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MODERNIZING THE SUPERFUND CLEANUP PROGRAM

THURSDAY, JANUARY 18, 2018

House of Representatives

Subcommittee on Environment

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:15 a.m., in Room 2322 Rayburn House Office Building, Hon. John Shimkus [chairman of the subcommittee] presiding.

Members present: Representatives Shimkus, McKinley, Barton, Blackburn, Harper, Olson, Johnson, Flores, Hudson, Walberg, Carter, Tonko, Ruiz, Green, DeGette, McNerney, Cardenas, Dingell, and Pallone (ex officio).

Staff present: Allie Bury, Legislative Clerk, Energy/Environment; Jordan Haverly, Policy Coordinator, Environment; A.T. Johnston, Senior Policy Advisor, Energy; Mary

25 Martin, Deputy Chief Counsel, Energy & Environment; Katie
26 McKeogh, Press Assistant; Tina Richards, Counsel, Environment;
27 Dan Schneider, Press Secretary; Jennifer Sherman, Press
28 Secretary; Andy Zach, Senior Professional Staff Member,
29 Environment; Jeff Carroll, Minority Staff Director; Jacqueline
30 Cohen, Minority Chief Environment Counsel; Jean Fruci, Minority
31 Energy and Environment Policy Advisor; Evan Gilbert, Minority
32 Press Assistant; Tiffany Guarascio, Minority Deputy Staff
33 Director and Chief Health Advisor; Rick Kessler, Minority Senior
34 Advisor and Staff Director, Energy and Environment; Alexander
35 Ratner, Minority Policy Analyst; Tuley Wright, Minority Energy
36 and Environment Policy Advisor; C.J. Young, Minority Press
37 Secretary; and Catherine Zander, Minority Environment Fellow.

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38 Mr. Shimkus. The subcommittee will now come to order.
39 Thank you for closing the door. The chair recognizes himself for
40 five minutes.

41 Today, we continue the subcommittee's oversight of the
42 Superfund cleanup program and we initiate a discussion with the
43 EPA and other stakeholders about ways to modernize the program
44 to make sure that the Superfund sites around the country are
45 getting cleaned up and returned to productive use in the most
46 efficient and effective manner.

47 The Comprehensive Environmental Response, Compensation, and
48 Liability Act, commonly referred to as CERCLA, also known as
49 "Superfund" was signed into law on December 11th, 1980.

50 The National Priorities List came into existence in 1983 and
51 it is the prioritization of sites with known releases or
52 threatened releases of hazardous substances throughout the United
53 States.

54 As of November 2017 there were over 1,300 sites on the
55 National Priorities List and many of the sites have been on the
56 list for more than 20 years.

57 The process of evaluating contamination at the site and
58 determining the appropriate remedy can take years or even decades,
59 which delays the cleanup of the site and prevents the area from
60 being returned to productive use, which is why today's hearing
61 is so important.

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62 We applaud Administrator Pruitt for making Superfund cleanup
63 a priority because he correctly noted that cleanups take too long
64 to start and too long to complete.

65 To improve the efficiency and efficacy of the Superfund
66 program, EPA developed an extensive list of recommendations to
67 restructure the cleanup process and make sure that responsible
68 parties and other stakeholders are fully engaged in the process.

69 I would like to welcome Mr. Breen, the principal deputy
70 assistant administrator for the Office of Land and Emergency
71 Management, who will hopefully be able to share with us
72 information about the efforts undertaken by the agency to expedite
73 cleanups and reinvigorate redevelopment.

74 We hope that today will be a start of a productive dialogue
75 about the Superfund cleanup program and how we can all work
76 together to make sure that the program results in timely and
77 efficient cleanups.

78 When CERCLA was enacted, very few states had their own
79 cleanup programs, whereas today all states have robust and
80 successful programs. We need to assess whether states should
81 have a more significant role in CERCLA cleanups and whether there
82 are cleanups that are best handled entirely by the states.

83 Furthermore, there is a lot of process involved in CERCLA
84 cleanups. We need to take a serious look at whether the process
85 is working or whether it encourages or impedes cleanups.

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86 To help us with this analysis, we welcome our second panel.
87 We welcome back Mr. Cobb from the state of Alabama, who is here
88 on behalf of a good friend of the subcommittee, ASTSWMO.

89 Mr. Cobb is the head of the Land Division in Alabama and will
90 hopefully talk to us about how far states have come with developing
91 cleanup programs and whether the current role for states in CERCLA
92 cleanups is appropriate.

93 We also welcome Mr. Porter, who is former head of the EPA's
94 Office of Solid Waste and Emergency Response. Mr. Porter has been
95 in the trenches at EPA with respect to CERCLA cleanups and
96 hopefully he can share with us his ideas and suggestions for making
97 the program work better.

98 We also have with us today Jim McKenna, who comes from us
99 from Governor Brown's office in Oregon, who I personally met on
100 my trip to that Superfund site with our colleague a couple months
101 ago.

102 Mr. McKenna has over 30 years of experience working with the
103 Superfund cleanup program and we welcome his suggestions for
104 modernizing the program both in the state and responsible party
105 perspective.

106 And last but not least, we will hear from Katherine Probst,
107 who truthfully wrote a detailed report on how to improve the
108 Superfund program, and Ms. Mans, who is part of the Community
109 Advisory Group for the Passaic River -- I should know that --

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110 Superfund site in New Jersey, which was listed on the National
111 Priorities List in 1984. So, hopefully, she will have some
112 productive suggestions for us how to make the program work better.

113 So we welcome everyone. Is Mr. Carter -- Mr. Carter, do you
114 want to take my last minute to do your introduction?

115 [The prepared statement of Mr. Shimkus follows:]

116

117 *****INSERT 1*****

118 [The prepared statement of Mr. Walden follows:]

119

120 *****INSERT 2*****

121 Mr. Carter. Thank you, Mr. Chairman.

122 I just wanted to recognize that you've already mentioned Dr.
123 Porter -- Dr. Winston Porter, who is here. He happens to reside
124 in my district and I appreciate him being here very much.

125 He's very familiar with the four Superfund sites that we have
126 in our district and we appreciate that. As you mentioned, Mr.
127 Chairman, he was the EPA's assistant administrator with national
128 responsibility for the Superfund program. We are very pleased
129 to have him here and appreciate his expertise and him sharing it
130 with us.

131 Thank you, Mr. Chairman. I yield back.

132 Mr. Shimkus. The gentleman yields back to me and I yield
133 back my time.

134 The chair now recognizes the ranking member of the
135 subcommittee, Mr. Tonko from New York, for five minutes.

136 Mr. Tonko. Thank you, Mr. Chair, and thank you for holding
137 this hearing on modernizing EPA's Superfund program.

138 And thank you, Mr. Breen for being here. Appreciate you
139 being here. However, I am disappointed that Albert Kelly, who
140 led the Superfund task force, is not with us.

141 It is critical that we hear from the agency's political
142 leadership on this and other important issues. In 1980, Congress
143 passed the Comprehensive Environmental Response Compensation and
144 Liability Act, which is more commonly known as Superfund.

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145 Superfund is critical to protecting Americans' health and
146 the environment. It is estimated that over 50 million Americans
147 live within three miles of a Superfund site.

148 Today, there are over 1,300 sites listed on the National
149 Priorities List. These represent many of the most contaminated
150 sites in our country. There is no question that remediation of
151 these sites is complex.

152 There are many reasons why cleanups are slow and often
153 delayed, and I believe many members would be interested in
154 examining what changes are needed to the program to ensure that
155 it operates more effectively, moving forward.

156 But we cannot discount the importance of funding and the need
157 for robust engagement with stakeholders and the people that live
158 near these sites.

159 Administrator Pruitt has said remediating these sites is a
160 top priority. However, the president's fiscal year 2018 budget
161 request proposed a 30 percent cut to the program.

