage the federal funding that Superfund

provides and also empower communities, state and local governments, and responsible parties to step up to the plate.

V. Conclusion

This oversight hearing is an important opportunity to “reboot” Superfund. Certainly, any bureaucratic transformation will require space and time. However, today we have significantly more tools and technology than we did in 1980. Going forward, I am confident that Superfund stakeholders can work together to advance this cause and set Superfund on a positive path forward for the next generation. Thank for again for this opportunity and I look forward to answering any questions.