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6 H.R. 1512, THE CLEAN FUTURE ACT: SUPERFUND PROPOSALS TO

7 ADVANCE CLEANUPS, EQUITY, AND CLIMATE RESILIENCE

8 THURSDAY, MAY 13, 2021

9 House of Representatives,

10 Subcommittee on Environment and Climate Change,

11 Committee on Energy and Commerce,

12 Washington, D.C.

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16 The subcommittee met, pursuant to call, at 10:31 a.m.
17 via Webex, Hon. Paul Tonko [chairman of the subcommittee],
18 presiding.

19 Present: Representatives Tonko, DeGette, Schakowsky,
20 Sarbanes, Clarke, Ruiz, Peters, Dingell, Barragan, Blunt
21 Rochester, Soto, O'Halleran, Pallone (ex-officio); McKinley,
22 Johnson, Hudson, Carter, Duncan, Palmer, Curtis, Crenshaw,
23 and Rodgers (ex-officio).

24 Staff Present: Jeff Carroll, Staff Director; Jacqueline
25 Cohen, Chief Environment Counsel; Adam Fischer, Professional
26 Staff Member; Waverly Gordon, General Counsel; Tiffany
27 Guarascio, Deputy Staff Director; Anthony Gutierrez,

28 Professional Staff Member; Caitlin Haberman, Professional
29 Staff Member; Perry Hamilton, Deputy Chief Clerk; Zach Kahan,
30 Deputy Director Outreach and Member Service; Rick Kessler,
31 Senior Advisor and Staff Director, Energy and Environment;
32 Mackenzie Kuhl, Press Assistant; Brendan Larkin, Policy
33 Coordinator; Dustin Maghamfar, Air and Climate Counsel; Elysa
34 Montfort, Press Secretary; Kaitlyn Peel, Digital Director;
35 Tim Robinson, Chief Counsel; Chloe Rodriguez, Deputy Chief
36 Clerk; Nikki Roy, Policy Coordinator; Andrew Souvall,
37 Director of Communications, Outreach, and Member Services;
38 Rebecca Tomilchik, Policy Analyst; Caroline Wood, Staff
39 Assistant; Sarah Burke, Minority Deputy Staff Director;
40 Michael Cameron, Minority Policy Analyst, CPC, Energy,
41 Environment; Jerry Couri, Minority Deputy Chief Counsel for
42 Environment; Nate Hodson, Minority Staff Director; Peter
43 Kielty, Minority General Counsel; Mary Martin, Minority Chief
44 Counsel, Energy & Environment; Brandon Mooney, Minority
45 Deputy Chief Counsel for Energy; Peter Spencer, Minority
46 Senior Professional Staff Member, Energy; and Michael
47 Taggart, Minority Policy Director.

48

49 *Mr. Tonko. Good morning, the Subcommittee on
50 Environment and Climate Change will now come to order.

51 Today the subcommittee is holding a hearing entitled,
52 "The CLEAN Future Act: Superfund Proposals to Advance
53 Cleanups, Equity, and Climate Resilience."

54 Due to the COVID-19 public health emergency, today's
55 hearing is being held remotely. All members and witnesses
56 will be participating via video conferencing.

57 As part of our hearing, microphones will be set on mute
58 for purposes of eliminating inadvertent background noise.
59 Members and witnesses, you will need to unmute your
60 microphone each time you wish to speak.

61 Documents for the record can be sent to Rebecca
62 Tomilchik at the email address we have provided to staff.
63 All documents will be entered into the record at the
64 conclusion of the hearing.

65 I now recognize myself for five minutes for an opening
66 statement.

67 In 1980 Congress passed the comprehensive Environmental
68 Response, Compensation, and Liability Act, which is now more
69 commonly known as "Superfund." Superfund is critical to
70 protecting Americans' health and the environment.

71 Approximately 73 million Americans live within 3 miles of a
72 Superfund site, and 21 million live within 1 mile of a site.
73 Today there are over 1,300 sites on the National Priorities

74 List. These represent the most contaminated sites in the
75 country.

76 Superfund was established under the principle of the
77 polluters pay. Responsible parties should foot the bill to
78 clean up contaminated sites, not the taxpayers, and
79 definitely not the local communities that have to suffer the
80 potential health consequences of living next to highly-
81 polluted properties. Unfortunately, EPA has not always had
82 the resources to remediate orphan sites, to compel
83 responsible parties to clean up sites, or to conduct cleanups
84 and then seek reimbursement from responsible parties.
85 Hopefully, any future infrastructure bill considered in
86 Congress will provide resources to accelerate this work, and
87 reinstate the Superfund tax.

88 Because we know Superfund sites face serious and growing
89 challenges, they can threaten nearby residents if hazardous
90 substances are left on site. Many Superfund sites are
91 vulnerable to extreme weather events, which are becoming more
92 frequent and severe, due to the effects of climate change.
93 And in the future, we can expect these risks to only grow,
94 due to greater flooding, storm surge, wildfires, and sea
95 level rise. Certainly climate mitigation, as proposed in the
96 CLEAN Future Act, is critical to reducing these long-term
97 risks. But extreme weather is already here, and it is
98 affecting sites today.

99 In 2017 Hurricane Harvey damaged several sites
100 containing hazardous substances, and a report by the
101 Government Accountability Office identified 945 NPL sites
102 that could be impacted by climate change. I am happy to
103 welcome Mr. Gomez back to the subcommittee to discuss that
104 report and GAO's other relevant work. In that report GAO
105 found that EPA regional officials had not consistently
106 integrated climate change, or considered future environmental
107 conditions in risk assessments and remedy selection and
108 design.

109 We must also recognize that climate risks are changing.
110 It is imperative that existing sites, including sites with a
111 remedy in place, continue to monitor and evaluate conditions.
112 It is quite possible that a remedy selected 30 years ago did
113 not adequately anticipate today's or the future's climate
114 realities.

115 And, as is always the case with Superfund, an ounce of
116 prevention is worth a pound of cure. Preventing industrial
117 sites from becoming polluted in the first place is cheaper
118 and safer than remediating them under Superfund. And
119 reducing risks from existing Superfund sites is cheaper and
120 safer than dealing with the health, environmental, and
121 economic consequences of toxic releases.

122 The CLEAN Future Act acknowledges that many Superfund
123 sites are vulnerable to the effects of climate change, and

124 seeks to better direct the program to deal with this fact.
125 The bill requires EPA to establish financial assurance
126 requirements consistent with climate and extreme weather
127 risks at sites. Sites would be able to reduce the amount of
128 financial assurances required by taking steps to reduce risk.
129 This is intended to incentivize prevention and limit future
130 Superfund sites from being created in the first place.

131 This section also amends the definition for Act of God,
132 to ensure that releases due to the possible causal connection
133 to climate change and its effects are not shielded from
134 liability.

135 The bill also sets a 10-year deadline for the
136 identification and remediation of Federal NPL sites that are
137 vulnerable to the effects of climate change.

138 I thank our witnesses for joining us today. I look
139 forward to the discussions that we will have on how we can
140 ensure the Superfund program is taking steps to protect
141 communities in the face of increasing climate and extreme
142 weather risks.

143 [The prepared statement of Mr. Tonko follows:]

144

145 *****COMMITTEE INSERT*****

146

147 *Mr. Tonko. With that I will now recognize Mr.
148 McKinley, our ranking member of the Subcommittee on
149 Environment and Climate Change.

150 Representative McKinley, you are recognized for five
151 minutes for your opening statement, please.

152 *Mr. McKinley. Thank you, Mr. Chairman. Before I start
153 with it, I want the committee to recognize that Chairman
154 Tonko and I are going to be in West Virginia in a district
155 next week. This is an effort for bipartisanship to show how
156 we can work together, and understand that we are going to
157 wind up going back to New York to continue this message. We
158 did this with Peter Welch, and now with Paul. So I really --
159 I think we all ought to take a message from that.

160 But Paul, before I --

161 *Mr. Tonko. I look forward to it, my friend.

162 *Mr. McKinley. Oh, we need -- I think Congress needs to
163 set an example, though, not only on bipartisanship, but on
164 this other matter.

165 We all wanted our schools and our businesses to open and
166 -- during the COVID. So -- and if the Senate and the House
167 and other House committees are having these hybrid and in-
168 person meetings, we are congregating, Paul, as you know, on
169 the floor there, who is directing you not to allow our
170 committee to have in-person meetings?

171 *Mr. Tonko. We seem to be guided by the messaging

172 coming from the physician, the House physician.

173 *Mr. McKinley. So the other committees are violating
174 it?

175 *Mr. Tonko. I just know what our subcommittee is doing
176 and our committee is doing.

177 *Mr. McKinley. I think people are hiding from having
178 these meetings. So look, back on the subject matter, though,
179 Paul, everyone wants to clean up these Superfund sites. They
180 are a blight on America.

181 Unfortunately, as you pointed out, there are over 1,300
182 designated Superfund sites across the country. Under
183 President Obama, he cleaned up 82 sites in 8 years. That
184 only averages 10 a year. So do the math. Under that
185 scenario, it would take us 130 years to remove these blights
186 all across the country. And during that 130 years, as you
187 know, Paul, other sites would be added to the list. So it is
188 a never-ending -- this is -- it is never going to stop.
189 America deserves better, Mr. Chairman.

190 So what was the problem? Under Obama, his focus was
191 entirely on climate, and the Superfund sites were neglected,
192 and they weren't pursued in an aggressive fashion. But how
193 is that different from what Trump did?

194 Trump cleaned up the sites at twice the rate, annual
195 rate, 20 per year. He made cleaning up our sites a priority,
196 as compared to under Obama. His task force developed an

197 emphasis list that -- they were following a plan, one that
198 wasn't politically driven. As a result, sites like Westlake
199 Landfill up in Missouri, Miami Alkali Company in New Jersey,
200 Tar Creek in Oklahoma, Madison Creek in Missouri, they were
201 all taken care of. They have been on the list. But under
202 Obama they couldn't get them taken care of. Trump did. He
203 did what he said he was going to do. So they are all done.

204 He also put together a lean management system that made
205 the Superfund process more efficient, and cleanups happened
206 even faster. He did. He also did it with community outreach
207 programs that -- and all across America -- that we got
208 responses back from elected officials who appreciated this
209 attention to their problem sites.

210 As former Chairman Walden said, mentioned in a previous
211 hearing, in a thank you note an elected official from
212 Portland, Oregon -- hardly a Republican bastion -- wrote that
213 they have been waiting for years for the EPA to clean up the
214 Willamette River and the Portland Harbor. But Trump made it
215 happen. He focused on it. It wasn't climate change. He
216 said, "I am going to clean up these sites," Mr. Chairman.

217 And according to a Politico article last year, a
218 prominent Superfund activist said, even though she couldn't
219 stand Trump, that -- she said he actually was getting
220 something done. He was doing what he said he was going to
221 do. She went on to say, "Obama was terrible on these issues,

222 and Gina McCarthy only cared about the climate.' ' So she
223 went on to say that, until the Trump Administration, the last
224 time she said that that much work had been done on a
225 Superfund site was never. It never happened before.

226 So, Mr. Chairman, this legislation doesn't seem to be
227 supporting going to top the Trump successes, but rather it is
228 going to slow things down, and it is time the CLEAN Future
229 Act -- the Superfund program will be mired again down in
230 climate change debate, and buried under reams of new
231 bureaucratic requirements, and obviously, if history repeats
232 itself, be relegated once again to the back burner, like it
233 was under the Obama-Biden Administration. So in so doing, we
234 can only expect the cleanup process to slow down again, and
235 with less empathy to rural communities saddled with these
236 horrors of Superfund sites in their backyard.

237 So, Mr. Chairman, don't tell me that Congress is going
238 to clean up these sites. Show me. Show me.

239 [The prepared statement of Mr. McKinley follows:]

240

241 *****COMMITTEE INSERT*****

242

243 *Mr. McKinley. Thank you, I yield back.

244 *Mr. Tonko. Thank you. The gentleman yields back, and
245 I will remind my friend that these cleanups don't happen
246 overnight, that decades of work was done. They got completed
247 under his clock, but certainly during the Obama years they
248 continued to work on cleaning up these efforts that are
249 years' worth of effort to make them clean. And if we want to
250 continue that, we need to reimpose the tax.

251 So with that, I will recognize the chair of the full
252 committee, Representative Pallone, our hard-working chair,
253 for five minutes for his opening statement.

254 Chairman Pallone, please.

255 *The Chairman. Thank you, Chairman Tonko.

256 And look, Mr. McKinley, I like you, and I am trying not
257 to be partisan here. And I know you started out talking
258 about being bipartisan.

259 But the bottom line is if you are going to continue to
260 say that somehow Trump did a better job at cleanup than
261 Obama, then I am going to have to respond to that, and simply
262 say that it is not true, okay?

263 I would totally disagree that more was done under Trump
264 than under Obama, or to suggest -- which may be or not, but
265 it sounded like you were suggesting that most of the sites
266 were cleaned up. I assure you they are not. I can take you
267 -- talking about visits, you are going to go to West

268 Virginia. I will certainly take you to a site in my
269 district, in Old Bridge, that is not cleaned up, and
270 basically, nothing happened towards its cleanup under
271 President Trump. Trump did not make it happen.

272 But I would rather get back to what we can do together.
273 But I do have to emphatically start out by saying that it is
274 simply not the case that Trump did more than Obama.

275 And to denigrate Lisa Jackson and Gina McCarthy, who
276 were the EPA administrators, and say that they didn't do
277 anything, that is simply not true. Lisa Jackson, when she
278 became the administrator under Obama, prioritized Superfund
279 cleanups, and I went with her to sites that had been
280 delisted, literally taken off the list, and hadn't been
281 cleaned up, and that we had to go back and re-list them,
282 okay?

283 So and the problem here also is the level of cleanup,
284 right? In other words, you can say -- you could just take a
285 site off the list and say it has been cleaned up, and it
286 hasn't been. Or you can decide to pave it over with asphalt,
287 and not remove the material underneath. And that is not
288 cleanup.

289 But the bottom line is we really need to have -- we
290 can't rely on general revenue, because the list of sites that
291 don't get cleaned up, and the type of cleanups that are
292 ineffective get longer unless you have a pot of money like

293 the Superfund to actually do the cleanup, instead of relying
294 on taxpayers and general revenue. When you rely on general
295 revenue, you don't have a Superfund tax. That means that the
296 taxpayers are using their money from their income tax to
297 clean up these sites. And that is not right. It is the oil
298 and chemical industry that should pay this tax so that we
299 have a fund to clean up these sites, and not rely on the
300 average taxpayer to do it. I just think it is wrong.

301 So let me go back, Mr. Chairman. I have to shorten my
302 -- I guess I will have to introduce my opening statement into
303 the record, because it is too long now, since I have used up
304 this time. But let me try to, if I could, ask unanimous
305 consent to include it in the record.

306 But let me just try to summarize part of it. I wanted
307 to say that there are provisions in the CLEAN Future Act that
308 aim to address these sites, and cleaning up these most
309 vulnerable sites, and prevent new contamination. And these
310 substantive provisions in the CLEAN Future Act complement
311 President Biden's efforts to invest in Superfund cleanups.

312 The American Jobs Plan, which he talked about a few
313 weeks ago, includes a proposal to restore payments from
314 polluters into the Superfund Trust Fund so that polluting
315 industries help fairly cover the cost of cleanups. And that
316 is a \$5 billion investment, if you will, in the remediation
317 and redevelopment of both brownfields and Superfund sites, as

318 well as workforce development investments to turn these
319 properties into economic growth and job creation.

320 Now, I just want to say, for many years I have
321 introduced a bill, the Superfund Polluter Pays Act, which
322 would reauthorize the original Superfund fees, and make
323 polluters, not taxpayers, pay the cost of cleaning up these
324 sites. And I think the taxpayers have been footing the bill
325 to clean up polluters' messes for far too long. Reinstating
326 the Superfund tax will re-establish the polluter pays
327 principle of the law, reduce pressures on the budget, and
328 lead to faster cleanups of these toxic and dangerous sites.
329 And reinstating this polluter pays tax has to be part of any
330 conversation we have in Congress about Superfund.

331 The bottom line is that this Superfund program is an
332 essential tool, and one that we should use as much as
333 possible in order to fight climate change, promote equity,
334 and restore the American economy.

335 And there are many communities around these Superfund
336 sites and potentially dangerous industrial facilities that --
337 I think the people in these environmental justice communities
338 should have some peace of mind that these contaminated sites
339 are being cleaned up, and that polluters are paying for the
340 work, and that we are actively trying to protect their
341 health.

342 Let me just say a lot of these sites are near -- are

343 what we call environmental justice communities. And it is
344 just not fair that the people don't have these sites cleaned
345 up. They have not been cleaned up.

346 [The prepared statement of The Chairman follows:]

347

348 *****COMMITTEE INSERT*****

349

350 *The Chairman. So with that, I will yield back, Mr.
351 Chairman, and thank you for having this very important
352 hearing.

353 *Mr. Tonko. Okay, the chairman yields back. And I will
354 remind him and all of the committee that all documents will
355 be entered into the record at the conclusion of the hearing.
356 So your statement will be part of that.

357 We now recognize Mrs. Rodgers, ranking member of the
358 full committee, for five minutes for her opening statement.
359 So Mrs. Rodgers, please.

360 *Mrs. Rodgers. Thank you, Mr. Chairman. Good morning,
361 everyone. Good morning to our witnesses.

