

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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February 15, 2018

Mr. Barry Breen  
Principal Deputy Assistant Administrator  
Office of Land and Emergency Management  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Mr. Breen:

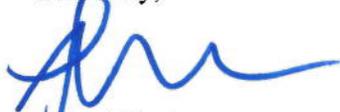
Thank you for appearing before the Subcommittee on Environment on January 18, 2018, to testify at the hearing entitled "Modernizing the Superfund Cleanup Program."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Friday, March 2, 2018. Your responses should be mailed to Kelly Collins, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to [Kelly.Collins@mail.house.gov](mailto:Kelly.Collins@mail.house.gov).

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus  
Chairman  
Subcommittee on Environment

cc: The Honorable Paul Tonko, Ranking Member, Subcommittee on Environment

Attachment

## Attachment—Additional Questions for the Record

### The Honorable John Shimkus

1. EPA retains money received through settlements with Potentially Responsible Parties (PRPs) in site-specific accounts to conduct planned future cleanup work at the site based on the terms of the settlement agreement. Is EPA constrained or prevented from using special account funds to get these sites cleaned up?
  - a. If not, why is the balance in the account so high and why is the money not being spent?
  - b. Does CERCLA need to be updated to clarify what special account funds may be used for?
2. The recommendations of the Superfund Task Force included a recommendation that EPA “maximize the use of special accounts to facilitate site cleanup and/or redevelopment.” Other than developing guidance, what is the plan for implementing this recommendation?
3. EPA drafted guidance that is expected to allow for or encourage the provision of Superfund's "special account" funds to bonafide prospective purchasers (BFPPs) as an incentive to conduct work on Superfund sites. Does EPA have the legal authority to reallocate special account funds in this way?
4. One of the recommendations of the Superfund Task Force was the use of adaptive management. Does EPA intend to incorporate adaptive management into the Superfund cleanup program and if so, how?
5. How can EPA use incentives to encourage responsible parties to cooperate and come to the table early to avoid the increased transaction costs associated with protracted negotiations?
  - a. What incentives can EPA utilize to clean up a Superfund site faster and more efficiently?
  - b. How can EPA use enforcement authorities as leverage to get a cleanup started or to help reach settlement?
6. Please identify any statutory changes EPA believes need to be made to improve the Superfund cleanup program or to implement the recommendations of the Superfund Task Force.
7. Would EPA support delegating certain aspects of the Superfund cleanup program to States that seek such authorization?

### **The Honorable David McKinley**

1. Mr. Breen- It is our understanding, upon completion of assessment in the Pre-Remedial Program, sites are reviewed and considered for listing on the NPL. If a site is contaminated but not determined to be appropriate for the NPL, recommendations are made for remediation outside of the CERCLA Program. However, these recommendations are not enforced by EPA, and property owners without financial interest often do not act on the recommendations. These sites are generally encouraged to enter a state Voluntary Remediation Program, but the property owners cannot be forced to participate in a voluntary program. This issue, combined with a pressure to not list new sites on the NPL, has created a “black hole” where contaminated sites without proper remediation lay dormant and potentially dangerous for years. What reforms can be done to address this issue? Is any legislation needed to remedy the problem?

### **The Honorable Richard Hudson**

1. Mr. Breen, thank you for coming before the committee today. In your testimony you mention that cleaning up Superfund sites is not only a top priority for Administrator Pruitt, but also an important aspect of the EPA’s core mission. In my home state of North Carolina there are 48 Superfund sites, six of which are in my district. These sites vary dramatically in how long they’ve been on the list ranging from 1984 to 2008. With that in mind how do you strike the balance between removing sites from the list and taking immediate actions to mitigate risk at new sites?
2. As part of the Superfund program it requires coordination with the EPA, Regional bodies, and individual states. Can you describe the level of coordination of these efforts? Is the EPA in a position to effectively lead these efforts or should it take the role more generally as a facilitator? Should more power be delegated down to the states?
3. Similarly, the EPA also relies on responsible parties to cooperate in remediation efforts. How can EPA use incentives to encourage responsible parties to cooperate and come to the table early in order to avoid the increased transaction costs associated with protracted negotiations? What incentives can EPA utilize in order to clean up a Superfund site faster and more efficiently?

### **The Honorable Tim Walberg**

1. On December 8, 2017 the Administrator released a list of 21 sites that EPA targeted for “immediate and intense attention.” The list is comprised of sites with “critical, near-term milestones” that EPA determined would benefit from Administrator Pruitt’s direct engagement.
  - a. Who completed the analysis?

- b. Other than impending milestones, what factors were considered in adding sites to the list?
  - c. What milestones rose to the level of being “critical” and resulted in the site being added to the list?
  - d. If no money is attached to being on the top 21 list – what does it mean to be on the list?
2. On January 17, 2018 EPA released another list of sites, these with the greatest expected redevelopment and commercial potential – the Redevelopment Focus List.
- a. Were all superfund sites analyzed and just the 31 on the list made the cut?
  - b. Who made the decision and what factors were considered?
  - c. The list directs interested developers and potential owners to Superfund sites with redevelopment potential, but notes that it does not necessarily include all possible sites with similar potential. What distinguished these 31 sites from the others?
  - d. What does it mean to be on this list?

## **The Honorable Paul Tonko**

### **1. Migratory Pollutants at Sites**

- a. How does EPA consider the impact of migratory pollutants on natural resources outside a defined cleanup unit when determining 5-Year Review findings and issuing Certificates of Completion?
- b. What experience does EPA have relying upon natural attenuation as the principle strategy for a site when there is a possibility that it could result in contamination of downstream resources?

### **2. Certificate of Completion**

- a. What are the conditions upon which a Certificate of Completion is issued to the liable party for a Superfund cleanup?
- b. What is the role of the Record of Decision and the Consent Decree in this context?

### **3. Hudson River Site**

- a. Does the agency intend to wait until the Remediation Goals have been achieved and the remedy is protective of human health and the environment before issuing the Certificate of Completion?