

Modernizing the Superfund Program

Testimony of Dr. J. Winston Porter Subcommittee on Environment House Committee on Energy and Commerce

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Mr. Chairman, my name is J. Winston Porter, and I am an environmental and energy consultant, based in Savannah, Georgia. Formerly, I was the EPA's Assistant Administrator with national responsibility for the Superfund program

It is a pleasure to be here today to provide testimony on EPA's progress in the cleaning up of Superfund sites. Specifically, I will make a number of recommendations to improve the effectiveness of these remedial activities.

In my testimony I will draw on about 30 years of Superfund experience, including management of the early EPA program as well as consulting activities with various federal agencies, states and private parties. My professional background also includes the fields of chemical engineering and project management. My degrees are from the Universities of Texas (Austin) and California (Berkeley).

I understand that some are critical of President Trump and his EPA Administrator Scott Pruitt for reducing funds for the Superfund hazardous waste cleanup program. But money is not Superfund's problem.

While Superfund has completed over a thousand contaminated sites, the work completed is not nearly commensurate with the huge public and private dollars spent — well over \$100 billion. Also important, people living near Superfund sites are often unhappy with the excessive times needed to complete the sites.

Actually, over the 37- year life of Superfund the basic problem has been site cleanups take too long and cost too much. The good news is that Mr. Pruitt has put a high priority on completing Superfund sites in a timely and cost-effective manner. Also, my belief is that EPA career staff are competent, but what is often missing are EPA presidential-appointees who can ensure that Superfund sites are dealt with effectively.

Specifically, the President and Congress need to get the new Assistant Administrator for Land and Emergency Management (OLEM) in place . As such, this AA has the final

authority to approve Superfund cleanups. In this position, we need a person with technical and project management skills and a strong bent toward environmental results and common sense.

The idea is not for the AA to micro-manage every Superfund site, but to see that major site schedules are adhered to and make, if necessary, final decisions for such complex matters as site remedies.

The key Superfund subordinates for the AA should continue to be the 10 EPA regional administrators and Superfund chiefs. No longer should the making of Records of Decision (site remedies) be made by middle level EPA personnel and committees.

Here are the other steps needed to fix Superfund.

The key is that Superfund remediation is not an exact science, which is why experienced senior managers are needed to deal with such disparate Superfund items as waste toxicity issues as well as cost-effectiveness and community and state interactions with EPA.

Second, EPA should promptly deal with the most important Superfund problem — the lack of firm deadlines for completing projects. It is actually unusual to have clear deadlines for remedy selection and site completion activities.

Also, EPA senior management should insist that remedy selection for Superfund sites should take place in less than 30 months. The assistant administrator can always allow somewhat more time for very complex sites, like remediation of nuclear weapons facilities.

Unfortunately, at many sites, the study work meanders around for 5 to 15 years without even selecting a cleanup remedy. As for costs, some recent studies, ranging from New Jersey to Oregon, have exceeded \$100 million.

Frankly, much of the costly activities are because Superfund has become a lucrative source of work for lawyers and consultants. At a Senate hearing a number of years ago I was asked by the late Senator Frank Lautenberg (D-N.J.) why, after all these years, Superfund cleanups take so long. My answer: At many sites I find few people who seem to really want to finish the project. It is a very lucrative program for many.

One answer to this problem is to ensure that both EPA and the potentially responsible parties need to ensure that the contracted work is only focused on information needed to select the best site remedy.

Third, the most effective part of the Superfund program has been “emergency removals” and other early actions, which directly correct obvious environmental problems. These early cleanup activities also inform later, more extensive work activities

Unfortunately, the EPA bureaucracy and lawyers for the potentially responsible parties (PRPs) often stymie these early action efforts with such interminable debates as to who will pay what.

Fourth, PRPs caught up in Superfund should be more active and not just with their contractors, some of whom tend to string out the process. A more cost-effective approach by PRPs would be to make proposals to EPA for good remedies and then offer to conduct the cleanup work themselves. (They will have to pay anyway someday.)

Over the years, a troubling trend has been for many companies to turn Superfund over to their legal departments. The resultant outside lawyers have increasingly become the de facto Superfund site managers.

The EPA should get rid of “remedy review boards” which were set up years ago to make sure that the “right” site remedy was selected. In other words, EPA middle managers from around the country can second-guess more senior local managers regarding the remedy. This adds much more time to remedy selection and further confuses the EPA chain of command.

Finally, the Congress may need modest legislative activities to ensure some of the fixes noted in this testimony, particularly those related to deadlines for major site remediation activities. Some specific suggestions: The cost and time limits for emergency removals should be increased from two to five million dollars and one year to two years to maximize these cost effective measures.

In addition, within 18 months of a Superfund site listing EPA should identify any early responses needed to deal with obvious contamination problems. The site remedial investigation/feasibility study (RI/FS) should normally be completed in no more than 30 months of site listing on the Superfund list. Finally, a site ROD (remedy) should be issued no later than 12 months of completion of the RI/FS.

Looking ahead, Superfund sites should increasingly be taken on by appropriate state superfund programs, which are usually much less costly than EPA and closer to the problems. For example, unlike air and water issues, waste site problems usually involve a matter of acres and only one state.

Mr. Chairman, I will be happy to answer any questions that you or other members may have.