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6 OVERSIGHT OF CERCLA IMPLEMENTATION

7 WEDNESDAY, JULY 13, 2016

8 House of Representatives

9 Subcommittee on Environment and the Economy

10 Committee on Energy and Commerce

11 Washington, D.C.

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15 The subcommittee met, pursuant to call, at 10:00 a.m., in  
16 Room 2123 Rayburn House Office Building, Hon. John Shimkus  
17 [chairman of the subcommittee] presiding.

18 Members present: Representatives Shimkus, Harper,  
19 Whitfield, Murphy, McKinley, Johnson, Bucshon, Flores, Hudson,  
20 Tonko, Schrader, Green, McNerney, and Pallone (ex officio).

21 Staff present: Will Batson, Legislative Clerk, Energy and  
22 Power; Rebecca Card, Assistant Press Secretary; A.T. Johnston,  
23 Senior Policy Advisor; David McCarthy, Chief Counsel, Environment

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1 and the Economy; Tina Richards, Counsel, Environment; Chris  
2 Sarley, Policy Coordinator, Environment and the Economy; Dan  
3 Schneider, Press Secretary; Jeff Carroll, Minority Staff  
4 Director; Jacqueline Cohen, Minority Senior Counsel; Timia Crisp,  
5 Minority AAAS Fellow; Tiffany Guarascio, Minority Deputy Staff  
6 Director and Chief Health Advisor; Rick Kessler, Minority Senior  
7 Advisor and Staff Director, Energy and Environment; Dan Miller,  
8 Minority Staff Assistant; Alexander Ratner, Minority Policy  
9 Analyst; Andrew Souvall, Minority Director of Communications,  
10 Outreach and Member Services; Tuley Wright, Minority Energy and  
11 Environment Policy Advisor; and C.J. Young, Minority Press  
12 Secretary.

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1           Mr. Shimkus. If I can get my colleagues to take their seats,  
2 we will call the hearing to order.

3           First of all, just for our guests, the way we will operate  
4 is we will do our opening statements. We do five for the chairman,  
5 five ranking, and then at the full committee chairman, full  
6 committee ranking members, so there will be ten, ten on each side.

7           Then, we will turn to our first panel. The first panel will  
8 give their opening statements. It is the tradition of this  
9 committee not to engage in questions afterwards. We will receive  
10 your testimony and then we will bring up the EPA on the overall  
11 generic debate on the hearing, which is in the Superfund et al,  
12 the general Superfund hearing.

13           So, with that, I will recognize myself for 5 minutes.

14           I would like to welcome everyone this morning. As we take  
15 another look today at CERCLA, which is the Superfund law, today  
16 our focus will be on how the Superfund program is being  
17 implemented. Hopefully, our witnesses can share with us what  
18 worked but, more likely, we will need to take a look at what doesn't  
19 work. We also are looking for suggestions on how we make the  
20 program better.

21           CERCLA or Superfund governs the cleanup of hazardous waste  
22 sites, as well as accident spills and other emergency releases  
23 of pollutants and contaminants into the environment. The program

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1 is implemented by EPA in cooperation with the States and tribal  
2 governments. And in implementing CERCLA, EPA also delegates  
3 certain authority to the regional administrators.

4 One of the key issues we intend to look at today with Mr.  
5 Stanislaus is whether the level of delegation is appropriate and  
6 whether there is adequate oversight of the regional  
7 administrators by the EPA headquarters.

8 It has been over 35 years since CERCLA was enacted. A lot  
9 has changed since then. When CERCLA was enacted, very few States  
10 had their own cleanup programs. What we are looking at today is,  
11 after all that time, how is it going? Are sites are getting  
12 cleaned up in a timely manner? And if not, why not?

13 We need to assess whether States should have a more  
14 significant role in CERCLA cleanups and are there cleanups that  
15 are best handled entirely by the States. There is a lot of process  
16 involved with CERCLA cleanups. We need to take a serious look  
17 at whether that process is working or whether it encourages or  
18 impedes timely and efficient cleanup.

19 I would like to welcome my colleagues, Ann Wagner and Lacy  
20 Clay. We also welcome back to the committee Mathy Stanislaus,  
21 the Assistant Administrator from the recently renamed Office of  
22 Land and Emergency Management.

23 And we welcome our second panel, who will walk us through

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1 how public and private stakeholders also participate in the  
2 implementation of the Superfund Program. We welcome Ms. Brittain  
3 from the State of Oklahoma, who is here on behalf of a good friend  
4 of the subcommittee ASTSWMO. Ms. Brittain will, hopefully, talk  
5 to us about how far States have come with developing cleanup  
6 programs and whether the current role for States in CERCLA cleanup  
7 is appropriate.

8 We also welcome Ms. Horinko, who is a former head of EPA's  
9 Office of Solid Waste and Emergency Response. Ms. Horinko has  
10 been in the trenches at EPA with respect to CERCLA and can share  
11 with us her opinion of what works and what doesn't, as well as  
12 suggestions for moving forward.

13 We also have today with us Mr. Nadeau, thank you, an attorney  
14 with over 30 years of experience, representing potentially  
15 responsible parties or, as we know them, PRPs, Superfund sites  
16 around the country.

17 And last but not least, we will hear from Mr. Spiegel, the  
18 Executive Director of the Edison Wetlands Association, which has  
19 done a lot of work restoring hazardous waste sites in New Jersey.

20 So, we welcome everyone.

21 And just on the aside, with my friend, obviously and  
22 colleagues, in the Metro Saint Louis areas, members Ann Wagner  
23 and Lacy Clay, the nation's Superfund legacy is part of a response

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1 to our nuclear legacy, which was implemented to make sure we saved  
2 hundreds of thousands of lives in the invasion of Japan and  
3 development of the nuclear weapon and that was successful in  
4 saving American lives. But there is still a legacy around the  
5 country, and my colleagues will talk about the site in Saint Louis  
6 Metropolitan area. But there are sites like these all over the  
7 country and it is still part of our responsibility to help move  
8 forward and remediate these locations as soon as possible. So,  
9 I appreciate them being there.

10 I yield back my time and I now I yield to the ranking member  
11 Mr. Tonko from New York.

12 Mr. Tonko. Thank you, Mr. Chair, for holding today's very  
13 important hearing on the Superfund program.

14 I also want to thank our colleagues, Ms. Wagner and Mr. Clay,  
15 and other witnesses for their testimony here this morning and our  
16 other witnesses that will, again, offer testimony.

17 Congress enacted the Comprehensive Environmental Response,  
18 Compensation and Liability Act, commonly known as Superfund more  
19 than 35 years ago but communities across our country are still  
20 dealing with the legacy of toxic waste.

21 EPA has estimated that over 50 million people live within  
22 3 miles of a Superfund National Priorities List Site or a Superfund  
23 Alternative Approach site. Despite successful remediation at a

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1 number of sites, there is still much work to do and too few dollars  
2 available to do it.

3 At our hearing last year, GAO provided testimony that there  
4 are thousands of contaminated sites on federal land, the majority  
5 of which are abandoned mines. Federal agencies do not even have  
6 accurate inventories of these sites, let alone a plan or the  
7 funding needed to clean them up. Agencies feel like they have  
8 been left holding the bag for the cleanup, despite not being  
9 involved in causing the contamination. This is emblematic of the  
10 issue with the Superfund program. Too much of the burden of  
11 cleaning up after private entities has fallen upon the public at  
12 large. The cleanup of Non-federal National Priorities List Sites  
13 is funded by potentially responsible parties that are liable for  
14 conducting or paying for the cleanup. When such parties cannot  
15 be identified or are financially unable to perform the cleanup,  
16 EPA is authorized to pay for it. CERCLA created the Superfund  
17 Trust Fund for these cases. However, the tax to fund the Trust  
18 Fund expired in 1995. For years, appropriations from the General  
19 Fund have been the largest source of revenue for the Trust Fund.  
20 There are over 1300 sites on the National Priorities List, with  
21 more being added each year, despite declining funding.

22 From 1999 to 2013, the total number of non-federal sites on  
23 the National Priorities List remained relatively constant, while

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1 the number of completed projects generally declined on an annual  
2 basis. This should not come as a completely surprise, since  
3 appropriations declined during this time but we cannot lose site  
4 of the polluter pays principle that has guided this program since  
5 its inception.

6 Ultimately, I believe there are two steps that must be taken  
7 to strengthen this given program. First, ensuring that the Trust  
8 Fund is supported by polluting industries to help clean up  
9 existing orphaned sites. Second, to limit the number of new sites  
10 being created in the first place, be ensuring that businesses that  
11 engage in activities that regularly lead to serious  
12 contaminations have the financial assets in place before waste  
13 is generated to cover the cost to clean up a site, should it be  
14 necessary.

15 With the passage of Superfund, we made a commitment to  
16 identify and clean up contaminated properties. We should fulfill  
17 that commitment but the reality is we need more funding and  
18 assurances in order to do it. When sites are cleaned up, the  
19 surrounding community benefits from a cleaner, healthier  
20 environment. And returning abandoned contaminated land to  
21 productive use improves the local economy.

22 So, I again thank all for participating in the hearing this  
23 morning. I look forward to your testimony on this important



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1 issue.

2 And with that, Mr. Chair, I yield back.

3 Mr. Shimkus. The gentleman yields back his time. The chair  
4 looks to the majority side to see if anyone else wishes to make  
5 an opening statement.

6 Seeing none, the chair then turns to the minority side. The  
7 chair recognizes the ranking member of the full committee, Mr.  
8 Pallone, for 5 minutes.

9 Mr. Pallone. Thank you, Mr. Chairman. Thanks for calling  
10 this hearing to bring much needed attention to the Superfund  
11 Program.

12 The Superfund Program is critical to cleaning up the most  
13 toxic sites across our country and these sites are shockingly  
14 common in my home state of New Jersey. Roughly 50 percent of the  
15 population lives within three miles of Superfund site.

16 And I want to welcome not only our Missouri colleagues but  
17 also Bob Spiegel of the Edison Wetlands Coalition, which has been  
18 a tremendous ally for many years in the fight to ensure fast and  
19 thorough cleanup of contaminated sites in my home state of New  
20 Jersey.

21 The contaminants at Superfund sites have been shown to cause  
22 cancer, birth defects, infertility and other serious health  
23 problems. According to EPA, cleanups through the National

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1 Priority List and Superfund Alternatives Program have brought  
2 human exposure to contaminants under control at over 1400 sites  
3 around the nation but the impact of Superfund goes well beyond  
4 these funded cleanups, thanks to a provision of the law that allows  
5 EPA to recover treble damages or three times the cost of cleanups  
6 when the agency carries out a cleanup on its own. And this  
7 provision has encouraged countless other cleanups.

8 But there are still so many sites nationwide and in New  
9 Jersey, which has more sites than any other state, that will need  
10 funding for cleanup in the future. Unfortunately, funding for  
11 these cleanups has dropped dramatically since the Superfund tax  
12 expired in 1995, meaning fewer cleanups were started and even  
13 fewer are finished. Too many communities are waiting too long  
14 for cleanups. The threat that EPA will come in and clean up the  
15 site and the threat of treble damages is now all but extinguished  
16 by the lack of funds and the cleanups that are being done, it seems,  
17 are not as robust as they once were. In many cases, remedies are  
18 selected based on available funds, rather than risk.

19 And I have personally visited many of these sites and have  
20 seen firsthand the impact a contaminated site can have on a  
21 community. Nothing but a full and timely cleanup can restore  
22 these communities.

23 We have to provide the program the resources it desperately

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1 needs. For years, I have introduced a Superfund Polluter Pays  
2 Act, which would reauthorize the original Superfund fees and make  
3 polluters, not taxpayers, pay the cost of cleaning up Superfund  
4 sites. Congress needs to reinstate the Polluter Pays taxes so  
5 those industries most responsible for polluting our land and water  
6 are held responsible for cleaning up our toxic legacy, a legacy  
7 that severely affects New Jersey and many other States around the  
8 nation.

9 Now, that is only fair because restoring the polluter pays  
10 principle to this program would reduce pressures on the federal  
11 budget and lead to faster cleanup of these toxic and dangerous  
12 sites.

13 Now, I understand that reinstating this tax is not within  
14 the committee's jurisdiction and some of my colleagues will look  
15 for solutions we can offer as a committee to strengthen Superfund.  
16 One thing we can do within our committee's jurisdiction is to  
17 encourage EPA's efforts to establish financial responsibility  
18 requirements to the most polluting industries and those  
19 requirements can stop the proliferation of new orphaned Superfund  
20 sites, which hurt public health and cost the taxpayers millions  
21 of dollars.

22 But the main problem facing Superfund is the expiration of  
23 the polluter pays tax and the most important thing we can do in

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1 Congress is reinstate. Cleaning up toxic Superfund sites not  
2 only reduces health risks, it also helps create jobs during the  
3 cleanup and allows for redevelopment of the land, once the cleanup  
4 is completed. We should also report cleanups of these  
5 contaminated sites and should ensure that these efforts are  
6 appropriately funded.

7 So, I would yield back, unless one of my colleagues -- I yield  
8 to Mr. Green.

9 Mr. Green. Thank you, Mr. Chairman. I thank my ranking  
10 member for yielding the time.

11 I know we don't have jurisdiction over that fund but we do  
12 have jurisdiction over the EPA. And that is what this hearing  
13 is about today. I think every member of Congress around the  
14 country had problems with the slowness in cleaning up. I know  
15 I do in our district, in our community, along with other members  
16 and members who are here today. So, that is what we are for and  
17 see why we can't move these cleanups along to make our  
18 neighborhoods safe.

19 And I appreciate your time. Thank you.

20 Mr. Pallone. Any other of my colleagues want time? If not,  
21 Mr. Chairman, I yield back.

22 Mr. Shimkus. The gentleman yields back his time.

23 Now, I turn to our colleagues in the first panel. I am going

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1 to do it by seniority first. So, I would like to first recognize  
2 Congressman Lacy Clay.

3 Mr. Clay. I am going to yield. Mr. Shimkus. You can  
4 do that but you are senior.

5 Mr. Clay. I know. We have an arrangement.

6 Mr. Shimkus. And I was messing it up. I was going to use  
7 another word but --

8 Mr. Clay. That is fine.

9 Mr. Shimkus. So, the chair now recognizes the gentlelady  
10 or the gentlewoman from the Metropolitan Saint Louis area,  
11 Congresswoman Wagner, for 5 minutes.

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1 STATEMENTS OF HON. LACY CLAY, A REPRESENTATIVE IN CONGRESS FROM  
2 THE STATE OF MISSOURI; AND HON. ANN WAGNER, A REPRESENTATIVE IN  
3 CONGRESS FROM THE STATE OF MISSOURI.

4  
5 STATEMENT OF HON. ANN WAGNER

6 Ms. Wagner. Thank you. Thank you, Mr. Chairman. I thank  
7 my friend and colleague Lacy Clay for yielding.

8 Chairman Shimkus, Ranking Member Tonko, full committee  
9 ranking member, Mr. Pallone, and my other colleagues, I appreciate  
10 the opportunity to speak to you today on this very important  
11 subject over oversight on CERCLA and the EPA's role in cleaning  
12 up contaminated sites across the country.

13 I would like to speak today about my experience with the West  
14 Lake Landfill in Saint Louis and how the EPA has failed, failed  
15 for more than 30 years, in its cleanup of nuclear waste dating  
16 back to the Manhattan Project and World War II. For 3 full  
17 decades, the CERCLA process, and particularly the EPA, have failed  
18 the people of Saint Louis in the most heartless manner possible.

19 Before I share the facts, I want to paint a bleak picture  
20 of what my constituents are facing. Moms and dads are watching  
21 their children suffer from and fight uncommon health afflictions.  
22 Local school districts are sending kids home with notices of  
23 emergency procedures related to the hazardous landfill. The

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1 county health department started testing nearby residents for  
2 respiratory problems and developed an emergency plan of its own.

3 I cannot possibly imagine what it would be like to open my  
4 child's book bag when they got home from school and learned that  
5 they are subject to extreme health risk or learn about the  
6 procedures they have been practicing in their classrooms in the  
7 event that the radioactive waste reaches fire. This is happening  
8 and it is happening to the innocent children every day in Saint  
9 Louis. These are the experiences caused by years, years of  
10 dereliction and inaction by the EPA.

11 In 1990, the EPA listed West Lake on the National Priorities  
12 List under CERCLA. It wasn't until 18 years later, in 2008, that  
13 the EPA was finally able to come up with a decision on what to  
14 do with the waste at the site.

15 After intense public backlash and sharp criticism from the  
16 EPA's own National Remedy Review Board, the agency reopened the  
17 2008 decision and has undertaken additional testing and study.

18 In June of this year, just last month, another document  
19 prepared by the National Remedy Review Board in 2013 was released  
20 by the EPA stating --

21 Mr. Shimkus. Would the gentlelady yield? I am sorry to do  
22 that but we have got young kids coming in which we want to  
23 incentivize. Come on in. There are seats, if people can move.

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1 This is about their future. I love it when we have young adults  
2 come in. And they were kicking some out and I didn't want to do  
3 that.

4 Ms. Wagner. Gather around the walls.

5 Mr. Shimkus. That is right.

6 Ms. Wagner. I do want to reclaim my time, however, Mr.  
7 Chairman.

8 Mr. Shimkus. Well, that was another reason why I was  
9 interrupting but you caught me.

10 And we are going to be very gracious on time. So, the  
11 gentlelady, you can resume. Thank you for letting me interrupt.