162 The EPA has also proposed eliminating financial support for
163 the Justice Department's Environment and Natural Resources
164 Division. EPA provides this office with 27 percent of its budget
165 which is used to support Superfund efforts.

166 Superfund has always been based on the principle of the
167 polluters pay. Responsible parties should foot the bill to clean
168 up contaminated sites, not our taxpayers. But it is critical that

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169 EPA has the resources to hold responsible parties accountable as
170 well as ensure remediation of "orphaned" sites.

171 Similarly, Superfund can only succeed with public buy-in.
172 Rushing to delete sites without engaging stakeholders or failing
173 to alleviate their concerns that a site is not adequately
174 remediated will undermine the integrity of the program as well
175 as its ability to complete meaningful cleanups.

176 As we will hear this morning, Administrator Pruitt has taken
177 actions related to Superfund. In July, the Superfund task force
178 released its report with 42 recommendations and last month the
179 EPA published a list of 21 sites targeted for immediate intense
180 action.

181 I have questions and concerns about how these
182 recommendations and priorities have been developed. These cases
183 are yet additional data points in an unacceptable pattern of
184 behavior.

185 This administration's aversion to transparency and public
186 influence is well noted. In the case of the targeted list, the
187 task force's own recommendation was not even closely followed.
188 As far as I am aware, there was no method released publicly for
189 determining site selection and it seems to me that sites where
190 human exposure is not under control were not sufficiently
191 prioritized.

192 It appears that many of these sites do not have much in common

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193 with one another. According to the questions and answers
194 document on EPA's website, they were at least partially chosen
195 because they have upcoming critical milestones and intent is to
196 have sites added and removed from this list, going forward.

197 I am not convinced that cycling sites that -- through a
198 meaningless list and churning out press releases celebrating
199 milestones are going to result in these sites being cleaned up
200 more quickly.

201 So far, this list has only raised more questions and caused
202 confusion with stakeholders. As always with Superfund, members
203 will have questions about sites of great interest to them.

204 For the people of my district, that means the Hudson River.
205 I am very concerned about the status of the site. EPA's draft
206 second five-year review concluded that today the upper Hudson
207 fails to meet the minimum standard for Superfund cleanup,
208 protection of human health, and the environment. The draft
209 review concluded that EPA expects the site to be protected at some
210 point in the very distant future, 55 years or more, although that
211 assumption seems tenuous.

212 The U.S. Fish & Wildlife Service, the National Oceanic and
213 Atmospheric Administration, and New York State have all
214 challenged EPA's time line for achieving the remediation goals
215 and the adequacy of the cleanup.

216 The communities I represent have always -- have already

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217 waited a lifetime to see this river and its rich heritage restored.
218 They should not have to wait another five or six decades as a best
219 case scenario.

220 The federal government has a responsibility to ensure that
221 the Hudson River is indeed protected. So I encourage EPA to
222 reevaluate the draft review.

223 Finally, I want to emphasize the rolling back environmental
224 protections and reducing enforcement actions will ensure that we
225 continue to add sites to the National Priorities List in the
226 future. I hope we can consider Superfund's role in the context
227 of the agency's broader plan to protect human health and the
228 environment.

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

230 Mr. Shimkus. The gentleman yields back his time. As the
231 chair waits for the chairman of the full committee, I would like
232 to turn to the ranking member of the full committee, Mr. Pallone,
233 for five minutes.

234 Mr. Pallone. Thank you, Mr. Chairman, for calling this
235 hearing on the Superfund program, which is a critical public
236 health program that's made an enormous difference in my state and
237 nationwide.

238 It is essential that this committee conduct oversight of the
239 controversial and, frankly, confounding implementation decisions
240 being made by President Trump, Administrator Pruitt, and the rest

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241 of the political leadership at EPA.

242 In the past month, this administration has published not one
243 but two new lists of Superfund sites with no public process and
244 no clear explanation of how sites were chosen or will be impacted
245 and neither of these lists focuses on the riskiest sites, calling
246 into question this administration's commitment to cleaning up the
247 most toxic sites poisoning communities around this country.

248 Unfortunately, we do not have anyone from EPA's political
249 leadership here today to answer our questions and, Mr. Chairman,
250 this administration has gone to extraordinary lengths to avoid
251 transparency with the public and with Congress and I repeatedly
252 raised these concerns with you and Chairman Walden and I have to
253 raise them again today.

254 EPA did not send a single witness to testify before this
255 committee until November. Last month, Administrator Pruitt
256 appeared for the first time, a full 10 months after taking office,
257 and at that hearing he pledged to provide witnesses for future
258 hearings and to respond to our oversight request.

259 Well, over a month has passed since he appeared and we have
260 received no additional responses to our oversight requests, and
261 despite the promise of Albert Kelly testifying today, we are now
262 told he had to back out because of unavoidable conflicts.

263 Now, strangely, these conflicts appeared very recently,
264 despite EPA being apprised of this hearing some two months ago.

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265 Mr. Chairman, I believe Mr. Kelly's unavoidable conflicts
266 have nothing to do with scheduling and everything to do with his
267 troubling financial ties.

268 Mr. Kelly owes this committee and the public a thorough
269 explanation of his past misdeeds, an explanation that EPA's career
270 staff cannot provide.

271 Public office is a public trust and that's especially true
272 for the Superfund program -- billions of dollars moved to the
273 Superfund trust fund and the Superfund special accounts, money
274 that can mean the difference between a toxic environment and a
275 safe one for communities around the country.

276 And Mr. Kelly, who Administrator Pruitt pledged in charge
277 of these funds or placed, I should say, in charge of these funds,
278 was just this past year banned for life from working in any
279 federally-insured bank or financial institution. He was banned
280 for life because of his unfitness to serve and his willful or
281 continuing disregard for the safety and soundness of the bank for
282 which he worked.

283 Is that really the type of person we should trust to run the
284 Superfund program? In September, I wrote to EPA to ask for an
285 explanation and, of course, like so many other inquiries made to
286 this EPA there is been no response.

287 When we first learned that Mr. Kelly would skip this hearing,
288 we urged you to postpone for good cause. Mr. Kelly appears to

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289 be running the Superfund program singlehandedly and generating
290 no records.

291 He's the only one who can answer questions about the decision
292 he has made. This hearing should have been postponed until he
293 was available. That didn't happen so now we should schedule
294 another hearing and the committee should use all of its available
295 tools to ensure that Mr. Kelly appears.

296 All I am saying is that we must hold this administration
297 accountable but that's not happening with this Republican
298 majority. Cleaning up toxic Superfund sites protects human
299 health and the environment. We must move past the press releases
300 to protect the Superfund program and all the essential laws that
301 the EPA implements.

302 And I just hope in this new year I would hope we can move
303 forward together in our oversight efforts.

304 I just think this program is too important, Mr. Chairman.
305 The EPA is too important. We can't accept this administration's
306 lack of transparency and we can't accept the appointment of people
307 who do not deserve, in my opinion, the public's trust.

308 And I yield back, unless someone else wants some of my time.
309 But I don't think so. Thank you.

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

311 The chair is looking for the chairman, who has not arrived.
312 Anyone else -- majority?

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313 The chair recognizes the gentlelady from Tennessee for five
314 minutes.

315 Mrs. Blackburn. Thank you. Thank you, Mr. Chairman.

316 I want to applaud the EPA's back to basics approach and
317 Administrator Pruitt's commitment to focus on the agency's core
318 mission. I think these are steps in the right direction and to
319 stay within the bounds of constitutional law and to cut
320 unnecessary bureaucracy.

321 And I will you, in Tennessee my constituents talk about the
322 work that's being done to cut regulation and bureaucracy. They
323 like these steps.

324 Now, in Tennessee there are 28 Superfund sites. Four are
325 on the National Priorities List and they are in my district. So
326 this is something that we focus on. You need to clean up these
327 contaminated sites. There is no question about it and I will tell
328 you, I have questions about the amount of process and the foot
329 dragging that is involved in cleaning up these sites under CERCLA.

