

**Attachment—Additional Questions for the Record**

**Subcommittee on Environment and Climate Change  
Hearing on  
“The CLEAN Future Act: Superfund Proposals to Advance Cleanups, Equity, and Climate Resilience”  
May 13, 2021**

Ms. Laurie Droughton Matthews, J.D., Of Counsel, Morgan, Lewis & Bockius LLP, on behalf of  
the Superfund Settlements Project

**The Honorable Cathy McMorris Rodgers (R-WA)**

1. There was a great deal of attention focused in the hearing on the need to protect Superfund sites from the impacts of climate change risks. I thought, though, that your written testimony suggested that section 631 went outside the bounds of CERCLA; stating instead that section 631 is geared towards operating facilities which are already subject to extensive requirements to address any future release of hazardous substances.

- a. Does Section 631 of H.R. 1512 address the impacts of climate change risks at CERCLA sites?

**RESPONSE: No. The “classes of facilities” that would be subject to Section 631 of H.R. 1512 are not Superfund sites, but operating facilities.**

- b. Does EPA, through its climate initiatives and the CERCLA process, including five-year reviews (under CERCLA section 121) for any sites where contamination is left behind, already address climate change risks at Superfund sites?

**RESPONSE: Yes**

2. Resilience and the aftermath of Hurricane Harvey were mentioned in the hearing, including impacts to the San Jacinto CERCLA site.

- a. Has EPA conducted an evaluation of the state of remedy resilience at CERCLA National Priority List and Superfund Alternative Approach Sites, particularly one that relates to a severe weather event?

**RESPONSE: Yes**

- b. If yes, what were the results of that examination?

**RESPONSE:** In EPA's evaluation report entitled *Remedy Resilience at Superfund NPL and SAA Sites: Analysis of 2017 Hurricane Season*, EPA concluded that "The state of the remedies is 'Resilient'; While over 250 sites were impacted by tropical forces winds or greater, and/or inundation, only 16 sites across the three regions reported minor damage, none at this point indicate impairment to remedy protectiveness."

- c. The temporary cap that failed at San Jacinto was a temporary remedy. Is a temporary cap still required by EPA at this site?

**RESPONSE:** The temporary armored cap that was impacted by Hurricane Harvey at the San Jacinto River Waste Pits Superfund Site was installed in 2011 as a Time Critical Removal Action as a temporary way to contain the contaminants. Since that time, EPA has selected a final remedy for the Site and remedial design is underway. The selected remedy includes removal of the dioxin containing material from the waste pits and off-site disposal.

3. During the hearing, you mentioned that you support the polluter paying. I am sure your clients doing cleanups get frustrated by accusations that they don't pay to clean up their pollution.

- a. Under CERCLA, if they are liable as a potentially responsible party, they pay for the cleanup and related site study costs. Is that correct?

**RESPONSE: Yes**

- b. I believe you mentioned that greater than 70 percent of NPL sites are paid for entirely by the PRPs, is that correct?

**RESPONSE: Yes**

- c. And, PRPs are obligated to pay for Federal and state government oversight costs as well?

**RESPONSE: Yes**

- d. Is it your experience that your members are holding up their end of the equation and stepping into cleanup sites where they are PRPs?

**RESPONSE: Yes**

- e. So, what the Superfund tax issue is really about is forcing classes of businesses -- who didn't do anything to cause or contribute to contamination

at the specific site where the tax would be used – to pay for “orphan” share cleanups where the PRP is unavailable (i.e. dead or unlocatable), unable (i.e. bankrupt), or unwilling (i.e. recalcitrant), correct?

**RESPONSE: Yes**

4. CERCLA section 104(k)(5)(B) prevents brownfield grant funding from being used to pay fines or cleanup costs for persons that are potentially liable under CERCLA at NPL sites – essentially it makes the polluters pay when it comes to brownfields cleanups.
  - a. Does section 234 contain any of the same explicit prohibitions on funding for cleaning up fossil fuel plants?

**RESPONSE: No**

5. Do you believe section 631 could lead to regulations that would be subject to legal challenge?

**RESPONSE: Yes**

**The Honorable Richard Hudson (R-NC)**

1. Ms. Matthews, if you do the math on EPA’s website, you realize that 65 percent of sites on the National Priorities List have been there for more than 11 years. You mentioned in your testimony that requiring them to be cleaned up in 10 years is not practical.
  - a. Some of your fellow witnesses seem to suggest that all Superfund sites are the same. Is there a boilerplate version of a Superfund site or cleanup?

**RESPONSE: No**

- b. What types of features in your experience drive a cleanup to take longer?

**RESPONSE: Factors that may drive a cleanup to take longer include the types of contamination, the level of contamination, the site’s hydrogeology, the existence of a large water body, the size of the site or a combination of these and/or other factors. Another important factor that slows down many cleanups is a failure to recognize when study should end.**

2. Ms. Matthews, I noticed from your bio that you are an environmental engineer and have experience in both CERCLA and RCRA cleanups. There is a site in my district, located in the Town of Badin North Carolina, that has gone uncleaned-up for decades.

This site does not rank high enough on the Hazard Ranking System to be listed on the National Priorities List and the State is trying to move this site's work along.

- a. What are some ideas you have about steps that can be taken to expedite corrective actions?

**RESPONSE: EPA has developed a site cleanup approach called RCRA FIRST that employs a strategy that starts with a multi-party understanding of the objectives in investigation and remedy selection phases of a cleanup and enhances communication among project stakeholders throughout the process. Use of the RCRA FIRST Toolbox could jumpstart the project and provide continued momentum.**

- b. You claim Section 631 would impose significant costs on industry anticipating releases or other impacts due to climate change but do nothing to avoid those impacts. Why?

**RESPONSE: Section 631 would only require industry to provide financial assurance to address potential future impacts, such as releases to the environment, that may occur due to climate change but it would not require industry to conduct proactive measures to avoid those impacts. Instead of tying up large sums of money on financial instruments to address impacts after the fact, efforts and funds would be better spent trying to prevent those impacts.**