12 Ms. Wagner. Thank you, Mr. Chairman. And welcome.

13 Welcome, young people. It is about your future and the future  
14 of all of our families and our children in our communities.

15 After intense public backlash and sharp criticism from the  
16 EPA's National Remedy Review Board, the agency reopened, as I  
17 stated, a 2008 decision and has undertaken additional testing and  
18 study.

19 In June of this year, another document prepared by the  
20 National Remedy Review Board in 2013 was released by the EPA  
21 stating that removing radioactive waste at the landfill was  
22 feasible and could reduce long-term risks, contradicting the  
23 EPA's earlier decision to leave the waste in place and capping.



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1           But simply, Mr. Chairman, the fact that this 2013 document  
2 has not been available before last month shows the lack of  
3 transparency and accountability that the EPA has demonstrated  
4 throughout this entire process.

5           As the Missouri Attorney General stated, and I quote, the  
6 EPA has time and again made promises that failed to deliver  
7 results. Meanwhile, families suffer as the clock ticks, and  
8 ticks, and ticks away.

9           During this additional testing, discovery of new radioactive  
10 materials is consistently found outside of the known containment  
11 area, bringing considerable doubt in EPA's management of the site  
12 while pushing back the time line for action.

13           At the same time, a subsurface fire is burning in an adjacent  
14 site and moving toward the radioactive waste, prompting  
15 significant and absolutely justifiable concern in the community  
16 that the EPA has turned a blind eye and failed in its missions  
17 to protect our residents. And despite the seriousness of the  
18 situation, the EPA has still, still not made a decision about what  
19 do with the waste, pushing back their self-imposed deadline for  
20 releasing a decision time after time and year after year.

21           Failure after failure while entire communities wait.  
22 Forget cleanup and remediation; the EPA can't even make a decision  
23 about what to do with the Federal Government's nuclear waste.

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1 They have been unable to deliver on deadlines to ensure basic  
2 safety in preventing the underground fire from reaching the  
3 radioactive waste.

4 In a letter from the International Association of  
5 Firefighters, they say, and I quote, Firefighters in the area are  
6 especially concerned about the dangers posed by the underground  
7 smoldering fire at the nearby Bridgetown landfill. The proximity  
8 of the two landfills creates the potential for firefighters and  
9 other emergency personnel to be exposed to radioactive materials  
10 during response operations.

11 Community leaders, Mr. Chairman, such as Dawn Chapman and  
12 Karen Nickel who have joined me and are seated right behind me,  
13 and Ed Smith who couldn't be with us today have been tirelessly  
14 raising the alarm for years about the dangers posed by this site.  
15 I have their testimony, Mr. Chairman, that I would like to submit  
16 for the record.

17 Mr. Shimkus. We will look at the testimony but we won't  
18 commit for submission to the record but we will have to talk to  
19 the ranking member.

20 Ms. Wagner. Let me take a quote from Karen Nickel. They  
21 both are up here of their own expense, their own dime, their own  
22 nickel because they care so deeply about their communities and  
23 their families.

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1           Karen Nickel says, where we thought we would find an ally  
2           in EPA, instead we found a foe and failure. Dawn Chapman, we  
3           deserve to be able to put our children on the school bus without  
4           fear that a catastrophic event will happen at this land fill and  
5           our children will have to be sent to a different location to keep  
6           them safe.

7           Mr. Chairman, I can tell you that this is the first issue  
8           I was briefed on after being elected to Congress nearly 4 years  
9           ago and it is past time, past time for action. I appreciate their  
10          support and am asking this committee for help on behalf of all  
11          my constituents and these leaders, these women and men, and  
12          activists who have recognized that something must be done to clean  
13          up this nuclear waste and prevent health and safety concerns.

14          That is why I, along with my colleague, Congressman Lacy Clay  
15          and Congressman Blaine Luetkemeyer introduced legislation to  
16          transfer control of landfill from the EPA to the Army Corps of  
17          Engineers Formerly Utilized Sites Remedial Action Program,  
18          FUSRAP, which is H.R. 4100.

19          Companion legislation in the Senate has already been passed  
20          by unanimous consent. The Corps has successfully and  
21          professional managed several of the similar sites in the Saint  
22          Louis area and across the country. This move is supported by the  
23          Saint Louis community, including SSM Healthcare, which describes

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1       itself as, and I quote again, the healthcare provider serving the  
2       community surrounding the West Lake Landfill.

3               Mr. Chairman, members of this committee, the EPA has had more  
4       than 25 years to understand and resolve the situation at this  
5       landfill and they have delivered zero, zero results. The Agency  
6       has undoubtedly lost the trust of the entire community and has  
7       lost my trust as well. It is time for someone new to step in.  
8       EPA has failed and CERCLA has failed. And as my constituents and  
9       I continue our fight, the clock continues to run.

10              I would also like to request, Mr. Chairman, to insert into  
11       the record local letters of support for H.R. 4100, as well as city  
12       and council resolutions supporting the transfer of West Lake from  
13       EPA to the Army Corps. And these documents that I have referenced  
14       today all I would like to submit for the record, sir.

15              Mr. Shimkus. Again, we will take that into consideration  
16       with the minority.

17              Ms. Wagner. Thank you very much. Finally, most  
18       importantly I would like to enter into the record the full  
19       testimony of the constituents who were not able to testify on their  
20       own today at this hearing. I thank you very much for your  
21       indulgence, Mr. Chairman.

22              [The prepared statement of Ms. Wagner follows:]

23

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1           Mr. Shimkus. Again, the same statement applies.

2           The chair now recognizes the gentleman from Saint Louis, Mr.  
3 Clay, for 5 minutes.

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1 STATEMENT OF HON. LACY CLAY

2  
3 Mr. Clay. Thank you, Mr. Chairman and Ranking Member Tonko,  
4 as well as all of the members of this committee for affording  
5 Congresswoman Wagner and I the opportunity to come to you today  
6 and tell our story.

7 You know FUSRAP, which is already hard at work across the  
8 nation and at several locations in the Saint Louis area cleaning  
9 up our nation's legacy of radioactive and toxic contamination from  
10 weapons production. The bill before you, H.R. 4100, was crafted  
11 with strong grassroots support from the Missouri Coalition for  
12 the Environment, Just Moms Saint Louis, who were mentioned  
13 earlier, who are here with us today, and many other civic and  
14 environmental activists to address a 74-year-old nuclear legacy  
15 in Saint Louis, which has subjected families to fear and suffering  
16 for far too long.

17 In 1942, the War Department secretly contracted with the  
18 Mallinckrodt Chemical in Saint Louis to enrich yellow cake uranium  
19 from the Belgian Congo to fuel the Manhattan Project. That  
20 enriched uranium prepared with the assistance of Nobel Prize  
21 winning physicist, Dr. Arthur Holly Compton of Washington  
22 University, was used to fuel our nation's first atomic bombs  
23 created at Los Alamos, New Mexico, under the direction of

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1 Manhattan Project Director, J. Robert Oppenheimer. That  
2 program, which exists from 1942 to 1945 was essential to winning  
3 World War II but the nuclear waste that was generated from the  
4 manufacturing of those original atomic bombs and others that would  
5 follow forged a curse of radioactive contamination that is still  
6 inflicting pain and suffering on our constituents today.

7 After World War II, that waste and several failed attempts  
8 to clean it up caused dangerous radioactive contamination at sites  
9 in downtown Saint Louis, at Lambert-St. Louis International  
10 Airport, at Latty Avenue in North Saint Louis County, at Coldwater  
11 Creek, which is a tributary which flows into the Mississippi  
12 River.

13 And finally, in 1973, approximately 50,000 tons of  
14 contaminated soil from that same nuclear waste was illegally  
15 dumped at West Lake Landfill in Bridgeton, Missouri, and mixed  
16 with other debris. That nuclear waste includes radioactive  
17 uranium, radioactive thorium, radioactive barium sulfate, and  
18 other toxic contaminants. Unbelievably, that radioactive toxic  
19 mess dumped illegally at West Lake 43 years ago is held in an  
20 unlined limestone landfill near the Missouri River, near a major  
21 hospital, near Lambert-St. Louis Airport, near schools, and  
22 interstate highways. And most troubling of all, is the appalling  
23 fact that 1,000 of our constituents live less than a mile away



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1 from this illegal nuclear waste dump.

2 The truth is that if you search far and wide across this  
3 country, it would be almost impossible to find a dumber, more  
4 dangerous, more completely irresponsible place to dump nuclear  
5 waste than West Lake Landfill.

6 And if you think this potential environmental disaster  
7 couldn't get any worse, you are wrong. For the last 4 years, we  
8 have also been dealing with a creeping underground landfill fire  
9 at the adjacent Bridgeton Sanitary Landfill, which is under the  
10 control of the Missouri Department of Natural Resources. And  
11 that underground fire is less than 1,000 feet from the buried  
12 nuclear waste.

13 My friends, the U.S. Government created this radioactive  
14 mess and then we allowed it to metastasize to other sites,  
15 including West Lake and we have a clear and unavoidable  
16 responsibility to finally clean it up. That is what H.R. 4100  
17 is all about. Our legislation builds on the highly successful  
18 track record of FUSRAP, which is already cleaning up the same  
19 nuclear waste at other sites around Saint Louis. It is fiscally  
20 responsible because even after the transfer of the West Lake to  
21 the Army Corps of Engineers, the site would remain on the Superfund  
22 List, which would preserve revenue streams to help fund the  
23 cleanup from several potentially responsible parties, including

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1 the Department of Energy, Republic Services, and the Cotter  
2 Corporation.

3 This bill has earned the bipartisan support of Democrats and  
4 Republicans, religious coalitions, community activists, and  
5 respected scientific sources, who believe that a cleanup like this  
6 should be put in the hands of those who have the strongest possible  
7 expertise in cleaning up nuclear waste, the U.S. Army Corps of  
8 Engineers.

9 You know a few months ago, this identical legislation  
10 introduced by our Missouri colleagues, Senators Blunt and  
11 McCaskill was embraced and approved by a huge bipartisan majority  
12 in the U.S. Senate. Congresswoman Wagner and I introduced the  
13 companion bill here. Some of the forces who want to keep this  
14 nuclear waste in the unlined West Lake Landfill ganged up to stop  
15 it. And I am greatly disappointed that this common sense bill  
16 has been delayed, obstructed, and even deliberately  
17 misrepresented by some staff and certain members of this  
18 committee.

19 My friends, after 74 years of negligence by the U.S.  
20 Government, that is totally indefensible.

21 Now, I recognize that there are factions who oppose this bill  
22 because of cost concerns. I also know that some oppose this  
23 timely and wise solution to cleaning up West Lake for purely

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1 selfish and political considerations but none of that matters to  
2 the real people who we represent who still live in fear because  
3 of the West Lake Landfill.

4 So, let me say this to all of you. As my colleagues and my  
5 friends in service to this country when the U.S. Government makes  
6 a mistake, when we put citizens at risk, when we disrupt their  
7 lives, when destroy the peace and property values in these  
8 neighborhoods and when we allow the health of innocent citizens  
9 to be harmed because of our own inaction, we must make it right.

10 The U.S. Government created this nuclear mess in West Lake  
11 and we have a responsibility to pass this bill and clean it up.  
12 And I ask you all to search your conscience and realize that these  
13 people are suffering, that our community is in harm's way and need  
14 to clean it up and give that bill serious consideration.

15 And I yield back the balance of my time.

16 [The prepared statement of Mr. Clay follows:]

17  
18 \*\*\*\*\*COMMITTEE INSERT 2\*\*\*\*\*

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1           Mr. Shimkus. The gentleman yields back his time. We thank  
2 you for your testimony, both of you. We will submit for the record  
3 a statement by the Corps of Engineers in response, since they were  
4 raised in your testimony and that will be submitted for the record  
5 agreed upon by both the minority and the majority.

6           [The information follows:]

7

8           \*\*\*\*\*COMMITTEE INSERT 3\*\*\*\*\*

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1           Mr. Shimkus. And we appreciate your testimony and now we  
2 will turn to the EPA for the second panel. Thank you very much.

3           So, we will start with our first panel and we welcome back  
4 Mathy Stanislaus, which is actually a new name. As far as his  
5 office, he is the Assistant Administrator for the Office of Land  
6 and Emergency Management from the United States Environmental  
7 Protection Agency. Mathy, you have been a friend of the committee  
8 and been here numerous times. Thank you for appearing and we will  
9 recognize you for 5 minutes.

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1 STATEMENT OF MATHY STANISLAUS, ASSISTANT ADMINISTRATOR, OFFICE  
2 OF LAND AND EMERGENCY MANAGEMENT, U.S. ENVIRONMENTAL PROTECTION  
3 AGENCY.

4  
5 Mr. Stanislaus. Good morning, Chairman Shimkus, Ranking  
6 Member Tonko, and other members of the committee. I am the  
7 Assistant Administrator at the U.S. EPA with Office of Land  
8 Emergency Management, which is responsible for, among other  
9 things, the Superfund Program.

10 The Superfund Program protects tens of millions of Americans  
11 in thousands of communities across the country by first responding  
12 to the imminent issues of a release, something that is called  
13 time-critical and non-time-critical removal actions to protect  
14 human health and the environment for shorter term response  
15 actions. These really effectively serve a safety net to protect  
16 communities from the immediate issues of hazardous substances.  
17 And these are all done at the request of States, local governments  
18 and community residents.

19 Over the past 4 years, for example, EPA has conducted or  
20 provided oversight for close to 1400 of what we call removal  
21 completion. These are the situations of imminent risk to public  
22 health and a total of close to 800 emergency responses. You know  
23 some of these include securing and disposing of thousands of

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1 containers of acids, solvents, and flammable materials in a rural  
2 area outside of Dexter, Oregon; providing air and water monitoring  
3 at train derailment outside Galena, Illinois, spilling more than  
4 300,000 gallons of crude oil; removing close to 4,000 cubic yards  
5 of asbestos and PCB waste from burned out former school buildings  
6 in Tazlina, Alaska, and managing the collection and disposal of  
7 thousands of hazardous and non-hazardous waste items, including  
8 drums, tanks, appliance in the aftermath of the Merrimack River  
9 flooding in Saint Louis, Missouri.

10 Separately, the Superfund Remedial Program addresses longer  
11 term at more comprehensive and more complex sites. The EPA's  
12 analysis, as was noted earlier, shows that approximately 53  
13 million people live within 3 miles of a Superfund NPL site or a  
14 Superfund Alternative Approach site, roughly 17 percent of the  
15 U.S. population, including 18 percent of all children in the U.S.  
16 under the age of 5. This population is predominately minority  
17 and low-income and is less likely to have a high school education  
18 than the U.S. population as a whole. As a result, these  
19 communities often lack sufficient resources to address health and  
20 environmental concerns.

21 Sites that the EPA adds to the National Priorities List  
22 represent the nation's most serious uncontrolled and abandoned  
23 hazardous waste sites. Contaminated sites reflect both legacy

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1 practices but also recent practices of mismanagement. Of the 112  
2 sites listed on the NPL from 2010 to 2016, nearly half have related  
3 from recent mismanagement of industrial activities. Of the 112  
4 sites, 12 involve bankrupt facilities or properties. None of  
5 these situations did those companies have financial instruments  
6 in place to pay for the cleanup. Therefore, these sites will have  
7 to be cleaned up by taxpayer resources in the future.

8 State partnerships is critical to Superfund cleanup efforts.  
9 EPA has ongoing engagement with the States in the execution and  
10 implementation of the Superfund Program, as well as tribes and  
11 local communities. The EPA requests state or tribal support for  
12 any site that it seeks to list on the National Priorities List  
13 sites, coordinates early site assessments. In some cases, the  
14 States actually take the lead of investigation, along with state  
15 funding -- I am sorry, funding to the States to conduct that  
16 funding. And development of the cleanup remedies is also done  
17 with extensive consultation with the state.

18 We also recognize that that consultation, that engagement  
19 could be strengthened and we currently have a process to do that,  
20 particularly how we want to make sure that state standards are  
21 properly included in our decisionmaking. We have stood up a  
22 working group working with the States, working with ASTSWMO and  
23 the ASTSWMO will be talking about that a bit later.



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1           Community engagement is a real critical component of our  
2 program. We want to engage and ensure that communities  
3 participate in an effective way, in an informed way. We invest  
4 in technical assistance so technical assistance providers on  
5 behalf of communities can digest some fairly complex technical  
6 information.

7           We seek to present the information in an understandable way  
8 so communities can really understand the decisions in front of  
9 us.

10           And EPA is also continuing to utilize every dollar to the  
11 greatest extent possible. You know obviously, we want to make  
12 responsible parties pay for that and we have leveraged significant  
13 federally enforcement dollars in 2015. EPA has secured  
14 commitments on the order of \$2 billion from responsible parties  
15 to conduct the cleanup. It still leaves a gap, where the  
16 taxpayers have to pay for the orphaned sites, where there is no  
17 responsible party or responsible parties don't have financial  
18 resource to pay for that.

19           You know EPA does have a challenge in the Superfund Program.  
20 We do have a backlog of sites that we cannot fund because of the  
21 absence of funding. This is the reason that the President  
22 requested a bump-up for Superfund resources of \$20 million in the  
23 fiscal year 2017 budget. And the administration has also

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1 supported the reinstatement of the Superfund tax so that there  
2 is a dedicated tax to pay for the cleanup, as opposed to the  
3 taxpayer paying for that.