330 Bids for these sites should not be taking 15 or 20 years.
331 That would be commons sense. We know that process has to speed
332 up.

333 Administrator Pruitt has said a couple of things. Back last
334 June at an appropriations hearing he made a comment, "It's more
335 about decision making, leadership than management -- and
336 management than money." Excuse me, I got that quote wrong.

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337 "It's more about decision making, leadership, and management than
338 money."

339 I agree with him on that. As I said, it ought not to take
340 15 or 20 years. At our oversight hearing in December he said,
341 "Most of it is a lack of direction on how we should clean up."

342 So these are solvable problems. Communities want to see
343 these sites cleaned up. They want to see the problem solved. So
344 we all know it is possible to do more with less. The private
345 sector does this every single day and it is time for government
346 to start to do more with less and to do it in a more timely fashion
347 and time efficient manner.

348 Let us be responsible to the states, to the communities, and
349 to the parties that are involved in this process and let's speed
350 this up and get these cleanup efforts in gear.

351 And I will yield, Mr. Chairman, to whomever would like the
352 time or yield it back.

353 Mr. Shimkus. It looks like you could yield it back and we'd
354 be great.

355 Mrs. Blackburn. I yield back.

356 Mr. Shimkus. Gentlelady yields back her time and we
357 appreciate that.

358 Having -- all time having expired, the chair now recognizes
359 the first panel.

360 Mr. Barry Breen, principal deputy assistant administrator

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361 for the Office of Land and Emergency Management, U.S.
362 Environmental Protection Agency -- before the hearing, he and I
363 spoke. We both served in the Army at the same time.

364 So thank you for your service and you're recognized for five
365 minutes.

STATEMENT OF BARRY BREEN, PRINCIPAL DEPUTY ASSISTANT
ADMINISTRATOR OF THE OFFICE OF LAND AND EMERGENCY MANAGEMENT, U.S.
ENVIRONMENTAL PROTECTION AGENCY

STATEMENT OF MR. BREEN

Mr. Breen. Thank you, Mr. Shimkus, and thank you, Ranking
Member Tonko and Ranking Member Pallone. Thank you, all the
members of the subcommittee. We are grateful to be here and to
answer your questions.

The Superfund program is a premier example of how we can both
protect the environment and pursue economic development at the
same time.

The importance of Superfund to human health is highlighted
in recent academic research by faculty at Princeton University,
University of Chicago, and the University of California at
Berkeley.

Superfund cleanups reduce the incidents of congenital
abnormalities, birth defects in infants, by as much as 25 percent
for families living within two meters of -- 2,000 meters of a site.

At the same time, Superfund is important to economic
development. Faculty at Duke University and the University of
Pittsburgh found that increased residential property values
within three miles of Superfund sites go up between 18 and 24
percent when the sites are cleaned up and deleted from the NPL.

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390 Superfund responds to both short-term emergencies and
391 long-term remedial action needs. Each year about 30,000 calls
392 come into the national response center and many of these are best
393 handled by state and local responders. But EPA works with our
394 Coast Guard partners in responding to, roughly, 150 to 200 of these
395 releases each year.

396 EPA has a 24-hour response capability and for the last 11
397 years EPA completed or oversaw 3,600 and some response actions.

398 At the same time as those short-term emergencies are being
399 dealt with, the Superfund remedial program addresses complex,
400 high-priority, long-term cleanups. They reflect both legacy
401 practices from decades ago and more recent contamination as well.

402 Through 2017, EPA and our partners completed final remedial
403 assessments at more than 51,000 potentially contaminated sites.
404 But at the same time much has been done, there's much left to do
405 and we've taken several steps to further improve and expedite the
406 process of site remediation.

407 The administrator established a Superfund task force to
408 provide recommendations on an expedited time frame. The task
409 force report provides 42 recommendations and we adopted it in
410 July.

411 We included a list, as Mr. Tonko mentioned, of the 21 sites
412 for immediate and intense attention. In developing the list, we
413 considered sites that would benefit from the administrator's

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414 direct engagement and have identifiable actions to protect human
415 health and the environment.

416 We wanted to spur action at sites where opportunities exist
417 to act quickly. Sites will move on and off the list as
418 appropriate. We also recently released an initial list of
419 Superfund sites with the greatest expected redevelopment and
420 potential for commercial development.

421 These are where we think there's been previous outside
422 interest, access to transportation corridors, land values, and
423 similar development drivers. It's not a complete list of
424 everything with redevelopment potential and we hope sites will
425 move on and off the list as appropriate.

426 And we are addressing risk at all Superfund sites, not just
427 of those on the list. The administrator's expectation is a
428 renewed focus on accelerating work in progress at all sites
429 nationwide.

430 We appreciate your interest in our program. Protecting
431 human health and the environment by enhancing ongoing cleanup and
432 reuse remains EPA's -- one of EPA's top priorities.

433 Such efforts will be always undertaken in partnership with
434 other federal departments and agencies, states, tribes, and local
435 communities in a manner that protects human health and the
436 environment and seeks economic development as well.

437 Thank you very much, and I will look forward to your

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438 questions.

439 [The prepared statement of Mr. Breen follows:]

440

441 *****INSERT 3*****

442 Mr. Shimkus. I thank the gentleman and now we'll turn to
443 the round of questions and I will start with -- recognize myself
444 five minutes for the first -- for the first member to speak.

445 First of all, welcome. We are glad to have you here and,
446 just to put this in perspective, a long-time career professional
447 employee from the EPA. We appreciate your service, and that gives
448 us a pretty good insight into -- you have seen a lot over the years.

449 So I want to thank Administrator Pruitt and the EPA for making
450 the Superfund cleanup program a priority. I think most members
451 -- if we don't have a Superfund site in our district we have one
452 close enough and we've been bedeviled by this process, as you all
453 have been, for decades and that's a frustration that you will hear
454 from members who have been on the committee for a long time just
455 how long this takes, the cost it takes, the parties involved and
456 those issues.

457 Would you please walk us through what you view as the most
458 important issues that need to be addressed to make the program
459 more effective and more efficient?

460 Mr. Breen. Thank you.

461 In fact, we asked ourselves those questions when we put
462 together the task force over the summer and developed the 42
463 recommendations.

464 The way the recommendations were developed was by asking
465 senior career staff, for the most part, what we should do and we

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466 all listened as well to outside input.

467 But in the end, it was the task force that put the
468 recommendations together and provided it to the administrator in
469 June on about the 30-day time line he'd asked for.

470 Then there was interaction with the administrator and then
471 we came out with the report as reflected in July. So I would have
472 to say what we would reflect back are what's in the task force
473 report.

474 For one thing, it's looking for hindrances that can be moved
475 aside. Things were put in place for a reason at one time but that
476 time may well have passed.

477 We want to focus on demonstrable outcomes like construction
478 completion, getting site wide ready for anticipated use. We want
479 sites deleted when they can be safely. We want to get the work
480 done.

481 So I would turn us to those 42 recommendations as what I would
482 suggest as the consensus view.

483 Mr. Shimkus. Thank you.

484 The -- you know, the state cleanup programs when I -- I had
485 the history of the Superfund in my opening statement -- that's
486 what I was pulling out -- enacted in 1980, the National Priority
487 List in 1983. There are still sites on that list that haven't
488 been remediated, which is, again, I think, embarrassing from a
489 national government perspective.

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490 Having said that, what has evolved and what is different is
491 state involvement in cleanup and cleanup actions. Would cleanups
492 be more efficient if certain Superfund CERCLA authorities were
493 delegated to the states?

494 Mr. Breen. Thank you.

495 So let me start by saying we, at least from our perspective,
496 have a very strong relationship with the states and we appreciate
497 it and, in fact, we couldn't -- we couldn't accomplish nearly
498 enough without that strong relationship.