362 And Mr. Chairman, I will just underscore that, as
363 Republicans, we are focused on results, and we look forward
364 to working bipartisan to continue to get results, and make
365 sure that money is prioritized most effectively.

366 Today our subcommittee is having a hearing on provisions
367 in the CLEAN Future Act that are related to the Comprehensive
368 Environmental Response, Compensation, and Liability Act of
369 1980, also known as Superfund.

370 I note that, unfortunately, we are not hearing today
371 from the U.S. Environmental Protection Agency, EPA. It is
372 imperative that members have an opportunity to question and
373 get feedback from EPA in a hearing setting. We need to hear
374 about the feasibility of this legislation, and how it would

375 be implemented. Having any kind of discussion about changing
376 Superfund cannot occur in a vacuum. So much has occurred in
377 this program and at these sites in the last four decades that
378 ignoring history risk makes Superfund outcomes worse.

379 I know the chairman of the full committee is a big
380 supporter of reinstating the Superfund tax as a way of curing
381 what ails Superfund. For me, though, as I said at our budget
382 hearing, we need to know exactly what all the money is
383 buying. Past GAO studies have shown that EPA's Superfund
384 program was spending less than \$.50 of every dollar out of
385 its cleanup budget on dirt-moving cleanups at these heavily
386 contaminated sites.

387 In addition, Superfund sites were taking what seemed
388 like forever to clean up. Let's focus on results. Let's
389 focus on reality. Provisions in this bill likely will slow
390 progress and add costs.

391 One provision removes the Act of God defense for
392 liability for unanticipated natural events if they are
393 connected to climate change. This is simply unrealistic.
394 Human activity certainly influences climate change, but
395 legislating the words out of a statute is not going to change
396 the fact that we experience Acts of God.

397 In my home state of Washington, people are painfully
398 aware of the 4 Superfund sites at Hanford, 32 years, and the
399 Puget Sound Naval Shipyard, 27 years. More specific to my

400 own district, Fairchild Air Force Base has four waste areas
401 that officially have been on EPA's priority list even longer
402 than Hanford and Puget Sound.

403 We need to figure out how to move protective cleanups
404 along, rather than ways to make them take more time. That is
405 why many of my Republican colleagues and I were so pleased
406 with the work of the previous Administration. They
407 prioritized listening to affected communities, getting the
408 cleanups done, and removing these sites from the National
409 Priorities List. The previous EPA didn't just say -- they
410 didn't just say it, they did it, and the most delistings of
411 cleaned Superfund sites in 20 years. And the Trump EPA
412 positioned even more sites to complete their cleanups and
413 received delisting in the not-too-distant future. They will
414 not get credit for doing this, but all Americans are the
415 winners when communities can turn the page to redevelopment
416 and a cleaner future.

417 Superfund and the communities with these sites have been
418 marred by stigma, litigation, and delay. We should avoid
419 creating more of that and, instead, produce the one thing
420 Superfund was meant to do: clean up. Perhaps that is why so
421 many of us are big fans of the brownfields program, the
422 sunniest side of the Superfund law. Brownfields is a 20-year
423 program that has successfully returned blighted properties
424 back into productive use, whether for retail, industrial, or

425 renewable energy. In eastern Washington, we have seen the
426 benefits of brownfield grants for the Hillyard neighborhood
427 and Riverfront Park in Spokane.

428 I appreciate the CLEAN Future Act is only trying to
429 further extend the brownfields program. What is concerning
430 for me is the significant funding increases, and whether
431 statutory funding criteria will be applied. I look forward
432 to hearing the testimony of our witnesses, and further
433 discussing these concerns with the Superfund provisions in
434 the CLEAN Future Act.

435 We have seen in previous administrations how to approach
436 Superfund in a successful way with prioritization, engagement
437 with communities, and progressive cleanup actions. Let's
438 keep working on results. Let's keep getting outcomes, not
439 delays in inaction.

440 [The prepared statement of Mrs. Rodgers follows:]

441

442 *****COMMITTEE INSERT*****

443

444 *Mrs. Rodgers. And thank you, Mr. Chairman. With that,
445 I yield back.

446 *Mr. Tonko. The gentlelady yields back.

447 The chair would remind members that, pursuant to
448 committee rules, all members' written opening statements
449 shall be made part of the record.

450 I now will introduce the witnesses for today's hearing:
451 Mr. Alfredo Gomez, director of the -- natural resources and
452 environment for the U.S. Government Accountability Office;
453 Ms. Amanda Goodin, staff attorney at Earthjustice; Ms. Laurie
454 Matthews of counsel, Morgan Lewis and Bockius LLP, on behalf
455 of the Superfund Supplements Project; and finally, Ms. Amy
456 Catherine Dinn, managing attorney with the environmental
457 justice team, equitable development initiative at the Lone
458 Star Legal Aid.

459 I recognize Mr. Gomez now for five minutes to provide
460 his opening statement.

461 Mr. Gomez, please.

462

463 STATEMENT OF J. ALFREDO GOMEZ, DIRECTOR, NATURAL RESOURCES
464 AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (GAO);
465 AMANDA GOODIN, J.D., STAFF ATTORNEY, EARTHJUSTICE; LAURIE
466 DROUGHTON MATTHEWS, J.D., OF COUNSEL, MORGAN, LEWIS, AND
467 BOCKIUS LLP, ON BEHALF OF THE SUPERFUND SETTLEMENTS PROJECT;
468 AND AMY CATHERINE DINN, J.D., MANAGING ATTORNEY,
469 ENVIRONMENTAL JUSTICE TEAM, EQUITABLE DEVELOPMENT INITIATIVE,
470 LONE STAR LEGAL AID

471

472 STATEMENT OF J. ALFREDO GOMEZ

473

474 *Mr. Gomez. Chairman Tonko, Ranking Member McKinley,
475 and members of the subcommittee, good morning. I am pleased
476 to be here today to discuss our October 2019 work on
477 Superfund sites that may be impacted by climate change, and
478 the steps that the EPA can take to manage these risks.

479 As it has been noted already, the National Climate
480 Assessment -- some natural disasters will become more
481 frequent or intense, which may damage Superfund sites, and
482 potentially release contaminants. Today I will discuss the
483 number of non-Federal Superfund sites climate change may
484 potentially affect, EPA's efforts to manage the potential
485 impacts of climate change at these sites, and the challenges
486 EPA faces in doing so.

487 To conduct our work, we obtain data from EPA on the

488 location and characteristics of non-Federal Superfund sites,
489 and we also obtain data from FEMA, from NOAA, and the U.S.
490 Forest Service on flooding, storm surge, sea level rise, and
491 wildfires. We then map these climate change effects on top
492 of Superfund sites. And this mapping showed that, in 2019,
493 about 60 percent of all non-Federal Superfund sites, or 945,
494 were located in areas that may be impacted by these potential
495 climate change effects.

496 If I can, please show a map on the screen.

497 [Slide.]

498 *Mr. Gomez. And this map, which is also in our
499 testimony statement, in our report, you can see the red dots.
500 And the red dots are the Superfund sites that you can see are
501 scattered throughout the U.S. But these are Superfund sites
502 that may be affected by one or more of these climate change
503 effects.

504 So, for example, you can see Superfund sites along the
505 Eastern Shore, and the Gulf Coast, and the Great Lakes. You
506 can even see them along rivers. And then you see them in the
507 western U.S., which -- you have the additional risk of
508 wildfire.

509 If you can, please remove the map.

510 So, with regards to flooding, 783 non-Federal Superfund
511 sites throughout the United States were in areas that have
512 moderate or high flood hazard or other flood hazards,

513 according to FEMA. For example, the San Jacinto River waste
514 -- Superfund site in Houston, Texas, sits in a flood hazard
515 area. Record-breaking flooding during Hurricane Harvey
516 eroded the temporary cap that contained the waste, and
517 exposed some of the contaminants.

518 With regard to wildfires, 234 non-Federal Superfund
519 sites were in areas that have high or very high wildfire
520 hazard potential, based on a U.S. Forest Service model. For
521 example, the 2018 Carr Wildfire almost destroyed the water
522 treatment plant that protects the Sacramento River from toxic
523 acid mine drainage at the Iron Mountain site in Northern
524 California. Firefighters successfully put out the fire
525 before it reached the ore body in the mine, which could have
526 led to an explosion and substantial environmental and health
527 hazards.

528 We found that EPA had taken some actions to manage risks
529 from climate change at non-Federal sites. For example, EPA
530 had identified these risks at Monitor, and communicated about
531 the risks.

532 In addition, EPA had taken some steps to assess and
533 respond to these risks. However, they had not consistently
534 incorporated potential climate change effects into site level
535 risk assessments and risk response decisions. EPA did not
536 always have the climate data they needed to do so, or the
537 direction on how to alter practices to account for climate

538 change. Absent such information and direction, EPA cannot
539 ensure that it has remedies to protect human health and the
540 environment in the long term.

541 Lastly, we found that EPA faces several challenges in
542 managing these risks. These include technical resource and
543 institutional challenges. So, for example, some EPA
544 officials told us they need additional expertise and
545 training. Insufficient or changing resources may also make
546 it challenging for EPA to manage these risks. For example,
547 designing or modifying an existing remedy could increase
548 costs.

549 We made four recommendations to EPA, including that it
550 provide additional direction on integrating climate
551 information, such as projections for flooding or rainfall
552 into site-level decision-making. EPA originally agreed with
553 one recommendation and disagreed with the others, but is now
554 currently taking steps to respond to three of the
555 recommendations, and is considering action on the other.

556 Chairman Tonko and Ranking Member McKinley, this
557 completes my statement, and I am happy to answer questions in
558 this report or other related Superfund reports. Thank you.

559 [The prepared statement of Mr. Gomez follows:]

560

561 *****COMMITTEE INSERT*****

562

563 *Mr. Tonko. Thank you, Mr. Gomez, and we now welcome
564 Ms. Goodin.

565 Ms. Goodin, you are recognized for five minutes, please.

566

567 STATEMENT OF AMANDA GOODIN

568

569 *Ms. Goodin. Thank you, Chairman Tonko and Ranking
570 Member McKinley. Good morning. My name is Amanda Goodin,
571 and I am an attorney with Earthjustice. I have been
572 litigating and advocating for CERCLA financial assurance
573 requirements for nearly a decade. I want to focus this
574 morning on the importance of the financial assurance
575 provisions in section 631.

576 Financial assurances are, basically, insurance or
577 bonding requirements. Broadly speaking, we require insurance
578 for all kinds of activities. To drive a car, you need car
579 insurance. If you want to buy a home with financing, you
580 need homeowner's insurance. And if you want to rent an
581 apartment, you need a security deposit.

582 But you don't need insurance to handle hazardous
583 substances. You don't need insurance, even if the tanks you
584 use to store toxic chemicals are obviously corroding and on
585 the brink of failure. You don't need insurance, even if your
586 storage pond of hazardous sludge is in an area that is prone
587 to flooding. You don't need insurance, even if a spill at
588 your facility would likely cause loss of life, contaminate
589 drinking water, or devastate the surrounding ecosystem.

590 This makes no sense, and it has to change. There are
591 three important reasons that Congress should require

592 facilities to have financial assurances under CERCLA.

593 First, these requirements help ensure that hazardous
594 spills are cleaned up thoroughly and quickly.

595 Second, financial assurances promote basic fairness by
596 ensuring that the polluter pays for cleanup, and not the
597 public.

598 Third, financial assurances can prevent spills from
599 happening in the first place, by creating strong financial
600 incentives for best practices. Polluters are more likely to
601 prevent spills that they will have to pay to remediate. And
602 third-party insurers may require best practices as a
603 condition of coverage or to reduce premiums.

604 Now, we have already seen what happens without financial
605 assurances, and it is not pretty. There are around 1,300
606 sites on the National Priorities List. These are the most
607 heavily contaminated sites in the country. The cost to clean
608 up a single one of these sites can run from hundreds of
609 millions to even billions of dollars for a single site.

610 Many of these cleanups are being funded by the public,
611 in whole or in part. Despite the huge amount of taxpayer
612 funds that go to these cleanups, we are not actually making
613 much progress on the National Priorities List, and that is
614 because new sites get added every year, as fast or faster
615 than we can clean up the sites that are already on the list.
616 We are trying to fill this hole, and we just keep digging

617 ourselves in deeper and deeper.

618 The problem has actually gotten worse since the
619 Superfund tax expired. Now there is even less funding for
620 cleanup, and the Superfund has to ration resources between
621 these heavily contaminated sites. Spreading out these
622 resources is a huge problem, because it means cleanup goes
623 slow. And sometimes the toxic mess gets even worse and
624 harder to clean up if you let it sit for too long. And when
625 cleanups go slow, anyone who lives near one of these sites
626 has to live with the toxic mess in the meantime.

627 We also know that climate change will make this problem
628 even worse. We are facing more and more extreme weather
629 events as our climate warms. And we have already seen how
630 severe weather events can cause huge spills at facilities
631 that aren't prepared. Unless we require companies to have
632 insurance or bonding to cover their own costs of cleanup, we
633 will just keep adding sites to our national backlog faster
634 than we can address the ones we already have. And we are
635 going to have to keep going back to the public to foot the
636 bill.

637 This problem is preventable. Strong financial assurance
638 requirements decrease spills, especially when they make the
639 amount of assurance contingent on a facility's use of best
640 practices. When spills do occur, strong financial assurance
641 requirements mean those spills are cleaned up quickly and

642 thoroughly. And they also mean that the cleanup happens at
643 the polluter's expense, not the taxpayers'.

644 Even with financial assurance rules, unforeseen
645 disasters will occasionally strike. We are still going to
646 need funding for Superfund site cleanup. But we also need
647 industries to do their fair share. Facilities have to assess
648 the risks posed by climate change. They have to employ best
649 practices to prevent spills from climate-related weather or
650 any other cause. And they have to carry insurance so that,
651 if something does go wrong, they are not passing their bill
652 onto the rest of us. Financial assurance requirements do
653 just that.

654 Thank you. I yield back the remainder of my time.

655 [The prepared statement of Ms. Goodin follows:]

656

657 *****COMMITTEE INSERT*****

658

659 *Mr. Tonko. Thank you, Ms. Goodin. And now we welcome

660 Ms. Matthews.

661 You recognized, Ms. Matthews, for five minutes, please.

662

663 STATEMENT OF LAURIE DROUGHTON MATTHEWS

664

665 *Ms. Matthews. Thank you. Chairman Tonko, Ranking
666 Member McKinley, Chairman Pallone, Ranking Member Rodgers,
667 and members of the subcommittee, I am Laurie Droughton
668 Matthews. I am of counsel with Morgan, Lewis and Bockius,
669 and today I appear on behalf of the Superfund Settlements
670 Project. Thank you for the opportunity to be here today.

671 The Superfund Settlements Project, or SSP, is an
672 association of major companies from many different sectors of
673 American industry. SSP was organized in 1986 to help improve
674 the effectiveness and efficiency of the Superfund program.
675 Superfund today is a mature program that addresses legacy
676 contamination, generally dating back many decades, from a
677 time when environmental regulation was nonexistent. In
678 contrast, today the gaps, or lack of environmental regulation
679 that led to the creation of the large majority of Superfund
680 sites, has been filled.

681 Today private parties are cleaning up greater than 70
682 percent of the sites on the NPL, working closely and
683 cooperatively with the EPA. At these sites PRPs are paying
684 the full cost of those cleanups, including reimbursement of
685 all of the EPA's direct costs and overhead, and covering most
686 orphan shares. Great progress has been made over the last
687 four decades, and PRPs, such as the members of SSP, are

688 dedicated to the efficient remediation of NPL sites for the
689 benefit of the environment and surrounding communities.

690 Section 631 of the CLEAN Future Act would require
691 financial assurances at facilities that are not Superfund
692 sites, but operating facilities.

693 Section 631 would impose significant costs on industry
694 anticipating release or other impacts due to climate change,
695 but do nothing to avoid those impacts.

696 Further, section 631 would impose financial assurance
697 requirements on risks that are beyond the scope and goals of
698 CERCLA, because it is untethered to the release or threatened
699 release of hazardous substances.

700 Instead of providing financial assurance for damage from
701 potential extreme events that may never occur, it would be
702 more sensible and effective to require companies to spend
703 money to protect their facilities against disaster. As
704 mentioned before, industry is now subject to numerous
705 preventative Federal and state regulatory programs.
706 Specifically with regard to releases that could potentially
707 lead to a CERCLA response, these existing laws address the
708 range of risks by requiring safe operation, implementing
709 programs to minimize on a release, and requiring addressing
710 any resulting environmental conditions promptly if they do
711 occur.

712 In short, the risks the proposed section 31 (sic) is

713 targeting that an operating facility will become a Superfund
714 site can be addressed by working within the regulatory
715 structure already in place. And indeed, EPA is already --
716 has already begun to address climate change impacts
717 throughout its programs, including CERCLA response. EPA has
718 a climate change adaptation plan that addresses risk through
719 agency programs that helps to avoid the impacts of climate
720 change. EPA's approach promotes resilience and strength in
721 the face of extreme events, as compared to tying up money to
722 address potential future impacts.

723 Imposing financial assurance requirements on industries
724 that are generally financially sound is unnecessary. That
725 some small percentage of facilities may be at risk cannot
726 justify significant financial burden on the large majority.
727 The cost of the assurance instruments is not trivial. In
728 contrast, there is real potential that the cost could be
729 staggeringly high. Accordingly, a potential consequence of
730 imposing these onerous financial assurance requirements could
731 be facilities relocating from their communities.