4 To underscore the value of the investment in the Superfund  
5 Program, it returns an investment in health, disease avoided, and  
6 the increase of property value, and tax revenue from the reuse  
7 of these properties. We believe it is an investment, not only  
8 dealing with the legacy of sites but also recent sites, ongoing  
9 sites that result in mismanagement that, unfortunately, the  
10 federal government Superfund Program has to address.

11 With that, I see my time is up. I will close and take  
12 questions from you.

13 [The prepared statement of Mr. Stanislaus follows:]

14  
15 \*\*\*\*\*INSERT 4\*\*\*\*\*

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1           Mr. Shimkus. We thank you for your opening statement. Your  
2 full statement is submitted for the record.

3           I will recognize myself 5 minutes for the questioning period  
4 of time.

5           So, the former Chanute Air Force Base, which is in Rantoul,  
6 Illinois, it is a new part of my congressional district, is a  
7 Superfund site. BRAC funding for environmental cleanup is  
8 limited to Superfund or CERCLA hazardous substances.

9           How does Chanute deal with the cleanup of emergent  
10 contaminants such as perfluorinated chemicals, PFCs or PFAS that  
11 are not currently regulated under CERCLA?

12          Mr. Stanislaus. Sure. As you know, Chairman, that is being  
13 led by the Air Force under CERCLA authority and these emergent  
14 contaminants perfluor and PFAS can be addressed under the CERCLA  
15 authority.

16          Mr. Shimkus. So, the ability to recruit dollars for the  
17 cleanup of these remaining contaminants should be able to be  
18 deemed through the Superfund?

19          Mr. Stanislaus. Yes, so just to be clear, it is the  
20 responsibility of the Air Force. So, in terms of conducting  
21 response actions, there is no constraint under the CERCLA  
22 authority.

23          Mr. Shimkus. So, Chanute Landfill leachate has made it into

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1 the waste water treatment process and the PFCs contaminate the  
2 biosolids, which in the past have been spread on local private  
3 farm ground. What would the mechanism for cleanup be in this  
4 circumstance?

5 Mr. Stanislaus. Well, I think, following, if I understand  
6 your question, in the Air Force, following the standard Superfund  
7 and CERCLA process, we would look at the areas contaminated that  
8 are contaminated above the certain thresholds. Then, the  
9 appropriate cleanup should happen.

10 Mr. Shimkus. In your opinion, how is the Superfund cleanup  
11 process working in terms of getting sites cleaned up efficiently  
12 and in a timely manner?

13 Mr. Stanislaus. Sure. I mean Superfund sites are a  
14 complicated situation. I mean it is a reflection of -- we come  
15 to the sites because of sometimes decades of mismanagement. Some  
16 of that has been enunciated earlier today.

17 We first try to get the responsible parties to pay for that  
18 and actually lead the cleanup of those sites and then we oversee  
19 whether the responsible party does the cleanup or we do the  
20 cleanup. Then, we do through a process.

21 You know, one, we want to make sure that it is technically  
22 grounded. We want to make sure it is data-driven, so that it is  
23 -- it takes some time do that. But we also recognize that we need

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1 to bring to bear in an ongoing way the best management practices  
2 to make sure we streamline that. And during my tenure, I have  
3 really pushed that really significantly. We pushed something we  
4 call optimizing. How do we build in time and cost savings? And  
5 we have done that. Looking at contractor savings and we have done  
6 that.

7 There are lots of examples that we have institutionalized  
8 to bring out more efficiencies to the Superfund process. But we  
9 also recognize more can be done as an ongoing commitment and we also  
10 are engaging the States in that process.

11 Mr. Shimkus. So, I think the constant refrain, and I think  
12 actually one of my colleagues who testified earlier, and I think  
13 you will hear from many members of the committee is it just takes  
14 too long. And we deal with long timeframes in a broad portfolio  
15 of interests of the Energy and Commerce Committee. And we are  
16 finding in a lot of areas that new technology, efficiencies can  
17 be created. That is part of some of our other debates. What is  
18 EPA doing to try to cut down the time line and get more efficient?

19 You used the word process. It was kind of weaved into the  
20 question. Surely, there must be some things about the process  
21 that we can improve.

22 Again, on the drug debate, we are trying to make sure some  
23 of these inspections run parallel instead of cumulative. That

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1 is cutting down the overall time. I think that is what we are  
2 going to look forward to hearing is process. How can we change  
3 process to get this stuff moving quicker?

4 Mr. Stanislaus. Sure. I mean there are a lot of things as,  
5 Chairman, as you referred to, that we can learn. And one of the  
6 things we have learned is there are some opportunities to expedite  
7 the investigation process. I mean there has been some history,  
8 frankly, where investigation has gone on too long. And so how  
9 do we triangulate the investigation? How do we marry the  
10 investigation and clean up? There are some sites that we kind  
11 of know earlier on the potential remedial options.

12 So, we have begun to do this optimization effort to look at  
13 those opportunities to marry some of those things that may have  
14 taken more time in the past.

15 Mr. Shimkus. We will keep encouraging you to be successful  
16 at that and kind of expedite the process.

17 The chair now recognizes the ranking member of the  
18 subcommittee, Mr. Tonko from New York for 5 minutes.

19 Mr. Tonko. Thank you, Mr. Chair. And you know listening  
20 to the testimony and hearing about efficiencies that should be  
21 embraced and management that should be underscored are all  
22 important but also appropriations. We are appropriators, too.  
23 And we need to understand that every action or perhaps inaction

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1 in terms of appropriations trickles down, percolates down to the  
2 local level and affects human lives. So, we need to bear that  
3 in mind.

4 The legacy of contaminated orphaned sites in this country  
5 is serious and, in some areas, devastating. The number of  
6 abandoned mines posing serious threats to drinking water sources  
7 in the West is shocking. Even more shocking is the fact that more  
8 orphaned sites are still being created.

9 As I mentioned, I believe more must be done to prevent sites  
10 from becoming orphaned in the first place. When Superfund was  
11 created, Congress required EPA to establish financial assurance  
12 requirements for the most polluting industries, to ensure that  
13 companies going into business in those industries would be  
14 solvent, to clean up any contamination they caused. This is a  
15 common sense approach that protects the American taxpayers.

16 Unfortunately, these rule, which were required to be  
17 initiated decades ago, have not been developed.

18 Administrator Stanislaus, do you believe that requiring  
19 financial assurances incentivizes facilities to manage and store  
20 their hazardous waste materials more safely?

21 Mr. Stanislaus. Oh, absolutely. And we also want to make  
22 sure that in the worst case scenario a company goes bankrupt, that  
23 those financial instruments are in place to pay for the cleanup,

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1 as opposed to the American taxpayer.

2 Mr. Tonko. And when can we expect to see financial assurance  
3 requirements proposed under the Superfund?

4 Mr. Stanislaus. Sure. The first sector was the hard rock  
5 mining, which was identified because it was the number one taker  
6 from the Superfund and it also has the highest risk from various  
7 analysis we have done. The first proposed rule will be done later  
8 this year.

9 Mr. Tonko. And is that in line with the schedule set out  
10 by the D.C. Circuit Court of Appeals earlier this year regarding  
11 hard rock mining?

12 Mr. Stanislaus. That is correct.

13 Mr. Tonko. And has EPA begun considering which other  
14 industries are in need of financial assurance rules?

15 Mr. Stanislaus. Yes, so we will also be making this decision  
16 as to whether we want to also do financial assurance for a couple  
17 of other sectors.

18 Mr. Tonko. Including?

19 Mr. Stanislaus. Chemical manufacturing, the electric  
20 utility industry is two. I believe there is another one that I  
21 don't remember.

22 Mr. Tonko. Okay and when can we expect requirements to be  
23 finalized?



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1 Mr. Stanislaus. On the first proposal of hard rock mining?

2 Mr. Tonko. Yes, the hard rock mining.

3 Mr. Stanislaus. Yes, let me get back to you. I just don't  
4 recall.

5 Mr. Tonko. Okay and do you envision that these new rules  
6 would complement existing costs, recovery, and enforcement  
7 procedures?

8 Mr. Stanislaus. Yes, I mean in terms of -- is your question  
9 will be it consistent with the current cost recovery procedures?  
10 Is that your question?

11 Mr. Tonko. Well, just would they complement existing cost  
12 recovery and enforcement procedures?

13 Mr. Stanislaus. Yes, I mean that is absolutely the  
14 intention.

15 Mr. Tonko. And a 2015 GAO report stated that States agreed  
16 to add sites to the national priorities list, where they  
17 encountered difficulty in getting a potentially responsible party  
18 or a PRP to cooperate, or where that PRP went bankrupt.

19 Do you believe States may be more likely to add a site to  
20 the national priorities list if no responsible party can step up  
21 to the pay for the cleanup?

22 Mr. Stanislaus. I mean I think that is one factor that we  
23 have heard from the States but not only the factor. You know

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1 sometimes it is just the magnitude and complexity of the sites  
2 as well.

3 Mr. Tonko. Well, if that is the case, I think that it is  
4 likely that the most difficult orphaned sites will continue to  
5 find their way to the National Priorities List, unless financial  
6 assurances are required. Financial assurances were intended to  
7 prevent the all too common practice of polluting and then  
8 declaring bankruptcy, leaving the bill for the taxpayers to pick  
9 up. The lack of financial assurance requirements has exposed the  
10 Superfund Program and the United States taxpayers to potentially  
11 enormous cleanup costs. These requirements are long overdue.

12 I know that some of my Republican colleagues have opposed  
13 them in the past but I hope they will join me now in supporting  
14 them to protect taxpayers and the environment and, obviously, the  
15 appropriations for some of these programs are essential to be at  
16 the appropriate level.

17 With that, I yield back my time, Mr. Chair.

18 Mr. Shimkus. The gentleman yields back his time. The Chair  
19 now recognizes my colleague, the Vice Chair of the subcommittee,  
20 Mr. Harper from Mississippi for 5 minutes.

21 Mr. Harper. Thank you, Mr. Chairman. Great to see you  
22 again.

23 Mr. Stanislaus. You, too.

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1           Mr. Harper. And I had a few questions I would like to ask  
2 you.

3           When selecting the remedy for a contaminated sediment site  
4 cleanup, does EPA follow the contaminated sediment remediation  
5 guidance for hazardous waste sites?

6           Mr. Stanislaus. Oh, absolutely.

7           Mr. Harper. How does EPA ensure the timeliness,  
8 cost-effectiveness, consistency, and the quality of the sediment  
9 site cleanups?

10          Mr. Stanislaus. Well, that is an ongoing responsibility  
11 between both the regions and heard quarters, particularly  
12 sediment sites. We review everything from the investigation  
13 planning to the proposed cleanup remedy.

14          Mr. Harper. So, how does EPA ensure that sediment cleanups  
15 are consistent with the contaminated sediment remediation  
16 guidance?

17          Mr. Stanislaus. Sure. In our review of the site-specific  
18 factors, we look at one of the things that headquarters looks at  
19 is a consistency with the national guidance.

20          Mr. Harper. Now, we understand that certain authorities are  
21 delegated from EPA headquarters to the regions. Please explain  
22 what authority is actually delegated.

23          Mr. Stanislaus. Sure, I mean the delegation to the States

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1 goes back I think to the mid-1980s or so. You know it was really  
2 intended to bring out more efficiency to the process. But that  
3 being said, we also recognize the need for headquarters review.  
4 And so, again, everything from the proposed plan, you know the  
5 headquarters reviews. We also have additional infrastructure  
6 for significant costly remedies. We have a National Remedy  
7 Review Board. We have a sediment cleanup body. There is a  
8 national body of peer review experts who also look at that.

9 I get briefed on a monthly basis on the sites of controversial  
10 complexity. So, there is an ongoing scrutiny, frankly that we  
11 do.

12 Mr. Harper. Let me, just so that I am clear, does the  
13 Administrator or someone at the EPA headquarters have the final  
14 sign-off on those remedial decisions?

15 Mr. Stanislaus. The delegation envisions that it be done  
16 at the regional level.

17 Mr. Harper. Okay.

18 Mr. Stanislaus. But again, that decision is done after  
19 significant engagement with headquarters.

20 Mr. Harper. Got you. Is there a process in place to ensure  
21 that the Administrator and you, as the Assistant Administrator  
22 for the Office of Land and Emergency Management are actively  
23 reviewing and signing off on remedial investigations proposed by

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1 the regional administrators to ensure that they are consistent  
2 and appropriate?

3 Mr. Stanislaus. Yes. As I referred to it earlier, so we  
4 have an ongoing engagement leading up to the proposed planned  
5 review, all of that.

6 Mr. Harper. So, you are getting a briefing at least once  
7 a month.

8 Mr. Stanislaus. Yes, on the sites of major issues.

9 Mr. Harper. And how are you drawn into it into a deeper way,  
10 let us say, on a specific situation? Does that vary case by case?

11 Mr. Stanislaus. Well, it depends on -- again, my technical  
12 staff reviews evidence from the data and the guidance. And  
13 depending on those issues, I get briefed on sites.

14 Mr. Harper. Well, let me ask this. If you can recall, are  
15 remedies proposed by the regions ever changed by you or the  
16 administrator?

17 Mr. Stanislaus. It definitely gets changed through the  
18 headquarter involvement, absolutely.

19 Mr. Harper. So, what would draw it to your attention? Are  
20 you reviewing every proposal or just in an overall briefing of  
21 the entire review process?

22 Mr. Stanislaus. Yes, I mean you know I get briefed at  
23 various levels, depending on the site. Sites are very large, very

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1 complex, which really are sometimes a precedential nature. Take  
2 a hard look at that, involving a mixture of proposed future uses,  
3 cleanup remedy alternatives. So, all of that goes into the mix  
4 of the decisionmaking.

5 Mr. Harper. I want to make sure that I am following you and  
6 I have got this; that I am understanding what you are telling us.  
7 Normally, those remedies, they are going to just proceed and you  
8 are not going to be reviewing every remedy that comes into the  
9 agency. Am I correct, as far as making the decision how to proceed  
10 from the start?

11 Mr. Stanislaus. Well, yes. I mean so, again, we have my  
12 staff reviews, at a technical level, the data and the technical  
13 issues. And I get briefed at a certain level. And where there  
14 are potential areas of major significance, then I get more deeply  
15 involved, depending on the precedential nature of that decision  
16 on particular sites.

17 Mr. Harper. And if you don't like what you see or you don't  
18 think it is the right course, then you will pass on that decision.

19 Mr. Stanislaus. Yes. Well, sometimes I would ask for  
20 taking a hard look at an alternative or is there enough data to  
21 support this decision. It kind of depends on the site.

22 Mr. Harper. Thank you very much. I yield back.

23 Mr. Shimkus. The gentleman's time has expired.

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1           The chair now recognizes the ranking member of the full  
2 committee, Mr. Pallone, for 5 minutes.

3           Mr. Pallone. Thank you, Mr. Chairman and thank you Mr.  
4 Stanislaus.

5           I wanted to focus on three concerns, all related to the  
6 funding of the Superfund program. First, how pays? Second, the  
7 delays brought about by dwindling funds. And third, a falloff  
8 in the quality of cleanups brought about by dwindling funds.

9           So, as we all have discussed, the Superfund tax was created  
10 to cover the cost of cleanup when potentially responsible parties  
11 could not pay or could not be ID'd. In my view, this fund was  
12 the crowning achievement of the Superfund because it ensures that  
13 polluters paid for cleanups even at orphaned sites.

14           And since the funds from that tax were exhausted, funding  
15 for cleanups at orphaned sites has come through the appropriations  
16 process, drawing from general treasury funds. That is correct.

17           Mr. Stanislaus. That is correct.

18           Mr. Pallone. I think that is just fundamentally wrong. The  
19 cost of cleanup should be paid for those who get rich off  
20 contaminating these sites. And it is not just a question of  
21 fairness. Since the tax expired, funding for Superfund cleanups  
22 has decreased dramatically by about 45 percent since 1999.

23           And I have a list of sites provided by your staff which are

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1 waiting for funding. There are about 12 sites on the list that  
2 I have. And for the communities around these sites -- you have  
3 the list, Mr. Stanislaus, correct?

4 Mr. Stanislaus. I am sorry. Say that again.

5 Mr. Pallone. You have the list with the 12 sites?

6 Mr. Stanislaus. I am aware of that. I am not sure I have  
7 it with me right now.

8 Mr. Pallone. Okay, well, you are aware of it.

9 Well, what I wanted to ask you is for the communities around  
10 these 12 sites, what is the impact of your limited funding, if  
11 you would?

12 Mr. Stanislaus. Well, I mean it is delayed cleanup, delayed  
13 recovery, delayed protection, and delayed economic land use  
14 benefits.

15 Mr. Pallone. Okay. And we just heard a few minutes ago from  
16 our colleagues from Missouri how serious the effects of these  
17 cleanup delays can be for the communities. And we also have our  
18 colleagues speaking about the tension over what remedies should  
19 be selected, whether pollution should be removed or capped in  
20 place. Mr. Spiegel, who is going to testify in the third panel  
21 is very familiar with how we have to deal with that in a given  
22 situation.