499 We have a baseline already of many sites not being addressed
500 on the Superfund National Priorities List because states are
501 addressing them under state programs, and in many cases we have
502 formal agreements to that end and in other cases we have strong
503 working relationships that don't need a formal agreement.

504 But there are indeed probably thousands of sites that are
505 not on the National Priorities List thanks to strong state
506 programs.

507 In order for a site to get on the National Priorities List,
508 our practice is to ask states for their concurrence before putting
509 it on the list and, indeed, many of the filtering and screening
510 and site assessment work that leads to a site being put on the
511 NPL are actually accomplished by state programs.

512 And so, in fact, we have -- for one recent year, in 2017,
513 we provided \$58 million to states in total, both to conduct

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514 activities on NPL sites and to support state Superfund programs.

515 Where states are undertaking work on their own, the statute
516 already provides that states have the same ability that the EPA
517 does to recover cost from polluters.

518 And so Superfund is a response statute. It involves men and
519 women working on the ground. We'd be ready to talk further about
520 ways we can work together. But I wouldn't want to miss the reality
521 that the strong working relationship is already making a big
522 difference.

523 Mr. Shimkus. In my short time remaining, does the national
524 contingency plan need to be updated and modernized to more
525 effectively deal with sites that are being cleaned up?

526 Mr. Breen. Thank you.

527 We recently amended the hazard ranking system to account for
528 subsurface intrusion. This is the TEC, typically, or other
529 halogenated solvents that can move with the water through the
530 ground water and then come up into homes and basements.

531 We recently amended the hazard ranking system to address
532 that. In terms of other NCP amendments, we'd be open to
533 discussion. I know it's not just Superfund but the oil program
534 as well in the NCP.

535 Mr. Shimkus. I want to thank you, and I will now recognize
536 the ranking member of the subcommittee, Mr. Tonko, for five
537 minutes.

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538 Mr. Tonko. Thank you, Mr. Chair.

539 Mr. Breen, how does the EPA consider concerns from the
540 public, from peer agencies, states, and independent scientists
541 in its five-year review determinations?

542 Mr. Breen. There is a formal process for doing a five-year
543 review determination and, as you mentioned, with the Hudson River
544 we did a draft and put it out for public comment and we did
545 extensive interagency coordination on it, and now we are in that
546 step with the final.

547 It is the case that we are working hard on this, and I listened
548 carefully to what you said and I will, naturally, take that back
549 and we've had input as well from New York State as well as natural
550 resource trustees at the federal level, including.

551 So we'll take that all back. But we have not yet resolved
552 the five-year review.

553 Mr. Tonko. And you will factor all of those concerns that
554 the state has shared, and others --

555 Mr. Breen. Yes, sir.

556 Mr. Tonko. -- into its final decision?

557 Mr. Breen. Yes, sir.

558 Mr. Tonko. I do not believe the site possibly being
559 protected 55 years from now is deserving of it being granted a
560 current status of being complete and protected.

561 I would encourage EPA to take another look at the evidence

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562 gathered by your counterparts in the New York State government
563 and other federal agencies.

564 One of the goals of the Superfund task force recommendations
565 is to engage partners and stakeholders. So, unfortunately,
566 everything we have seen from this administration has been contrary
567 to that given goal.

568 There has been a shocking lack of transparency in both the
569 development of the task force recommendations and the choice of
570 21 targeted sites.

571 Given that lack of transparency, it is especially
572 problematic that we do not have the agency's political leadership
573 here today to testify.

574 Mr. Breen, how were the members of the Superfund task force
575 chosen?

576 Mr. Breen. For the most part, they are overwhelmingly
577 career members of the EPA whose assignments -- they are mostly
578 senior, very senior members -- whose assignments bring them into
579 the kind of work that the task force has undertaken.

580 There wasn't a formal sort of filter where only some people
581 could be on. I was on some of the phone calls and it seemed to
582 be a considerable matter of people's work making them the natural
583 choice to be on.

584 Mr. Tonko. Okay. Now, for the next questions I would
585 appreciate a yes or no answer.

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586 Administrator Pruitt noted that stakeholder partners
587 contributed to the task force report. Did the task force comply
588 with the requirements of the Federal Advisory Committee Act?

589 Mr. Breen. To the best of my knowledge, the answer is yes.

590 Mr. Tonko. Were task force members announced in the Federal
591 Register or at least on the agency's website?

592 Mr. Breen. I believe we have -- there is a list posted. I
593 don't think it's on the agency's website but I would have to check
594 on that.

595 But I want to be clear, this is an internal group, not an
596 external federal advisory committee.

597 Mr. Tonko. Right. But, again, were they listed in the
598 register?

599 Mr. Breen. No, I don't believe so.

600 Mr. Tonko. Did the task force hold public meetings?

601 Mr. Breen. No.

602 Mr. Tonko. Did the task force publish proposed
603 recommendations for public comment and other responses to public
604 comments?

605 Mr. Breen. So I understand you want a yes and no.

606 The task force report itself, which we published in July,
607 is intending to be a living document and we would be grateful for
608 input on it.

609 Mr. Tonko. So did they publish proposed recommendations for

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610 public comment?

611 Mr. Breen. Not before July of 2017.

612 Mr. Tonko. Okay. Did the task force maintain and publish
613 records of its meetings and process?

614 Mr. Breen. So, again --

615 Mr. Tonko. Yes or no on that one.

616 Mr. Breen. I understand, sir.

617 Again, the task force isn't a freestanding body. It's a
618 group of people who work together and --

619 Mr. Tonko. Right. But do they maintain and publish records
620 of their meetings and process?

621 Mr. Breen. We have not published records.

622 Mr. Tonko. Okay. This is disappointing and, frankly,
623 counterproductive.

624 Transparency can go a long way to building trust and
625 community support for Superfund activities, which is essential
626 for effective cleanups.

627 Let's move on to the list of 21 targeted sites announced on
628 December 8. Again, yes or no answers, please.

629 Did EPA develop a formalized methodology for selecting
630 sites?

631 Mr. Breen. You're asking did EPA acknowledge --

632 Mr. Tonko. Did they develop a formalized methodology for
633 selecting sites?

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634 Mr. Breen. We have an objective for what the -- what was
635 our -- what we were looking for in the list of sites.

636 Mr. Tonko. But no formalized methodology?

637 Mr. Breen. Well, I would say there was a methodology. We
638 asked the regions for candidates. We understood what that
639 objective was, which I can tell you, and then the regions came
640 in with sites.

641 There was discussion about it and then finally a list was
642 given to the administrator.

643 Mr. Tonko. Okay. Let's move on. Did EPA hold public
644 meetings or solicit public recommendations for sites to be
645 included on the list?

646 Mr. Breen. We -- so a number of times, I have to say, we
647 asked people what should be included. But I don't think we held
648 a public meeting --

649 Mr. Tonko. Okay.

650 Mr. Breen. -- specifically on that topic.

651 Mr. Tonko. Okay. Did EPA publish a proposed list for
652 public comment?

653 Mr. Breen. No.

654 Mr. Tonko. Did EPA confer with stakeholders at sites before
655 they were listed including the formal community advisory groups?

656 Mr. Breen. So we did not ask the regions to formally go out
657 to the community advisory groups. But in asking the regions what

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658 sites to put on the list, regions may usefully have taken into
659 account what they thought would be the public --

660 Mr. Tonko. All right. Has EPA met with stakeholders at the
661 listed sites since they were listed to explain the consequences
662 of listing?

663 Mr. Breen. I would have to check on that on a site by site
664 basis and get back to you.

665 Mr. Shimkus. Okay. The chair has been very patient. The
666 chair now will reclaim the time and yield to the gentleman from
667 West Virginia, Mr. McKinley.