732 Importantly, the risk that section 31 -- 631, my
733 apologies -- is seeking to address is speculative, and would
734 be essentially impossible to value. Climate data is
735 inherently limited, and modeling the scenario analysis
736 involves a high degree of uncertainty.

737 Furthermore, as recognized during the development of the

738 CERCLA 108(b) regulations, there is significant potential
739 that the market would not have the capacity for such a
740 program. The breadth of the section and what is sure to be
741 an inability to reasonably value a speculative risk would
742 undoubtedly lead to multiple legal challenges.

743 Section 636 of the CLEAN Future Act is vague and,
744 unfortunately, unrealistic. Even if section 636 is limited
745 to Federal facilities, the goal is not achievable. Superfund
746 sites are complex, and it takes time. Some sites simply need
747 more time to allow for study to understand the nature and
748 extent of contamination. Some site conditions will not allow
749 for expeditious cleanup. Some remedies that may no -- that
750 may be longer-term solutions can be the better choice, based
751 on numerous other factors, including environmental justice.
752 Forcing timelines on site remediation also simply hasn't been
753 shown to work, and may not be in the best interest, even if
754 it did. Other sites may be prioritized for more important
755 reasons, or other considerations than climate change impacts.

756 Instead of forced timelines that may end up with
757 decisions not based on sound science, and not being the best
758 for the environment or the community, greater efficiency can
759 be achieved by reforms to the program, using lessons learned
760 from the 40-year experience within the Superfund program.

761 Thank you.

762

763 [The prepared statement of Ms. Matthews follows:]

764

765 *****COMMITTEE INSERT*****

766

767 *Mr. Tonko. The gentlelady yields back.

768 Now, Ms. Dinn, you are recognized. Welcome, by the way,

769 and you are recognized for five minutes, please.

770

771 STATEMENT OF AMY CATHERINE DINN

772

773 *Ms. Dinn. Good morning. My name is Amy Catherine
774 Dinn. I am the managing attorney for the environmental
775 justice team at Lone Star Legal Aid, which is part of the
776 firm's equitable development initiative.

777 Lone Star Legal Aid is a 501(c)(3) nonprofit law firm
778 focused on advocacy on behalf of low-income and underserved
779 populations. For the past four years, I have assisted these
780 communities in Lone Star Legal Aid's 72-county service area
781 along the Texas Gulf Coast and eastern Texas to fight
782 environmental injustices in their area. Based in Houston,
783 our environmental justice team has worked to address
784 disparities in these communities, which are particularly
785 vulnerable to pollution resulting from climate change because
786 of no zoning policies, and the historical siting of
787 facilities that compromise -- that comprise the area's
788 significant petrochemical industry in low-income areas and
789 communities of color.

790 The Environmental Justice Team of Lone Star Legal Aid
791 thanks you for the opportunity to speak today regarding the
792 Superfund proposals to enhance cleanups, equity, and climate
793 resilience in the proposed CLEAN Future Act. Specifically,
794 section 631 and 636 of the CLEAN Future Act contain important
795 provisions to environmental justice communities in Lone Star

796 Legal Aid's service area. These provisions offer protections
797 to environmental justice communities, and ensuring legacy
798 contamination in flood plains and subject to extreme weather
799 events are prioritized for remediation, and that the
800 facilities have appropriate financial assurances to guard
801 against the known risk posed by climate change.

802 In 2017 Hurricane Harvey, which dropped a record 16
803 inches of rain over 5 days in the region, served as a wake-up
804 call for the Texas Gulf Coast and the nation, as the region
805 struggled with unprecedented contamination that filled the
806 floodwaters, directly impacting the health of many low-income
807 communities.

808 In Channelview and the Highlands, the protective cap at
809 the San Jacinto River waste pits Superfund site was breached.
810 Sampling after the floods of Hurricane Harvey showed very
811 high levels of dioxin and furan along the surface of the
812 northwest part of the waste pit.

813 In the Manchester community near the Houston Ship
814 Channel, residents suffered exposure exceeding lifetime
815 cancer risk from contaminants which can attach themselves to
816 floodwaters.

817 And in Port Arthur, a wastewater facility operated by
818 one of the largest chemical product producers in North
819 America was responsible for the single biggest wastewater
820 spill during Hurricane Harvey, releasing more than 100

821 million gallons.

822 The frequency of heavy rainfall events in the Greater
823 Houston Area appears to be increasing. Between 1981 and
824 2000, the odds of a rainfall event of more than 20 inches
825 increased by 1 percent. This frequency is expected to grow
826 by 18 percent between 2018 and 2100. The reality of climate
827 change and extreme weather events puts these environmental
828 communities continually at risk for increased exposures to
829 pollution, not only from surplus sites, but also other sites
830 where contamination is present, such as brownfields.

831 There are 33 Superfund sites in Lone Star Legal Aid's
832 service area; 27 of these sites have some identified risk
833 associated with climate change or extreme weather events,
834 based on the GAO's analysis of data from the EPA, FEMA, NOAA,
835 and the U.S. Forest Service. The analyzed risk to these 27
836 sites include threats from flooding, sea level rise,
837 hurricanes, and wildflowers -- wildfires.

838 Superfund sites like French Limited, near a historic
839 Black settlement called Barrett Station, have recognized
840 impacts due to Hurricane Harvey, where underground plumes of
841 benzene and tertiary butyl alcohol at the site moved since
842 the record of decision was entered, and will continue to
843 threaten adjacent communities with the possibility of
844 contamination and, likely, flood waters.

845 We thank you again for the opportunity to share Lone

846 Star Legal Aid's work on addressing community concerns around
847 Superfund sites and ongoing threats posed by climate change
848 to these sites. We are hopeful that legislation like the
849 proposed Act will assist in prioritizing cleanup of these
850 vulnerable sites, and to ensure that there is sufficient
851 financial accountability to address the ongoing threat posed
852 by climate change to environmental justice communities.

853 Thank you, and I yield back the rest of my time.

854 [The prepared statement of Ms. Dinn follows:]

855

856 *****COMMITTEE INSERT*****

857

858 *Mr. Tonko. Thank you, Ms. Dinn. We now will move to
859 member questions, and I will start by recognizing myself for
860 five minutes.

861 The effects of climate change are already here, and
862 already impacting communities across our country. For
863 communities around facilities storing or disposing of
864 hazardous materials, and communities next to Superfund sites
865 waiting for cleanups, the risks from climate change are
866 particularly high. We must protect these communities by
867 addressing climate change, adapting to extreme weather, and
868 cleaning up the pollution already in our environment.

869 The CLEAN Future Act would put us on the path to net-
870 zero greenhouse gas pollution by 2050, and would align with
871 our new NDC under the Paris Agreement with at least a 50
872 percent reduction by the year 2030.

873 So Ms. Dinn, how are the communities you represent
874 already being impacted by climate change?

875 [Pause.]

876 *Mr. Tonko. You need to unmute, please.

877 *Ms. Dinn. Apologies. As I just outlined in my
878 testimony, the effects of climate change are here. We have
879 contaminated floodwaters that are flooding communities. And
880 in some ways, it is difficult to track exactly how much
881 contaminants are being carried into these communities from
882 these adjacent sites, which is, actually, beyond the scope of

883 just Superfund sites, because of the number of facilities
884 that are operating currently in the area, and then residual
885 sites that are more classified like brownfields. But it is
886 clear that we have --

887 *Mr. Tonko. Okay, and how --

888 *Ms. Dinn. What?

889 *Mr. Tonko. I am sorry, go ahead.

890 *Ms. Dinn. No, it is clear that we have health impacts
891 on these communities. We have got cancer clusters being
892 discovered regularly in our area that have direct ties to
893 prior legacy contamination.

894 *Mr. Tonko. And obviously, it is imperative that these
895 communities be addressed by the risks of climate change.

896 *Ms. Dinn. I believe so. These sites, particularly,
897 need to be prioritized for cleanup to ensure that there are
898 not continued health impacts felt over and over again from
899 flooding events.

900 *Mr. Tonko. And as you noted, many of these effects of
901 climate change are already here, and adaptation is essential.
902 So how can adaptation and resilience help the communities
903 that you represent?

904 *Ms. Dinn. Well, I think we need to be prepared to
905 address climate change. And part of that is starting the
906 remediation process. So, for example, in the San Jacinto
907 River waste pits, which I mentioned, prioritizing an actual

908 plan for remediating that site, given an acknowledgment,
909 finally the cap had breaches in it, and needed to be
910 completely replaced, and all of the contaminants removed.

911 There are some challenges with respect to that site
912 because it is in the San Jacinto River, which is its own
913 floodway. But there are -- at least the communities were
914 responsive to the idea of actually prioritizing this site,
915 because not much had been done in the last 10 years prior to
916 that -- Hurricane Harvey, recognizing the real threat that
917 was happening in the community.

918 *Mr. Tonko. Several of the provisions under discussion
919 today aim at adaptation by creating incentives. For example,
920 the bill makes clear that facility owners and operators will
921 be responsible for toxic releases that occur during extreme
922 weather events. So, Ms. Dinn, do you agree that making that
923 change can incentivize the adaptation that protects the
924 communities you represent?

925 *Ms. Dinn. Yes, absolutely, I think it is essential for
926 the communities to be protected and -- in that way.

927 *Mr. Tonko. Liability under Superfund has always been a
928 tool to incentivize the safe handling of hazardous
929 substances. Now that our climate is changing, the statute
930 should change, too. So, obviously, extreme weather risks
931 will continue to change as our climate changes.

932 Mr. Gomez, is there a concern that a remedy selected 20

933 or 30 years ago may not have taken into account climate-
934 related risks as we understand them today?

935 *Mr. Gomez. Yes. So that is a good question. And that
936 was one of the intents of our studies, right, was to look at
937 those sites, especially those sites that have remedies that,
938 as you said, are so old. And the question being, are they
939 protected today, right? Knowing these potential hazards that
940 exist, is that the case?

941 *Mr. Tonko. And how important is it for EPA to monitor
942 and regularly review sites using the latest understanding of
943 climate science?

944 *Mr. Gomez. We would say that it is very important.
945 You know, EPA does have -- for those sites that are
946 completed, they do that review every five years, which is a
947 good opportunity, then, to visit that remedy that is in
948 place, to see if it continues to be protected, given the
949 information that they have today.

950 *Mr. Tonko. So is it doing enough? Is EPA doing enough
951 in accounting for climate risks in its assessments and remedy
952 selections today?

953 *Mr. Gomez. So -- right. So what we found is that it
954 was incorporating some of this information when it was
955 available, and in other cases, when it was not available,
956 people weren't doing it. People didn't know where to get it
957 from. People were challenged with finding the climate

958 experts, even within the same agency, to help them think
959 through those things.

960 So part of our recommendations were along those lines,
961 right, to ensure that everyone has the information, the
962 guidance that they need, so they can make those better
963 decisions on the ground.

964 *Mr. Tonko. Thank you, Mr. Gomez, my time is up. I
965 will now recognize Mr. McKinley, our subcommittee ranking
966 member, for five minutes to ask questions, please.

967 *Mr. McKinley. Thank you again, Mr. Chairman. I think
968 we all have to remember what our goal is here, and that is
969 that we want to clean up our sites as expeditiously as
970 possible, and not put more further impediments in the way
971 with it.

972 So if I could turn to Ms. Matthews on -- with some
973 questions, I -- so my first question would be are the
974 provisions in this bill that we have talked -- are they going
975 to continue the pace that the EPA was implementing under
976 President Trump, or are they likely to slow down the cleanup
977 process and do less?

978 *Ms. Matthews. I think that they have some potential to
979 slow down the cleanup process, and to divert resources to
980 something that is not -- that isn't part of the cleanup
981 process.

982 So what I hear some of my other panelists talk about is

983 that things need to happen, and that there are impacts from
984 climate change. And then -- so the sites need to -- the
985 response actions at those sites need to address that.

986 But having those financial assurance provisions is not
987 doing that. It is going to put this massive program in place
988 that will make -- tons of money will be spent on it, and
989 resources at EPA will be -- will need to monitor it. And not
990 just one time, but annually.

991 It is a big program. There is a lot of work to be done
992 for Superfund.

993 *Mr. McKinley. Okay.

994 *Ms. Matthews. Let's do the work.

995 *Mr. McKinley. All right. I think you -- and you just
996 touched on one thing that Ms. Goodin said, that they don't
997 have insurance on the thing. For those of us that are --
998 that come from the business world, understand that all of
999 these petrochemical companies or all industries that are
1000 producing these have liability insurance. So she -- I think
1001 she just misrepresented over the insurance provision with it.

1002 So in -- further, in my opening statement, I talked
1003 about, at the pace we are on, we are talking about -- we
1004 could be as much as 100 years before we clean up existing
1005 sites, and then we are going to be -- as others have said, we
1006 are going to be adding more to this in the future.

1007 So my question back to Ms. Matthews again is, how --

1008 what would you recommend? How can we improve the existing
1009 program to expedite this cleanup, but without adding more
1010 bureaucracy, more big government? What is your solution to
1011 that?

1012 *Ms. Matthews. Like I said in my statement, the
1013 Superfund program is now very mature. We have 40 years of
1014 experience, and there are definitely lessons learned where we
1015 can start to make some progress at streamlining some of the
1016 issues.

1017 The RIFS, the remedial investigation feasibility study
1018 guidance, dates back to the 1990s. Certainly, we know how to
1019 do things better.

1020 One of the initiatives that the Superfund Task Force
1021 looked at under the last Administration was adaptive
1022 management. Adaptive management is something that makes a
1023 lot of sense at a Superfund site, especially these complex
1024 Superfund sites that are certainly lagging, and remaining on
1025 the list for a long time. In general, there are
1026 opportunities to streamline and to make decisions.

1027 One very successful program in the RCRA corrective
1028 action area is -- it is called RCRA First. It is where
1029 parties get together, they -- all the stakeholders, including
1030 the government, and discuss what is the end-state vision, how
1031 are we going to get there, open up lines of communication
1032 where decisions are being dragged out, elevate the issues.

1033 There are opportunities --

1034 *Mr. McKinley. Okay.

1035 *Ms. Matthews. -- to speed this process up.

1036 *Mr. McKinley. Now, it appears that, instead of
1037 prioritizing the sites that we have now, that was being done
1038 under the Trump Administration, this legislation, obviously,
1039 intends to add more sites to Superfund list. It could
1040 possibly -- not -- but possibly could be a problem in the
1041 future.

1042 So should we be focusing on the problems we now have,
1043 instead of the hypotheticals?

1044 Is this another example of making perfect the enemy of
1045 good?

1046 *Ms. Matthews. I think it is diverting the resources
1047 that we have, and that we need to make progress.

1048 So, to be focusing on operating facilities that are
1049 already subject to pervasive regulation, and that are
1050 addressing these issues, to layer that with another -- with a
1051 financial assurance layer is not necessary.

1052 *Mr. McKinley. Okay, in the just few seconds I have
1053 left, you heard the testimony from the other people and their
1054 positions. Is there something you want to clarify, or
1055 correct their statements?

1056 *Ms. Matthews. Well, I guess, just that financial
1057 assurance isn't necessary for these companies to operate

1058 responsibly. They are operating responsibly under their --
1059 this current regulatory regime.

1060 *Mr. McKinley. Thank you.

1061 Mr. Chairman, my time has expired, so I yield back.

1062 *Mr. Tonko. The gentleman yields back. The chair now
1063 recognizes Mr. Pallone, full committee chair.

1064 Representative Pallone, Chairman Pallone, you are
1065 recognized for five minutes, please.

1066 *The Chairman. Thank you, Chairman Tonko. I am now
1067 referencing an article that was in The Hill that says Trump
1068 EPA has largest backlog of toxic waste cleanups in 15 years.
1069 And just to quote some of it, it says, "In 2019, the EPA did
1070 not have funding to begin work on 34 Superfund sites, a
1071 number more than 50 percent above the highest figures from
1072 the Obama Administration. The agency often promotes any
1073 closure of Superfund sites with press releases, but the
1074 figures released on December 26 show a growing number of
1075 projects as the Trump Administration has repeatedly tried to
1076 cut the budget of the EPA. Under President Trump, EPA is
1077 deleting Superfund sites from the National Priority (sic)
1078 List at the fastest pace in more than a decade.'" This was
1079 Wheeler, the administrator, said in a statement.

1080 I mean the bottom line is they are deleting sites that
1081 have not been cleaned up. And this is exactly what happened
1082 in New Jersey with the Ramapo, which is an Indian tribe, when

1083 Lisa Jackson was the administrator of the EPA under the Obama
1084 -- she went in and found that, you know, a lot -- a number of
1085 these sites had been deleted in the past, and were not
1086 actually cleaned up.

1087 And so, you know, I understand Mr. McKinley said the
1088 goal is to clean up sites as expeditiously as possible, but
1089 not to delist them prematurely. It doesn't help if the site
1090 is taken off the list and it is not cleaned up. And this was
1091 an environmental justice community, in particular, with the
1092 Ramapo Indians in North Jersey, near the New York border.
1093 And we went in with Lisa Jackson -- and Senator Lautenberg
1094 was alive at the time, he was the author of the Superfund
1095 program and the tax, initially -- and found out that Ford
1096 Motor Company hadn't done anything, and it was just taken
1097 off, you know, by a previous administration.