23 Often, the community around the site wants the pollution



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1 removed completely. A lot of times, that is a lot more costly  
2 but it also ensures, in a way that institutional controls cannot,  
3 that there will be no future human exposure to these contaminants  
4 from the site.

5 So, Mr. Stanislaus, can you explain how the limited funding  
6 available for Superfund cleanups affects decisions about how to  
7 clean up these sites, removal versus capping or whatever?

8 Mr. Stanislaus. Well, I don't think the limited pot of money  
9 has an influence on the remedy. It has an influence on how many  
10 sites we can take on every year.

11 The remedy selection we go through this process under the  
12 underlying regulations where we look at the opportunity to a  
13 permanent cleanup, the short- and long-term benefits. So, it all  
14 goes purely from a technical legal consideration. And I think  
15 the relevance of cost is really, as you noted, that we are going  
16 to have a backlog of sites, as we do right now.

17 Mr. Pallone. But isn't it true that in many cases -- I don't  
18 know many cases but certainly in some cases, that you do end up  
19 capping the site as sort of an interim measure because the funds  
20 are not necessarily available to do the final cleanup?

21 Mr. Stanislaus. Well, interim remedies are all done for  
22 technical reasons. Sometimes we do interim remedies to create  
23 a temporary block of exposure, while we examine the long-term

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1 remedy. You know so I wouldn't say that putting in a temporary  
2 measure is driven by the unavailability of cost. And it could  
3 be that the unavailability of funds delay the pace of executing  
4 the cleanup.

5 Mr. Pallone. Okay. Well, I appreciate your comments and  
6 I appreciate the fact that the chairman had this hearing.

7 And I just hope that we will all work together to do the most  
8 important thing that we can do and that is reinstate the Superfund  
9 tax. I remember when it was expiring, I think Gingrich was the  
10 speaker at the time and President Clinton was very emphatic that  
11 he wanted to continue it and Speaker Gingrich said no.

12 I think we can debate tweaks in policies but, without funding  
13 these policies are meaningless. So, we are just going to see more  
14 communities waiting for cleanups and more communities  
15 dissatisfied with the cleanups that are being done. So, I really  
16 think the most important thing is reinstating the Superfund tax.

17 I yield back, Mr. Chairman.

18 Mr. Shimkus. The gentleman yields back his time. The chair  
19 now recognizes the gentleman from Pennsylvania, Dr. Murphy, for  
20 5 minutes.

21 Mr. Murphy. Thank you, Mr. Chairman. Thank you for this  
22 hearing.

23 I was visiting a business in my district a few years ago and

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1 I went down there with some folks to see this site on their factory  
2 that they have not been able to use, part of a warehouse that was  
3 involved in some government contract research using some  
4 materials that were radiation-contaminated, not in high levels  
5 but enough that they weren't supposed to go in them.

6 It was some things the size of oil drums and they were filled  
7 with concrete and rags and they were materials that contained  
8 radioactive materials at one time. And they weren't allowed to  
9 touch them.

10 So, we went down there and visited and talked with the Army  
11 Corps of Engineers and EPA and said what would it take. They said  
12 we are going to have to study this, do several studies. I am  
13 planning on lots of things. It is probably going to take about  
14 11 years and maybe \$1 million or more.

15 And I said what will you do with it at the end? We will pick  
16 it up, we will move it. We will take it to the approved site and  
17 there they will seal it and bury it.

18 In the meantime, the business couldn't use their building.  
19 So, I said so well what is to stop them from going out and getting  
20 a dump truck, put all the stuff in a dump truck, load it in, drive  
21 it to the same site and just say keep the truck? And they said,  
22 well, we wouldn't recommend that because they have to go through  
23 the studies.

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1           And I said well, wouldn't you do the same? And they said  
2 well, basically, in the end, that is what we are going to do. So,  
3 you can understand the incredible frustration from business  
4 saying why are we going to lose out on using this site and having  
5 this problem, when basically the resolution is the same. I am  
6 sure you can understand the appreciate the frustration that people  
7 have with taking so incredibly long to do something.

8           But let me ask you about some timeframes on this. And,  
9 again, thank you for being here. We know this is not easy. And  
10 we know you have got to crack the whip and make some things work  
11 and we want you to do it right but the public doesn't understand.

12           So, the nature of these sites being cleaned up under CERCLA  
13 has changed since CERCLA was enacted some 35 years ago. The sites  
14 remaining to be cleaned up today are more complex, like sediment  
15 or mining sites.

16           So, do you think that the Superfund program needs to change  
17 and adapt to deal with the new challenges associated with these  
18 more complex cleanups? I mean do we need to do something  
19 different?

20           Mr. Stanislaus. Well, I think we need to specifically call  
21 attention to particular differences, a sediment site and a mining  
22 site. So, for example, a sediment site, the approach of well let  
23 us call it adaptive management, so we want to move forward with

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1 some level of immediate cleanup and learn from that. Just because  
2 the complexity of sediment sites are much longer, much wider --

3 Mr. Murphy. So, let me just make sure I understand. So,  
4 does everybody have to follow the same set of rules regardless  
5 of the site, then? Or are you saying a mining, a sediment site,  
6 a hazardous waste material site versus something buried, is it  
7 the same rules everybody has to follow all the time that adds to  
8 some of the timing and burden?

9 Mr. Stanislaus. Well, you know I would say the same basic  
10 rules. One, you want to fully investigate the site. And then  
11 you want to select a remedy, based on investigation.

12 But the differences I was referring to is that when you are  
13 in the water, it is far more complex than when you are on land  
14 in terms of doing cleanup. Sediment sites you tend to have a much  
15 wider breadth of area, much more complexity in terms of science.  
16 You have you are in the water, you have a mixture of sediments  
17 that are buried under sometimes decades of sediment and fill, so  
18 a bit more complex.

19 Mr. Murphy. Let me ask. When it does involve some  
20 radiation materials, does that go under the Nuclear Regulatory  
21 Commission or is that under you?

22 Mr. Stanislaus. Well, I guess, depending on the site. We  
23 have Superfund sites.

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1 Mr. Murphy. Sure.

2 Mr. Stanislaus. And then you have radiological materials  
3 and that would be under the Superfund Program.

4 Mr. Murphy. And do you review and monitor the efficiency  
5 of those who are doing those? I know Mr. Johns from this committee  
6 has an area he talks about in his district, where it has taken  
7 years to do this and records may indicate a lot of people are  
8 putting in overtime who haven't even put in hours and a massive  
9 amount of waste. So, I just wonder if you audit those things,  
10 too, and say why is it taking so long. Is there something in the  
11 nature of this particular project?

12 Mr. Stanislaus. Well, I mean what we try to do is, up front,  
13 look at how do we kind of make sure that the process work is  
14 intended and build in efficiency to better extend possible --

15 Mr. Murphy. But you understand efficiency is not a word that  
16 we think as associated with this agency.

17 Mr. Stanislaus. Well, I mean I think we can agree to  
18 disagree on certain aspects of it. Because what I have done under  
19 my --

20 Mr. Murphy. Yes, but years, and years, and years is not  
21 efficient. So, let me just ask this.

22 Mr. Stanislaus. But this is decades of mismanagement.

23 Mr. Murphy. I appreciate that.

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1 Mr. Stanislaus. Decades of hazardous substances.

2 Mr. Murphy. Thank you.

3 Mr. Stanislaus. And getting to understanding the  
4 complexity of the problem, it is technically challenging. I  
5 think every technical expert will conclude that discerning the  
6 magnitude of the problem does take some time.

7 Mr. Murphy. So, let me ask if we could --

8 Mr. Stanislaus. That is not to say that efficiencies are  
9 not important.

10 Mr. Murphy. Okay. I would love to be able to meet with you  
11 one-on-one to talk about a couple of the sites --

12 Mr. Stanislaus. Sure.

13 Mr. Murphy. -- review that, and then get some more in-depth  
14 information.

15 We want you to be empowered to make this efficient and change  
16 the mismanagement over time, whether it is on the site or whether  
17 it is in your agency. And I appreciate that opportunity.

18 Thank you, Mr. Chairman.

19 Mr. Shimkus. The gentleman's time expired.

20 The chair now recognizes the gentleman from Oregon, Mr.  
21 Schrader, for 5 minutes.

22 Mr. Schrader. Thank you, Mr. Chairman. And welcome, Mr.  
23 Stanislaus. Thanks for coming here. It is a tough hearing but

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1 it is a very important hearing.

2 As you know, I am primarily concerned about the Portland  
3 Superfund site and the Willamette River back home in Oregon. And  
4 I am concerned a little bit about the data being used, to be honest  
5 with you. This has been in process for a long time. I appreciate  
6 the fact that we are coming to a record of decision, hopefully  
7 soon.

8 But some reservations still remain. I mean it has been clear  
9 to me that this Superfund site is actually cleaner than some of  
10 the sites that have been cleaned up. You can swim in the river.  
11 No problem. You can eat the native fish out of the river. No  
12 problem. You know I think it is good to do things as well as  
13 possible.

14 But I would like to see the feasibility study and the proposed  
15 plan to be based on good science. Right now we are talking about  
16 non-native fish being eaten by local residents that are fishing  
17 in that harbor on an extended basis that is not really very  
18 realistic. So, I am hoping that as headquarters reviews some of  
19 the data, they take that into account. We want to have an  
20 efficient process.

21 I know in 2012 you tried to look at ways to be innovative  
22 and adaptive to local conditions. And I am not sure I am seeing  
23 that. My colleague from Mississippi talked a little bit about



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1 what role the headquarters has.

2 To that point, what role do you play in terms making sure  
3 there is consistency across the country in how these standards  
4 are applied so that you don't have one region getting a little  
5 carried away and not paying attention to what has being done  
6 overall around the country so we can allocate the resources most  
7 effectively?

8 Mr. Stanislaus. Sure. So, the structure we have in place  
9 right now is we have what I would characterize as some up-front  
10 infrastructure. So, we have guidance to promote national  
11 consistency in terms of cleanup, in terms of remedy selection.  
12 And then we have site-specific reviews of proposed cleanup above  
13 a certain monetary amount. So, we have a national body of experts  
14 called the National Remedy Review Board. We have separately a  
15 sediment group that looks at sediment sites from a national  
16 perspective to provide independent technical review while we are  
17 looking at other alternative ways of achieving the goals. Have  
18 the goals been set appropriately?

19 And then based on that, then I get briefed from various  
20 periods of time in the decisionmaking process.

21 Mr. Schrader. Now, to that, I guess I am a little concerned  
22 because the only solutions I have seen proposed originally and  
23 even now in the proposed plan is just dredging and capping. I

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1 mean it seems to me there ought to be other alternatives that we  
2 would want to consider.

3 What role has the State of Oregon played, prior to the release  
4 of the proposed plan? Have you resolved most or all of the issues  
5 that the state has brought up?

6 Mr. Stanislaus. I believe that is the case. I mean we  
7 believe the state is an important partner in moving this forward  
8 and my understanding is that the proposed plan is aligned with  
9 the state's perspective.

10 Mr. Schrader. All right. I am not sure I 100 percent agree  
11 but that is okay.

12 To the point on cost and realistic assumptions and stuff,  
13 how accurate has EPA's sediment site cost estimates been in the  
14 past? I would reference in Tacoma a couple of waterways where  
15 the costs eventually were 3 times and almost 100 percent more in  
16 another case than what was originally estimated. How accurate  
17 do you think the estimates are, in general?

18 Mr. Stanislaus. Well, I don't have a comprehensive survey  
19 or assessment in front of me but I can get back to you on some  
20 of those sites.

21 Mr. Schrader. I guess a similar question, then, I would like  
22 to get that information would be on the estimating how long it  
23 takes to clean up a site. The time period for the Hudson River

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1 dredging, how long did you think that was going to take and how  
2 long did it eventually take?

3 Mr. Stanislaus. Sure, I will get back to you specifically.  
4 I think the Hudson River was actually widely viewed as successful  
5 by many, in terms of the timing and the accomplishments there.  
6 But I will get back to you on the specific timing.

7 Mr. Schrader. All right. And again, it raised a question  
8 because I am not sure I am every going to agree with that  
9 assessment.

10 And the biggest issue from I think, well many issues in the  
11 Portland area, but the proposed plan compared to some of the  
12 original suggestions is exactly the same plan, in terms of  
13 dredging, capping, natural recovery, and yet the costs were,  
14 seemingly, arbitrarily reduced from \$1.4 billion down to \$750  
15 million with not a lot of change what actually is going on. And  
16 we are very concerned that the local Region 10 is being overly  
17 optimistic in its assumptions about how it is going to take to  
18 do some of this stuff, what affect this new landfill location  
19 closer to the Superfund site itself is going to have.

20 So, we are very concerned that unrealistic modeling is going  
21 to cause some real serious problems for the folks that are willing  
22 to step up, many that were not there when the original  
23 contamination occurred, in trying to take care of the place. So,

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1 I would hope that before the record of decision you guys would  
2 re-look at that and take that into account.

3 Mr. Stanislaus. Sure.

4 Mr. Schrader. With that, I will yield.

5 Mr. Stanislaus. I would like to speak a little bit about  
6 the change of the cost.

7 Mr. Schrader. Please.

8 Mr. Stanislaus. Clearly, it was driven by looking at some  
9 optimization. So, the remedy has, in fact, changed from the  
10 proposal, the extent of excavation versus capping. So, while the  
11 basic elements are the same, the extent of each is what has driven  
12 the cost. And I have personally reviewed it. I have had my staff  
13 personally look at it. So, we are going to continue to be involved  
14 in it and continue to review the comments. I know there has been  
15 a lot of commentary that we are going to take a look at.

16 Because we know that various parties, the local government  
17 entities and private sector entities have commented as well as  
18 the local community.

19 Mr. Schrader. If I could get the chair's indulgence, just  
20 for quick second, if I may.

21 Now, I am looking at the proposed plan remedy and the NRB  
22 remedy. The cost of the proposed plan is \$750 million.  
23 Originally, NRB, \$1.4 billion. Dredge volume 1.9 million cubic

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1 yards in both situations. Construction duration 7 years in both  
2 situations. Active cleanup areas 290 in the proposed plan, 300,  
3 so a mere 10-acre difference there. Natural recovery, 1800 acres  
4 in both; 1900 lineal feet riverbank remediation, virtually the  
5 same I both.

6 I am just not sure I have seen any change in the plan to  
7 justify that reduction in cost. I am just very worried, sir, just  
8 very worried.

9 And I yield back.

10 Mr. Shimkus. The gentleman yields back his time. The chair  
11 now recognizes the gentleman from West Virginia, Mr. McKinley for  
12 5 minutes.

13 Mr. McKinley. Thank you, Mr. Chairman. And Mr.  
14 Stanislaus, it is good to see you again.

15 Mr. Stanislaus. You, too.

16 Mr. McKinley. Your office has been very good to work with  
17 over the years on some of these matters.

18 My district and Congressman Johnson, we share that along the  
19 Ohio River, is an old area, old mature industries of chemical and  
20 steel, glass, pottery, that have been ripe over the years for  
21 problems with Superfund. So, I think that in my career, or my  
22 life as an engineer, I have experienced quite a bit of that about  
23 the Superfund sites and the contamination that occurs with that.

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1 Under the Superfund site, there is a concern that, and maybe  
2 it is valid, is that when a Superfund site is designated as a  
3 Superfund site, there becomes a stigma on that area. Would you  
4 not agree that if you have got land, 100 acres or so that has been  
5 designated a Superfund site, that would cause you to be concerned  
6 about locating a school next door to it?

7 Mr. Stanislaus. Well, I think any contaminated site creates  
8 a concern. We have done studies and I have independent studies  
9 that show that once a site is cleaned up--

10 Mr. McKinley. No, no, I didn't say that. I say whether  
11 it is designated. Once it is designated a site, because I am going  
12 to lead into it --

13 Mr. Stanislaus. Okay.

14 Mr. McKinley. -- is that I think it has a stigma and an  
15 effect on other development around it.

16 And unfortunately, there was an article that came out earlier  
17 this year -- I would like you to respond to it -- by a  
18 conservative group, the Daily Caller. But Ethan Barton came out  
19 in April of this past year and through his investigation, found  
20 out, and I think it follows a little bit about what some of the  
21 other folks have been talking about, that these sites that get  
22 designated as Superfund may not get any attention for years.

23 Let me give you some statistics that show up in this. That

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1 there are two-thirds of the sites that have been designated,  
2 nothing has been done with it. So, 771 of the 800 sites have been  
3 waiting 5 years for something to be done with it; 154 of those  
4 designated sites have been waiting 30 years before work has even  
5 begun on it. And it is a stigma on that community and people are  
6 concerned about what their water quality, any other air quality,  
7 anything else that comes with it. And then they found that once  
8 it gets designated in cleanup, sometimes, according to that, that  
9 it might take 30 years, 13 years on average to clean up a Superfund  
10 site. Look 54 of them apparently took 20 years, 20 years to clean  
11 up and all that while the water was contaminated or the air was  
12 contaminated with it, the soil contaminated with it. The  
13 community was stigmatized with it by having this.

14 So, Mr. Stanislaus, what can we do to address this problem?  
15 Because once we designate this and we put this red mark on a  
16 community or a site, why should we be waiting 20 years before  
17 something happens with it or 54 years before something begins?