668 Mr. McKinley. Thank you, Mr. Chairman, and thank you, Mr.
669 Breen, for appearing here today.

670 I was impressed with how quickly you were able to put together
671 these recommendations because apparently the charge was put in
672 May and by July they had 42 recommendations. That's -- given the
673 work output in Washington, that's a dynamic thing to be able to
674 accomplish -- 42 recommendations in two months, to come up with
675 it.

676 And I was particularly impressed with one component of it.
677 It was I think recommendation 23 and 28 perhaps. Had to do with
678 comfort levels -- comfort letters.

679 Having come from the engineering practice and working on some
680 of these Superfund sites and other Brownfield locations, owners
681 desperately want to understand whether or not this site is clean.

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682 And I don't know whether people have been able to read yet the
683 recommendations that you had. But one of the comfort levels that
684 in the past was -- is pretty illuminating in that here it is at
685 the conclusion -- a typical comfort level it says this letter --
686 this is coming from the EPA -- "This letter is provided solely
687 for informational purposes." They are trying to get -- an owner
688 is trying to find out, or a prospective buyer, is this site clean.

689 And so the government gets back to them in a bureaucratic
690 fashion by saying this letter is provided solely for informational
691 purposes and is not otherwise intended to limit or affect the EPA's
692 authority under CERCLA or provide a release from CERCLA liability.
693 There is no comfort.

694 I don't -- so I am curious now. How much progress do you
695 think -- have you made since July when this report came out that
696 you might be able to have something on a comfort level that
697 actually does give comfort and support for someone?

698 Mr. Breen. Thanks, Mr. McKinley.

699 So we do intend to come out with a quarterly progress report
700 starting soon that would have recommendation by recommendation
701 -- our approach.

702 What I would like to do is offer a briefing for you and your
703 staff on where we are on that particular recommendation in
704 particular without waiting for the quarterly report. We'll get
705 back to you with some specifics.

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706 Mr. McKinley. Okay, if you could.

707 The other is I am trying to understand the driving factor
708 that puts these sites --

709 Mr. Breen. Yes.

710 Mr. McKinley. Is it bankruptcies? Can you -- if a company
711 declares bankruptcy, there seems to be unclear whether or not they
712 can shed their liability in a bankruptcy.

713 What causes a site to be transferred from a corporation or
714 a business over to the federal government to clean it up? What
715 would be an example?

716 Mr. Breen. So a site could be on the national Superfund
717 priority list with a bankruptcy situation or without -- either
718 one. Bankruptcy would be an important marker that there are not
719 enough assets in the corporation in order for the enforcement part
720 of the Superfund program to seek cost recovery.

721 Mr. McKinley. But couldn't we go back personally on the
722 stockholders or someone? Why has this become a way to shed
723 responsibilities of corporations to the federal government?

724 Mr. Breen. So there are lawyers at the Justice Department
725 who do this 12 hours a day. I would probably do best to get you
726 one of the environmental bankruptcy lawyers at the Justice
727 Department.

728 Mr. McKinley. Yes. I would like to -- I would like to hear
729 back from someone what would be some suggested legislation that

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730 we might be able to do to make sure they can't shed this, because
731 we've had enough problems around here with corporations shedding
732 their pension responsibilities, and I don't like the idea of them
733 also shedding their environmental liabilities as well. So --

734 Mr. Breen. Thank you.

735 Mr. McKinley. -- is there anything else that -- there was
736 another question. If it's taking five years -- five years to come
737 up with a plan, why would that -- what can we do from Congress
738 to speed up this process -- that after we've identified it, why
739 would it take five years to come up with a remedial process when
740 EPA has demonstrated that within two months they can come up with
741 42 suggestions?

742 Mr. Breen. So we don't want it to take long either. We are
743 -- we are -- that's why we come to work every day is to get it
744 cleaned up.

745 The truth is we don't pick the worst sites. The worst sites
746 get -- what I mean to say is we pick the worst sites. We didn't
747 make them. So they're on our list precisely because they're hard
748 and difficult.

749 So sometimes to do it right does take time. But we want to
750 go faster, too.

751 Mr. McKinley. Okay. I yield back.

752 Mr. Shimkus. Gentleman yields back his time. The chair now
753 recognizes the ranking member of the full committee, Mr. Pallone,

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754 for five minutes.

755 Mr. Pallone. Thank you, Mr. Chairman.

756 Obviously, I wanted to use my time today to ask Albert Kelly,
757 the controversial political appointee who's been put in charge
758 of the Superfund program, to explain to the American people
759 exactly what he did to get barred for life from the banking
760 industry.

761 But, unfortunately, he backed out, probably because he
762 doesn't want to answer these questions, and like my colleague from
763 New York, Mr. Tonko, I find this lack of transparency unacceptable
764 and I am also concerned that my Republican colleagues on the
765 committee continue to enable this lack of transparency because,
766 you know, they don't insist on his being here or do other things
767 to try to get him here.

768 So I am going to have to turn to Mr. Breen because he's the
769 only witness. Mr. Breen, can you explain to the American people
770 what exactly Mr. Kelly did to get barred for life from the banking
771 industry?

772 Mr. Breen. I understand that Mr. Kelly elected to settle
773 a matter with the FDIC. He suggested I pass on to you that he
774 is fully willing to discuss this matter.

775 Mr. Pallone. Well, I would hope then that, as I said before,
776 Mr. Chairman, that we can get him back for another hearing -- bring
777 him in here to testify because I think he's the only one that can

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778 really answer the question.

779 But I appreciate the fact that he's willing to come back and
780 I would hope that that would mean that you would be willing to
781 bring him back because, you know, this really is a matter that
782 relates, I think, to the long-term solvency of the Superfund
783 program.

784 Now, since 1983, EPA has relied on the National Priorities
785 List to identify and target the Superfund sites that present the
786 greatest threat to human health and the environment.

787 In December, EPA introduced a new list of sites that would
788 be targeted for immediate intense action. That list is not based
789 on risk to human health or the environment, meaning that some of
790 the most dangerous Superfund sites are not being targeted, and
791 I quote, "for immediate intense action."

792 Then yesterday EPA published yet another new list of sites,
793 the sites that EPA believes have the greatest potential for
794 redevelopment.

795 This list is also not based on risk to human health or the
796 environment and suddenly one list has become three, and I think
797 the public is understandably confused.

798 So, Mr. Breen, am I correct that neither of these new lists
799 targets the sites that present the greatest risk to human health
800 and the environment?

801 Mr. Breen. The answer is yes. I want to thank you, Mr.

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802 Pallone, for your personal support and interest over the years.

803 Mr. Pallone. Well, I appreciate that.

804 But I mean, isn't the mission of EPA and the Superfund program
805 to protect human health and the environment? Isn't that the
806 reason?

807 Mr. Breen. That's right. So the National Priorities List
808 is risk based. These are units within the NPL that we use to say
809 these need the administrator's attention and --

810 Mr. Pallone. Okay.

811 Mr. Breen. -- these others are available for redevelopment
812 to bring money and jobs to the site even while we are addressing
813 risk.

814 Mr. Pallone. No, I understand that.

815 But we've heard a great deal about how Administrator Pruitt
816 is attempting to focus on the core mission of the agency. So,
817 to me, it's kind of alarming to see that these actions that, you
818 know, seem to focus the EPA attention away from the riskier sites.

819 Mr. Breen, is EPA still committed to cleaning up the sites
820 that pose the greatest risk to human health and the environment?

821 Mr. Breen. Yes.

822 Mr. Pallone. Okay. And even if those sites don't appear
823 on either of these new lists that's still true?

824 Mr. Breen. Yes.

825 Mr. Pallone. Okay. But, again, it's kind of ridiculous

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826 that I have to ask you these questions. But EPA's recent actions,
827 in my opinion, have called into question whether the agency is
828 still focused on the most dangerous sites.

829 I've heard from communities in my district that are
830 threatened by these sites and the sites that weren't included on
831 the new list and they don't know what it means.