1098 So this idea that, by delisting, that somehow you are
1099 accomplishing something is not the case. And basically,
1100 under the Trump EPA, they had a bigger backlog than ever
1101 before. And they weren't funding these, because they didn't
1102 have the money, and they didn't put it in the budget under
1103 general revenue. So that is why we need the tax. And let's
1104 not delist these sites that need to be cleaned up.

1105 But anyway, I just wanted to say -- I know I don't have
1106 a lot of time yet -- I am just trying to get some general
1107 goals here for legislation, or for action by the committee.

1108 And basically, the general goals I would like to see are that
1109 polluters should pay for Superfund cleanups, that climate
1110 change is making the cleanups more pressing, and that
1111 prevention is better than cleanup whenever possible.

1112 So let me see if I can quickly go through the three
1113 people. Let me start with Ms. Goodin.

1114 Do you agree that polluters should pay for Superfund
1115 cleanups, yes or no?

1116 *Ms. Goodin. Yes, absolutely.

1117 *The Chairman. And do you agree that cleanups are
1118 becoming even more imperative because of climate change, yes
1119 or no?

1120 *Ms. Goodin. Yes.

1121 *The Chairman. And do you agree that preventing
1122 releases is better than cleaning them up after they occur?

1123 *Ms. Goodin. Yes, of course.

1124 *The Chairman. All right. And then, Ms. Dinn, turning
1125 to you with the same three questions, do you agree that
1126 polluters should pay for Superfund cleanups, yes or no?

1127 *Ms. Dinn. Yes.

1128 *The Chairman. And do you agree that cleanups are
1129 becoming even more imperative because of climate change?

1130 *Ms. Dinn. Yes.

1131 *The Chairman. And do you agree that preventing
1132 releases is better than cleaning up -- cleaning them up after

1133 they occur?

1134 *Ms. Dinn. Yes.

1135 *The Chairman. All right. And then finally, let me
1136 turn to Ms. Matthews. I know you represent responsible
1137 parties that are paying for cleanups under the Superfund
1138 program, just as the polluter pays principle holds. Is it
1139 safe to say that you and the companies you represent agree
1140 that polluters should pay for cleanups, yes or no?

1141 *Ms. Matthews. At their sites, yes.

1142 *The Chairman. And do you agree that climate change is
1143 impacting existing Superfund sites?

1144 *Ms. Matthews. Yes.

1145 *The Chairman. Okay. I noticed that your testimony
1146 offered several suggestions for preventing the creation of
1147 new Superfund sites. I just wanted to ask the same question
1148 again. Do you agree that preventing releases is better than
1149 cleaning them up after --

1150 *Ms. Matthews. Yes.

1151 *The Chairman. -- they occur?

1152 *Ms. Matthews. Yes.

1153 *The Chairman. All right. And I -- you know, again, I
1154 am only saying this because I think there are some general
1155 principles that, hopefully, we can agree on. I am not saying
1156 that just because they, the three speakers, said they do,
1157 that that means that everybody on the committee, on a

1158 bipartisan basis, agrees on these principles.

1159 But I just -- you know, again, I want to talk about this
1160 Superfund tax. Again, I don't want to see general revenue
1161 used, because I do think that it is harder to get that in the
1162 budget every year. And that is why the backlog continues.
1163 And I just think reinstating the taxes is the most important
1164 thing we can do to speed up the cleanup of sites, and better
1165 protect environmental justice communities, in particular.

1166 So, you know, I just -- if anyone on the committee is
1167 interested in cosponsoring the Superfund bill, I would
1168 appreciate it. And I know -- I think we do have some
1169 Republicans, I am not sure, but I just wanted to mention that
1170 again, Mr. Tonko. Thank you so much, Mr. Chairman.

1171 *Mr. Tonko. The gentleman yields back. The chair now
1172 recognizes the ranking member of the whole committee,
1173 Representative Rodgers, for five minutes.

1174 Representative Rodgers, please.

1175 *Mrs. Rodgers. Thank you, Mr. Chairman, and to
1176 everyone.

1177 I know there is a lot to digest from this hearing. I am
1178 most concerned about creating requirements that are going to
1179 distract attention and resources from EPA or responsible
1180 parties cleaning up Superfund pollution, particularly after
1181 the Superfund cleanup process that was accelerated during the
1182 Trump EPA. Eighty-two sites delisted, including the North

1183 Side Landfill in Spokane.

1184 Ms. Matthews, you caught my attention when you mentioned
1185 that section 631 requires facilities to purchase insurance to
1186 protect them from the impacts of climate change and weather,
1187 but that these impacts go way beyond Superfund. I would like
1188 to explore that a little bit more. I represent an area that
1189 has been devastated by wildfires, an event associated with
1190 climate change. How extensive would the requirement be for
1191 people in my area to potentially need to buy insurance
1192 because they are "at risk"?

1193 *Ms. Matthews. As written, section 631, it does not
1194 have limits on the type or the size of facilities that would
1195 be required to provide financial assurance. That would be
1196 subject to EPA's discretion. And also, the nature of the
1197 risk identified by section 631 is not limited to the release
1198 or threatened release of hazardous substances, but rather,
1199 applies to risk associated with impacts of climate change and
1200 extreme weather on facilities.

1201 Accordingly, EPA, when they would be developing their
1202 rules, would have wide latitude in determining what
1203 facilities would be subject to the requirement, and the scope
1204 and the nature of the requirement.

1205 *Mrs. Rodgers. Does section 631 affirmatively exclude
1206 anyone who fails in -- falls into a class?

1207 *Ms. Matthews. No.

1208 *Mrs. Rodgers. Does section 631 explicitly authorize
1209 EPA to provide waivers for anyone in the class?

1210 *Ms. Matthews. No.

1211 *Mrs. Rodgers. Are these types of policies expensive?

1212 *Ms. Matthews. Yes --

1213 *Mrs. Rodgers. Does -- okay. Does section 31 (sic)
1214 provide any way to defray the cost of these products, based
1215 on income level?

1216 *Ms. Matthews. No.

1217 *Mrs. Rodgers. Thank you.

1218 Mr. Gomez, many of the Republican members and I support
1219 the use of opportunity zones to economically jumpstart
1220 communities that need this help. In fact, a number of census
1221 tract designated opportunity zones have been identified in my
1222 district. Since June 1st, 2018, EPA brownfields funding of
1223 just under 29 million in census tract opportunity zones has
1224 led to accomplishments at 1,255 properties, which have
1225 leveraged over 400 million in additional funding, and created
1226 1,500 jobs.

1227 Has GAO done work in this space to examine the benefit
1228 of combining these economic and environmental policies?

1229 *Mr. Gomez. Thank you for that question, and that is a
1230 good question. We have not done work in that area, and we
1231 would be happy to --

1232 *Mrs. Rodgers. Okay, thank you. Thank you. Can we

1233 work together to explore these kind of solutions to increase
1234 opportunities in communities?

1235 I think you were about ready to say that.

1236 *Mr. Gomez. Yes.

1237 *Mrs. Rodgers. Okay, super, thank you.

1238 At the EPA budget hearing two weeks ago, I mentioned the
1239 City of Seattle has been repeatedly exceeding its Clean Water
1240 Act-approved limits for dumping sewage into Puget Sound. The
1241 State of Washington directly and scientifically confirmed
1242 that these continued dumping of sewage is damaging the salmon
1243 population. In fact, Puget Sound chinook and Puget Sound
1244 steelhead, their populations are in crisis. NOAA has
1245 identified that -- these specific salmon in Puget Sound as
1246 the highest priority to save the orcas.

1247 Governor Inslee and the Washington Department of Ecology
1248 recently proposed a general pollution permit that would allow
1249 58 sewage treatment plants in King County to continue the
1250 illegal dumping of sewage in Puget Sound. EPA Administrator
1251 Regan committed to me to take action to keep the city within
1252 its permitted discharge limits.

1253 Ms. Goodin, because exceeding a permitted discharge
1254 level of pollutants can lead to an additional Superfund
1255 designation, will Earthjustice also commit to demanding that
1256 the city, the state, and the EPA ensure that the City of
1257 Seattle comply with this -- these discharge levels?

1258 *Ms. Goodin. Representative Rodgers, we take a number
1259 of actions to try and clean up the waters in and around Puget
1260 Sound and throughout Washington to protect salmon and
1261 steelhead, as I believe you are aware.

1262 *Mrs. Rodgers. Have you looked specifically at these
1263 discharge permits, and -- they are under review right now.

1264 *Ms. Goodin. I personally have not, and I would have to
1265 ask to see whether anyone in my entire organization has.

1266 *Mrs. Rodgers. Okay, thank you, everyone. With that I
1267 yield back.

1268 *Mr. Tonko. The gentlelady yields back. The chair now
1269 recognizes the gentlelady from Colorado, Representative
1270 DeGette, who also serves as chair of the Subcommittee on
1271 Oversight and Investigations.

1272 Representative DeGette?

1273 *Ms. DeGette. Thank you so much, Mr. Chairman. I think
1274 it is really important, as we have these discussions, that we
1275 not conflate all of our different environmental remediation
1276 laws.

1277 Brownfields are something we all can agree on in this
1278 committee should be cleaned up. And in fact, I have been
1279 working on brownfields legislation ever since I was in the
1280 Colorado legislature in the 1990s. But what we are talking
1281 about today -- and so we are not talking about opportunity
1282 zones with brownfields cleanup. We are talking about the

1283 most intransigent environmental sites that we have, and the
1284 most complicated to clean up, and that is Superfund sites.

1285 And so I want to ask our witnesses about some of these
1286 Superfund sites. We have some right in my congressional
1287 district in Denver. And I want to talk about why it is
1288 important that we look at climate change as we look at
1289 prioritizing these sites.

1290 Many of my colleagues on both sides of the aisle are
1291 correct, it has been difficult for us to get all of these
1292 Superfund sites cleaned up. And I think all of us agree,
1293 including, apparently, the Republicans' witness, that
1294 polluters should have to pay to clean up the sites. But
1295 unfortunately, we just have not had the financial wherewithal
1296 to do it, and we need to expedite it because of climate
1297 change.

1298 So, Mr. Gomez, I want to ask you a couple of questions
1299 about the GAO study. Now, as I understand it, under the
1300 Obama Administration, the Obama Administration decided that
1301 one of the criteria that should be used in cleaning up these
1302 sites is climate. Is that correct?

1303 *Mr. Gomez. Yes, that is correct.

1304 *Ms. DeGette. And then, as I understand it, under the
1305 Trump Administration, the EPA was instructed not to take into
1306 account climate impacts when prioritizing Superfund sites to
1307 clean up. Is that also correct?

1308 *Mr. Gomez. So it was really unclear to regional staff,
1309 because there was --

1310 *Ms. DeGette. Okay. Go ahead.

1311 *Mr. Gomez. Yes, it was unclear to regional staff, who
1312 are the ones who carry out the work, what the agency's goals
1313 and objectives were, because it was not part of the strategic
1314 plan. So some field offices did move forward and try to get
1315 information. Others didn't know where to get it, or whether
1316 that was the direction or not. So it was unclear to some
1317 people.

1318 *Ms. DeGette. And so that led to an inconsistent
1319 prioritization of climate as a factor in prioritizing sites.
1320 Would that --

1321 *Mr. Gomez. Yes.

1322 *Ms. DeGette. -- be fair to say?

1323 *Mr. Gomez. Yes, that is correct. And we had a
1324 recommendation along those lines, to make sure to align all
1325 of the goals and objectives in the agency, so people are
1326 clear about what they are supposed to do and how to do it.

1327 *Ms. DeGette. Now, why is it important to include
1328 climate change as a factor in deciding which sites to
1329 prioritize?

1330 *Mr. Gomez. Well, certainly, I mean, the intent of our
1331 job was to look at these climate change effects, right? And
1332 these are existing hazards, right? These are existing

1333 risks --

1334 *Ms. DeGette. Right.

1335 *Mr. Gomez. -- whether it is flooding or fire. And
1336 really, it was a screening, right, screening mechanism to
1337 identify those sites where those risks are present, and where
1338 perhaps it is already happening. If a site is being flooded,
1339 and there is concerns about the remedy that is in place, or
1340 the contaminants, and so what should EPA be doing to ensure,
1341 again, that that is protected to human health and --

1342 *Ms. DeGette. And, Ms. Dinn, I would like to ask you
1343 the same question. Is -- when we are deciding which sites to
1344 prioritize, why is it important to include, as a factor for
1345 prioritization, the issue of climate change?

1346 *Ms. Dinn. Well, I think the San Jacinto River waste
1347 pits is an example of why. It is in the San Jacinto River,
1348 there was a protective cap in place. There was a known
1349 breach in the cap. And then, when Hurricane Harvey hit, it
1350 was further damaged, and dioxin was released into the San
1351 Jacinto River, which is an extreme contaminant that causes
1352 cancer. And that is a showing not only of why we need to
1353 continue to re-evaluate solutions that are in place, in light
1354 of climate change. Now there is an initiative at that site
1355 to remove all of the contaminants, because the cap cannot
1356 protect in that vulnerable situation that that site is in.

1357 And then we need to continue to look at sites that are

1358 threatened by this, because the release of these toxins into
1359 flood waters or areas where it may contaminate drinking water
1360 or other surface waters that are used for agricultural
1361 purposes is a real threat to these communities that live
1362 nearby.

1363 *Ms. DeGette. Thanks. And Ms. Goodin, just quickly, do
1364 we have sites similar to this site Ms. Dinn just explained
1365 throughout the United States that are more vulnerable because
1366 of climate issues?

1367 *Ms. Goodin. I believe we do, yes.

1368 *Ms. DeGette. Thank you.

1369 Thank you so much, Mr. Chairman. I yield back.

1370 *Mr. Tonko. You are welcome. The gentlelady yields
1371 back. The chair now recognizes the gentleman from Ohio.

1372 Representative Johnson, you have five minutes for
1373 questioning.

1374 *Mr. Johnson. Well, thank you, Mr. Chairman. You know,
1375 I have grown increasingly concerned that we have now had at
1376 least five hearings on different sections of the massive
1377 CLEAN Future Act. And although I wish it weren't the truth,
1378 the prevailing sentiment of my Democrat colleagues seems to
1379 be, let's just pass this thing and see what happens.

1380 From rushed renewable mandates that could jeopardize
1381 grid reliability and national security, to the plight of oil
1382 and gas workers who would lose their jobs with no real

1383 alternatives, I am observing the same blase attitude from
1384 some of my colleagues on the other side of the aisle as we
1385 take a closer look at the Superfund provisions in the bill.

1386 There is one thing that we all agree on, though: that
1387 these sites need to be cleaned up as soon as possible. But
1388 when we examine more closely some of these provisions
1389 intended to improve the Superfund program, they are filled
1390 with vague, top-down mandates, contradictory requirements,
1391 and new rules that could actually delay cleanups, and further
1392 push back productive redevelopment of these sites.

1393 While the Superfund program isn't perfect, it has
1394 produced some successes, including a few in my eastern and
1395 southeastern Ohio district, a part of America that has a rich
1396 legacy of heavy industry. Re-purposing and re-developing
1397 these sites has resulted in new businesses, community
1398 revitalization, and hundreds of much-needed jobs in my region
1399 of the country. This is why it is vital that we get this
1400 right, and make sure these sites are cleaned up quickly, but
1401 also responsibly.

1402 So, Ms. Matthews, regarding the point you made about
1403 section 636, and how it would alter prioritization of sites
1404 for cleanup, do you believe section 636 could create a
1405 conflict between its vague new climate change considerations
1406 and more pressing local human health and environmental risks?

1407 *Ms. Matthews. I think there is definitely a potential

1408 for that. There may be sites that are vulnerable to climate
1409 change, but they are sites that are -- you will have
1410 relatively stable conditions, maybe they are a groundwater
1411 site that -- where, if it was a flooding impact, different
1412 concerns.

1413 And then you may have another site that is not
1414 vulnerable to climate change, that doesn't have human
1415 exposure under control yet. And in that case, what are you
1416 balancing, this speculative risk at a stable site versus a
1417 condition that needs to be addressed to get, for example,
1418 human exposure under control?

1419 *Mr. Johnson. Yes, and you actually answered, I think,
1420 my second question. I wanted you to provide a practical
1421 example of how the risk to public health and the environment
1422 may pose a greater risk than sites with this new climate risk
1423 designation, and I think you just did that.

1424 So if there is a conflict, is it clear in the
1425 legislation which side is meant to prevail?

1426 *Ms. Matthews. Well, for section 636, certainly, the
1427 emphasis would be about the climate, those sites that had the
1428 climate impact, that those would come first in line.

1429 *Mr. Johnson. And that is going to -- I believe that is
1430 going to be detrimental to public health and environmental
1431 concerns.

1432 Ms. Matthews, continuing with you, your testimony states

1433 that top-down, forced timelines lead to unscientific
1434 decisions that are not in the best interest of a community,
1435 and that better outcomes can -- and I quote -- "be achieved
1436 by reforms to the program using lessons learned from the 40-
1437 year experience with the Superfund program.'" Can you expand
1438 on this statement?

1439 What lessons are you specifically talking about?

1440 *Ms. Matthews. I think, at this point, we understand
1441 much better than we did 40 years ago that, if you have, for
1442 example, a certain type of groundwater contamination in a
1443 certain hydrogeologic structure, that there are remedies that
1444 are going to work and remedies that aren't. There are -- so
1445 there is just scientific understandings that we have
1446 developed over all these years.

