



November 13, 2017

TO: Members, Subcommittee on Subcommittee on the Environment

FROM: Committee Majority Staff

RE: Hearing entitled “Response and Recovery to Environmental Concerns from the 2017 Hurricane Season”

I. INTRODUCTION

The Subcommittee on the Environment will hold a hearing on Tuesday, November 14, 2017, at 10:00 a.m. in 2123 Rayburn House Office Building entitled “Response and Recovery to Environmental Concerns from the 2017 Hurricane Season” to examine Federal, State, local, and private responses to and recovery efforts from environmental concerns associated with the recent hurricanes in Texas, the Gulf Coast, Florida, Puerto Rico, and the United States Virgin Islands.

II. WITNESSES

- **Peter Lopez, Regional Administrator, Region 2, Environmental Protection Agency;**
- **Trey Glenn, Regional Administrator, Region 4, Environmental Protection Agency;**
- **Sam Coleman, Acting Regional Administrator, Region 6, Environmental Protection Agency;**
- **Bryan Shaw, Chairman, Texas Department of Environmental Quality;**
- **Mark Lichtenstein, Chief of Staff and Chief Sustainability Officer, SUNY College of Environmental Science and Forestry;**
- **Lyvia N. Rodríguez Del Valle, Executive Director, Corporación del Proyecto ENLACE del Caño Martín Peña;**
- **Trent Epperson, Assistant City Manager, City of Pearland, TX;**
- **Garett Thomas Sansom, DrPH, MPH, Associate Director, Institute for Sustainable Communities, Texas A&M University; and**
- **Mike Howe, Executive Director, Texas Section of American Water Works Association on behalf of the American Water Works Association.**

III. BACKGROUND

From August 17 to September 30, the United States experienced severe weather from five hurricanes, including extensive damage due to landfall from four hurricanes: Harvey (Texas and Louisiana), Irma (Florida, Georgia, Puerto Rico, and the U.S. Virgin Islands), Maria (Puerto Rico and the U.S. Virgin Islands), and one Category 1 storm: Nate (Louisiana and Mississippi). The impact of the hurricanes was significant: Harvey—77 lives lost and \$70 billion in damage, Irma—134 lives lost and \$63 billion in damage, Maria—63 lives lost and \$51.2 billion in damages, and Nate—43 lives lost and \$2.65 billion in damages.

The preparation for, response to, and short-term recovery from these storms is dictated by the National Response Framework (NRF), a guide detailing the roles, responsibilities, and coordinating structures for the Nation from Federal, State, local, and non-governmental entities. Under the NRF, States set priorities, lead, manage, and drive the overall recovery process and play a central role in coordinating recovery activities, including providing financial and technical support.¹ Assisting States are the Federal agencies assigned “primary” or “support” status under the NRF for Recovery Support Function (RSF).² Under the NRF, the Environmental Protection Agency (EPA) is (1) “primary” for the Health and Social Services and Natural and Cultural Resources RSFs and (2) “supporting” for the Community Planning and Capacity Development, Infrastructure Systems, Housing, and Economic RSFs.³

In addition, several Federal agencies have authorities to respond to and declare specific types of disasters or emergencies. These agencies can either act when the Department of Homeland Security (DHS) is not coordinating the overall response or request DHS activate response structures and elements to provide additional assistance that would be led by the requesting Federal agency.⁴ For example, EPA has the authority to take actions to respond to oil discharges and releases of hazardous substances, pollutants, and contaminants, including leading such response.

STATUS OF MAJOR STORM RECOVERY EFFORTS

HURRICANE HARVEY⁵

EPA and the Texas Council on Environmental Quality (TCEQ) continue to coordinate with Federal, State, and local officials to address the human health and environmental impacts of Harvey and its aftermath, especially the water systems in the affected areas. The TCEQ has approximately 500 people and, at the height its response, EPA had 261 employees responding to Harvey. Today, the EPA employees in Texas are working on long-term support and recovery.

A Unified Command was established between the EPA, the TCEQ, the General Land Office (GLO), and the U.S. Coast Guard (USCG) to oversee all emergency response efforts. This Unified Command is supported by three operational branches in Corpus Christi, Houston, and Port Arthur. In addition to EPA, TCEQ, GLO, and USCG, multiple agencies and groups are supporting each of the operational branches, including the Texas National Guard, 6th Civil Support Team; the Arkansas National Guard, 61st Civil Support Team; the Oklahoma Task Force 1; and the Texas State Guard Engineering Group. Branch personnel are working to continuously monitor water and wastewater systems, as well as assess spills or discharges because of the storm.