18 Mr. Stanislaus. So --

19 Mr. McKinley. I am sorry. I don't mean to blind side you  
20 on that but on Barton's article, have you seen this article at  
21 all?

22 Mr. Stanislaus. I have not. I will take a look at it.

23 Mr. McKinley. If you would, take a look. I would like to

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1 hear back from you on that.

2 So, what is holding it up?

3 Mr. Stanislaus. Well, I would say that the original stigma  
4 is the mismanagement of site that comes from decades of work.

5 Mr. McKinley. I understand that but we can't go back and  
6 redo that. But once you have designated it, I want you to do  
7 something.

8 Mr. Stanislaus. So 68 percent of sites on the National  
9 Priorities List have what is called construction completion. So  
10 that means all of the construction of the cleanup remedy is in  
11 place. Now, sometimes, for example, groundwater, groundwater  
12 does take decades but redevelopment can happen and that does  
13 happen once you have construction completion.

14 Mr. McKinley. Completion but you just heard what I said.  
15 Some of these sites have taken 54 years, on average it is 13. I  
16 have seen some success and we have had it in the Weirton area,  
17 the Business Development Corporation with Pat Ford and what he  
18 has done out there. They took a site that had been abandoned.  
19 It was a contaminated site and now they have got people working  
20 on it. It is functioning. So, my hat is off to Pat Ford and the  
21 whole group up there but they have got to get it finished, not  
22 Pat Ford but on all these others.

23 If we have all these sites waiting 20 years, 13 on average,



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1 that is too long. I want to know what does it take to get it done  
2 quicker?

3 Mr. Stanislaus. Well, I think ongoing diligence of the  
4 management of those sites, I completely agree. However, I don't  
5 think 13 years is accurate from this perspective.

6 So, you can have productive activity at a site while the  
7 long-term cleanup is going on. There are numerous sites where  
8 companies have site on a Superfund site where groundwater cleanup  
9 or other kind of cleanup is continuing.

10 Mr. McKinley. I have run out of time on that but again,  
11 could you please get back to me and explain your perspective on  
12 Barton's article?

13 Mr. Stanislaus. Sure.

14 Mr. McKinley. Thank you, I yield back.

15 Mr. Shimkus. The gentleman's time has expired.

16 The chair now recognizes the gentleman from California, Mr.  
17 McInerney, for 5 minutes.

18 Mr. McInerney. Well, I thank the chair for holding this  
19 hearing. I just wanted to respond to Mr. McKinley. If there is  
20 no funds, then we are not going to be able to get this done. And  
21 I think Mr. Gingrich did a good job of reducing funds. So, we  
22 need to restore those funds if we want to get onto those sites.

23 Mr. Shimkus. If the gentleman will yield, we could start

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1 going down this route and talk about majorities and I think we  
2 best just move forwards.

3 Mr. McInerney. Yes, thank you, Mr. Chairman, for that  
4 bipartisan comment.

5 Mr. Stanislaus, much of the debate around Superfund sites  
6 now revolves around whether pollution should be removed or  
7 controlled on site using land restrictions or other institutional  
8 controls. In most every site now, is that a discussion? Is that  
9 a debate?

10 Mr. Stanislaus. Well, I think that, broadly, the extent of  
11 removal of contaminants, whether you can treat contaminants  
12 on-site or a mixture of that and leaving things in place, at the  
13 end of the day, we are driven on preventing ongoing exposure. So,  
14 it can happen through a mixture of those.

15 Mr. McInerney. Well, as an engineer, I understand what it  
16 means for pollution at a site to be addressed through engineering  
17 controls, on the one hand, or institutional controls on the other  
18 hand. Institutional controls aren't as clear as engineering  
19 controls. Can you explain what the difference between those two  
20 is? Mr. Stanislaus. Sure. Engineering control is really, for  
21 example, a concrete barrier. Institutional control would be,  
22 basically, a legal prohibition of doing certain activities. For  
23 example, a legal prohibition of digging beyond this kind of a cap

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1 for example.

2 I do agree with you that making sure that institutional  
3 controls are effective is one of the things that I have really  
4 tried to enforce since I have been in this job, really making sure  
5 that there is ongoing consultation with the local government to  
6 make sure that those kinds of institutional controls are actually  
7 adhered to and effective and/or are enforced.

8 Mr. McInerney. Do you think more clarity is needed either  
9 in revisions to the National Contingency Plan or through guidance  
10 on making these choices?

11 Mr. Stanislaus. Yes, I am not sure necessarily an amendment  
12 to the National Contingency Plan is necessary. I mean just, I  
13 am trying to remember, 3 or 4 years ago we issued a guidance on  
14 the whole issue of institutional controls, making sure it is a  
15 hard look at whether it is effective and implemental, this  
16 consultation with the local government. So, I think rigor to the  
17 use of that in the appropriate circumstance is really important.

18 Mr. McInerney. Thank you. So, back to the funding issue.  
19 How many employees do you have that work on the Superfund sites  
20 issues?

21 Mr. Stanislaus. Let me get back to you with a hard number  
22 on that.

23 Mr. McInerney. Okay, are we talking thousands or are we

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1 talking tens?

2 Mr. Stanislaus. Well, I mean it is in the hundreds but I  
3 don't want to give a fixed number. Let me get back to on this  
4 one.

5 Mr. McInerney. All right. How many Superfund site are  
6 there?

7 Mr. Stanislaus. Well, on the National Priorities List, we  
8 have a about 1700 on the National Priorities List. But we get  
9 sites to our attention on a regular basis. These are just the  
10 real-time remedial sites. Every day we have to immediate  
11 response because of drums left behind, spills happening. So, it  
12 is hundreds of sites that we kind of manage on a regular basis.

13 Mr. McInerney. Well, as my good friend Mr. McKinley said,  
14 it takes 13 years on average, and I will take your word on that.  
15 That sounds about right. How many new Superfund sites do we get  
16 per year? I mean are we keeping ahead of it or are we falling  
17 behind on the number of Superfund sites?

18 Mr. Stanislaus. Well you know we, as was noted earlier, we  
19 have a backlog of about I think 12 to 15 sites that we need funding  
20 for by the end of this fiscal year. But then in the next fiscal  
21 year, that could probably be projected to grow to 20 to 25.

22 You know the function of the National Priorities List is to  
23 identify the highest priority risk sites. And ideally, we have

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1 a responsible party step up and address that. That is not always  
2 the case because we have bankruptcy or inability or unwillingness  
3 that the Federal Government has to step in. So, there is a delta,  
4 there is a gap.

5 Mr. McInerney. Well, my district has Superfund sites and  
6 I was just wondering what you think the cost of the communities  
7 and the people living in the area is. I mean, Mr. McKinley brought  
8 this up. It is a black mark on the community. Property values  
9 are affected and this can go on for generations, basically. So,  
10 how can we mitigate these effects on people's lives?

11 Mr. Stanislaus. Yes. Well, yes, I completely agree that  
12 delayed cleanup means delayed public health benefits and delayed  
13 economic benefits. Within the constraints I have, I am always  
14 given a certain flat amount in appropriations and we have this  
15 prioritization process based on risk. And we take on those sites  
16 based on the limited funding.

17 Mr. McInerney. Thank you, Mr. Chairman.

18 Mr. Shimkus. The gentleman's time has expired.

19 The chair now recognizes the gentleman from Ohio, Mr.  
20 Johnson, for 5 minutes.

21 Mr. Johnson. Thank you, Mr. Chairman. And Mr. Stanislaus,  
22 thanks for joining us today.

23 Are you familiar with the Contaminated Sediment Technical

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1 Advisory Group and the National Remedy Review Board? And if so,  
2 could you please explain what those entities are and how they fit  
3 into the remedial decisionmaking process?

4 Mr. Stanislaus. Sure. So, these are two national group of  
5 EPA experts to provide independent advice on cleanups. So, the  
6 National Remedy Review Board looks at sites, at this moment,  
7 \$50,000 or more, and have independent technical review, peer  
8 review, looking at the nature and extent of investigation, the  
9 potential cleanup options available to them.

10 The Sediment Group looks at, obviously, sediment sites, with  
11 a similar function.

12 Mr. Johnson. Okay. Well, what is EPA Headquarters doing  
13 to ensure that technical recommendations from the National Remedy  
14 Review Board and the Contaminated Sediment Technical Advisory  
15 Group are being followed and incorporated into remedy decisions?

16 Mr. Stanislaus. Sure. So, I mean directly we have  
17 headquarters presence on both of those bodies. And then the  
18 technical comments are transmitted to the region itself.

19 But then once you come to a proposed plan, we review the  
20 proposed plan, in terms of have relevant aspects of those comments  
21 been incorporated. And just more broadly, have the pertinent  
22 guidance and regulations been adhered to in the selection of the  
23 proposed remedy?

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1           Mr. Johnson. Are there checks and balances? Specifically,  
2 the Review Board or the Advisory Group recommends this. Was this  
3 included the particular proposal? How are you ensuring that the  
4 recommendations are being followed and incorporated?

5           I mean I hear what you say about how the process works but  
6 I didn't hear the part about how are you making sure that the  
7 recommendations are being followed.

8           Mr. Stanislaus. Well, I would say it is in the mix of  
9 everything else we review. So, the Remedy Review Board would  
10 transmit comments technically in nature.

11          Mr. Johnson. Is there any feedback to the Advisory Group  
12 or the Review Board on where their recommendations stand?

13          Mr. Stanislaus. Yes, I would say, typically, there is back  
14 and forth after the issuance of the recommendation. Sometimes  
15 the recommendations are --

16          Mr. Johnson. I am sorry. I guess what I am looking for is  
17 there a score card. I mean from my military background, when the  
18 IG comes in and the IG finds these kinds of issues in your  
19 Operational Readiness Inspection, there is a report that goes back  
20 from the organization to the IG to say this is how we have addressed  
21 your recommendations or the requirements to mitigate any short  
22 falls. Is there any kind of score card that ensures that the  
23 recommendations from those bodies are being adhered to?

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1           Mr. Stanislaus. Well, I would say this body does not really  
2 function as an IG. It really functions as a science --

3           Mr. Johnson. I know that. But the recommendations are  
4 supposed to be adhered to, right?

5           Mr. Stanislaus. Yes. Yes, and so, again, some of those  
6 comments are can you develop more data in this regard or conduct  
7 more sampling in this area before I make the remedy. So, we have  
8 reviewed that plus broader issues, in terms of adherence to  
9 national guidance and regs.

10          Mr. Johnson. Well, obviously, you can tell from my  
11 questions, that the committee is concerned with EPA regions'  
12 compliance with both the National Contingency Plan and the  
13 sediment guidance at sediment sites.

14          So, can you tell me the requirements for the regions to  
15 document how they are following the sediment guidance?

16          Mr. Stanislaus. Well, the sediment guidance lays out almost  
17 like the how in terms of how should sediment sites be investigated  
18 and remedy selected. So, ultimately, that just gets imbedded in  
19 the proposed plan. And then during the proposed plan, then we  
20 solicit input from both potential responsible parties and the  
21 public both in terms of have we adhered to the guidance or other  
22 aspects of the proposed remedy.

23          Mr. Johnson. Okay, I am not sure I see the clear connection



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1 but my time has run out.

2 Mr. Chairman, I yield back.

3 Mr. Shimkus. The gentleman yields back his time.

4 The chair now recognizes the gentleman from Texas, Mr. Green,  
5 for 5 minutes.

6 Mr. Green. Thank you, Mr. Chairman. And thank you, Mr.  
7 Stanislaus, for joining us today and to discuss ways we can improve  
8 the Superfund and protect local communities from toxic sites.

9 I know you heard from a lot of members on their particular  
10 problems. And in our district in East Harris County, Texas, we  
11 are concerned about the San Jacinto River Waste Pits, a toxic site  
12 that was polluted with dioxin, a cancer-creating chemical, into  
13 the river in Galveston Bay for decades from the 1960s. This site  
14 was added as a Superfund site in 2008 at both my urging and  
15 Congressman Ted Poe. And nearly a decade later, families in East  
16 Harris County are still waiting for the final decision from the  
17 EPA and for some piece of mind that the site will be permanently  
18 cleaned up.

19 Six months ago, a barge pierced the temporary covering over  
20 the site and that polluted this historic river even more. We do  
21 have a responsible party who is responsible for that cleanup.

22 Last week, the Harris County Health Department sent letters  
23 to residents near the waste pits advising households not to drink

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1 their tap water, due to the possible dioxins contaminating local  
2 private wells. This area is an unincorporated area, so people  
3 have private wells and there are some water districts. It is not  
4 in the City of Houston or the City of Baytown. It is between those  
5 two cities.

6 So, Mr. Stanislaus, what is EPA doing in response to the  
7 county health department's advisement about the possible  
8 pollution of ground water that these people drink?

9 Mr. Stanislaus. Yes, so we have worked with the county and  
10 local government officials in terms of the conduct of the  
11 sampling. In terms of the advisory itself, that is really the  
12 province of the local government.

13 In terms of the long-term remedy, we expect by the end of  
14 the summer to have a proposed remedy to have a permanent solution  
15 to that situation.

16 Mr. Green. Well, I know the local government doesn't have  
17 responsibility for groundwater, though. These people have  
18 private wells on their own property and even businesses. But if  
19 it is being polluted by dioxin from this facility, it is actually  
20 the responsible party who is supposed to clean that up. Is the  
21 EPA encouraging them to be able to provide bottled water? I don't  
22 know what you can do if the groundwater is polluted except remove  
23 all that dioxin that is there. And I know in that particular

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1 region, we have had EPA clean up a number of our dumping pits that  
2 were there before EPA was even created and they have been able  
3 to move that soil. Although this is actually in the water, so  
4 it is going to be even more expensive to remove that as much as  
5 possible from that site. Because to this day, it continues to  
6 pollute the San Jacinto River.

7 What time line for the final decision? Did you say a final  
8 decision may be by October?

9 Mr. Stanislaus. I think the plan is to present a proposed  
10 plan later this summer. And they are going to have a series of  
11 public hearings, public comment period. Based on that, typically  
12 anywhere from 60 to 90 days. And then after that time, we would  
13 incorporate the comments and make a final decision.

14 Mr. Green. Okay. I, along with our Harris County  
15 Attorneys' Office and the local community organizations such as  
16 the Galveston Bay Foundation and San Jacinto River Coalition, we  
17 have called for the EPA to fully dredge and remove the toxins from  
18 the San Jacinto River. And local residents believe strongly that  
19 only the full removal of dioxin and toxic chemicals in the Waste  
20 Pits will permanently protect their families.

21 This is a growing area of Harris County but it is also an  
22 industrial area, historically. So, we are concerned that EPA,  
23 which used a cheaper option that would keep the dioxins in place

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1 because a stone cap that may erode over time and fail during a  
2 major hurricane. In 2008, Hurricane Ike actually went over that  
3 facility there and the San Jacinto River off of Interstate 10.

4 What is the EPA doing to ensure the community's wishes are  
5 being fully considered?

6 Mr. Stanislaus. Well, that is definitely something part of  
7 our current considerations and part of what we would engage the  
8 community in the proposed remedy.

9 So, typically, we would present a primary or sometimes  
10 alternative remedies, with a mixture of complete removal, part  
11 removal, part and in place and walk through the regulatory  
12 criteria for each of them. And we will have a public meeting based  
13 on that.

14 Mr. Green. EPA had a hearing like that back in February and  
15 the community was united on not having a short-term solution. The  
16 temporary cap is not working. And even if you put a harder cap  
17 on there, that area is growing with barge traffic. And since it  
18 is right on the San Jacinto River, where there is a great deal  
19 of barge traffic because of the energy industry, that is why a  
20 permanent solution is the only solution.

21 And I appreciate you being here but we are going to keep  
22 trying to make sure that that site, like the other sites in our  
23 East Harris County who have been cleaned up, we want it removed

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1 and permanently dealt with so the people there can feel  
2 comfortable with what they are getting out of their groundwater.

3 Mr. Chairman, I know I am over time but, as you heard from  
4 other members, these are really important issues in our district.  
5 And I appreciate you being there. We will continue to work with  
6 EPA to see if we can get a permanent solution.

7 Mr. Shimkus. The gentleman's time has expired.

8 The chair now recognizes the gentleman from Texas, Mr.  
9 Flores, for 5 minutes.

10 Mr. Flores. Thank you, Mr. Chairman. Thank you, Mr.  
11 Stanislaus, for joining us today.

12 My first question is this. The States play an important role  
13 in the Superfund cleanup process. Do you feel that the current  
14 role of the States in the process is appropriate? Mr.  
15 Stanislaus. Well, again, we make sure we view States as a partner  
16 through this whole process. So, we do some up-front sharing of  
17 resources, have the state lead on some investigation, consult the  
18 States on before we list a proposed site. But we also recognize  
19 the States have raised this issue of whether we are appropriately  
20 and effectively incorporating their requirements.

21 We have stood up this process with the States. I think you  
22 are going to hear later from a witness. I think there is more  
23 we can do, frankly.

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1           Mr. Flores. Well, let us take that one step deeper. When  
2 CERCLA was enacted, very few States had any sort of a cleanup  
3 program under the Superfund process. And now, practically, every  
4 state has its own cleanup program. Do you agree now that we have,  
5 since the States have better infrastructure to deal with this,  
6 that we should have States--let me rephrase that. Should more  
7 sites be cleaned up under state programs, where the States take  
8 the lead, rather than Superfund?