1447 We also are very familiar with the process as PRPs, as
1448 regulators. We know how to go about this. And all of that
1449 can be streamlined, because we are all on the same page
1450 there.

1451 *Mr. Johnson. Okay, all right. Well, thank you, Ms.
1452 Matthews.

1453 Mr. Chairman, I yield back.

1454 *Mr. Johnson. The gentleman yields back. The chair now
1455 recognizes the gentlelady from Illinois, Representative
1456 Schakowsky, who also serves as our subcommittee chair for
1457 Commerce and Consumer Protection.

1458 Representative Schakowsky, you have five minutes.

1459 [Pause.]

1460 *Ms. Schakowsky. There we go. I have a question --
1461 actually, a question or two -- for Ms. Dinn.

1462 Can you speak briefly to the economic impact that
1463 Superfund sites have on the communities that surround them?

1464 *Ms. Dinn. Well, for example, the San Jacinto River
1465 waste pits, which I mentioned earlier, is directly in the San
1466 Jacinto River. And so continued threats of contamination
1467 from that Superfund site could impact industrial interests in
1468 the area that rely on water. It impacts recreational
1469 interests. It impacts fishing of the area, because the fish
1470 can be contaminated and, in fact, the fish cannot be eaten in
1471 that area. For a long time that has been posted.

1472 And so there are definite impacts if there is
1473 contamination like dioxin in rivers. And that same type of
1474 risk is posed by these sites where you would have risk of
1475 health impacts associated with contaminants that pose health
1476 impacts like cancer.

1477 *Ms. Schakowsky. Let me ask another question. So job
1478 creation and workforce development are both essential
1479 components of President Biden's American Jobs Act. So I
1480 wanted to ask you, how might workforce development training
1481 help some of the communities that you represent?

1482 And do you think the Federal Government should invest in

1483 training workers from impacted communities to carry out the
1484 cleanup?

1485 *Ms. Dinn. I think there is a really great opportunity
1486 here to engage impacted community members in the cleanup
1487 response by training them, and providing them a path to good-
1488 paying jobs in the industry around cleanups and remediation.

1489 There are a number of successful programs that I am
1490 aware of in the brownfields area, and there is not a reason
1491 why those similar programs couldn't be replicated in a
1492 Superfund site. There might be some additional challenges
1493 associated with it, but the remediation processes are still
1494 somewhat similar, and that would be a good way to engage the
1495 community around being part of the solution.

1496 *Ms. Schakowsky. All right, thank you.

1497 So Ms. Goodin, the conversation -- a lot of conversation
1498 now -- about this financial insurance requirement -- and I
1499 was really impressed when you first gave a list of the ways
1500 that insurance is required, and various ways that the --
1501 where the community could be harmed. And actually, you were
1502 accused of misrepresenting the use of these financial
1503 insurance requirements.

1504 And it seems, to me, obvious -- we are talking about
1505 Superfund sites -- that there ought to be insurance. I
1506 wonder if you could talk a little bit more about that. It
1507 seemed kind of like a no-brainer to me.

1508 *Ms. Goodin. Yes, Representative, it does seem kind of
1509 like a no-brainer to me, too. And just to respond to the
1510 earlier suggestion that I misspoke, none of these sites, no
1511 site in the country, has Superfund insurance. Now, some
1512 sites might have other kinds of insurance to protect against
1513 other risks, but we don't require even the most risky sites
1514 in the country to carry any insurance specifically to protect
1515 against the risk that they could create the next Superfund
1516 site, and that they could abandon that site to the public to
1517 clean up. So I see that as a huge problem.

1518 And I mean, again, to put it in more common terms, I
1519 have homeowner's insurance. That doesn't mean I can avoid
1520 carrying car insurance. We are talking about different kinds
1521 of insurance, and none of these facilities have Superfund
1522 insurance.

1523 *Ms. Schakowsky. So has this ever been suggested, or
1524 debated, and shot down?

1525 *Ms. Goodin. Well, yes, it has. EPA did a substantial
1526 amount of work to develop draft Superfund insurance
1527 requirements for several industries. And then, under the
1528 last Administration, they decided they had the discretion not
1529 to require any insurance, despite the risks that EPA had
1530 identified.

1531 *Ms. Schakowsky. Well, just in closing, let me just say
1532 I think that this is something that we ought to give some

1533 serious consideration to. Otherwise, the taxpayers and the
1534 communities are left hanging to -- and pick up the bill.

1535 So I yield back. Thank you, Mr. Chairman.

1536 *Mr. Tonko. You are welcome. The gentlelady yields
1537 back. The chair now recognizes our colleague, the gentleman
1538 from Georgia, Representative Carter.

1539 Welcome, you are recognized for five minutes, please.

1540 *Mr. Carter. Thank you, Mr. Chairman, and thank all of
1541 the witnesses for being here. This is certainly important,
1542 and I want to say it is exceptionally important in my
1543 district.

1544 I have, in my district, which includes the entire coast
1545 of Georgia, over 100 miles of pristine coastline. I have got
1546 three Superfund sites, and two of them have been on the NPL
1547 list for over 20 years. And they are both on the water, by
1548 the way. Both of them, you know, are in danger of being
1549 impacted by flooding. So it is very concerning to me.

1550 And I think I want to start with you, Ms. Matthews, and
1551 ask you. Everyone here wants to see quicker and complete
1552 cleanups of Superfund sites. I have been very concerned
1553 about community input, and about the lack of community input
1554 in these projects, and particularly in my district. And I
1555 would like to get your thoughts on how we can better build
1556 out that relationship.

1557 Is there anything in this legislation, Ms. Matthews, or

1558 in the current statute, that would require the potential
1559 responsible party and the overseeing Federal agency to work
1560 with and adhere to community interest in the properties?

1561 *Ms. Matthews. There are public participation
1562 agreements -- sorry, requirements -- in the Superfund
1563 process. So, for example, when the EPA issues a proposed
1564 plan, there is a minimum 30-day public comment period. They
1565 hold a public meeting. And then, when they issue the record
1566 of decision, which decides the -- what is the ultimate
1567 response action, they do respond to those comments. But they
1568 are not required to take them.

1569 *Mr. Carter. Well, that was my question, essentially.
1570 And my follow-up question is that, outside of the public
1571 comment period, is there any kind of requirement to factor in
1572 the community's input, and -- as far as the long-term use of
1573 the property goes?

1574 This is a real problem that I have had many calls in my
1575 office about, and many conversations with county
1576 commissioners, with city council people, with planners in
1577 these districts where these Superfund sites are located,
1578 about the long-term use of it. They feel like it is being
1579 dictated to them, what they can and what they cannot do, and
1580 what the project cleanup is going to be like.

1581 *Ms. Matthews. The cleanup process is very regimented,
1582 and it is, you know, geared toward an end goal.

1583 And I agree with you that it makes sense to look at
1584 those end-state visions up front, and tailor the cleanups
1585 accordingly.

1586 *Mr. Carter. You know, I mentioned that two -- these
1587 two sites that are in the NPL, they have been in there for
1588 over 20 years. And it is -- you know, it is hard to imagine
1589 how it can take 20 years for something. And they are still
1590 in the remediation process.

1591 I mean, it is going to be a lot longer, and it is just
1592 hard to understand how it can take this long, and it is hard
1593 to understand, when EPA comes in and they are going to -- and
1594 they said, "We are going to do this," and the community is
1595 saying, "Well, you know, that would be a great place for a
1596 school, but if they are not going to clean it up better than
1597 that, we can't put a school there.'" Public input has got to
1598 be paramount in some of these cleanup sites. And I certainly
1599 hope that we will start addressing this.

1600 I wanted to ask you specifically about the deadlines
1601 that are set in section 363. It says the 10-year deadline
1602 for the identification and the remediation of sites that are
1603 vulnerable to climate change. And as I said, I have got two
1604 sites that are on the NPL in my district that are right by
1605 the water, right on the marsh. And they are subject to
1606 flooding, and they have been in the cleanup process, as I
1607 mentioned, over 20 years.

1608 How would this provision, if at all, how would section
1609 636 -- how would it address those existing properties?

1610 *Ms. Matthews. The section is laudable, it is just not
1611 very practical to think that these sites can all be cleaned
1612 up in 10 years. As you said, your sites are sitting there
1613 for 20 years. And while that would be great, it is
1614 unrealistic.

1615 The way that this would impact your sites, I am not
1616 quite sure. The way I read the language, it is unclear if it
1617 applies to all sites that are being run by -- so, like,
1618 Federal lead sites, as opposed to Federal facility sites, for
1619 example, DoD or DoE sites. So I think that is a
1620 clarification that needs to be made, should this section go
1621 forward.

1622 *Mr. Carter. And don't you think there is a danger
1623 that, if we put a time limit like a 10-year -- and look, I am
1624 advocating -- I am frustrated, obviously, that it has taken
1625 20 years on these 2 sites, and we are still in the
1626 remediation process. But if we do put a 10-year limit on it,
1627 I am worried that it is not going to get cleaned up like it
1628 needs to get cleaned up.

1629 *Ms. Matthews. Certainly, there are conditions
1630 associated with Superfund sites that will make that --
1631 meeting a timeline impossible.

1632 *Mr. Carter. Mr. Chairman, thank you very much, and I

1633 yield back.

1634 Thank you, Ms. Matthews.

1635 *Mr. Tonko. You are welcome, you are welcome. The
1636 gentleman yields back. The chair now recognizes the
1637 gentleman from Maryland.

1638 Representative Sarbanes, a staunch defender of the
1639 Chesapeake Bay, you are recognized for five minutes, please.

1640 *Mr. Sarbanes. Thank you, Mr. Chairman. I appreciate
1641 it very much. I appreciate you holding the hearing. I also
1642 want to thank Chairman Pallone for his leadership. I know
1643 that the Superfund program has been a priority of his for
1644 many, many years. And I certainly appreciate him continuing
1645 to push on this very important issue.

1646 I want to focus today, as some others have done -- but I
1647 don't think we can over-emphasize this -- on the issue of
1648 environmental justice, and how it relates to the contaminated
1649 properties that we are discussing today. As we know, there
1650 is an estimated 73 million people who live within 3 miles of
1651 a Superfund site. That is a pretty startling statistic.
1652 These communities are disproportionately communities of color
1653 and low-income communities, and they are bearing the brunt of
1654 our environmental pollution, often times.

1655 To add to this, we are experiencing more intense and
1656 frequent extreme weather events that can and have led to the
1657 release of contaminants like lead and arsenic into

1658 neighboring communities, environmental justice communities.

1659 In my state, my home state of Maryland, we have several
1660 Superfund sites, and we are also experiencing floods and sea
1661 level rise, which climate change is exacerbating. So if we
1662 are going to protect our residents, we need not only to clean
1663 these sites up, but we also got to build resiliency against
1664 the known risks of climate change.

1665 I think it is important that we go a step further,
1666 though. If we are really going to build back better in an
1667 equitable way -- and I know that the President is committed
1668 to that -- we need to not only address these contamination
1669 issues, but invest in these environmental justice
1670 communities, and provide economic opportunity for them.

1671 In other words, it is not just about doing the right
1672 thing to make sure that these communities are not
1673 disproportionately impacted by these environmental
1674 contaminants, but it is looking at what are the economic
1675 opportunities that can be afforded, as well. That is why I
1676 am pleased to see section 234 in the CLEAN Future Act,
1677 because it would not only help to remediate these properties,
1678 but use it as an opportunity to develop clean energy projects
1679 and to create jobs.

1680 Ms. Dinn and Ms. Goodin, if you would like to provide
1681 your perspective on this, I would appreciate it. Can you
1682 share how remediating these sites will not only help, from a

1683 public health perspective, but also can help in terms of
1684 providing an opportunity to build a cleaner future for
1685 neighboring communities, and offer some of these economic
1686 opportunities?

1687 Thank you. Ms. Dinn?

1688 *Ms. Dinn. Well, as I addressed to the question raised
1689 by Representative Schakowsky, there would be, you know, a
1690 great benefit to the communities, as far as helping stimulate
1691 their economic progress around these sites through providing
1692 job training or re-development opportunities for these
1693 Superfund sites, once they are fully remediated. I think
1694 that those are good options. Again, it includes the
1695 community and the solution, and it makes them invested in a
1696 positive outcome here. So those efforts are appreciated.

1697 *Mr. Sarbanes. Ms. Goodin?

1698 *Ms. Goodin. Yes, I would absolutely agree. I think
1699 there is tremendous opportunity, both in the actual cleanup
1700 of these sites to involve the community and incorporate job
1701 training, and make sure that they are engaged in cleaning up
1702 as thoroughly as possible. And then, of course, once they
1703 are cleaned up, there is far more possibilities for
1704 redevelopment in that area.

1705 *Mr. Sarbanes. I appreciate that. I think where we are
1706 trying to go with this is a concept of a holistic approach to
1707 these cleanups that doesn't just look at it as a kind of

1708 cleanup project in a narrow context, but recognizes that it
1709 presents a tremendous opportunity to achieve a lot of
1710 different goals simultaneously.

1711 And I think the Biden Administration is bringing that
1712 perspective. I think it will take advantage of some of these
1713 provisions in the CLEAN Future Act that we are discussing
1714 here today. And I know we are certainly committed to it in
1715 our committee. So thank you for your testimony.

1716 And with that, Mr. Chairman, I yield back.

1717 *Mr. Tonko. The gentleman yields back. The chair now
1718 recognizes the gentleman from the State of Utah.

1719 Representative Curtis, you are recognized for five
1720 minutes, please.

1721 *Mr. Curtis. Thank you, Mr. Chairman. Like many of
1722 you, my district has a story about these Superfunds. It is,
1723 I think, particularly relevant. I would like to share it
1724 with you, if you don't mind. We have a long history of
1725 uranium mining and processing in my district. And it won't
1726 surprise any of you that, as a result, we have higher cancer
1727 rates, a number of abandoned mines that need to be cleaned
1728 up.

1729 One of our Superfunds is the Monticello radioactivity
1730 contaminated property site, where we have 424 residential and
1731 commercial properties that were cleaned up. Now, to put that
1732 in perspective, there is only 2,604 residents of this town,

1733 so 1 in 5 of their buildings had to be dealt with. Listen to
1734 this: tailings were used for building materials. We took
1735 the tailings out, and used them for driveways, for backfill,
1736 for basements, mixed it into concrete. And you can imagine
1737 the results of this.

1738 I met with a businessman in this town, and he pulled out
1739 a map from underneath his desk, laid it out on the table, a
1740 very mature man, got a little tear in his eye, and started
1741 pointing to his friends who had contracted cancer. This one,
1742 and this one, and this one, and this one. It just broke your
1743 heart. And of course, it won't surprise you, the frustration
1744 in my office in our inability to get them cancer screening in
1745 that town, so that they at least can know who is dealing with
1746 this problem.

1747 Well, of course, since we did this, we have learned so
1748 much about the risks and the things like that. And this
1749 cleanup here in this town is a perfect example of how the
1750 Superfund program was designed to help Americans cleaning the
1751 environment in a way that immediately has an impact and is
1752 helpful. And I would like to address Ms. Matthews with a
1753 question or two.

1754 Ms. Matthews, the CLEAN Future Act would expand the
1755 Superfund program to focus on climate impacts more greatly.
1756 We have heard that a lot today. I just can't express how
1757 strongly I support addressing the impacts of climate change.

1758 As a matter of fact, I think that is one of the things that
1759 we overlook, and not just in this committee, but in many
1760 places. But I am questioning and wondering if the Superfund
1761 program is the right tool to do that.

1762 I am worried that this legislation would hurt our
1763 ability to clean up areas that I have just described that are
1764 health risks today by focusing on some of the ambiguous goals
1765 related to potential climate impacts. I am curious, your
1766 opinion of that, Ms. Matthews.

1767 *Ms. Matthews. Thank you. Section 631, there has been
1768 a lot of talk about how important it is to prioritize the
1769 climate change impacts at Superfund sites. But section 631
1770 doesn't do that. It provides a fiscal program for operating
1771 sites to not become Superfund sites.

1772 But as I said in my testimony, because there -- the
1773 existing regulatory framework prevents that, and provides
1774 incentive to prevent that, we don't need this extra program.
1775 And it is -- and those insurance requirements that these
1776 facilities have, these insurance policies and the things --
1777 they are the Superfund assurance, or the Superfund insurance
1778 that Ms. Goodin spoke of. They are preventing -- they are
1779 providing funding, should anything happen. If you have that
1780 rusty tank and there was a rupture, you have been insured, it
1781 will be cleaned up.

1782 The site you talk about is what I was talking about from

1783 the -- existed because of the lack of environmental
1784 regulation decades and hundreds of years ago. I have a site
1785 where the contamination is from the turn of the -- not this
1786 century, the last century. So we are talking about
1787 addressing those sites. Not -- we shouldn't be talking about
1788 adding the fiscal program on top of the need to do that.

1789 *Mr. Curtis. Okay, and I don't want to put words in
1790 your mouth, but it sounds like -- that you would agree with
1791 me that the proposed revisions to the Superfund may actually
1792 undermine efforts like -- that were made in this town, and we
1793 need to be super careful with them.