As of October 6, 2017:

¹ https://www.fema.gov/media-library-data/20130726-1820-25045-5325/508_ndrf.pdf

² Ibid.

³ Ibid.

⁴ https://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf

⁵ https://response.epa.gov/site/site_profile.aspx?site_id=12353

- Drinking Water:⁶
 - Harvey affected 2,238 drinking water systems.
 - Of those drinking water systems, 2,196 systems are fully operational, 39 have boil-water notices, and two are shut down.
 - The TCEQ is contacting the remaining systems to gather updated information on their status.
- Superfund Sites:⁷
 - All 43 Superfund National Priorities List sites in the hurricane affected area have been assessed and, 42 sites have been cleared.
 - The San Jacinto River Waste Pits site requires additional follow up.
 - The TCEQ has also completed the assessment of all 17 State Superfund sites in the affected area. There were no major issues noted, and TCEQ continues to monitor these sites to ensure no further action is needed.
- Air Quality:
 - As of September 29, the TCEQ's air monitoring network is 100 percent operational. All measured concentrations were well below levels of health concern.⁸
- Solid Waste:⁹
 - The TCEQ has approved 187 Temporary Debris Management Sites in areas under the Federal or State Disaster Declaration designations.
 - TCEQ regional offices and local authorities are also actively overseeing the siting and implementation of debris and waste management plans in the affected area.
 - The EPA, TCEQ, and Army Corps of Engineer field observers are visiting staging and landfills to ensure compliance with guidelines.
 - EPA has participated in over 261 joint site observations and expects to conclude its activities next week.

For more information on EPA's response to Hurricane Irma, please see:

https://response.epa.gov/site/site_profile.aspx?site_id=12382

HURRICANE IRMA¹⁰

EPA continues coordinating with local, state, tribal, and federal partners on response to Irma. While EPA's On Scene Coordinators, scientists, technical assistance professionals, and other first responders have begun deploying to Puerto Rico and the U.S. Virgin Islands, landfill technical specialists continue to assist with debris management in the Florida Keys and site visits.¹¹ Prior to their departure, emergency response staff worked on regional assessment and response deployment activities, including assessing drinking water and wastewater infrastructure, facility assessment, and managing debris and household hazardous waste.

⁶ https://response.epa.gov/site/site_profile.aspx?site_id=12353

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

¹⁰ https://response.epa.gov/site/site_profile.aspx?site_id=12382

¹¹ https://response.epa.gov/site/site_profile.aspx?site_id=12382

In addition, and at the request of the State of Florida, EPA field teams continue vessel recovery operations in Marathon Key, having recovered 65 vessels in the Marathon Key area and transported them to FWC staging areas. EPA estimates that 83 vessels remain to be addressed within its area of responsibility.¹²

For more information on EPA's response to Hurricane Irma, please see:

https://response.epa.gov/site/site_profile.aspx?site_id=12382

HURRICANE MARIA¹³

EPA's Region 2 offices are managing EPA's response efforts to Maria. EPA is supporting the Federal Emergency Management Agency (FEMA) through its assistance to the governments of Puerto Rico and the U.S. Virgin Islands. EPA's mission includes restoring wastewater systems and access to clean drinking water, and addressing chemical spill response, oil and chemical facility assessments, and debris management.

Specifically, EPA is coordinating drinking water sampling with the U.S. Virgin Islands Department of Natural Resources and is focused on assessing both drinking water and wastewater systems in collaboration with the government of Puerto Rico – one month ago, forty percent of Puerto Rico's sewage treatment plants were non-operational. Due to concerns about raw sewage being released into waterways, boil orders are in effect for drinking, bathing, and other hygiene activities.

In addition, as of last week, EPA announced it had completed preliminary assessments at EPA-led Superfund sites, oil sites, and chemical facilities in both Puerto Rico and the U.S. Virgin Islands to determine if the sites were affected by Maria, and it is conducting follow-up actions, such as fence and structure repairs.¹⁴ In addition, EPA is coordinating with the lead Federal agencies for two other sites, Culebra and Vieques.¹⁵

EPA teams have assessed 240 fixed facilities in Puerto Rico and 65 in the U.S. Virgin Islands that are regulated under the Risk Management Plan (RMP), Facility Response Plan (FRP), or Spill Prevention, Control, and Countermeasure (SPCC) programs.¹⁶

As of October 7, 2017, EPA had 313 personnel involved in hurricane response efforts, with 82 personnel on the ground in the U.S. Virgin Islands to assist with response efforts, and 136 personnel on the ground in Puerto Rico to assist with response efforts.

