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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE SUBCOMMITTEE ON
ENVIRONMENT AND THE ECONOMY
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

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Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee, I am Mathy Stanislaus, Assistant Administrator for the Office of Solid Waste and Emergency Response (OSWER) at the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear today to discuss the EPA's role in the cleanup and restoration of contaminated federal facilities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

CLEAN UP PROGRESS UNDER CERCLA

Protection and restoration of our land is an important component in the EPA's mission to protect human health and the environment. The EPA leads the federal effort to reduce risks posed by contaminated land, undertaking cleanup and other activities that allow land to be returned to beneficial use. Since the enactment of CERCLA (or "Superfund"), the EPA, along with federal agencies, as well as states and tribes, have made significant progress toward this goal. Under the Superfund program, the EPA and its state, tribal, and federal partners have assessed more than 50,000 sites; the removal program has conducted more than 15,000 removals at over 9,000 sites; and 1,760 sites have either

been proposed to, listed on, or deleted from the Superfund National Priorities List (NPL). Of the 1,709 final or deleted sites, more than 90 percent have undergone construction activity, have been completed, or have been deleted from the NPL.

FEDERAL FACILITY CLEANUP AND REUSE

CERCLA Section 120 provides a framework for identifying contaminated federal facility sites, assessing actual or potential environmental risks from these sites, and assuring cleanup and other actions to protect human health and the environment. Under CERCLA, the EPA and its federal and state partners address releases of hazardous substances that pose or may pose current or future threats to human health and the environment. The federal facility restoration and reuse program is an important component of the broader Superfund program. Under CERCLA Section 120, federal facilities are required to comply with CERCLA in the same manner and to the same extent, both substantively and procedurally, as private entities.

Section 120 includes some unique provisions and timetables that apply to federal facilities only, including requiring the EPA to establish a federal agency hazardous waste docket, requiring completion of a preliminary assessment by a federal facility after docket listing, requiring a federal agency to commence a remedial investigation/feasibility study of a facility it owns or operates within six months of that facility being placed on the NPL, and requiring the EPA and the federal facility enter into an Interagency Agreement (IAG) (commonly referred to as a “Federal Facility Agreement”, or FFA) at NPL sites. Also, specific provisions govern the transfer of federal property to private entities. Finally, CERCLA restricts the use of Superfund Trust Fund monies to carry out remedial

actions at federal facilities. Instead, federal departments and agencies pay for the assessment and cleanup of facilities under their jurisdiction, custody or control, while the EPA uses its Superfund resources to provide technical assistance, oversight.

Under Executive Order 12580, federal agencies are designated as the “lead agency” for carrying out many CERCLA statutory requirements at their facilities. However, consistent with the requirements in CERCLA, the EPA retains the final decision authority over selection of a remedial action at sites listed on the NPL. CERCLA Section 120(e)(4) specifies that an IAG must include the review of alternative remedial actions, with the selection of remedial action by the head of the federal agency *and* the EPA. The Administrator of the EPA makes the final selection of the remedial action if the federal agency/department and the EPA are unable to reach agreement on the selection of a remedial action. Thus, in some respects, the Department of Defense (DoD), Department of Energy (DOE), and other federal agencies are both the EPA’s partners, as well as regulated entities, under the CERCLA framework.

At federal facilities on the NPL, unlike non-federal Superfund sites, the federal agencies responsible for cleanup generally write Records of Decision (RODs), with EPA review and concurrence. In addition, federal agencies assume the lead responsibility for carrying out CERCLA section 121(c) 5-year reviews to determine if the remedy remains protective at federal facility NPL sites, again with EPA review and concurrence.

The shared responsibility for program implementation under CERCLA has posed unique challenges for the EPA and other federal agencies, but has generally worked effectively.

At most federal facility NPL sites, field staff relationships are strong, and the program has made significant progress since the 1990s. Currently there are 157 final federal facility sites on the NPL with another 17 federal sites having been deleted from the NPL. Approximately, 80% of the 174 sites are DoD Component sites.

The FFAs negotiated with DoD, DOE and other agencies are enforceable agreements that govern the cleanup at federal Superfund sites, and are comparable to consent decrees which govern cleanups at private sites. FFAs often include a state as a signatory, and provide a formal mechanism for state involvement in the remedial action. Tribal governments also are often involved in the cleanup process and participate in the decision making process.

Often, the EPA and the other federal agencies implementing the remedies face unique challenges due to the types of contamination present, the size of the facility, the extent of contamination, ongoing facility operation needs, and complexities related to the redevelopment plans for the facilities

PROGRESS THROUGH EFFECTIVE PARTNERSHIPS

The CERCLA framework has worked effectively for helping to ensure appropriate oversight of clean ups for more than 25 years, with a proven track record for achieving consistent, protective cleanups at the nation's federal facility NPL sites. CERCLA has provided a consistent foundation for the EPA and federal agencies to cooperate in the field. Moreover, because states are most often parties to the agreements and state Applicable or Relevant and Appropriate Requirements apply to site cleanups, states and

the EPA work together to help ensure NPL cleanups meet statutory requirements and are protective of human health and the environment.