1794 *Ms. Matthews. I think it is important to focus our
1795 resources where we are going to get the most bang for our
1796 buck. And especially where there are limited resources, to
1797 have a program that is going to be very expensive is not
1798 going to serve us in getting these sites, including sites
1799 subject to climate change, off of the list and cleaned up.

1800 *Mr. Curtis. All right, Mr. Chairman, I have used my
1801 time. Thank you very much. I yield my time.

1802 *Mr. Tonko. You are welcome. The gentleman yields
1803 back. The chair now recognizes the gentlelady from New York,
1804 Representative Clarke, who is our most recent former vice
1805 chair of the full Committee on Energy and Commerce.

1806 So, Representative Clarke, voice of Brooklyn, you are
1807 recognized for five minutes.

1808 *Ms. Clarke. I thank the chairman, Mr. Tonko, and our
1809 ranking member, Mr. McKinley, for convening on our nation's
1810 Superfund crisis. And let me also thank our witnesses for
1811 your testimony.

1812 We know the impacts of climate change are already here,
1813 and they are being felt most profoundly by our underserved
1814 and disadvantaged communities. I believe that it is our
1815 Federal Government's duty to tackle climate change and
1816 protect our communities. And that is why I recently
1817 introduced the FEMA Climate Change Preparedness Act, which
1818 would ensure that FEMA and our entire emergency management
1819 community are equipped to prepare for and respond to the
1820 impacts of climate change. Our committee's legislation and
1821 the proposals that we are discussing today fall under the
1822 same exact premise: safeguarding our communities from the
1823 impacts of climate change.

1824 Right next to my district in Brooklyn is a 1.8-mile-long
1825 former industrial waterway called the Gowanus Canal, which
1826 also happens to be one of the most polluted Superfund sites
1827 in the nation. It contains more than a dozen individual
1828 contaminants, and cleanup costs are estimated to be over \$1
1829 billion -- that is billion, not million.

1830 Eight years ago, during Superstorm Sandy, the Gowanus
1831 Canal flooded, sending contaminated water into the streets
1832 and people's homes.

1833 Mr. Gomez, my question is for you. What are some of the
1834 major risks that climate change might pose for a site like
1835 this?

1836 And what sorts of risks or hazards might the impact be
1837 on nearby communities?

1838 *Mr. Gomez. Sure. Thank you for that question,
1839 Representative Clarke.

1840 So, obviously, as you noted, this is a site that has a
1841 lot of contaminants. And during Superstorm Sandy it was
1842 flooded, dispersing those contaminants in the neighborhood.

1843 You have also heard the case from some of us already,
1844 Hurricane Harvey in Houston, affecting the San Jacinto River
1845 waste pit site. So, yes, these are very real occurrences
1846 that do have an impact on the community.

1847 And you know, really, the focus is on each site, right?
1848 Because each site is different. Each site may have
1849 particular contaminants. Each site may just be containing
1850 the waste, which may be at risk if it is flooded, or if there
1851 is a wildfire nearby. So there are real risks here that are
1852 associated, and our work was meant to be, again, a screening
1853 to let EPA and others know, hey, here are sites that may be
1854 affected, right, and we should pay attention to them.

1855 *Ms. Clarke. And how would our committee's legislation
1856 address these types of risks as Superfund sites across the
1857 nation?

1858 *Mr. Gomez. So, I mean, there are a variety of
1859 provisions that have been discussed, and one was focusing on
1860 federal facilities, and making sure that those federal
1861 facilities are also addressed to see if they are affected by
1862 climate change.

1863 In our study, we didn't look at Federal facilities. We
1864 only looked at non-Federal facilities. So those Federal
1865 facilities, you know, those facilities that are owned by DoD,
1866 DoE, those are the ones that perhaps require a look to see if
1867 those are at risk, as well, from the impacts of climate
1868 change.

1869 *Ms. Clarke. Very well. And, of course, climate change
1870 isn't only a threat to existing Superfund sites. It also has
1871 very real potential to create new Superfund contamination by
1872 damaging or disrupting a wide variety of facilities.

1873 Consider the impacts of extreme weather and sea level rise
1874 that we have seen already seen on critical infrastructure,
1875 and the fact that climate change is making storms, wildfires,
1876 floods, and other natural disasters more common and intense.

1877 Ms. Goodin, our CLEAN Future Act would require that
1878 certain classes of facilities maintain evidence of financial
1879 assurance, consistent with the risks posed by climate change.
1880 How might this help to prevent new Superfund sites from being
1881 created in and around my district, due to the effects of
1882 climate change, such as the next Superstorm Sandy?

1883 *Ms. Goodin. Well, Representative, I think one of the
1884 important things that section 631 does is direct that the
1885 amount of financial assurance be tied to the use of best
1886 practices. And so I think where, you know, where an
1887 insurance requirement comes with the requirement to take care
1888 to put preventative measures in place, then I think that can
1889 really prevent the next release, and the next release due to
1890 climate.

1891 As the chairman mentioned, an ounce of prevention is
1892 certainly worth a pound of cure here.

1893 *Ms. Clarke. Very well. Mr. Chairman, I yield back,
1894 and I thank our witnesses once again.

1895 *Mr. Tonko. The gentlelady yields back. The chair now
1896 recognizes the gentleman from Alabama.

1897 Representative Palmer, you have five minutes to
1898 question. Welcome.

1899 *Mr. Palmer. Thank you, Mr. Chairman.

1900 Ms. Matthews, in your testimony you state that, while
1901 contamination is still being identified, there are -- a few
1902 sites are being created today by today's industrial
1903 operations. Can you speak more to how the businesses are
1904 operating in an environmentally responsible manner?

1905 And more importantly, do they need the CLEAN Future Act
1906 to pass for them to take responsible steps to protect the
1907 environment?

1908 *Ms. Matthews. They do not. The industry is subject to
1909 a very pervasive and wide network of environmental
1910 regulations, so their tanks are monitored, or regulated.
1911 Their air emissions, their water emissions -- if there was a
1912 spill, what they have to do if there is a spill. It is from
1913 -- if they generate hazardous waste, what happens to the
1914 hazardous waste, how it is handled on site, how it -- where
1915 it goes, how it is handled while it is transported.

1916 What happens is that all of the waste and the emissions
1917 that a facility creates are already subject to regulation.
1918 And when EPA went back and looked at the potential 108(b)
1919 regulations for the hard rock mining, electric power,
1920 petroleum and coal, and chemical manufacturing industries,
1921 what they found is that, when they looked at sites or
1922 facilities after 1980, there weren't large numbers of
1923 Superfund sites being created.

1924 *Mr. Palmer. I thought that might be the case. I --
1925 part of running a think tank, I worked for two international
1926 engineering companies, one of which was focused on
1927 environmental systems. And there is an enormous amount that
1928 is invested into protecting the environment by industrial
1929 companies. And the engineering company that I worked for --
1930 actually, two of them, but one in particular -- designed
1931 those systems.

1932 I want to ask you, you mentioned that the financial

1933 responsibility policies called for section 631 could have a
1934 very burdensome annual economic requirement. What do you
1935 mean when you say the cost would be staggeringly high?

1936 *Ms. Matthews. When --

1937 *Mr. Palmer. And I have a follow-up to that, if you can
1938 be brief.

1939 *Ms. Matthews. I will. When EPA looked at the 108(b)
1940 hard rock mining, and they were considering it, they
1941 estimated, for just the hard rock mining sector, that the
1942 annual financial assurance requirement would be 111 million
1943 to \$171 million, annually, and that over 34 years that they
1944 would need to assure \$7.1 billion. They come at -- this is a
1945 real cost. I have a client who spends over \$1 million a year
1946 for one Superfund site, just to financially shore.

1947 *Mr. Palmer. If you also --

1948 *Ms. Matthews. And that money goes to cleanup.

1949 *Mr. Palmer. You also mentioned that these changes
1950 could lead facilities to move operations elsewhere. Do you
1951 mean overseas, or do you mean to other parts of the country?

1952 *Ms. Matthews. You know, these are businesses. They
1953 are trying to make money. So if you have this large cost
1954 that is associated with simply your location, if that could
1955 be moved somewhere else, that would have to be a factor in
1956 your business decision.

1957 *Mr. Palmer. So if we are talking about a mining

1958 operation, we have already driven -- pretty much driven --
1959 our rare earth metals mining out of the country. We have
1960 driven the refinery -- refinement of those metals for
1961 production, for the critical microchips and other things that
1962 we need. We can't even -- we couldn't even have this Webex
1963 hearing using our laptops and other communications devices
1964 without rare earth metals.

1965 So if we drive those operations offshore, which they
1966 pretty much are, we get 100 percent of our rare earth metals
1967 offshore, 80 percent of them come from China. Wouldn't you
1968 agree that that impacts our national security?

1969 *Ms. Matthews. Well, I am certainly no expert on that,
1970 but that does sound reasonable to me.

1971 *Mr. Palmer. It also impacts our economy, and the
1972 ability to provide jobs for a lot of people who are suffering
1973 economic injustice and energy injustice, and they don't have
1974 access to these good-paying jobs. Would you agree that that
1975 also occurs when we impose these staggeringly high costs on
1976 these companies that --

1977 *Ms. Matthews. Yes.

1978 *Mr. Palmer. -- are not able to provide jobs?

1979 *Ms. Matthews. Yes, I agree --

1980 *Mr. Palmer. I thank you for your testimony, and I
1981 yield back.

1982 *Mr. Tonko. The gentleman yields back. The chair now

1983 recognizes the representative from California, the gentleman
1984 from California, Representative Peters.

1985 You are recognized for five minutes. And thank you for
1986 your input on the subcommittee routinely. You are
1987 recognized --

1988 *Mr. Peters. Thank you so much, Mr. Chairman. And it
1989 reminds me that I was first -- when I was first a lawyer I
1990 worked on Superfund cleanups in the Midwest. And so this law
1991 has come a long way, and it has made a big impact through the
1992 concept of making the polluter pay, which I think has given
1993 incentives to companies to really mind their business better
1994 than they did before. I think we should apply that
1995 principle, by the way, as an aside, to other environmental
1996 challenges, like putting a price on carbon to address climate
1997 change.

1998 I note also that, with respect to climate change, the
1999 threat of wildfires is real and growing in California and in
2000 my district. Ordinary homeowners are working to adapt to the
2001 threat, and reduce their risk. Industrial facilities should
2002 be doing the same. And these are kind of those common-sense
2003 changes included in the CLEAN Future Act that would ensure
2004 that the liability of the scheme of Superfund is in place to
2005 incentivize that adaptation. According to the GAO, 234 NPL
2006 sites are in areas that have a high wildfire potential.

2007 I would just say, with respect to the Act of God

2008 defense, increasingly these disasters and extreme weather
2009 events are seen as consequences of climate change, and are
2010 really, in effect, acts of humans. And I think that there is
2011 no reason -- I don't want to spend a lot of time on questions
2012 on this, but there is no reason not to adjust our
2013 understanding of Act of God defense to reflect that.

2014 I did want to ask Ms. Goodin and Ms. Dinn if climate
2015 change impacts -- affects Superfund sites that were
2016 previously deleted.

2017 And then there is a so-called Act of God, or an act of
2018 climate change. Is the Federal Government able to pursue
2019 additional money from the private actor originally
2020 responsible for the pollution, or is that commonly precluded
2021 by releases of liability as part of settlements?

2022 *Ms. Goodin. Thank you, Representative. I believe in
2023 some cases it could be precluded, and I think that is a huge
2024 problem, because I do think climate change does pose risks at
2025 some sites where we would otherwise have believed that the
2026 cleanup would be complete.

2027 *Mr. Peters. Well, typically, I think that is the way
2028 the settlements work. They incorporate a release of
2029 liability, and I think that is why we are going to have to
2030 look for other income. And I assume it is going to be some
2031 sort of Federal appropriation.

2032 I would ask Mr. Gomez, how would you use health risk --

2033 site-specific health risk assessment to prioritize these
2034 sites for cleanup?

2035 And is there a role for that? Is -- how would that
2036 work?

2037 *Mr. Gomez. Right, so the regional offices, as you
2038 know, are the ones responsible for these sites. And each
2039 office has a remedial project manager. So they are looking
2040 at the specific characteristics of that site, doing their
2041 risk assessments, but really, also incorporating information
2042 about that site and the potential risks that are associated
2043 with that.

2044 Now, what I would also like to point out is, you know,
2045 even the climate change effects that we use, they are about
2046 current and past hazards. There are really no national data
2047 sets about future hazards.

2048 *Mr. Peters. Right.

2049 *Mr. Gomez. So just in the example you used with
2050 wildfire risk in California, those are current risks. They
2051 are not incorporating information on future fire risks,
2052 because that information doesn't exist at a national level.
2053 But there may be some local places and regional places that
2054 have some local data that may get at that.

2055 *Mr. Peters. It is very important --

2056 *Mr. Gomez. To answer your question, originally.

2057 *Mr. Peters. Mr. Gomez, what is the type and scale of

2058 resources that EPA needs to meet the 10-year target included
2059 in section 636 of the CLEAN Future Act?

2060 *Mr. Gomez. That is a really good question and a really
2061 big question. I am not sure that I have an answer to that,
2062 because we have been discussing, you know, these are the
2063 Federal sites, I presume, the Federal facilities, which have
2064 lots of contamination, been at it for a while.

2065 So, you know, we have teams at GAO that do work looking,
2066 for example, at cleanups at DoE, Department of Energy,
2067 Department of Defense. So it is just a big challenge for the
2068 Federal --

2069 *Mr. Peters. I --

2070 *Mr. Gomez. -- with huge liabilities, as you know well.

2071 *Mr. Peters. I mean, I see it as sort of a fundamental
2072 question, too, because we have to decide, you know, what we
2073 are going to plan for here. So I don't know if there is a
2074 way you could think about that, or send this to the right
2075 people, or respond in writing: How much money are we going
2076 to need, and how are we going to prioritize the sites that
2077 need to be cleaned up?

2078 It seems to me that site-specific health risk
2079 assessments would be a useful tool for that. That is just
2080 logical, to me. But whether that information is available,
2081 or how reliable those are, I don't know. But I think, at
2082 least knowing what the size of the problem is, from a

2083 monetary standpoint, is important for us.

2084 *Mr. Gomez. We --

2085 *Mr. Peters. I am out of time, Mr. Chairman, I yield
2086 back.

2087 *Mr. Tonko. The gentleman yields back. The chair now
2088 recognizes the gentleman from Texas.

2089 Representative Crenshaw, good to have you join us, and
2090 you are recognized for five minutes, please.

2091 *Mr. Crenshaw. Great to be with you all, and thank you
2092 for this important topic.

2093 Ms. Matthews, I would like to start with you. I guess I
2094 will say first, it is always good to start where we agree.
2095 We agree that Superfund sites are a problem, and we want to
2096 see them cleaned up in the most efficient and cost-effective
2097 way possible. We do believe that, if somebody polluted, that
2098 they should pay. I think there is broad agreement on that.

2099 Under the Trump EPA was a record number of Superfund
2100 site cleanups, and we should be proud of that record, and we
2101 should certainly continue on with that record.

2102 Then there is other proposed solutions. Now, the
2103 solutions we are talking about today don't seem to have
2104 anything to do with cleanup of Superfund sites. They have
2105 everything to do with an attempt to punish companies, an
2106 industry that has done nothing wrong, and under the guise of
2107 potentially preventing more cleanup sites. Okay, so that is

2108 what we are talking about. We are taking extraordinary
2109 measures to do so.

2110 So this bill says that the EPA administrator is now in
2111 charge of saying who is required to purchase a certain
2112 cleanup insurance policy, what the policy is ultimately
2113 required to cover, how much the policy is ultimately required
2114 to cover, and how a company might lower their rate if they
2115 pay a user fee. Ms. Matthews, is that correct?

2116 *Ms. Matthews. That is a fair -- yes, I agree.

2117 *Mr. Crenshaw. Okay, and if -- and what happens if an
2118 insurance company can't stay in business setting the rates
2119 required by the Federal Government?

2120 *Ms. Matthews. That was something that was brought up
2121 in connection with the 108(b) regulations, is that the EPA
2122 itself acknowledged in their market capacity study that the
2123 instruments, the availability of the instruments, really
2124 couldn't be predicted.

2125 *Mr. Crenshaw. Yes, and we have spoken with the
2126 insurance industry about this, and I would like to submit
2127 this letter for the record. In plain language, they simply
2128 state this would not be workable.

2129 So the unintended consequence of this legislation could
2130 potentially be insurance companies just can't provide the
2131 broad insurance that the EPA would demand, and certainly not
2132 at the rates that they are demanding. Would that be a fair

2133 characterization?

2134 *Ms. Matthews. Potentially, and then, if that was the
2135 case, then what would happen is that the companies would have
2136 to put money in, presumably, in a trust account, so up front,
2137 for a speculative risk. And --

2138 *Mr. Crenshaw. Yes, but does this -- the user fee, does
2139 that buy them anything? Does that buy them any protection
2140 from liability? Does that buy them a free cleanup by the
2141 EPA, or is that just a fee that they have to pay to operate?

2142 *Ms. Matthews. It would be used for future cleanup, if
2143 it were to actually happen that it was required.

2144 *Mr. Crenshaw. Like, so that company is paying user
2145 fees -- it is -- the text is not clear on this, so it is an
2146 honest question. They are paying into this fund. If they
2147 spill, do -- does that fund then pay for that spill?