9           Mr. Stanislaus. Well, I think it is a shared  
10 responsibility. And I think we engage the States. There are  
11 certain sites that States want to take the lead and that is  
12 absolutely appropriate. A lot of times the States turn to us,  
13 given the complexity and the magnitude of the site. Sometimes  
14 it is an imminent situation.

15           So, I don't disagree with you that where the States want to  
16 take the lead, we absolutely would support that.

17           Mr. Flores. Okay. And the next question is this. What  
18 steps is the EPA taking to ensure that any new financial assistance  
19 program that is developed under CERCLA Section 180(b) reflects  
20 real world scenarios and is not exaggerating the risk and cost  
21 of future liability?

22           Mr. Stanislaus. Sure. I mean we are in the process of doing  
23 that right now. We have engaged both industry, as well as the

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1 States, particularly the largest States that have significant  
2 mining, operations of financial assurance and we want to make sure  
3 that neither is there any duplication or preemption. So and our  
4 intention is to do that.

5 Mr. Flores. Okay. Mr. Chairman, that is all the questions  
6 I have and I yield the balance of my time to somebody that needs  
7 it or I can yield back to you.

8 Mr. Shimkus. The gentleman yields back his time.

9 The chair, seeing no other members presence, would like to  
10 thank you, Mathy, for coming. Again, you have been here numerous  
11 times.

12 We would ask that you respond to some of the colleagues who  
13 have asked specific questions on more details or maybe one-on-one  
14 conversations on specific sites. We know it is a difficult  
15 process. We all think we can do better and that is what we will  
16 explore in the years to come in the next Congress. So, what we  
17 might be able to do to move the ball down the road a little bit  
18 better.

19 So, with that, we would like to dismiss you and we will ask  
20 the next panel to take their seats.

21 Mr. Stanislaus. Okay, thank you. Mr. Shimkus. So, we  
22 have got people coming and going. We will let them leave the  
23 committee room and we will get started.

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1           So, we want to welcome the last panel for today. We want  
2 to welcome you for your presence and for sitting in all morning.  
3 I think it is very instructive and we appreciate your expertise.

4           We will go for opening statements from the left to the right.  
5 I have got the introductions here. So, we will start with Ms.  
6 Brittain, who is in Environmental Programs Manager, Site  
7 Remediation Section, Land Protection Division of the Oklahoma of  
8 Department of Environmental Quality on behalf of our friends at  
9 ASTSWMO. So, welcome.

10           You are recognized for 5 minutes. Your full statement is  
11 in the record.



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1 STATEMENTS OF AMY BRITTAIN, ENVIRONMENTAL PROGRAMS MANAGER, SITE  
2 REMEDIATION SECTION, LAND PROTECTION DIVISION, OKLAHOMA  
3 DEPARTMENT OF ENVIRONMENTAL QUALITY ON BEHALF OF ASSOCIATION OF  
4 STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS; MARIANNE  
5 HORINKO, PRESIDENT, THE HORINKO GROUP; STEVEN NADEAU, PARTNER,  
6 HONIGMAN; AND ROBERT SPIEGEL, EXECUTIVE DIRECTOR, EDISON WETLANDS  
7 ASSOCIATION.

8  
9 STATEMENT OF AMY BRITTAIN

10 Ms. Brittain. Good morning, Chairman Shimkus, Ranking  
11 Member Tonko, and members of the subcommittee. And I thank you  
12 for the opportunity to speak at today's hearing.

13 As you said, I manage the Superfund Program for the State  
14 of Oklahoma but I am here on behalf of the Association of State  
15 and Territorial Solid Waste Management Officials, or ASTSWMO.  
16 And ASTSWMO is an association representing the waste management  
17 and cleanup programs of 50 States, five territories, and the  
18 District of Columbia.

19 States play a key role in the Superfund process. We work  
20 closely with EPA to ensure that cleanup of Superfund sites in our  
21 States are appropriate, efficient, and cost-effective.  
22 Additionally, the Association works to address inconsistencies  
23 in how the program is managed from EPA region to EPA region.

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1           An ongoing concern for our state members is a process EPA  
2 follows to identify state regulations as potential applicable or  
3 relevant and appropriate requirements or ARARs. States across  
4 the country have raised concerns to EPA including inconsistencies  
5 in ARAR determination from one site to another, lack of written  
6 documentation on the rationale used to determine ARARs, and lack  
7 of early opportunities for the States to have a say in the ARAR  
8 list of a site.

9           Over this past year, EPA has invited representatives from  
10 States to participate as members of a workgroup to develop tools  
11 to improve the ARAR identification process. And ASTSWMO  
12 appreciates that invitation but we suggest that the next step is  
13 for EPA to continue to engage States and to have an open direct  
14 dialogue with States on policy decisions on whether or not a state  
15 regulation is an ARAR. Superfund sites should be cleaned up to  
16 the same standard as other cleanup sites in our States under our  
17 state programs.

18           Another growing concern for States is the financial burden  
19 that we face with operation and maintenance cost, especially on  
20 complex, long-term remedies such as groundwater treatment  
21 systems.

22           Now that Superfund has been around for 35 years, a lot of  
23 sites are now in this operation and maintenance stage and States

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1 are obligated to pay 100 percent of operation maintenance costs  
2 on these sites. States are working with EPA to find ways to  
3 optimize remedies. EPA has implemented a remedy optimization  
4 program to try to review sites and look for potential  
5 optimizations. And States encourage EPA to perform these  
6 optimizations as early as possible so that cost savings and  
7 efficiencies are realized before the financial burden falls  
8 entirely to the States.

9 Another issues that ASTSWMO is working on are Superfund State  
10 Contracts. A Superfund State Contract is a binding agreement  
11 between the EPA and an individual state that defines the terms  
12 and conditions for both parties to share remedial cost at a  
13 specific site. States have concerns with the lack of detailed  
14 line item documentation on what EPA has spent on a site remedy.  
15 States get very little information on how the cleanup costs have  
16 been spent but we are expected to pay for 10 or 50 percent of the  
17 cost incurred.

18 Another issue is the lack of timeliness for final financial  
19 reconciliation of these contracts. Many existing contracts have  
20 never been reconciled.

21 Additionally, States have experienced lack of adherence to  
22 the contract requirements by EPA.

23 With input from States, EPA revised the model clauses for

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1 Superfund State Contracts in late 2015. The new model provisions  
2 address several concerns of the state. However, many existing  
3 contracts will continue to cause problems for States.

4 Superfund is a very important program that provides a  
5 mechanism for cleaning up properties that pose a threat to human  
6 health and the environment. State participation in this

7 program is critical to success. States are important  
8 stakeholders because of the financial obligations of MATCH and  
9 long-term operation and maintenance. As co-regulators, States  
10 want to be real and meaningful partners in this process and will  
11 continue to work with EPA to address challenges.

12 Thank you for the opportunity to testify today.

13 [The prepared statement of Ms. Brittain follows:]

14

15 \*\*\*\*\*INSERT 5\*\*\*\*\*

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1           Mr. Shimkus. Thank you very much and we are happy to have  
2 you here.

3           And now I would like to turn to Marianne Horinko, President  
4 of the Horinko Group. And for the record, we know that you served  
5 in the EPA for many, many years, and bring a wealth of experience.  
6 We are glad to have you here. You are recognized for 5 minutes.

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1 STATEMENT OF MARIANNE HORINKO.

2  
3 Ms. Horinko. Thank you, Chairman Shimkus, Ranking Member  
4 Tonko, members of the panel. This is an important hearing and  
5 I appreciate your raising public attention to this critical  
6 environmental program. I will be the first to say, given my years  
7 in the program, that it has accomplished a great deal in 35 years  
8 -- controlled exposure at over 1400 sites, controlled groundwater  
9 migration at over 1100 sites, and most importantly, leveraged  
10 billions of dollars in private party investment, not just  
11 responsible parties, but developers, lenders, others who really  
12 want to clean up these properties and get them back into productive  
13 use.

14 At the same time, as the chairman said, it is not 1980. Much  
15 has changed. And so I am going to recommend both some statutory,  
16 programmatic, and policy topics for oversight for the committee.

17 Statutorily, the number one change is the role of States.  
18 As we have said, in 1908, perhaps only New Jersey had a program.  
19 Now, virtually every state, and often, many urban cities, such  
20 as New York City, have their own cleanup programs. So, capacity  
21 has increased enormously and yet, Superfund still acts as though  
22 it were in a vacuum. And certainly, there are ways to sort of  
23 patchwork solutions but I think a more fundamental reform is

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1 needed and that the committee should consider actually providing  
2 for a statutory change that will allow for a formal state  
3 authorization to run the Superfund program. All of the other  
4 federal cleanup statutes, RCRA, the Underground Tank Program, the  
5 Brownfields Program have a delegation for States. The States are  
6 up and running; they are very capable. So, I think it is time  
7 to contemplate a statutory change to allow States to formally run  
8 the Superfund Program.

9       Secondly, I think it is important to take a hard look at the  
10 National Priorities List. Why are we still listing sites today?  
11 Shouldn't the RCRA program have prevented operating industries  
12 from mismanaging chemicals? I recommend that the Government  
13 Accountability Office take a very careful look at the composition  
14 of sites coming onto the NPL in the past 5 to 10 years and see  
15 are these sites all really federal programs. Are there state and  
16 local programs that can remediate these sites in a more  
17 expeditious manner? So, I would take a hard look at the  
18 composition of the NPL.

19       Then I would also the committee to do as it is doing today  
20 for some accountability. Why have some of these sites been on  
21 the NPL for 30, 35 years? In the early days of the program, it  
22 was very easy to put sites on the NPL. People thought, wow, this  
23 means a lot of money, so States were listing sites at the rate

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1 of 80 to 100 a year. Well, maybe not all those sites would qualify  
2 as Superfund sites using today's ranking. So, let's take a hard  
3 look at why some of these sites haven't aged out of the system  
4 and also ask other accountability questions and sort of get the  
5 agency really thinking about deadlines and delivering results.

6 Programmatic changes -- oh, one last statutory change. And  
7 that is EPA needs the ability to manage its resources more  
8 efficiently. Right now, they are constrained from moving  
9 full-time equivalence people from one region to another. The  
10 sites are more mature in some regions than other, providing some  
11 congressional fix that would allow EPA to manage its resources  
12 and deploy them more efficiently would be very helpful.

13 On the policy side, I think the National Contingency Plan  
14 is ripe for overhaul, in terms of removing a lot of the process  
15 that bogs it down. If you look at the remedial program and the  
16 emergency removal program, which only EPA would create a program  
17 that is akin to picking someone up on the street having a heart  
18 attack and taking them to the hospital of removal. But it is a  
19 program that works. It is very effective. Similarly, the  
20 Brownfields Program, very flexible, very effective.

21 So, let's look at what works and incorporate those changes  
22 into the National Contingency Plan so sites can get cleaned up  
23 and not get bogged down in miles and miles of paperwork.



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1           The other thing that I would recommend is looking at the Six  
2 Sigma or LEAN process. Some of the EPA regions are piloting this  
3 in the RCRA Corrective Action Program and it has created a  
4 different culture, a culture of accountability, a culture of  
5 deadlines, a culture of daily looking at how can we fix things  
6 and meet our expectations for our customer, the community. So,  
7 take a look at that LEAN process and see how that can be implemented  
8 in Superfund.

9           And lastly, cultural changes. Cultural changes are perhaps  
10 the most challenging to implement because it requires people to  
11 think differently. Often people don't embrace change but I think  
12 we need to try.

13           So, I recommend the following two cultural evolutions. The  
14 first one concerns technology. It has dramatically transformed  
15 our lives in many ways and transforming institutional controls  
16 is one area where it is taking place now. EPA's Mid-Atlantic  
17 Region is piloting a tool that will create a GPS-enabled app that  
18 you can use on you smart phone and take anywhere in the country  
19 and lat/long a site's property boundaries and then also tell you  
20 where is the plume. Is it PCE? Is it dioxin? Is it mercury?  
21 Where is it going? What rate of speed is it going? Essentially,  
22 this tool could create a whole army of citizen enforcers of the  
23 environmental law, which is daunting but also very promising.

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1           So, take a hard look at technology and see how that can help  
2 us use our resources.

3           The other thing I would say is education. EPA has lost many  
4 key employees to retirement. It is hiring to make up backlog.  
5 These new risk managers need to learn what we have learned in 35  
6 years and how not to repeat the mistakes of the past. So, doing  
7 some very robust education, I think, would be much needed.

8           Lastly, partnerships. I am delighted that the Edison  
9 Wildlife Group is here because that represents the kind of  
10 partnership that really I think bring promise to the agency. We  
11 have learned that we don't have enough time or resources in the  
12 public or private sector. So, partnering with NGOs, educational  
13 institutions to do things like Region VII is doing where they put  
14 a pollinator garden on a former recycling Superfund site I think  
15 is very promising.

16           So, again, I thank the committee for its attention and I  
17 commend you all for your leadership and I appreciate your time.

18           [The prepared statement of Ms. Horinko follows:]

19

20 \*\*\*\*\*INSERT 6\*\*\*\*\*

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1           Mr. Shimkus. Thank you. The Chair now recognizes Steven  
2 Nadeau, a partner at Honigman. You are recognized for 5 minutes.  
3 Your full statement is in the record.

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1 STATEMENT OF STEVEN NADEAU

2  
3 Mr. Nadeau. Thank you. Thank you, Chairman Shimkus,  
4 Ranking Member Tonko, and members of the committee. Thank you  
5 for holding this important oversight hearing on the  
6 implementation of CERCLA, commonly known as Superfund.

7 My name is Steven Nadeau, and I am an environmental attorney  
8 with more than 3 decades of experience with potentially  
9 responsible parties at complex superfund sites across the country  
10 and I have served as the Coordinating Director for the Sediment  
11 Management Working Group since 1998.

12 I spent years working with industry and the EPA in developing  
13 site remedies for complex Superfund sites. I am delighted to be  
14 here today to share my experience with  
15 the Superfund program. However, before I do I must say that these  
16 views are my own and do not represent the views of any particular  
17 client or organization.

18 Congress enacted CERCLA in response to a growing desire for  
19 the federal government to ensure the cleanup of the nation's most  
20 contaminated sites and to protect the public from potential harm.  
21 For over 30 years, the EPA has successfully identified and  
22 remediated hundreds of Superfund sites, typically old abandoned  
23 landfills or industrial properties. However, the typical

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1 Superfund profile has changed from those abandoned landfills and  
2 industrial properties to complex mining and river sediment sites,  
3 often referred to as mega sites. These mega sites are far more  
4 complicated, expensive, and time consuming than traditional  
5 Superfund sites.

6 Mega sites, such as those involving former mining areas,  
7 where contaminated sediments are widespread and a costly problem  
8 for this country. According to the 2004 EPA Office of Inspector  
9 General, evaluation of mega sites, hard rock mining sites  
10 nationwide have the potential to cost between \$7 billion and \$24  
11 billion. Mining sites present unique challenges to the Superfund  
12 Program. Uncertainties about party's liability, their long-term  
13 viability and efficiency, and the effectiveness of existing hard  
14 rock mining remedies make the challenges insurmountable.

15 Similarly, contaminated sediments in our nation's  
16 waterways, which are the result of hundreds of years of urban and  
17 industrial activity from hundreds and even thousands of sources  
18 present unique challenges to the Superfund Program. These sites  
19 represent the future of the Superfund Program.

20 And as you can see in a map, there it is.

21 The issue of contaminated sediment is not unique to one  
22 region. Over a hundred potential sites are listed across the  
23 country in that time frame and many more have been added since.

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1 These sites present the challenge of addressing the health and  
2 environmental impacts of ongoing urban industrial use, rather  
3 than cleaning up discrete releases from specific individual  
4 entities, as is in the case of the older, traditional Superfund  
5 sites.

6 For example, large-scale contaminated sediment remediation  
7 projects on urban rivers, like the Willamette River in Oregon,  
8 can often involve dozens of PRPs, cost over a billion dollars,  
9 and drag on for decades.

10 To assist EPA regions and managers in making scientifically  
11 sound risk management decisions at these sites, EPA issued two  
12 critical policy guidance documents, Principles for Managing  
13 Contaminated Sediment Risk at Hazardous Waste Sites and the EPA  
14 Sediment Guidance.

15 The EPA Sediment Guidance was meticulously developed by EPA  
16 over a 5-year period and was the subject of internal review,  
17 comments from EPA regions and extensive public comments. The  
18 substance of the sediment guidance presents a comprehensive  
19 technically sound policy roadmap for addressing complexities  
20 associated with contaminated sediments. However, as I describe  
21 in greater detail in my written testimony, the EPA's disregard  
22 of the sediment guidance and the failure to follow the National  
23 Contingency Plan's requirements on, for example, short- and

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1 long-term effectiveness, implementability and  
2 cost-effectiveness, particularly at the regional level, are  
3 severely limiting the effectiveness of the Superfund Program at  
4 sediment sites, delaying the remediation of impacted sites and  
5 delaying the redevelopment of our nation's waterways.

6 For example, some EPA regions have ignored the sediment  
7 guidance risk reduction focus in its recommendation to use the  
8 phased approach and instead favor bank-to-bank dredging remedies  
9 at mega sites. This can lead to more harm than good and delay  
10 the recovery of the water body for decades due to the releases  
11 of contaminants from the sediments themselves during dredging.