In the last five years, construction completion has been reached at eight federal sites, including seven DoD sites and one U.S. Coast Guard site. Construction completion of a site is an important milestone as it means the construction of all cleanup actions is finished at a site, including actions to address all immediate threats and to bring all long-term threats under control. Since the Superfund program's inception, construction completion has been reached at 76 of the 174 federal sites on the NPL, including 60 (out of 141) military sites, and 10 (out of 21) DOE sites.

However, some of the most complex work remains, such as addressing groundwater and munitions. This means that the cleanup work we are doing today is often more difficult, is more technically demanding, and consumes considerable resources. Additionally, even after remedies are in place, significant resources will be needed well into the future for continued maintenance, oversight and ensuring remedy protectiveness when waste is left in place. Further, the EPA's Federal Facilities program requires a steady and robust annual appropriation to effectively implement its technical assistance and oversight role to help other federal departments and agencies meet their cleanup goals. The EPA requested \$26.3 million in the FY 2016 President's Budget to perform this function.

BASE REALIGNMENT AND CLOSURE ACT (BRAC) SITES

The EPA also works in close partnership with DoD to address contamination on properties slated for transfer and conversion to other purposes under the Base

Realignment and Closure Act (BRAC). For the past twenty years, the EPA has supported the military's cleanup and transfer of property under the first four BRAC rounds through a long-standing Memorandum of Understanding (MOU). Through this MOU, DoD provided funding to the EPA to support the accelerated environmental restoration and cleanup decisions needed to support the reuse at selected DoD BRAC installations. The EPA has been involved at 107 BRAC installations associated with the first four BRAC rounds but that involvement has steadily been ramping down over the past five years. The current BRAC MOU is scheduled to expire on September 30, 2016. This change will impact EPA's involvement at non-NPL BRAC sites, but the EPA will continue to provide oversight at NPL BRAC sites.

RECENT INITIATIVES

The EPA is engaging with other federal departments and agencies on a range of activities to maintain and accelerate cleanup progress at federal facilities. For example, we are working collaboratively with DoD on tools for advanced geophysical classification to allow for more accurate and efficient cleanup of munitions sites, improving site level data quality, and resolving technical issues associated with emerging contaminants. We are continuing to modernize the Federal Agency Hazardous Waste Compliance Docket and are exploring ways to make the program data more accessible to communities and other stakeholders as required by CERCLA.

The EPA is co-chairing the Munitions Response Dialogue with DoD and states to discuss national level policy issues affecting munitions cleanups. These new initiatives build

upon a range of long-standing partnerships for exchanging information and training on remediation technologies, monitoring and chemical methods and data quality practices. Contaminated sites and cleanup activities have a significant impact on the surrounding communities. Ensuring that people have environmental information about their communities is a top priority for my office because information enables communities to participate more fully in the environmental cleanup process. In 2010 and 2011, as part of ongoing efforts to enhance community engagement, OSWER reached out to diverse stakeholders through several Federal Facility Dialogue meetings to discuss the federal facility cleanup program. During these discussions, stakeholders identified ways to make information on federal facility cleanups more accessible and useful for communities.

For the past five years, OSWER has been responsive to the stakeholder input we received. In particular, we heard the need for easily accessible information on cleanup progress and long-term protectiveness. We will soon complete the Five-Year Review streamlining initiative, deploying tools to assist both project managers and community members. We also published guiding principles and best practices in a fact sheet on “Sharing Information Effectively.”

In 2012, the EPA, in collaboration with other federal agencies and departments, completed the Federal Facilities Site Evaluation Project (FFSEP). This project evaluated the disposition of 514 federally owned sites that the EPA identified as potentially stalled in their progress. At the FFSEP’s inception, these sites had not been fully assessed with regard to whether they should be included on the NPL, were eligible for cleanup under one of the EPA’s other cleanup authorities (e.g., Resource Conservation and Recovery

Act), other agency's cleanup authorities (e.g., state, federal) or did not warrant further action. Through this process the EPA had been able to make an activity determination on 491 of the 514 sites on the FFSEP list. Initiatives like FFSEP, is how the EPA is ensuring that legacy federal facility sites are continuing to make progress and are protective of human health and the environment.

CONCLUSION

I appreciate the Subcommittee's interest in the cleanup of NPL federal facility sites. In partnership with other federal departments and agencies, states, tribes and local communities, we will continue our efforts to ensure that the cleanup of contaminated federal facility sites is performed in a manner that protects human health and the environment.