832 So does EPA have plans to reach out to those communities to
833 reassure them that their cleanups are still a priority even though
834 they're not on these new lists?

835 Mr. Breen. You have marked for us work we need to do. We
836 are not moving away from cleaning up all the sites and, for that
837 matter, the riskiest sites get a very high priority.

838 Mr. Pallone. All right. So can you say right now -- you
839 seem to be saying but I am going to ask you more specifically --
840 can you say right now to reassure these communities that their
841 sites will still get funding, still get EPA attention, and still
842 get health protective cleanups -- that that's the goal?

843 Mr. Breen. Yes, sir. The one thing I have to worry about
844 is funding, as do -- as do you all.

845 Mr. Pallone. Okay. Well, again, you know, when we talk
846 about funding, myself and many Democrats on this committee have,
847 you know, introduced legislation to try to reinstitute the trust
848 fund and reinstitute, you know, the tax on the oil and chemical
849 industry that will provide more funding so we don't have to rely

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850 on the general revenue.

851 But we haven't been able to get the Republicans to do that,
852 and I go back to, you know, when Newt Gingrich was the Speaker
853 and it expired because he didn't want to do it.

854 So, again, I am just concerned that many endangered
855 communities are being ignored, even as Administrator Pruitt
856 declares the Superfund to be his top priority.

857 But thank you, Mr. Chairman.

858 Mr. Shimkus. The gentleman yields back his time. The chair
859 now recognizes the gentleman from Texas, Mr. Olson, for five
860 minutes.

861 Mr. Olson. I thank the chair, and welcome, Mr. Breen.

862 As you know, Texas has more than its fair share of Superfund
863 sites. One site that is causing the most concern in Texas-22,
864 as you mentioned earlier, is the San Jacinto River Waste Pits.

865 Waste from paper manufacturing has been store in hardened
866 caps at the bottom of the San Jacinto River for about 40 years.

867 Hurricane Harvey, bringing down 60 inches of rain in some
868 places, overwhelmed those caps and cancer-causing dioxin was
869 released. One EPA estimate of the release measured 70,000
870 nanograms per kilogram. The cleanup threshold is 30 nanograms
871 per kilogram. That's the same chemical in natural forces that
872 started the Superfund in Love Canal.

873 We'd like to thank you and Mr. Pruitt for committing to remove

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874 all of that waste -- not just recap it but remove it from threat.
875 You also mentioned emergency response in your testimony. You
876 said that you have to take in -- deal with 30,000 release
877 notifications each year. Some of those are really important.
878 Some not as important.

879 My question is, how do you determine when it's appropriate
880 for you to step in in an emergency or when should you let that
881 go to the states and locals to take care of some contamination?

882 Mr. Breen. Thank you.

883 There's a very well-practiced protocol for that. The calls
884 go to one central place, the National Response Center, which is
885 operated by the U.S. Coast Guard.

886 They get, as I said, about 30,000 calls a year. It's a
887 24-hour line. There are people on duty all the time, and as well
888 there are 10 EPA regional emergency operation centers and one EPA
889 headquarters emergency operation center.

890 As calls come in, the watch officer at the Coast Guard
891 national response center is making some on-the-spot decisions
892 about who to tell and, as I said, probably 99 percent of the time
893 it's the local fire department or the state hazmat unit, and that's
894 as it should be.

895 These are the people who are closest geographically anyway
896 and they know the communities the best. But frequently they ask
897 us to come in and then we come in right alongside beside.

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898 Mr. Olson. Thank you.

899 Now, do you have the resources you need to address these calls
900 to do what you have to do by law?

901 Mr. Breen. So the -- there's considerable work sharing
902 between us and the states and local governments, and what's really
903 happening very often is that professionals are deciding among
904 themselves who's closest to the site, who can get there fastest,
905 who's got the equipment and the people with advanced degrees to
906 know what are the gases being released, what are the constituents
907 going into the water.

908 Mr. Olson. So it sounds like you're okay. You could
909 probably use more but you got what you need right now.

910 Mr. Breen. We will work with whatever you give us.

911 Mr. Olson. Well, thank you.

912 I would like to also talk about responsible parties and how
913 we tackle some other sites like the San Jacinto River Waste Pits.
914 In that case, we have three class action lawsuits out there right
915 now with at least three defendants, none of whom were actually
916 involved in the waste storage when it happened.

917 And so we are trying to find out the responsible party. Can
918 you talk about how we can determine who is the or a responsible
919 party and what's the process for getting them to the table earlier
920 rather than later?

921 Mr. Breen. I can speak in general terms. Given the

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922 litigation, I probably ought to be careful not to speak in
923 particular terms about this site and this set of potentially
924 responsible parties.

925 In general terms, Congress sets who is a potentially
926 responsible party -- present owners and operators, owners and
927 operators at the time of disposal, those who arranged for the
928 hazardous substance to be put at the site, and those who
929 transported it there.

930 Those -- there's a PRP search typically early in a site's
931 development, and while the engineers are doing site evaluation
932 and remedial investigations, the enforcement program is seeing
933 who could ultimately be brought to -- brought to the table.

934 There are notice letters -- general and special notice
935 letters that go out. But that's not the end of the story. We
936 continue to look for potentially responsible parties.

937 Ultimately, we'll pick those who we think both have
938 responsibility and the assets to pursue.

939 Mr. Olson. Well, thank you. Those are my questions. I
940 would like to also congratulate you and Chairman Shimkus because
941 for the first time in 15 years you all have beaten my Navy-Army
942 at football. Congratulations.

943 [Laughter.]

944 I yield back.

945 Mr. Shimkus. I think we are 2-0 right now.

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946 So the chair now recognizes the gentleman from California,
947 Dr. Ruiz, for five minutes.

948 Mr. Ruiz. Thank you, Mr. Chairman.

949 Since 1980, the Superfund program has cleaned up hazardous
950 sites and helped corporations such as landfill operators,
951 chemical companies, and manufacturers -- hold them accountable
952 for polluting communities across the country.

953 In May, Administrator Pruitt announced the creation of a
954 Superfund task force that would prioritize and streamline
955 procedures for remediating more than 1,300 sites.

956 While it would be appropriate for this committee to hold
957 public hearings on potential updates to the Superfund program and
958 how to ensure necessary cleanups are not delayed, Administrator
959 Pruitt's unilateral decision to streamline the process raises
960 some serious transparency concerns.

961 Which procedure specifically is the task force streamlining?
962 Meaningful consultation with affected tribes are required by
963 Executive Order 13175?

964 The scientific evaluation scoring of sites based on the
965 severity of the contamination? The prioritization of the most
966 contaminated sites for limited federal cleanup funds?

967 The American public and this committee are all wondering
968 which specific proposals Administrator Pruitt unilaterally
969 decided to streamline and I hope today's hearing will shed some

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970 light.

971 Since I came to Congress I have heard horror stories about
972 the pollution and contamination of tribal lands or near tribal
973 lands that tribes rely on that our government turned a blind eye
974 towards for decades.

975 Two years ago, I convened a round table discussion to hear
976 from tribal leaders across the nation and learned more about the
977 environmental injustices they have dealt with and continue to face
978 with federal agencies.

979 One tribe in particular, the St. Regis Mohawk in New York,
980 raised concerns with the EPA's effectiveness in mitigating the
981 impacts of two Superfund sites located directly upstream and
982 upwind from where the tribes draw its drinking water.

983 Although consulted, the EPA disregarded the St. Regis
984 Mohawk's input on the level of remediation required at each site.
985 Later, testing revealed elevated levels of pollution in fish from
986 nearby water sources that the tribe relies on for their economy
987 and their consumption.

988 Living in close proximity to environmental hazards yet not
989 being meaningfully consulted in the government's mitigation
990 planning threatens the health and well-being of tribal members
991 who rely on resources like rivers for survival.