12 The EPA's failure to follow the NCP and the sediment guidance  
13 is causing lengthy and costly delays. The failure to adequately  
14 characterize and control upstream and adjacent contamination  
15 sources, which then can result in recontamination,  
16 implementability issues, such as significant challenges  
17 associated with rail and highway transport, aging super  
18 infrastructure and disposal of millions of cubic yards,  
19 significant long-term impacts on communities trying to use a water  
20 body when dredging occurs 24 hours a day for decades.

21 Thank you once again for the opportunity to testify here  
22 today. I believe that appropriate application of CERCLA's NCP  
23 provisions and the sediment guidance and the recommendations

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1 outlined in my written testimony, of which there are seven, will  
2 help make remedy selection decisions at the EPA faster, fairer,  
3 and more efficient. Implementing these recommendations will  
4 help protect human health and the environment, ensure  
5 cost-effectiveness, and provide for efficient use of our natural  
6 resources and save taxpayer dollars.

7 I look forward to answering any questions you may have.

8 [The prepared statement of Mr. Nadeau follows:]

9

10 \*\*\*\*\*INSERT 7\*\*\*\*\*



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1           Mr. Shimkus. Thank you very much.

2           And finally, last but not least, Robert Spiegel, Executive  
3 Director of the Edison Wetlands Association. Again, you are  
4 recognized for 5 minutes. Your full statement is in the record.

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1 STATEMENT OF ROBERT SPIEGEL

2

3 Mr. Spiegel. Sure. And unlike the rest of the speakers  
4 here, I am not going to try to get my 5 minutes and speak everything  
5 I have on my testimony because it is entered into the record. I  
6 want to really just go over a few things, based on what I have  
7 heard as we all as what other people have said.

8 My name is Bob Spiegel. I am the executive director of a  
9 non-profit called the Edison Wetlands Association. And unlike  
10 many of the people that have spoken here, actually I am not a  
11 lawyer. I am not an environmental engineer. What I started out  
12 as was a pastry chef. I went to school for cooking and I ended  
13 up taking a shortcut, or I should say a long cut, when I saw the  
14 condition of the environment in New Jersey and when I saw just  
15 how bad things had gotten in our state. New Jersey has got the  
16 distinction of having the highest population density. It also  
17 has got the highest cancer rate; one in three in the state and  
18 that is something that is unacceptable.

19 And many of the people that spoke earlier talked about  
20 illness in communities throughout the state. And it just appears  
21 to me that you shouldn't have to die, your family shouldn't have  
22 to get sick just because you picked the wrong ZIP code to live  
23 in. And I think that it is beholden up this committee and also

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1 all our elected representatives, both in the House and the Senate  
2 and our President to reauthorize Superfund so that we have the  
3 funds needed to clean these sites up once and for all.

4 We work with communities all throughout New Jersey. We work  
5 with the Ramapough Lunaape, who were featured in an HBO  
6 documentary, Mann v. Ford. We have worked with communities large  
7 and small. And one of the things that we saw was when there was  
8 a robust Superfund program, the cleanups got done. They got done  
9 quickly. They were done comprehensively.

10 As a matter of fact, we got the last check from the Superfund  
11 Trust Fund to clean up the chemical insecticide Superfund site.  
12 It was a site that had green rabbits on it as a result of the  
13 chemicals. And Congressman Pallone had been to the site many  
14 times and met some of the people that lived around the site. It  
15 was next to a roll bakery that made rolls for McDonald's in the  
16 Tri-State area. And I went and testified for the widows of those  
17 people that worked at the roll bakery.

18 And because of the amount of attention, we were able to  
19 actually get a lot of media attention. And Molly Ivins actually  
20 put a chapter in her book, Bushwhacked dedicated to the green  
21 rabbits and the yellow streams. Low and behold, Christy Whitman  
22 shows up with an oversized novelty check and the site now is clean.

23 It cost almost \$50 million and now the site is actually a

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1 dog park. We actually used Green Acres money, the first time in  
2 the state of New Jersey, and bought the property and converted  
3 it into a dog park and now it is a community asset. It is something  
4 that brings the community together; something that once made Agent  
5 Orange and other defoliants that killed servicemen in Vietnam is  
6 now a clean community asset. Why? Because we had money in the  
7 Superfund Trust Fund.

8 The polluters that caused this problem need to be the ones  
9 that pay for it. Now, there is other recommendations that I could  
10 talk about that would make the program better, like using the  
11 removal program and the remedial program, which I think Ms.  
12 Horinko had talked about and we call it remove-ial. It is kind  
13 of a hybrid using the removal program to fast track the cleanup  
14 investigation work which was done at Raritan Bay Slag and get it  
15 up to the point where the cleanup work can start.

16 So, I would echo that recommendation that you look at the  
17 removal program and the remedial program closer and let them do  
18 the work that they do well and then, that way, we could expedite  
19 cleanups.

20 Another thing that we want to see is there could be more  
21 available funding, if only the EPA and the legislators would  
22 pierce the corporate veil of the companies that are responsible  
23 for this pollution. More times than not, we see companies like

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1 Ford Motor Company, and Pfizer, and companies that have the  
2 wherewithal to lobby make decisions that get done in Washington  
3 that affect the cleanups. They get lower cleanup standards. The  
4 cleanups are delayed. And as a result, children get sick and die.

5 One of the last things I just wanted to talk about is that  
6 when you look at the original -- oh, the one thing that we didn't  
7 talk about was the fact that principle threat waste is a major  
8 component and it used to be of all Superfund cleanups. They used  
9 to have cleanups that used to deal with principal threat waste,  
10 which meant they took out the highest threat at a site and then  
11 sometimes the site would be capped, if they couldn't get all the  
12 waste out, but the major threats were removed. That is no longer  
13 done.

14 Principal threat waste removal at sites is done less and less  
15 frequently and I would like to see that trend reversed and the  
16 only way to do that is with proper funding.

17 Just one quick comment. Congressman Eckhardt, during 1979,  
18 at his waste disposal hearings, in the survey, in the final report,  
19 show that the chemical industry used our entire country as their  
20 own private chemical dump. And there was no town that was exempt  
21 from industry's practices. And the Superfund sites that they  
22 created are listed in that report. You can look at them. In  
23 every town in every state in the United States in that final report

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1 that was done in 1979, it lists every single state and every single  
2 community was a dumping ground. And that is why we have so many  
3 Superfund sites today because no one ever thought the magnitude  
4 of the problem that existed actually turned out to be the case.

5 Thank you for letting me come and testify. And I am here  
6 to answer questions you may have.

7 [The prepared statement of Mr. Siegel follows:]

8

9 \*\*\*\*\*INSERT 8\*\*\*\*\*

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1           Mr. Shimkus. Thank you very much. We appreciate your  
2 attendance and your testimony. So, I will start with my 5 minutes  
3 for opening questions.

4           First of all, just really for Ms. Brittain and anyone else  
5 can chime in real quick, the EPA today, and we have heard them  
6 numerous times say they really, they feel the States are valued  
7 partners in this process. Do you think States feel that they are  
8 valued partners in the process?

9           Ms. Brittain. I think that there are several parts of the  
10 process that States do not feel as valued as other parts. And  
11 it varies from State to State and region to region and how much  
12 involvement there is.

13           But yes, there are definitely areas that ASTSWMO works on  
14 to try to encourage state participation in the process.

15           Mr. Shimkus. Does anybody else want to chime in on that?

16           Mr. Spiegel. Yes, I actually would like to say one thing  
17 about the state process. We have 25,000 toxic waste sites,  
18 besides the Superfund sites, in our state and we have no site  
19 remediation program. They made it all voluntary.

20           So, there really is no oversight. They let the polluters  
21 self-regulate in our state and so we really don't have it.

22           Mr. Shimkus. Okay, so for the state of New Jersey, you don't  
23 think the States do. I don't want to get into state for state.

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1           Mr. Spiegel. No, but it is a completely voluntary program  
2 that self regulates and they dismantled the site remediation  
3 program.

4           Mr. Shimkus. Okay.

5           Mr. Spiegel. The one thing --

6           Mr. Shimkus. Thank you. Let me just move on. We will get  
7 back to you.

8           Mr. Spiegel. Can I just make one point?

9           Mr. Shimkus. It depends how quick.

10          Mr. Spiegel. Okay. Yes, the only thing that I would say  
11 that they should include more States is State-recognized Indian  
12 tribes that are recognized by the state should have a seat at the  
13 table and not only federally-recognized tribes like the Ramapough  
14 Lunaape.

15          Mr. Shimkus. Okay. Yes, thank you.

16          All right, Ms. Horinko, and you have already laid out where  
17 you think areas, and so did Mr. Nadeau about different ways we  
18 can improve the system, we appreciate that. So, I am going to  
19 jump to my second question for you, Ms. Horinko, because you laid  
20 those out pretty well.

21          Let's talk about administration reforms. Having come out  
22 of the EPA, what administration reforms you think could be added  
23 to the list of how we can improve the Superfund Program?



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1 Ms. Horinko. The number one administrative reform to me  
2 would be looking at ways to streamline the process. I couldn't  
3 agree more; the remove-ial program was actually piloted in Region  
4 III, I believe in the late '80s, early '90s.

5 Mr. Spiegel. I thought that was my term.

6 Ms. Horinko. Well, victory has a thousand fathers. But we  
7 can concur that that program was very successful. It focused on  
8 the concept that was alluded to earlier. If we know we are going  
9 to put the stuff in a truck and drive it to a permanent landfill,  
10 let's do that.

11 So, that would be the number one recommendation I would have  
12 is looking at the remove-ial program.

13 Mr. Shimkus. Great. Ms. Brittain, do you believe that it  
14 would make for faster and more efficient and cost-effective  
15 cleanup if States were authorized to implement CERCLA?

16 Ms. Brittain. I think it would be a good thing. And I can  
17 speak for the State of Oklahoma right now. We often ask for lead  
18 on our Superfund sites. So, the state takes the lead in  
19 performing those cleanups. And we have the staff and we have the  
20 willingness and we are there in the community.

21 So, we can get back with you on the other States. So, it  
22 might depend but yes, there are States that like to take the lead.

23 Mr. Shimkus. Because we have had these hearings on

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1 Superfund. This is not our first one and I have been on the  
2 subcommittee now for 5 and 1/2 years and there is always, I think  
3 there is a part of this debate is forgotten is how much the States  
4 are asked to pay. That is why the bill of sale or what are the  
5 actual costs, so that you can look at well, we are going to provide  
6 this much, this percentage, what are the real cost drivers. That  
7 is issue one.

8 Issue two is then the continued review of the site after the  
9 EPA finishes. Then that is on the state, that cost.

10 So, you want to be there at the planning and the execution  
11 because you are going to have the burden of the cost infinitum,  
12 once the site gets removed. Is that correct?

13 Ms. Brittain. Yes, that is correct.

14 Mr. Shimkus. Mr. Nadeau, States play an important role, as  
15 we were just discussing, in the cleanup process. Do you think  
16 that States should be authorized to implement CERCLA?

17 Mr. Nadeau. There has been a division of labor where they  
18 take the lead and then EPA has oversight. I think that part is  
19 still important because the sediment guidance and the NCP provide  
20 a really good roadmap on how to make risk-based decisions.

21 And what I wasn't able to say earlier is that the number one  
22 problem we have right now is you have sediment guidance in the  
23 NCP and there is no accountability by the regions to headquarters.

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1           Mr. Stanislaus pointed out there is a lot of discussion but  
2 I don't feel that headquarters even feels it is in their  
3 responsibility to direct the regions if they are off the tracks.  
4 And that is a serious problem because even, for example, on a  
5 cost-effectiveness requirement of the NCP requiring a  
6 proportionality between the remedy and the cost, no one is even  
7 running that analysis, even though it is a regulation of the U.S.  
8 Government. And likewise, it is very important at these sites  
9 that the experts in the NRB and in CSAG, when those recommendations  
10 are made, it is not part of the decision. It is purely voluntary  
11 and advisory. And the regions, basically, and many of them, have  
12 disregarded the recommendations. So, there is no  
13 accountability.

14           And the length of these studies, if you look at Willamette  
15 River in Oregon, as Congressman Schrader pointed out, 15 years  
16 of study, over \$100 million before anything is cleaned up. When  
17 you have five to seven companies that are willing to start tomorrow  
18 to clean up but, because of the all the bureaucracy and the  
19 conservatism of figuring out why this is here and why is that here.  
20 This is not that complicated. They are complex but you can figure  
21 out pretty early on in an adaptive management or operable unit  
22 staged approach. This would be the biggest change that could be  
23 implemented. If you can figure out --

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1           Mr. Shimkus. Yes, I need to get to my colleagues. You will  
2 get a chance to follow-up. My time is way expired.

3           So, the chair now recognizes the ranking member of the  
4 subcommittee, Mr. Tonko, for 5 minutes.

5           Mr. Tonko. Thank you, Mr. Chair. And to all of our  
6 panelists, welcome.

7           Mr. Nadeau, can you explain the changing profile, if there  
8 is such a change, of our Superfund sites? In what ways are they  
9 becoming more complex?

10          Mr. Nadeau. The sediment sites and mining sites, for  
11 example, are geographically large. When you are dealing with  
12 contaminated sediments under a river, you can't see it and get  
13 your arms around it. Basically, we learned a lot of lessons with  
14 land but you can get your arms around it, you can see the edges,  
15 you can test it.

16          Then, with sediment sites, it is mixed. It is moving. You  
17 have ongoing sources that are adding. If you clean up a sediment  
18 site to a level a lot of it being suggested in the Pacific  
19 Northwest, let's just pick a number. Let's say it is ten. There  
20 are still 12 or 15 or 100 parts per million of the same material  
21 coming because of other sources.

22          So, they are complicated but there is no reason it should  
23 take 10 or 15 years to get them done. And there are ways to

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1 streamline that. And the nice thing about this is we think that  
2 the EPA policy is right on target; it just has to be applied. And  
3 if you apply the sediment guidance in good faith, you will get  
4 cost-effective streamlined remedies and you won't need 15 years  
5 to do it.

6 And if you implement a big dredging project, like as proposed  
7 for some of the large sites, maybe it is 15 years to get there  
8 but then it may be 15 years of dredging. And unlike land sites,  
9 another counterintuitive part about this, is when you dredge more,  
10 no matter how careful you are, it creates a problem.

11 And in Commencement Bay in Washington, the State of  
12 Washington has looked at data from before dredging started and  
13 after. And 20 years after the dredging started, the numbers went  
14 from 38 before the problem was fixed to up to as high 211 in  
15 fish and then down to now it is 70 or 80, after 20 years.

16 So, we have basically made it worse.

17 Mr. Tonko. Thank you.

18 Ms. Horinko, do you agree with that assessment? Are the  
19 Superfund sites becoming more complex?

20 Ms. Horinko. The nature of the challenge is becoming more  
21 complex. And this is intuitive. You think about it, the sites  
22 that were easy to clean up, the drum sites, the more focused sites  
23 were cleaned up in the 1980s and the 1990s and the early part of

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1 2000. What is left is the very large contaminated watersheds and  
2 mining sites that it took hundreds of years for them to get that  
3 contaminated. And so it is going to take a long time to put them  
4 back into productive reuse.

5 Mr. Tonko. Which types of sites would you recommend be given  
6 high priority under the Superfund program?

7 Ms. Horinko. It is a hard question to answer because as  
8 someone who formerly ran the program, of course all of my sites  
9 are important. But I would look at sites where people are exposed  
10 immediately. So, where people are actually consuming  
11 contaminated fish or exposed to chemicals in their water supply.  
12 I would immediately look at sites where people are exposed. Those  
13 should be the highest priority.

14 Mr. Tonko. And do you believe that States may be inclined  
15 to list a site on the National Priorities List if there is not  
16 a viable responsible party to bill for the site's cleanup?

17 Ms. Horinko. That may well be the case or, in some States,  
18 the State will threaten to list as a way to get a recalcitrant  
19 responsible party to the table. And that is a very valuable  
20 strategy. I have seen many sites get proposed for the NPL and  
21 never go final because the PRP woke up and said oh, my goodness,  
22 maybe I will snap to attention. So, that is very much a tool.

23 Mr. Tonko. And I agree that there may be more we can do to

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1 empower our state programs. I do not think, however, this solves  
2 the problem of orphaned sites. I believe complex and expensive  
3 cleanups, where there is no responsible party, will likely  
4 continue to be passed on to the federal National Priorities List  
5 and, thus, federal taxpayers.

6 With that, Mr. Spiegel, from your experience, if given enough  
7 resources, can Superfund sites be returned to productive use?

8 Mr. Spiegel. We actually work a lot with both  
9 Brownfields-to-Greenfields and Brownfield redevelopment, where  
10 they get a balanced redevelopment along the Raritan River. We  
11 are working on a very large one right now. It is about 660 acres  
12 as the Keasbey Redevelopment. And we are getting rateables.  
13 They are being cleaned up. And there are resources that are  
14 coming to these cleanups from both the EPA and from the state  
15 because they are generating rateables but it is when groups come  
16 together, when there is emphasis on certain brownfield  
17 redevelopment and we look at balance, I think that works the best,  
18 overall, with bringing all stakeholders together.