2148 *Ms. Matthews. Well, I guess our -- two different
2149 things. If they have a -- their own funded trust fund, then
2150 that trust fund would pay. But if they are paying one of the
2151 provisions of the bill, like, into the Superfund --

2152 *Mr. Crenshaw. Right.

2153 *Ms. Matthews. -- fund, that is unclear.

2154 *Mr. Crenshaw. Yes, and our interpretation is that it
2155 doesn't help them at all.

2156 So it is very likely that a lot of smaller businesses
2157 would simply go out of business, and then nobody would be

2158 paying into any Superfund fund. The insurance companies
2159 wouldn't be able to handle it. So the unintended consequence
2160 of this seems to me to be that the -- there is not enough
2161 money to now do these cleanups. And that is what we have to
2162 think about when we exert an excessive amount of control over
2163 this.

2164 The other question I have in my remaining time is, look,
2165 when I look at policymaking, I look at it as trade-offs. We
2166 need to understand the problem before proposing dramatic
2167 solutions. And this is, indeed, a dramatic solution, for the
2168 for the reasons I laid out. It could completely undermine
2169 the insurance market, and put a lot of this industry
2170 completely out of business. And if you want a quick note of
2171 what that might look like, just look at the East Coast when a
2172 pipeline goes down. I don't think America is ready for that.

2173 So one question I have, Ms. Matthews, is what is the
2174 nature of the problem?

2175 It is clearly a problem with legacy Superfund sites.
2176 How many new Superfund sites are popping up every year?

2177 Are they on the decline, are they on the incline?

2178 How should we be looking at this problem?

2179 *Ms. Matthews. Yes, even new Superfund sites are like
2180 -- are, generally, legacy sites that -- there aren't a ton of
2181 Superfund sites that come along from operations that happen
2182 today, that because of this pervasive regulatory scheme that

2183 I have spoken about before, we have addressed that issue.

2184 *Mr. Crenshaw. That is great to hear. And so it seems
2185 to me that we are proposing an excessive solution for a
2186 problem that may have already been solved, which concerns me
2187 a great deal when it comes to policymaking.

2188 I have run out of time. Thank you, Mr. Chairman. I
2189 yield back.

2190 *Mr. Tonko. The gentleman yields back. The chair now
2191 recognizes the gentleman from California, Dr. Ruiz, our
2192 representative from California.

2193 You are recognized for five minutes, please.

2194 *Mr. Ruiz. Thank you. Thank you, Mr. Chairman, for
2195 holding this hearing today.

2196 The purpose of the Superfund program is to clean up some
2197 of the most hazardous and contaminated sites in our nation
2198 that remain a threat to the public's health. Many of these
2199 sites, both directly and indirectly, affect Native American
2200 tribes or their land. According to the EPA, over 300,000
2201 American Indians, roughly 12 percent of the native
2202 population, live within 3 miles of a Superfund site. Let
2203 that sink in. Twelve percent of Native Americans in our
2204 country live within three miles of some of the most hazardous
2205 and contaminated sites in our nation.

2206 This proximity to Superfunds can affect tribes in a
2207 variety of ways. For example, in upstate New York, the St.

2208 Regis Mohawk Tribe has been dealing with the effects of
2209 chemical pollution from an aluminum plant since 1954. This
2210 pollution has poisoned the St. Lawrence River, where the
2211 tribe has fishing rights. In Arizona, the Navajo Nation has
2212 seen their lands contaminated by uranium mining that was used
2213 to support our nation's nuclear ambitions.

2214 In 2019, the GAO completed a study at the request of
2215 Chairman Pallone, myself, and other members to review
2216 Superfund sites that affect tribes and tribal interests.
2217 Specifically, the report looked at tribal consultation
2218 practices, and whether EPA was fulfilling the U.S.
2219 Government's trust responsibility and considering the unique
2220 needs of tribes in Superfund programs.

2221 My first question goes to Mr. Gomez. Can you briefly
2222 describe EPA's findings and recommendations from this report?

2223 *Mr. Gomez. Sure, thank you, Congressman Ruiz. So as
2224 you noted, we did a report looking specifically at Superfund
2225 sites that were on or near tribal lands, and there were basic
2226 questions, you know: how many Superfund sites are there?

2227 EPA didn't really have good, accurate information, so we
2228 had to work with them to figure out how many sites there
2229 were. And what we found with EPA, there were 88 Superfund
2230 sites that were on or near tribal lands.

2231 Also, EPA had difficulty documenting when they were
2232 doing consultation with tribes. So we made a recommendation

2233 that they should do a better job documenting that. And so
2234 those were the kinds of findings that we found.

2235 Now, since the report was issued, EPA has been -- has
2236 taken action in a lot of those areas. And as you noted,
2237 these Superfund sites, in particular, you know, affect tribal
2238 communities in different ways, because they may be requiring
2239 to fish at a stream or lake that may be potentially
2240 contaminated. And that is their subsistence, right?

2241 *Mr. Ruiz. Yes. The EPA has implemented some of these
2242 recommendations. Have they implemented all of the
2243 recommendations?

2244 And do you feel that the EPA consultation and data
2245 collection process has improved?

2246 *Mr. Gomez. Yes. So they have made improvements on all
2247 grounds, in all of the recommendations that we made. They
2248 have improved the data they collected. They have issued
2249 memos and guidance to all of the regional offices to be clear
2250 about what is a consultation, make sure you record it, but
2251 also to gather data on these Superfund sites.

2252 *Mr. Ruiz. Thank you. So now, moving towards the
2253 climate change effects on these Superfund sites, Mr. Gomez,
2254 of Superfund sites that are vulnerable to climate change, do
2255 you have a sense of how many affect tribal land, or have
2256 Native American interests?

2257 *Mr. Gomez. Yes. So what we did is we took the 88

2258 Superfund sites that we did for you in that report. And we
2259 then looked at the ones that we have from climate change
2260 effects. And we did find that about 70 percent of the Native
2261 American -- of the Superfund sites on or near tribal lands
2262 have impacts from climate change.

2263 As you have also noted --

2264 *Mr. Ruiz. Should they be prioritized for cleanup?

2265 *Mr. Gomez. So this is the -- you know, the purpose of
2266 our work was to do the screening, so that EPA can see --

2267 *Mr. Ruiz. Okay, we will discuss that later. But I
2268 want to get to this one. Your testimony focused on a GAO
2269 report that looked at a number of non-Federal sites that are
2270 vulnerable to climate change. Do you know how many Federal
2271 sites are vulnerable to climate change?

2272 *Mr. Gomez. So we know, at least from your work, for
2273 you, that there are 11 Federal sites that are on or near
2274 tribal lands. And so that is a good question, to see, for
2275 the federal facilities, which of those --

2276 *Mr. Ruiz. But in general, in general, as well, the
2277 Federal lands, it seems like your analysis, the 60 percent of
2278 non-Federal Superfund sites, would likely be affected by
2279 flood, storm surges, or wildfires. It doesn't seem there is
2280 to be a general analysis for Federal lands. Should a similar
2281 analysis be conducted for Federal sites?

2282 *Mr. Gomez. Yes, if that is something that Congress

2283 wants us to do, we are happy to do that.

2284 *Mr. Ruiz. Great. And section 636 of the CLEAN Future
2285 Act accomplishes this goal, and I yield back my time.

2286 *Mr. Tonko. The gentleman yields back. The chair now
2287 recognizes the gentlelady from Michigan, Representative
2288 Dingell, who has been an outspoken voice for clean water.

2289 So thank you for joining us. You are recognized for
2290 five minutes.

2291 *Mrs. Dingell. Thank you, Mr. Chairman, for holding
2292 today's important hearing on the CLEAN Future Act, and for
2293 these very important provisions to strengthen the EPA
2294 Superfund cleanup program.

2295 Climate change and extreme weather events that have been
2296 bringing flooding, wild storms -- or wildfires, storm surges,
2297 and sea level rising is exasperating -- are exasperating our
2298 ability to clean up toxic Superfund sites. And the -- we --
2299 as many of my other colleagues have talked about, we really
2300 need to reduce the backlog on EPA's National Priority (sic)
2301 List. Since the 1980s, the Superfund program has proven its
2302 ability to transform communities through a simple tenet:
2303 those who pollute communities and the environment are
2304 responsible for paying to restore them.

2305 Today, as we look towards the future of the Superfund
2306 program, I would like to focus on how we address a harmful
2307 emerging contaminant that is plaguing our communities across

2308 the country: PFAS chemicals. Director Gomez, can you
2309 briefly highlight for this committee the benefits of EPA
2310 listing PFAS as a hazardous substance under CERCLA or the
2311 Superfund program?

2312 This is a designation called for in bipartisan
2313 legislation I am leading, the PFAS Action Act.

2314 *Mr. Gomez. Yes, thank you, Representative Dingell, for
2315 that question. So, you know, by designating, for example,
2316 the PFAS and PFOA as hazardous substances under CERCLA, what
2317 that does is that triggers three requirements. So one of
2318 those is reporting releases of these substances, but it also
2319 authorizes a Federal response, actions that can be taken, and
2320 also, lastly, holds responsible the responsible parties that
2321 are liable for the cleanup costs.

2322 *Mrs. Dingell. So thank you. I agree.

2323 In January, you authored -- January of this year you
2324 authored a report called "Manmade Chemicals and Potential
2325 Health Risks," where you talked about this. Yes or no, has
2326 EPA completed the regulatory process to list these two most
2327 notorious PFAS chemicals under CERCLA?

2328 *Mr. Gomez. No.

2329 *Mrs. Dingell. In the report it states, "On January
2330 14th, 2021, EPA issued advance notice to proposed rulemaking
2331 for the hazardous substances designation to get public
2332 comment and data to inform the Agency's ongoing evaluation of

2333 the two PFAS''. Director Gomez, can you provide this
2334 committee the current status, as you know it, of EPA's
2335 efforts to designate PFAS as a hazardous substance under
2336 CERCLA?

2337 *Mr. Gomez. Sure. So in the report that we issued
2338 early this year, we were tracking the status of EPA's related
2339 -- regulatory related PFAS actions. It was part of their
2340 action plan. And as you noted, there was a proposed
2341 rulemaking, which is now currently under review by the
2342 current Administration. So I know this is a priority for
2343 Congress. It is a priority for EPA, but that is the current
2344 status, as we understand it.

2345 *Mrs. Dingell. So I am going to ask you one more
2346 question, and I am going to ask for a quick answer, because I
2347 want to get to a couple of others.

2348 Over the course of your work, do you have any sense or
2349 estimates of how long this process could take, or how soon
2350 the Administration could act to list these forever chemicals
2351 as hazardous under Superfund if the EPA decides to fund this
2352 process?

2353 Because, since I have been in Congress, promises,
2354 promises, promises, promises.

2355 *Mr. Gomez. Well, we do know that rulemaking takes a
2356 long time. So we are tracking this. We are looking at it.
2357 So I think we are all waiting to see how quickly this is

2358 going to happen.

2359 *Mrs. Dingell. Let's, like, act, if we can at all,
2360 please.

2361 Director Gomez, in my district we have a growing dioxin
2362 plume that has been spreading through Ann Arbor's groundwater
2363 for decades, more than 40 years. And for many years now, the
2364 public has been calling on it to be listed as a Superfund
2365 site. In the last month, the State of Michigan has allowed
2366 the process for listing to move forward. Can you explain the
2367 process for getting a site like this listed to the National
2368 Priorities List, and what factors go into a speedy listing?

2369 And is the process changing at all, as it relates to the
2370 climate change threat to Superfund sites?

2371 *Mr. Gomez. Sure. So the listing process, you know,
2372 they use the hazard ranking system, where they are looking at
2373 each site to see what are the contaminants there, what are
2374 the harms. And there is a score that takes place.

2375 So sometimes what can happen is removals can take place,
2376 so they remove the contaminants, which can sometimes lower
2377 the ranking score. And obviously, the listing of a site is
2378 also done in conjunction with the state. You know, the state
2379 is usually notified, EPA is working with the state. So that
2380 is usually what happens in the listing process.

2381 I would say, with respect to climate change effects,
2382 again, we have -- we did this national screening to show EPA,

2383 hey, here is all these sites that have these potential
2384 effects. You need to ensure that the remedies that are in
2385 place, that they are working on, are going to be protected to
2386 the public and to the environment.

2387 *Mrs. Dingell. Thank you, Dr. Gomez. I yield back, Mr.
2388 Chair.

2389 *Mr. Tonko. The gentlelady yields back. The chair now
2390 recognizes the gentlelady from California, Representative
2391 Barragan.

2392 We thank you for your work on environmental justice, and
2393 you are recognized for five minutes, please.

2394 *Ms. Barragan. Thank you, Chair Tonko, for holding this
2395 important hearing on how we can improve the Superfund program
2396 to achieve faster cleans and environmental justice.

2397 My district has four Superfund sites: Cooper Drum; the
2398 Southern Avenue industrial area; and Gervais Web in the City
2399 of South Gate, a majority Latino community; and Montrose
2400 Chemical Corporation, which partly spills into my district in
2401 Carson. All four properties are contaminated in the soils
2402 and groundwater. No community should have to deal with the
2403 impacts from one Superfund site, let alone three in South
2404 Gate. We have to do better for our environmental justice
2405 communities by reinstating the Superfund tax to fully fund
2406 cleanups and hold polluting industries accountable before
2407 they contaminate a site.

2408 Ms. Goodin, one challenge that EPA has with many
2409 Superfund sites is that the company responsible for the
2410 contamination no longer exists, or doesn't have the resources
2411 to pay the cost of cleaning up the site. What tools can we
2412 give EPA on the front end to hold industrial companies
2413 accountable when they apply for permits to operate a site, so
2414 that we don't need to spend years trying to raise funds and
2415 clean up a site?

2416 *Ms. Goodin. Thank you, Representative. I think
2417 financial assurances are exactly that tool. It allows EPA to
2418 require companies to show that they will be able to clean up
2419 their own messes.

2420 *Ms. Barragan. Well, thank you. Mr. Gomez, the
2421 Government Accountability Office reported that climate change
2422 threatens 60 percent of toxic Superfund sites. I represent a
2423 coastal district, and I am concerned about how extreme
2424 weather and sea level rise from climate change could impact
2425 the Superfund sites in my district, three of which the GAO
2426 analyzed as having moderate to high flooding hazards.

2427 Can you describe the risk many Superfund sites in
2428 coastal districts face, and how the CLEAN Future Act's
2429 proposed Superfund cleanup policies can help to lessen that
2430 risk?

2431 *Mr. Gomez. Sure. Thank you for that question. And
2432 so, right, our report was looking at data from NOAA, and also

2433 data from FEMA on storm surge and flooding. And yes, there
2434 are many, many sites across the country that are at moderate
2435 or high risk from flooding or inundation, right, from those
2436 power surges, the -- that come from hurricanes. So those are
2437 the sites that, again, require an additional look, perhaps,
2438 to see if what is happening at the site is protected, but
2439 also whether the officials there have the information that
2440 they need to make those decisions, right?

2441 So those are the important questions that we have
2442 raised, and that we think requires attention.

2443 *Ms. Barragan. Okay, thank you. Have you had a chance
2444 to look at the CLEAN Futures Act to see how it might clean up
2445 priorities and lessen that risk?

2446 *Mr. Gomez. So we have looked at areas that relate to
2447 the work that we have done. So if it is work that we have
2448 done on financial assurances, if it is work that we have done
2449 on different aspects of it, that is where we comment. But in
2450 general, we don't comment in general, on general bills,
2451 unless you have a specific question about an area that
2452 relates to work that we have done.

2453 Perhaps we have made recommendations to the agencies; I
2454 know Congress usually implements and includes those in the
2455 bills, as well.

2456 *Ms. Barragan. Okay, thank you, Mr. Gomez.

2457 The American Jobs Plan proposes \$5 billion to invest in

2458 the cleanup and revitalization of Superfund and brownfield
2459 sites. Given all of the cleanup needs with existing
2460 Superfund sites, and the list of potential sites on the
2461 National Priorities List, is this enough funding, or do we
2462 need to push for a greater investment in Superfund cleanup?

2463 *Mr. Gomez. I am sorry, was that a question for me, or
2464 was that to the panelists?

2465 *Ms. Barragan. That was to you, Mr. Gomez.

2466 *Mr. Gomez. Yes. So in general, like I said, we
2467 wouldn't comment on, necessarily, whether this is enough
2468 resources or not.

2469 We have reported, for example, on the resources that the
2470 Superfund program has had over time. There was a report we
2471 did a number of years ago, looking at appropriations and
2472 expenditures. Those have gone down over time. But --

2473 *Ms. Barragan. Well, Mr. Gomez, let me ask a different
2474 question, then. Would \$5 billion be enough to get to all the
2475 Superfund sites on the National Priorities List?

2476 *Mr. Gomez. I mean, I think that is a really good
2477 question. We haven't looked to see what are the current
2478 estimates, right, to clean up the sites. I think you have
2479 heard from other folks that, to clean up one site, for
2480 example, can be hundreds of millions of dollars.

2481 So -- and then the Federal facilities cost a lot more
2482 money. So maybe the answer is there.

2483 *Ms. Barragan. Okay. Thank you, Mr. Gomez. My time
2484 has expired, I yield back.

2485 *Mr. Tonko. The gentlelady yields back. The chair now
2486 recognizes the representative from Delaware, the voice for
2487 water infrastructure, and very active with the subcommittee.

