

January 16, 2017

TO: Members, Subcommittee on the Environment
FROM: Committee Majority Staff
RE: Hearing entitled “Modernizing the Superfund Cleanup Program”

I. INTRODUCTION

The Subcommittee on Environment will hold a hearing on Thursday, January 18, 2018, at 10:15 a.m. in 2322 Rayburn House Office Building. The hearing is entitled “Modernizing the Superfund Cleanup Program.”

II. WITNESSES

Panel I

- Barry Breen, Principal Deputy Assistant Administrator of the Office of Land and Emergency Management, U.S. Environmental Protection Agency.

Panel II

- Steve Cobb, Chief, Land Division, Alabama Department of Environmental Management (*on behalf of the Association of State and Territorial Solid Waste Management Officials*);
- J. Winston Porter, Environmental and Energy Consultant;
- James McKenna, Portland Harbor Policy Analyst, Governor Brown’s Natural Resources Office;
- Debbie Mans, Executive Director & Baykeeper, NY/NJ Baykeeper; and
- Katherine Probst, Independent Consultant.

III. BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) governs the cleanup of hazardous substances, spills, and other emergency releases of pollutants and contaminants into the environment.¹ CERCLA was signed

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

into law on December 11, 1980 in response to growing concerns over the health and environmental risks posed by the dumping of hazardous substances in the wake of the discovery of toxic waste dumps such as the Love Canal and Valley of the Drums in the 1970s.²

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 may be performed at both NPL and non-NPL sites with Environmental Protection Agency (EPA) oversight.

Sites with hazardous substances become eligible for cleanup under the Superfund program when EPA receives a report of the site. EPA enters the potentially contaminated facility into a searchable database formerly known as the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS), which is now referred to as the Superfund Enterprise Management System (SEMS). Then, either EPA or the State in which the potentially contaminated facility is located will conduct a preliminary assessment, to determine if the facility poses a threat to human health or the environment. The hazard ranking system (HRS) is used to review any available data to determine whether the environmental or health risks of a site are enough to qualify the facility for a Superfund cleanup. Facilities that have a certain score on the HRS are eligible for the NPL.

As of November 24, 2017, there are 1,341 sites on the NPL.³

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 issued Executive Order 12580, which is the current delegation of the President's authority under CERCLA to EPA and other Federal agencies.

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 involved in almost all phases of Superfund decision-making. CERCLA requires EPA to coordinate with the States and political subdivisions but the Federal government leads or oversees the response. States are 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.⁴

² *Id.*

³ <https://www.epa.gov/superfund/superfund-national-priorities-list-npl>

⁴ 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).

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 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. Remedial 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.

CERCLA imposes both strict and joint and several liability for all response costs incurred by a government or private party because 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.

A PRP is a party who may be held liable under CERCLA for the contamination of a property. 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 (NCP). Following the passage of CERCLA in 1980, the NCP was broadened to cover releases at sites with hazardous substances requiring emergency removal actions.⁵ 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

⁵ <https://www.epa.gov/emergency-response/national-oil-and-hazardous-substances-pollution-contingency-plan-ncp-overview>

Act of 1990. However, with respect to hazardous substance cleanup, the NCP has not substantively changed since the early days of CERCLA.⁶

Evolution of the Superfund Cleanup Program

Many Superfund sites are the result of the way hazardous materials were historically disposed of because manufacturing operations often buried or poured hazardous substances down drains or wells or left waste behind when they ceased operations. Such practices were not unlawful at the time and people did not realize that decades later the soil or the groundwater would be contaminated and unsafe to use.

Since CERCLA was enacted, the types of sites requiring cleanup have changed because many of the less difficult sites have been cleaned up. Cleanup technologies have changed and improved and robust State regulatory and voluntary cleanup programs, which did not exist when CERCLA was enacted, have been established. In addition, other cleanup programs like corrective action under the Resource Conservation and Recovery Act (RCRA), 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 Superfund cleanup program is whether the statute and resulting cleanup program are a good match for addressing today's contaminated sites and cleanup issues and if not, what needs to be done to modernize the program to make it more effective and efficient.

Administrator Pruitt announced early in his tenure that Superfund cleanups would be a priority for the Administration. On May 22, 2017, the Administrator established a Superfund Task Force charged with determining how EPA can restructure the Superfund cleanup process to speed up the remediation process, incentivize parties to remediate sites, and promote the revitalization of contaminated properties. On July 25, 2017, the Superfund Task Force published a list of recommendations intended to reinvigorate the cleanup program, which provided for specific actions, offered time frames for commencement, and identified EPA staff responsible for each action's implementation.

On December 8, 2017, EPA identified 21 sites the Agency targeted for immediate and intense attention. EPA noted that expeditious cleanup is the goal for all Superfund sites but the sites on the list have site-specific issues that will benefit from the Administrator's direct engagement and that the Administrator's goal will be to resolve impasses that have delayed progress.

IV. ISSUES

The following issues may be examined at the hearing:

- What are the issues associated with EPA's implementation of CERCLA? Are there changes that need to be made to make the program more efficient and effective?

⁶ *Id.*

- Is there too much process associated with cleanups under CERCLA? Does the existing CERCLA process encourage or impede timely cleanups? Is there too much process associated with deleting sites from the NPL? Are there process changes that would facilitate more timely and efficient cleanups under CERCLA?
- Are the guidance documents and processes that EPA established for Superfund cleanups being followed?
- Does the NCP need to be updated and modernized to more effectively deal with the sites that are currently in the process of being cleaned up?
- Is the level of delegation of decision-making authority for CERCLA cleanups from EPA headquarters to the regions appropriate? Are Regions free to make the decisions necessary to get sites cleaned up and off the NPL?
- How does EPA Headquarters ensure that the EPA Regions are consistent in their implementation of the cleanup program?
- How can EPA facilitate more early and interim actions at Superfund sites? Would increasing the use of optimization practices expedite Superfund cleanups?
- Is the role of the States in CERCLA cleanups appropriate? State cleanup programs have developed since the enactment of CERCLA, would cleanups be more effective and efficient if some CERCLA authorities were delegated to States?
- What is the status of the recommendations of the Superfund Task Force? When EPA begins implementing the recommendations of the Task Force, what is the plan to filter information down to the Regional project managers? Does EPA anticipate having to update guidance or regulations to effectuate the recommendations of the Task Force?
- What does it mean to be on the Top 21 List? How was the decision made about what sites to include on the list?
- Is the statute adequate to direct EPA to implement a cleanup program that can effectively and efficiently address cleanups? What statutory changes are necessary?

V. STAFF CONTACTS

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