19 So, yes, we do see them being cleaned up.

20 Mr. Tonko. Okay and just quickly, you have the experience  
21 to suggest that Superfund Programs have resources challenges. We  
22 know that there are orphaned sites where there is not a potentially  
23 responsible party to clean it up. Are there also sites where a

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1 PRP does exist but does not engage with the EPA because it knows  
2 that the EPA does not have the ability to clean up the site and  
3 send them the bill?

4 Mr. Spiegel. Yes, we see that more and more often. As  
5 Congressman Pallone has said, the responsible parties will do  
6 things to stall or delay. And oftentimes, they will do things  
7 like trying to drag in municipalities and try to bankrupt  
8 municipalities and so that delays the cleanup and then turns the  
9 municipality against its own residence.

10 And so if we could find better ways to pierce the corporate  
11 veil, we would make more money available for cleanups. We would  
12 have less delay and we would have more fair cleanups overall, at  
13 least in New Jersey, if not in the country.

14 Mr. Tonko. Well, my time has expired and with that, Mr.  
15 Chair, I yield back.

16 Mr. Shimkus. The gentleman's time has expired.

17 The chair now recognizes my colleague from Mississippi, Mr.  
18 Harper, for 5 minutes.

19 Mr. Harper. Thank you, Mr. Chairman, and thanks to each of  
20 you for being here on a very important topic.

21 Ms. Horinko, does the National Contingency Plan need to be  
22 updated? And if so, do you have suggestions regarding what needs  
23 to be done?



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1           Ms. Horinko. I do, Congressman Harper. I would take a look  
2 at the copious amount of procedural steps that need to be addressed  
3 as part of the National Contingency Plan, in order to make  
4 long-term remedial decisions. It is stultifying the process.  
5 It is bogging down the ability of States and local governments,  
6 and the regions, even, to get the cleanup decision.

7           So, that would be the first thing I would look at is all the  
8 steps in the long-term remedial program. Can those be collapsed  
9 and made more efficient?

10          Mr. Harper. Right. Your written testimony suggests that  
11 the role of States in implementing Superfund needs to be seriously  
12 reexamined.

13          Would you please elaborate and explain what changes may need  
14 to be made?

15          Ms. Horinko. Yes, the States now have such a deep bench of  
16 capability that didn't exist 35 years ago. Not in every section  
17 of the country but in many sections of the country they have the  
18 capability to manage most of the sites that come our way.

19          So, I am not saying do away with the NPL. I am not saying  
20 do away with the regional presence, by any means. You will always  
21 need that federal backstop but the States are now so robust in  
22 terms of their capacity that I think that they should be empowered.

23          Mr. Harper. Okay, should States be authorized to implement

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1 CERCLA?

2 Ms. Horinko. I think so.

3 Mr. Harper. Okay. How could EPA utilize the process it  
4 undertakes for removal action to make remedial actions more  
5 timely, cost-efficient, and efficient?

6 Ms. Horinko. I would look at the tools that the removal  
7 program has used over the past 35 years. Instead of the  
8 cumbersome RIFS process, which is years' worth of study around  
9 the remedial investigation of feasibility tools, I would look at  
10 the engineering evaluation and cost assessment and see how we can  
11 do in terms of attacking pieces of the problem at a time in these  
12 complex watersheds. I think doing a one size fits all approach  
13 is just bogging things down. I think we need to pick some spots  
14 where we can make improvements today and implement those changes  
15 now.

16 Mr. Harper. Ms. Horinko, your written testimony discusses  
17 the Six Sigma or LEAN Program and notes that it has been used to  
18 make the RCRA Program more efficient.

19 How could that process be utilized to make CERCLA more  
20 efficient?

21 Ms. Horinko. Well, I will commend the EPA for first of all  
22 piloting this process and, secondly, trying to do training across  
23 all ten regions. And I was privileged to attend 3 days of

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1 training in Columbus, Ohio, last year, with the Ohio Remedial  
2 Project Managers.

3 So, I think more awareness, more training. I am working with  
4 members of industry, who have used Six Sigma LEAN processes in  
5 their industrial operations, to bring those lessons learned and  
6 share best practices. So, I think that kind of cultural change  
7 is very beneficial.

8 Mr. Harper. Well, let's discuss technology for just a  
9 moment. How can technology that is available, what is available  
10 now, be utilized to make the Superfund Program more efficient?

11 Ms. Horinko. One of the challenges that was discussed  
12 earlier at this hearing is the integrity of long-term stewardship  
13 controls, engineering controls, legal controls.

14 If you have made a decision that some contamination has to  
15 be left in place for some period of time because it is just not  
16 technically possible to get it out, no matter how hard you try,  
17 then you need to make sure those engineering controls,  
18 institutional controls have integrity. And by using technology,  
19 such as GIS tools and mapping tools and apps on your smart phones,  
20 not only EPA and the state can ensure that those institutional  
21 controls are structurally sound but citizens, real estate agents,  
22 neighbors, property owners can say wow, I see this plume here.  
23 What is being done about it? So, it is very empowering.

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1           Mr. Harper. You were the Assistant Administrator for OSWER  
2 and presumably worked on Superfund guidance regarding how to clean  
3 up contaminated sediment sites during your time at EPA.

4           What is your experience with respect to how well EPA is  
5 currently applying the guidance?

6           Ms. Horinko. My experience has been that the results today  
7 are all over the map. Some regions are adhering closely to those  
8 adoptive management principles. Some are forging their own path.

9           And so the most common complaint I hear is that you get a  
10 different remedy, depending on what region of the country you are  
11 in and that doesn't seem right to me.

12          Mr. Harper. Well, can you give me a specific example of  
13 where EPA is doing a good job and perhaps one where maybe they  
14 are missing the mark?

15          Ms. Horinko. Sure. Sure, the sites where EPA is doing a  
16 good job tend to be not as controversial, not the ones grabbing  
17 the headlines like the Passaic or the Willamette. The  
18 Willamette especially because it is so front page news these  
19 days, is a site where I see the region sort of forging its own  
20 path, not necessarily look at adaptive management approach. So,  
21 I think that is a site where some near-term fixes could be made.

22          Mr. Harper. And my time is up. I yield back. Thank you,  
23 Mr. Chairman.

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1           Mr. Shimkus. Great questions, Mr. Harper. And I will yield  
2 to Congressman Schrader from Oregon for 5 minutes.

3           Mr. Schrader. Thank you very much, Mr. Chairman. I  
4 appreciate the panelists for being here.

5           I guess I will start with Ms. Horinko. I wonder if you could  
6 comment a little bit about the state's role in the EPA Superfund  
7 process.

8           Ms. Horinko. I would be happy to do that. As I indicated  
9 earlier, the States have really matured in terms of their  
10 capabilities over the past 35 years. And I, when I was Assistant  
11 Administrator, helped to defer many sites to state attention  
12 because they have the ability to manage these cleanups. The  
13 States also have the ability to be much more in tune with their  
14 communities because they are on the ground.

15           So, I think the States can play a very important role in the  
16 Superfund going forward with legal authority.

17           Mr. Schrader. Thank you. Again, I am focused a little bit  
18 on the Portland Harbor, obviously. I am concerned about, you know  
19 I hear estimates of costs of \$50 million to fix this or that or  
20 \$100 million. And here, we are talking hundreds of millions of  
21 dollars, if not over a billion dollars.

22           So, it is a very complex project. Every panelist, including  
23 Mr. Stanislaus has talked about this is not your grandpa's cleanup

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1 program anymore. Very complex, difficult approaches and hence,  
2 the adaptive management suggestions that have come out of the  
3 agency over the years and stuff.

4 So, I would like both Ms. Horinko and maybe Mr. Nadeau talk  
5 about why Portland is not being used in an adaptive management  
6 approach.

7 Ms. Horinko. The beauty of adaptive management is that you  
8 don't have to do everything at one time. When you are talking  
9 about ten river miles, you can't clean up ten river miles at one  
10 time. It is just not possible.

11 And so adaptive management is let's try some different  
12 projects in areas where the risk is greatest. And then test out  
13 how that approach worked and then come back and readjust our plan  
14 so that we are constantly improving, constantly incorporating new  
15 science, new data.

16 It is not let's study everything forever and then see if we  
17 can make a decision for all time. Making a decision for all time  
18 is very difficult. Making a decision for the next 5 years is not  
19 that hard of a process.

20 So, I think that is the key thing that I would like to see  
21 applied to this site.

22 Mr. Schrader. Thank you. Mr. Nadeau, do you agree?

23 Mr. Nadeau. I think Ms. Horinko has said it very well.

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1 Mr. Schrader. Do you have anything else?

2 Mr. Nadeau. It allows you to get started on a cleanup early.  
3 Instead of waiting until you think you have the perfect solution,  
4 you could start early. You can address something in 2 years, or  
5 3 years, or 4 years. And then it is a great case study to prove  
6 whether the remedy is working in combination, typically, of  
7 dredging and capping or capping alone. And these are early areas.

8 In a site like the Willamette, you could probably reduce  
9 70 to 80 percent of the risk in an adaptive management mode and  
10 then monitor it. You may find very well that you have done your  
11 job and you just monitor it indefinitely. It is much more  
12 efficient. You can get much more done earlier. And companies are  
13 willing to do this.

14 Companies want to do the right thing. They don't want it  
15 to drag out 15 years. No one is stalling.

16 Mr. Schrader. No. I know that is not the case. They want  
17 to get this thing done. They are as tired as everybody. The  
18 community, the businesses, EPA itself want to get this done. And  
19 so I agree with that and that sounds like that is a very good  
20 approach.

21 I am concerned, Mr. Nadeau, you talk about the sedimentation  
22 guidelines and perhaps not being looked at in a serious way, that  
23 EPA is not following its own recommendations. Now, I am a little

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1 bit of a scientist myself, having spent 30 some years in veterinary  
2 medicine. It seems very logical to me that the dredging does stir  
3 up a lot of stuff, things that haven't been put in suspension.

4 In some of your written testimony, you talk about a couple  
5 of sites where once it was all dredged up, now they are still seeing  
6 more contamination than before the remediation was put into play.

7 Could you comment on how the sediment guidance might be more  
8 helpful for a site like the Portland Superfund site?

9 Mr. Nadeau. Well, the sediment guidance right now requires  
10 examination of source control so that you don't get  
11 recontamination but it also requires your decision to be on a  
12 risk-based approach. And that also includes the risk of harm by  
13 doing an implementation of the remedy. So, no matter how careful  
14 you are, you are not going to get rid of 100 percent of the problem.

15 The newer techniques of capping, which are not new anymore,  
16 will allow you to seal in a lot of that contaminated sediment,  
17 not creating this big uncontrolled cloud. So, no matter,  
18 everyone's intent is to get 100 percent. No one is successful  
19 at that.

20 So, by applying adaptive management, you also get the benefit  
21 of learning the lessons of what worked under the specific  
22 conditions of the sites. It will really allow the environment  
23 to be remediated more quickly and in a very strong protective way



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1 and in an cost-effective manner.

2 Mr. Schrader. Thank you both very much, all of you. I  
3 really hope that EPA looks at the adaptive management guidelines,  
4 the sedimentation guidelines, before they make their record of  
5 decision because, again, I think everyone wants to do the right  
6 thing.

7 And I yield back, Mr. Chairman.

8 Mr. Shimkus. The gentleman yields back his time. The chair  
9 now recognizes the ranking member of the full committee, Mr.  
10 Pallone for 5 minutes.

11 Mr. Pallone. Thank you, Mr. Chairman.

12 I want to thank Bob Spiegel, my constituent for testifying  
13 before the subcommittee today. He and I have worked for many  
14 years on Superfund cleanups in New Jersey.

15 When he was talking about the green rabbits. that was at the  
16 CIC site in Edison, which was, at one point, ranked as the worst,  
17 the most toxic site on the Superfund list. And the used to  
18 manufacture Agent Orange. And then they dumped the Agent Orange  
19 on the site, which is just incredible.

20 But anyway, I wanted to ask you some questions. You know  
21 we talked about how Superfund cleanups are essential for  
22 protecting public health and funding has been cut considerably  
23 over the last decade. And the GAO released a report last year

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1 looking at funding and found that the number of non-federal  
2 Superfund sites increased by 10 percent in the last 15 years, while  
3 funding for the program in the same period fell from \$2 billion  
4 to \$1.1 billion. And obviously, we can't expect to successfully  
5 clean up more sites by slashing funding for the program.

6 So, Bob, I just wanted to ask you, in your experience, how  
7 has this drop-off in funding affected cleanups and have you seen  
8 delays in addressing contamination at specific sites?

9 Mr. Spiegel. At sites where there are orphaned sites, ones  
10 where either there is no viable responsible party or one that is  
11 recalcitrant, the cleanups have pretty much come to a halt.

12 And in a lot of these projects are what they call  
13 shovel-ready. In other words, all the studies are done. All the  
14 work that needed to be done to be done to determine the best type  
15 of cleanup or the most protective cleanup, it is done. They are  
16 just waiting for funding. Then, we are being told that the  
17 funding is not coming.

18 But also, more so, and I think you mentioned this before,  
19 sites where we do have a viable responsible party, the threat of  
20 treble damages is no longer a viable threat because they know the  
21 U.S. EPA is not going to come in. They don't have the resources  
22 to do a 10 or a 20, or a 30 million dollar cleanup, which might  
23 be what is required, as is in the case of the Ringwood Mine

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1 Superfund site, where you have drinking water for two million  
2 people at risk.

3 And so Ford has been just dragging their feet with the  
4 cleanup, when everybody knows that the pink sludge that has been  
5 dumped in the mines up there and the poisoning of the Ramapough  
6 Lunaape tribe, that that sludge has to be taken out, in order to  
7 protect the drinking water for two million people, and to protect  
8 the ancestral rights of the people that live on the mountain. But  
9 Ford knows what has to be done but they have the ability to drag  
10 it out and delay.

11 And that is what we seeing more and more, took, is not just  
12 with orphaned sites but with other sites where there is a PRP that  
13 does have the resources just delays for no real reason, other than  
14 they can.

15 Mr. Pallone. I appreciate that. Before we run out of time,  
16 I wanted to deal with this issue of robust and effective cleanups,  
17 as opposed to capping, for example. And during the first panel,  
18 I asked Mr. Stanislaus about the drop-off in funding and how has  
19 that affected the quality of the cleanups.

20 So, in your experience, have you seen cost, rather than  
21 health concerns, influence the remedies selected for cleanups?  
22 And do you agree with Mr. Stanislaus that the drop-off in funding  
23 hasn't affected the quality of the cleanups?

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1           Mr. Spiegel. I think all you really have to do is to look  
2 at the remedies that have come out since the Trust Fund has been  
3 depleted to look and see what remedies have been chosen and more  
4 and more remedies in New Jersey and in Region II that I have looked  
5 at, they are leaving behind the principle threat waste, which is  
6 what EPA used to always try to remove. Even if they had to cap  
7 some residual waste, they would remove the principle threat waste  
8 as a means to get rid of the source.

9           And now we are seeing that that is no longer being done across  
10 the board. I could probably rattle off 20 sites that I know of  
11 where the principle threat waste is being left behind. It used  
12 to be the exception to the rule and now it seems to be the rule.

13           And when you put a plastic pool cover on a site, all you are  
14 doing is creating a future problem because I think the people on  
15 this panel will agree all caps eventually fail and they require  
16 maintenance. So, what you are doing is creating a problem for  
17 the future and it is always cheaper when you take and you take  
18 these costs and you expand them out to clean up a site and get  
19 rid of the contamination than to have to cap it and monitor it  
20 and babysit it forever.

21           Caps always fail. It is just a question of when.

22           Mr. Pallone. All right, I appreciate all that you do, Bob.  
23 Really, you know, Mr. Chairman, I know he is my constituent. You

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1 would just say oh, you are just saying that because he is your  
2 constituent but --

3 Mr. Shimkus. No, I am not.

4 Mr. Pallone. No, I know. But I mean this guy has been  
5 unbelievable. You know he started out in Edison, which is in my  
6 district, but the Edison Wetlands Coalition is essentially the  
7 main organization in the whole State of New Jersey that deals with  
8 these sites and tries to seek remedies and do cleanup. So, even  
9 though he is in my district, he is really the number one guy in  
10 the state on this issue.

11 Mr. Spiegel. Come visit our dog park, too, the CIC site and  
12 see what happens when you have money in the fund. And the dog  
13 park actually opened last week, so it is something that is --

14 Mr. Shimkus. I look forward to getting my invitation to  
15 visit the dog park.

16 Mr. Pallone. Thanks, Mr. Chairman. Thank you, Bob.

17 Mr. Spiegel. It is certainly better than an Agent Orange  
18 manufacturer.

19 Mr. Shimkus. Amen. Amen.

20 So, thank you. We appreciate your testimony. This  
21 committee, especially the subcommittee, we just really had a  
22 pretty good successful run on reforming the TSCA. And I think  
23 it is somewhat similar. I think we all knew program was broken.

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1 We all knew we could do better. And then that started the process.

2 So, I am not sure where I will be in a 5-year process but  
3 I do think we could better and if we start talking together, maybe  
4 we can move this process and get some of these reforms and get  
5 a quick remediation. So, I appreciate my members and having the  
6 ranking member, especially, Mr. Pallone stay here for the end.  
7 That is unique and that is special and we appreciate that.

8 And with that, I will adjourn the hearing. Thank you for  
9 your testimony.

10 [Whereupon, at 12:32 p.m., the committee was adjourned.]