2488 Representative Blunt Rochester, you are recognized for
2489 five minutes, please.

2490 *Ms. Blunt Rochester. Thank you, Chairman Tonko, for
2491 calling this important hearing, and for your leadership. And
2492 also, it is good to be with Ranking Member McKinley. And
2493 thank you to the witnesses for your testimony today.

2494 Sites managed under the Superfund program are our
2495 country's most contaminated and hazardous sites. From oil
2496 refineries to abandoned mines to nuclear waste sites, these
2497 sites pose an ongoing risk to human health and the
2498 environment. Over 72 million Americans live near a Superfund
2499 site, and the historic placement of public housing in
2500 communities near hazardous facilities, and the practice of
2501 building new polluting facilities in low-wealth neighborhoods
2502 have created a disproportionate environmental burden on our
2503 communities of color and low-income communities.

2504 Protecting these communities requires preventing toxic
2505 releases from facilities in the future, and addressing the
2506 contamination that has already occurred. We need to make
2507 sure that our policies, moving forward, are inclusive of the

2508 communities most impacted, and look to prevent future
2509 exposures and releases, instead of cleaning them up. And I
2510 think that the Superfund resiliency and cleanup measures
2511 outlined in the CLEAN Future Act would do just that.

2512 Ms. Dinn, how are the communities you work with dealing
2513 with the combined crises of environmental injustice and
2514 climate change?

2515 *Ms. Dinn. Well, it is a big challenge that we have
2516 here, because we are continually under threat of severe
2517 flooding, as well as hurricanes on the Gulf Coast. And the
2518 fact that these sites are still in their community are just a
2519 constant sense of worry and stress for community members,
2520 because it is like a ticking time bomb in some of their
2521 neighborhoods as to what the potential impacts could be in an
2522 extreme weather event.

2523 And as you know, we just went through an extreme power
2524 outage, as well, in Houston. And there just seemed to be an
2525 overwhelming awareness and -- as well as stress related to
2526 having to respond continually to these ongoing threats on top
2527 of a pandemic.

2528 And for low-income communities like Lone Star Legal Aid
2529 represents, we really see these people being pushed really
2530 hard. And it is something that we try to provide support
2531 for. But obviously, the Federal Government could play a
2532 large role in alleviating some of these burdens. And so this

2533 proposed legislation that could help prioritize cleanups in
2534 these areas that have either been neglected, or are at
2535 extreme risk of future releases, could be a real -- of really
2536 big benefit to those communities.

2537 *Ms. Blunt Rochester. And are the industries, the
2538 polluting industries, doing enough to safeguard their
2539 facilities and the surrounding communities against climate
2540 change?

2541 *Ms. Dinn. Unfortunately, no. We are finding that a
2542 number of the facilities are not current on floodplain
2543 regulations. They have not maintained or upgraded their
2544 facilities to keep up with the threats of climate change. We
2545 have had a number of recent events in Harris County and the
2546 surrounding area, where we have had extreme environmental
2547 conditions.

2548 But on top of that, we have had industry accidents occur
2549 that have posed continuing ongoing threats to community
2550 health. We are talking about large releases of benzene,
2551 other chemicals in floodwaters that are exposing people to
2552 cancer risks that are beyond what anyone should see in their
2553 lifetime. And we really do need better regulation, better
2554 enforcement, and better protections on the financial side for
2555 these communities, to ensure that these are not continued
2556 risks.

2557 *Ms. Blunt Rochester. Thank you. And Ms. Goodin,

2558 Delaware has 15 sites on the National Priority (sic) List, 7
2559 of which are at risk of extreme coastal flooding under rising
2560 levels. In your opinion, are the facilities that handle
2561 hazardous materials properly prepared for extreme weather
2562 brought on by climate change?

2563 *Ms. Goodin. I think that many are not.

2564 *Ms. Blunt Rochester. And we heard some testimony today
2565 suggesting that financial assurance requirements would
2566 undermine adaptation efforts. How do you respond to that
2567 argument?

2568 And in your experience, do financial assurance
2569 requirements incentivize facilities to plan for climate risks
2570 ahead of a natural disaster?

2571 *Ms. Goodin. I think they absolutely would incentivize
2572 facilities to plan, especially if, as a condition of their
2573 coverage, they had to take some basic precautions. So, no, I
2574 don't think it would undermine preparedness at all. I think
2575 it would greatly increase it.

2576 *Ms. Blunt Rochester. Thank you so much. And thank
2577 you, Mr. Chairman. I yield back 10 seconds.

2578 *Mr. Tonko. Thank you for the 10 seconds, and the
2579 gentlelady yields back. We now recognize the representative
2580 from the State of Florida, the gentleman from Florida,
2581 Representative Soto.

2582 Thank you for alerting us to the environmental needs of

2583 Florida, and for your participation routinely with the
2584 subcommittee. You are recognized for five minutes.

2585 *Mr. Soto. Thank you, Chairman. Today we have a major
2586 generational challenge: whether we are going to allow the
2587 pollution of the 20th century to persist well into the 21st
2588 century; whether we are going to allow Superfunds of the past
2589 to continue to threaten the future of our nation. It is also
2590 about whether we are going to hold accountability for
2591 polluters, or set it up for taxpayer bailouts of polluters
2592 well after the jobs have been lost, the money has been made,
2593 and the responsibility has left town. And then we remember
2594 about the communities that are left behind, facing these
2595 poisons. This cancer, these massive deaths that happen in
2596 communities affected by it.

2597 I have heard several times the phrase that it would take
2598 over 100 years to fix these things. Not if we work together.
2599 If we work together, we could do this far quicker. We saw
2600 what -- when we worked together on the vaccines, people
2601 thought it would be impossible. And yet now we have well
2602 over half the American people receiving at least one shot, if
2603 not two, and going to our young people next. We can do big
2604 things in this nation. I know our friends across the aisle
2605 believe that. We are asking for your help on this. Every
2606 district, red or blue, conservative, progressive, centrist
2607 has some Superfund sites either in them or near them.

2608 This is about the health of our constituents and the
2609 future of America in the 21st century. And we ask for your
2610 help to work with us. The resiliency pieces that are being
2611 discussed today are particularly critical for Florida, since
2612 we are facing increasingly intense hurricanes and rising sea
2613 levels, while still simultaneously having an increase in
2614 population.

2615 And Chairman Pallone mentioned about the Ramapo Indians.
2616 While I moved to Florida half a lifetime ago, I grew up with
2617 those families in Ringwood, New Jersey. I knew those
2618 families, personally. And a cancer cluster ravaged so many
2619 of them. Deleting a site doesn't take away the risk. We
2620 could pat ourselves on the back here in Washington, and some
2621 administration can say they got the job done, but all it does
2622 is set a ticking time bomb for the communities left behind.

2623 We see a similar situation forming in Piney Point in the
2624 Tampa Bay area that I talked about in our last committee
2625 hearing, about an overflow of gypsum stacks from the mining
2626 of phosphates from long ago in those areas. Rather than
2627 cleaned up, it led to be -- it persisted, and now we have
2628 huge issues with pollution.

2629 In my own district we have hope, because we have the
2630 Kissimmee River restoration, an example of how we can restore
2631 important watersheds to their natural historic environments.
2632 And the Kissimmee River has been an example of how -- of

2633 increasing and restoring a major river watershed is something
2634 that is possible, if we work together.

2635 Mr. Gomez, when Superfund sites are remediated, are they
2636 returned to pristine, pre-contamination states, or does some
2637 contamination sometimes remain on the site?

2638 *Mr. Gomez. Right. So in some cases, some
2639 contamination does remain at the site. Perhaps it is
2640 contained with some kind of cap. And sometimes the
2641 contamination is treated on site. Sometimes it is removed
2642 from the site to be treated elsewhere. So it just really
2643 depends. And you have to look at each site individually.

2644 *Mr. Soto. So when we are looking at gypsum stacks,
2645 basically pools of waste leftover from phosphate mining in
2646 Florida, if it gets hit by a hurricane, how does that and
2647 other extreme weather from climate change threaten the
2648 release of contaminants in these Superfund sites?

2649 *Mr. Gomez. So I think that is the real concern, right,
2650 is to then look and see how those holes are perhaps being
2651 additionally reinforced, or made resilient, as you have
2652 noted, to those impacts. So it does require an additional
2653 review, perhaps, to see what takes place.

2654 And now, if it is a site that has been completed, what
2655 happens, again, is every five years EPA comes through and
2656 does a review. So that would be an opportunity for them to
2657 see, if conditions are changing, what does it mean. Does

2658 additional action need to take place or not?

2659 *Mr. Soto. Sure, and I have seen fully restored sites.
2660 It is actually pretty breathtaking, about how things can come
2661 back. But it takes resources, it takes communities coming
2662 together. And we need to have a better system, going
2663 forward, to make sure we have accountability for polluters,
2664 to make sure that we are protecting our communities across
2665 this nation.

2666 And I yield back.

2667 *Mr. Tonko. The gentleman yields back. The chair now
2668 recognizes the very patient representative from Arizona, the
2669 gentleman from Arizona, Mr. O'Halleran.

2670 Thank you for your concern, and your work on behalf of
2671 environment and climate issues. So with that, you are
2672 recognized, Representative, for five minutes.

2673 *Mr. O'Halleran. Thank you, Chairman Tonko and Ranking
2674 Member McKinley, for organizing this. And I want to thank
2675 our witnesses for testifying today.

2676 In Arizona the 2020 wildfire season saw over 2,500
2677 wildfires burn nearly a million acres of state, Federal, and
2678 tribal lands. These wildfires happened in almost every
2679 corner of the state, and definitely throughout my district.
2680 This was nearly double the 520,000 acres that burned in
2681 wildfires in the 2018 and 2019, combined. And we are
2682 expecting another active wildfire season this coming year.

2683 It is clear that these wildfires are getting worse. It
2684 is a problem that needs to be addressed from all angles.
2685 Climate change is, clearly, continuing to be -- to the
2686 conditions that allow these fires to grow. These wildfires
2687 have been devastating for many Arizona communities, and
2688 resulting in loss of life and massive destruction of
2689 infrastructure, natural resources, and watersheds.

2690 As we are discussing today, these wildfires can also
2691 have additional environmental impacts by disrupting Superfund
2692 sites. The Superfund cleanup process is slow enough already.
2693 I can't believe how slow it is, when we are talking about
2694 100-year time periods. We should do all we can to ensure
2695 that they are not delayed further by the effects of climate
2696 change.

2697 And one additional item -- I try to bring this up as
2698 much as I can -- the Navajo sites for uranium. It has been
2699 80 years. They are still not treated, the 520 of them, to
2700 anywhere near the level they should be. And there is a \$1.7
2701 billion in the fund site right now, in the trust site. So I
2702 don't know why it has taken this long to address.

2703 Mr. Gomez, your report mentioned that there are 22 NPL
2704 sites in areas of high wildfire hazard potential in EPA
2705 region 9, which includes Arizona. How would the region 9
2706 officials deal with increased threats from wildfires?

2707 And do you think it will impact the ability to oversee

2708 this cleanup -- these cleanup projects?

2709 *Mr. Gomez. Sure. You know, I talked about the example
2710 in Northern California, where there is a Superfund site
2711 there, the Iron Mine site, and where the wildfire, the Carr
2712 Wildfire, actually destroyed part of the site, and almost
2713 destroyed the water treatment system.

2714 And so, yes, in all the other sites in Arizona and other
2715 parts of the western U.S., if wildfire is a risk, EPA needs
2716 to look to see whether what is happening at the site --
2717 whether it is already a remedy that is in place, or they are
2718 proposing a remedy -- to make sure that that remedy, or the
2719 activities that are taking place there, are going to be
2720 protected, right, from that high wildfire risk, because it
2721 could be pretty detrimental if that is not the case.

2722 *Mr. O'Halleran. I just need to point out -- thank you,
2723 Mr. Gomez. I just need to point out the current state of the
2724 Forest Service budget that hasn't allowed that to occur.

2725 Mr. Gomez, in your testimony you said that EPA regional
2726 offices are not all on the same page when it comes to
2727 assessing climate risk at the Superfund sites. What more
2728 needs to be done to ensure they all have the data necessary
2729 that they need?

2730 *Mr. Gomez. Yes, so that was one of the things that we
2731 found, that not all the sites -- not all the regional offices
2732 were incorporating this data, knew where to get it, or how to

2733 use it.

2734 So one of the recommendations that we made was for EPA
2735 to provide clear direction and guidance, and with the
2736 information, but also actually to work across the offices at
2737 EPA, because we also heard that some of the Superfund
2738 officials didn't know where the climate experts within EPA
2739 were. So they really need to work across and integrate and
2740 collaborate to be able to get the information that they need
2741 to make the best decisions.

2742 *Mr. O'Halleran. And finally, Mr. Gomez, you mentioned
2743 Superfund sites that have been hit by wildfires such as the
2744 Iron Mountain one that we talked about. What suggestions for
2745 climate resilience can the EPA take from that?

2746 And additionally, I am very happy that you have gone
2747 through an evaluation from what has occurred over the last
2748 four years.

2749 *Mr. Gomez. Yes. So hopefully, again, EPA can learn
2750 from these examples, and share them across the agency.

2751 But I also wanted to mention to the committee that GAO
2752 recently issued a disaster resilience framework, which is a
2753 framework that we have developed over a long period of time,
2754 and work that we have done, where you can look at Federal
2755 actions, and you can use this framework to make sure that
2756 those actions are going to be resilient to disasters, to
2757 extreme weather, to climate change impacts. And it is

2758 various principles that you look at. You have the
2759 information that you need. Are you integrating the
2760 information? And can you set up incentives to help you?

2761 *Mr. O'Halleran. Thank you very much, Mr. Gomez.

2762 And Mr. Chairman, I yield.

2763 *Mr. Tonko. Thank you, the gentleman yields back, and I
2764 believe that concludes the list of colleagues who have chosen
2765 to ask questions of our witnesses.

2766 So we thank you all, and thank you, most importantly, to
2767 our witnesses for joining us at today's hearing. Thank you
2768 for your input, for your patience, and for your answering the
2769 questions of the many colleagues who joined us.

2770 I remind members that, pursuant to committee rules, they
2771 have 10 business days by which to submit additional records
2772 -- questions, rather, for the record, to be answered by our
2773 witnesses. So I ask only that our witnesses respond promptly
2774 to any such questions that you may receive. And we thank you
2775 for that.

2776 Before --

2777 *Mr. McKinley. Mr. Chairman?

2778 *Mr. Tonko. -- we move to -- yes, sir?

2779 *Mr. McKinley. Yes, Mr. Chairman, just a point of
2780 privilege at the end of this.

2781 Apparently we have -- of the 1,300 sites, 257 of them,
2782 apparently, are Federal sites. We have been focusing a lot

2783 on the private sector, but we have got 257 that are our
2784 responsibility, as Members of Congress. What can we do?
2785 What would you suggest? Is that maybe you and I, we put
2786 together something, we --

2787 *Mr. Tonko. Well, you know, we should look at
2788 whether --

2789 *Mr. McKinley. Why are they still on the books? Why
2790 aren't we cleaning them up?

2791 *Mr. Tonko. Right. We should look at opportunities for
2792 revenues that we could apply, perhaps Defense monies,
2793 whatever, that would apply to the various sites. So let us
2794 look at that, as a team, and see what we can come up with.

2795 *Mr. McKinley. I think it is a good place for
2796 bipartisanship. That is what I am thinking, if we work
2797 together. Let's get this thing in focus, and get these off
2798 the books.

2799 *Mr. Tonko. Right. Any site that is contaminating is
2800 of concern, whether it is private or government-owned. So
2801 let's commit to doing that.

2802 *Mr. McKinley. Thank you. Thank you.

2803 *Mr. Tonko. So, before we adjourn, there have been many
2804 requests to include information into the record. So I
2805 request unanimous consent to enter the following documents
2806 into the record: an article from High Country News entitled,
2807 "Libby, Montana Tries to Shake its Superfund Stigma"; a fact

2808 sheet from the National Mining Association entitled, "Common
2809 Sense Regulation that Recognizes Existing State and Federal
2810 Protections''; an article from the Florida Times Union
2811 entitled, "Off EPA's Priorities List: Fairfax Street
2812 Pollution Cleanup Celebrated as Poster Child''; a letter from
2813 the American Property Casualty Insurance Association; an
2814 article from the Montana Standard entitled, "Economic
2815 Outlook: A Look at Superfund Economics in Anaconda and
2816 Butte''; a report from the EPA Superfund Task Force entitled,
2817 "Making Decisions and Making a Difference in Superfund''; a
2818 report from the EPA entitled, "EPA Year in Review 2020,''
2819 pages 28 through 32; a 2019 petition for review with final
2820 action by the EPA, Idaho Conversation (sic) League vs. Andrew
2821 Wheeler, Administrator of the U.S. Environmental Protection
2822 Agency, and the U.S. Environmental Protection Agency; a
2823 report from the EPA entitled, "Superfund Fiscal Year 2019
2824 Annual Accomplishments Report. ''

2825 Are there any objections?

2826 Hearing none, without objection, so ordered.

2827 [The information follows:]

2828

2829 *****COMMITTEE INSERT*****

2830

2831 *Mr. Tonko. And with that, I again thank our witnesses
2832 for enduring here today. Thank you for your appearance and
2833 for your input.

2834 And at this time the subcommittee stands adjourned.

2835 [Whereupon, at 1:04 p.m., the subcommittee was
2836 adjourned.]