992 That's why I, along with Ranking Member Pallone, Ranking
993 Member Grijalva, and 24 other members of Congress asked the

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994 Government Accountability Office to prepare an investigative
995 report on the adequacy of federal policies that protect tribal
996 lands and recommendations for how the policies can be improved.

997 GAO has since initiated the study and I look forward to seeing
998 the results and identifying how we can improve the way our
999 government works with tribal governments, not walk away from our
1000 responsibility.

1001 Now is not the time to stop this momentum and push
1002 environmental injustices back into the shadows. The flagrant
1003 lack of transparency surrounding the task force selection of sites
1004 coupled with the failure to uphold any public meetings confirms
1005 that the task force is a step perhaps in the wrong direction.

1006 We have a duty to ensure that the families living in these
1007 communities and disproportionately suffering from exposure to
1008 pollutants emanating from these Superfund sites are being
1009 meaningfully engaged in the remediation process so that they can
1010 enjoy a cleaner and safer outdoor environment to work, play, and
1011 raise their families.

1012 Mr. Breen, since the last task force failed to generate a
1013 record of its deliberations, I am troubled by the lack of
1014 transparency and whether affected communities were meaningfully
1015 consulted.

1016 So what specific procedures did the task force follow to
1017 meaningfully consult with affected tribes and communities living

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1018 near toxic sites during the selection process of the 21 sites
1019 recommended for immediate intense action?

1020 Mr. Breen. Thank you very much.

1021 We completely agree that our relations with tribal
1022 governments are of high importance. This is a
1023 government-to-government relationship and the many cases there
1024 are --

1025 Mr. Ruiz. I have heard that for so many years. But the
1026 actions speak louder than words, and the actions do not show that.

1027 So what have you actually done to consult with tribes?

1028 Mr. Breen. Let me -- I mean, I will address that. I just
1029 didn't want to let it go unsaid.

1030 Mr. Ruiz. I only have 47 seconds left and it seems like
1031 you're stalling. So what actions --

1032 Mr. Breen. I am definitely not stalling.

1033 Mr. Ruiz. -- have you -- have you done to meaningfully
1034 implement meaningful consultation with tribes?

1035 Mr. Breen. Of the 21 sites that we identified for the
1036 administrator's immediate and intense attention in our data
1037 system, eight of the 21 are identified as having Native American
1038 interest.

1039 Mr. Ruiz. That's not meaningful consultation. That's what
1040 I've heard over and over again where they have Native American
1041 interest or they invite a Native American to a room just to check

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1042 a box. That is not meaningful consultation where you take their
1043 considerations, their concerns, and actually implement with them
1044 at the table.

1045 This is exactly what went wrong with the St. Regis Mohawk
1046 problem with the contamination of the reef -- of the rivers. They
1047 went to a meeting. They checked the box. They weren't listened
1048 to. Nothing was implemented, and now they have a problem.

1049 I yield back my time.

1050 Mr. Shimkus. I thank the gentleman. The gentleman yields
1051 back his time.

1052 The chair now recognizes the gentleman from Georgia, Mr.
1053 Carter, for five minutes.

1054 Mr. Carter. Thank you, Mr. Chairman.

1055 Mr. Breen, thank you for being here. Appreciate your
1056 indulgence with us. I am over here. Hello.

1057 Mr. Breen. I am sorry. I am looking at --

1058 Mr. Carter. Okay. Thank you. Appreciate it.

1059 Mr. Breen. I was getting out my right sheet of paper.

1060 Mr. Carter. That's okay. That's okay.

1061 Mr. Breen, I was just wondering, in 1996 do you remember what
1062 you were doing? I mean, were you with the agency then or --

1063 Mr. Breen. I was.

1064 Mr. Carter. You were?

1065 Mr. Breen. Yes.

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1066 Mr. Carter. Okay. That's a long time ago, right? 1996,
1067 yeah.

1068 In 1996, the LCP chemical site in Brunswick, Georgia, was
1069 put on the National Priorities List, in 1996. Twenty years later
1070 in 2016 a settlement was announced. But we still don't have
1071 funding. The funding still hasn't materialized.

1072 Seriously? I mean, seriously? What -- dumb it down for me.
1073 Tell me what's going on here. I mean, seriously.

1074 Mr. Breen. So I have -- the reason I was looking for my sheet
1075 of paper was to get some facts. But on the question of why not
1076 funding, I don't have that and I will commit to getting you that.

1077 Mr. Carter. We got -- we got a settlement in 2016 and we
1078 don't expect funding for years to come, and this is something that
1079 happened in 1996.

1080 Mr. Breen. Right. I will commit to getting you more
1081 information on that.

1082 Mr. Carter. But -- okay, and I appreciate that. I
1083 sincerely do.

1084 Why did it take so long?

1085 Mr. Breen. I am going to have to just get you more on the
1086 site in general for that as well.

1087 I can tell you some things but I can't tell you that.

1088 Mr. Carter. Let me ask you, the -- just in general why do
1089 these claims take so long? I mean, when you're -- when the EPA

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1090 is doing the -- is the EPA doing the work or is the DOJ doing the
1091 work? Who is responsible here?

1092 Mr. Breen. So I can help with that. So the remedy selection
1093 and the remedy design and the construction is an EPA
1094 responsibility. Often, we are doing it with the state but it is
1095 an EPA responsibility.

1096 Pursuing the potentially responsible parties is a Justice
1097 Department lead in courtroom matters, always with an EPA strong
1098 participation.

1099 Mr. Carter. So the EPA does have a say in these settlements.

1100 Mr. Breen. Yes.

1101 Mr. Carter. In these type of settlements, they have a say
1102 and they're divided up and they provide direction on funds outside
1103 of the direct remediation. EPA has that authority and has that
1104 ability.

1105 Mr. Breen. Yes.

1106 Mr. Carter. Would the -- so is the EPA able to usher these
1107 claims along?

1108 Mr. Breen. Which claims?

1109 Mr. Carter. These claims, such as this, with the one that
1110 I am stating here with the LPC chemical site in Brunswick?

1111 Mr. Breen. Sure. So where there's a potentially
1112 responsible party, EPA would be doing the site investigation that
1113 would lead to the referral to the Justice Department.

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1114 Mr. Carter. Okay. Earlier, you talked about the 42
1115 recommendations that were outlined in the Superfund task force
1116 report and one aspect of these sites is that it's taken so long
1117 to remediate.

1118 The administration's top ten list -- has it materialized and
1119 has that -- has that been set yet?

1120 Mr. Breen. Thank you.

1121 When we did the task force report, we envisioned a top ten
1122 list. It turns out that we thought there was more progress we
1123 could make than just at 10 sites.

1124 So what we thought was going to be 10 turned out to be 21
1125 and that's the list that we produced last month.

1126 Mr. Carter. So what started out as 10 turned out to be 21?

1127 Mr. Breen. Yes.

1128 Mr. Carter. Right. You mentioned about state involvement
1129 and about task force report, and in the task force report it
1130 describes the importance of third party investments.

1131 Can you -- can you elaborate on that just a little?

1132 Mr. Breen. Sure. So there are sites that are in productive
1133 reuse -- hundreds of sites that are in productive reuse, and often
1134 that's taking the work from mere clean to actually useable and
1135 the use of private investment for that is a strong possibility.

1136 Mr. Carter. Do you -- do you see any alternative methods
1137 or approaches to financing site cleanups?

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1138 Mr. Breen. I think there probably are things we could be
1139 thinking about.

1140 Mr. Carter. Any examples?

1141 Mr. Breen. Sure. I think the Brownfields program gives us
1142 some examples we could look toward and understand better and learn
1143 from.

1144 Mr. Carter. Okay.

1145 Mr. Breen, I am not trying to give you a hard time. But I
1146 am the one who has to go back to my district and answer these people
1147 and they want to know, 20 years, seriously? And yet, we still
1148 -- we got a settlement where we still haven't had any financial
1149 relief whatsoever. We don't -- I mean, what am I supposed to tell
1150 them?