For more information on EPA's response to Hurricane Maria, please see:

https://response.epa.gov/site/site_profile.aspx?site_id=12403

¹² Ibid.

¹³ https://response.epa.gov/site/site_profile.aspx?site_id=12403

¹⁴ https://response.epa.gov/site/site_profile.aspx?site_id=12403

¹⁵ Ibid.

¹⁶ Ibid.

IV. ISSUES

The following issues may be examined at the hearing:

- What is the status of the environmental recovery efforts from that damage for Hurricanes Harvey, Irma, and Maria?
- How has EPA performed within the structure of the National Response Framework (i.e. has the Framework provided the flexibility and funding to address the concerns found)?
- Has EPA's response and recovery effort been hindered by statutory authority. If so, which ones?

V. STAFF CONTACTS

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

Attachment #1

Relevant statutes to response and recovery that EPA enforces include:

Clean Air Act (CAA): is the principal statute addressing air quality concerns. CAA requires EPA to set health-based standards for ambient air quality, sets deadlines for the achievement of those standards by state and local governments, and requires EPA to set national emission standards for large or ubiquitous sources of air pollution, including motor vehicles, power plants, and other industrial sources. In addition, CAA mandates emission controls for sources of 187 hazardous air pollutants, establishes a cap-and-trade program to limit acid rain, requires the prevention of significant deterioration of air quality in areas with clean air, requires a program to restore visibility impaired by regional haze in national parks and wilderness areas, and implements the Montreal Protocol to phase out most ozone-depleting chemicals, and addresses accidental releases to air of extremely hazardous substances.

Safe Drinking Water Act (SDWA): is the key federal law for protecting public water supplies from harmful contaminants. SDWA is administered through programs that establish standards and treatment requirements for public water supplies, promote compliance capacity of public water systems, provide technical assistance to small water systems, control the underground injection of fluids, finance infrastructure projects, and protect sources of drinking water.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): authorizes cleanup and enforcement actions to respond to actual or threatened releases of hazardous substances into the environment, but generally excludes releases of petroleum and certain other materials covered by other federal laws. CERCLA directs EPA to maintain a National Priorities List (NPL) to identify the most hazardous sites for the purpose of prioritizing cleanup actions. The states and the public may participate in federal cleanup decisions at NPL sites. The states primarily are responsible for pursuing the cleanup of sites not listed on the NPL, with the federal role at these sites limited mainly to addressing emergencies.

CERCLA established a broad liability scheme that holds past and current owners and operators of facilities from which a release occurs financially responsible for cleanup costs, natural resource damages, and the costs of federal public health studies. At waste disposal sites, generators of the wastes and transporters of the wastes who selected the site for disposal also are liable under CERCLA. The liability of these "potentially responsible parties" (PRPs) has been interpreted by the courts to be strict, joint and several, and retroactive. At contaminated federal facilities, federal agencies are subject to liability under CERCLA as the owners and operators of those facilities on behalf of the United States. Federal agencies also may be liable in instances in which an agency generated or transported waste for disposal at a non-federal facility.

Solid Waste Disposal Act (SWDA): Also known as the Resource Conservation and Recovery Act of 1976 (RCRA), SWDA authorizes EPA to set standards for facilities that generate or manage hazardous waste, establishes a permit program for hazardous waste treatment, storage, and disposal facilities, and authorizes EPA to set criteria for disposal facilities that accept municipal solid waste. SWDA also establishes regulation of hazardous materials in underground storage tanks and disposal of medical waste.

Emergency Planning and Community Right-to-Know Act (EPCRA): established a national framework for the EPA to mobilize local government officials, businesses, and other citizens to plan-ahead for chemical accidents in their communities through State Emergency Response Commission (SERC) and local emergency planning committees (LEPCs) as well as respond to those accidents. EPCRA also directs covered facilities to submit information about the chemicals that they have present to the LEPC, SERC, and local fire department and estimate to EPA on releases from their facilities of certain toxic chemicals to the land, air, or water.