1151 Mr. Breen. Well, we'd like to sit down with you and walk
1152 you through it so you have that information.

1153 Mr. Carter. Okay. All right. I hope it will be within the
1154 next 20 years. I mean, seriously.

1155 Mr. Shimkus. If the gentleman would yield. I know he's
1156 about ready -- - not much time. But if and when you have that
1157 meeting I would like to attend. I think it's a budgetary issue.
1158 I think it's a funding issue and I think there's a deeper answer
1159 -- question to this answer.

1160 Mr. Carter. Right. Thank you very much, and I yield.

1161 Mr. Shimkus. Gentleman's time has expired.

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1162 The chair now recognizes the gentleman from Texas, Mr. Green,
1163 for five minutes.

1164 Mr. Green. Thank you, Mr. Chairman and Ranking Member, for
1165 holding today's hearing.

1166 A strong and well-funded Superfund program is necessary to
1167 ensure the toxic sites in Texas and throughout the United States
1168 are cleaned up.

1169 Mr. Breen, thank you for joining us today at our hearing.
1170 I have a district in Houston, Texas, and Texas was hard hit by
1171 Hurricane Harvey in August. It destroyed houses, schools,
1172 businesses along the Texas Gulf Coast.

1173 A major concern from our community during Hurricane Harvey
1174 was the status of the nearly two dozen Superfund sites in and
1175 around the Houston area.

1176 The major one was the San Jacinto River Waste Pits, and I
1177 want to thank EPA and the administrator for being there right after
1178 the water subsided and visiting that site and also making the
1179 decision that they will be cleaned up.

1180 Of course, we have a responsible party with that facility.
1181 One of the things I kept hearing -- because we did have a fire
1182 that's just east of my area -- is there a national toll-free number
1183 that can people call at the EPA on some tragedy or something like
1184 that to get information or --

1185 Mr. Breen. Well, there is a national number for calling and

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1186 reporting a release. In terms of getting information, we would,
1187 I think, probably hope those calls get routed to the people in
1188 the regions who are closest to it rather than handling them back
1189 --

1190 Mr. Green. Yeah. Well, in our Region Six -- like I said,
1191 on this one, but because of the -- where we are located and our
1192 industries we have a significant number of Superfund sites.

1193 Is there a team that's ready to be deployed at sites
1194 immediately after a national disaster?

1195 Mr. Breen. Yes. We have about 200 to 250 on-scene
1196 coordinators. These are men and women who, as they say, sleep
1197 with their boots by their beds and there is at all times someone
1198 who is on call ready to go.

1199 Mr. Green. Okay. Because we did have some tragedies at
1200 some of our facilities after that.

1201 One of the hallmarks of Superfund is a "polluter pays"
1202 principle, which holds polluters liable for the cleanup of toxic
1203 substances.

1204 Last month, Administrator Pruitt came before our committee
1205 and I asked Administrator Pruitt about the "orphaned" Superfund
1206 sites that do not have identifiable responsible parties, or PRP.

1207 I would like to follow up on the questions. How many
1208 "orphaned" sites are listed on the National Priorities List? Do
1209 you have a number?

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1210 Mr. Breen. And I wondered about that, too, when your staff
1211 mentioned you would ask.

1212 I don't have a specific number. I can tell you we usually
1213 approximate that at the remedial actions the responsible parties
1214 are performing the work about 60 to 70 percent of the time.

1215 But even at the remaining 30 to 40 percent, it's often the
1216 case that there are people we can go after. But we don't want
1217 to wait to make them do it. So we are doing it ourselves and we'll
1218 get reimbursed.

1219 So I don't know how many "orphaned" sites there are.

1220 Mr. Green. I hope that reimbursement works.

1221 Mr. Breen. Yes. We hope so, too. So but it usually does
1222 and we'll commit to getting you as best a number as we can.

1223 Mr. Green. Okay. And so my second question is does the
1224 taxpayer pay for the cleanup in those cases on an "orphan?" The
1225 taxpayer may -- but you're still going after somebody who may
1226 be the responsible party.

1227 Mr. Breen. That's right. If it's a truly "orphaned" site
1228 then there's no -- nothing else but the federal government. But
1229 even at sites where there are PRPs not doing the work, we will
1230 seek cost of recovery if we think we can get the money.

1231 Mr. Green. The appropriations process, the money for the
1232 Superfund trust fund, did EPA request a funding increase for the
1233 Superfund for this current year do you know of?

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1234 Mr. Breen. I think the president's budget does not.

1235 Mr. Green. Okay. Did it -- was there a proposed cut in the
1236 Superfund? I haven't looked at the president's budget. We are
1237 not on appropriations so we don't carry it around with us.

1238 Mr. Breen. I think the president's budget showed a
1239 reflection of less money. But I'm -- as I said, we'll work with
1240 whatever you give us.

1241 Mr. Green. In the Obama administration, 61 sites, or
1242 Superfund sites, were removed from the NPL including 12 toxic
1243 sites in 2014 alone.

1244 Can the administrator set an expectation for accelerating
1245 work in progress on all these Superfunds nationwide when EPA is
1246 recommending the sharpest budget cuts in the nation's history,
1247 or the agency's history, in eliminating 4,000 positions.

1248 Of course, the president's budget, and we know -- we
1249 appropriate the money -- someday we'll have an appropriations bill
1250 maybe, but I hope that EPA seriously reexamines its budget request
1251 for 2019 that will fully protect what in our area is human life
1252 and environment in a very urban area but also a very industrialized
1253 area in the upper Texas coast.

1254 I want to thank you, Mr. Chairman, for the time.

1255 Mr. Shimkus. Gentleman's time is expired.

1256 The chair now recognizes the gentleman from Texas, Mr.
1257 Barton, for five minutes.

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1258 Mr. Barton. Thank you, Mr. Chairman and Mr. Tonko, for
1259 holding this hearing.

1260 Mr. Breen, we appreciate you being here. I've looked at your
1261 limited bio that we are presented and it's unbelievably positively
1262 impressive.

1263 Princeton, Harvard Law, active Army, Justice Department
1264 criminal division, and that's all before you went to the EPA.
1265 That's impressive. It really is.

1266 How long have you actually been at the EPA?

1267 Mr. Breen. About 25 years.

1268 Mr. Barton. Twenty-five years. So you -- that would be
1269 '93?

1270 Mr. Breen. It was toward the end of 1992.

1271 Mr. Barton. 1992. Okay. So 1992, let's see -- Bush --
1272 first Bush was president.

1273 Mr. Breen. Right.

1274 Mr. Barton. Were -- did you go into the EPA as a civil
1275 service or as a political?

1276 Mr. Breen. Civil service.

1277 Mr. Barton. Civil service. So your career has been in the
1278 civil service?

1279 Mr. Breen. Yes.

1280 Mr. Barton. Do you have a present at EPA a political
1281 appointee above you other than Administrator Pruitt?

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1282 Mr. Breen. No.

1283 Mr. Barton. No. Do you -- has there been someone who has
1284 been sent to the Senate?

1285 Mr. Breen. No.

1286 Mr. Barton. Is there anybody under consideration?

1287 Mr. Breen. That I --

1288 Mr. Barton. You don't know.

1289 Mr. Breen. I would have to defer on.

1290 Mr. Barton. So for the time being, you're the man. Is that
1291 fair to say?

1292 Mr. Breen. I am the national program manager for the
1293 Superfund program.

1294 Mr. Barton. That's -- in Texas we'd say you're the man.
1295 Yeah.

1296 [Laughter.]

1297 Just out of curiosity, does the name Jan Gerro strike a bell
1298 with you?

1299 Mr. Breen. It does, but I --

1300 Mr. Barton. She's my sister. She is a environmental
1301 enforcement attorney for Region Six EPA in Dallas.

1302 Mr. Breen. Congratulations.

1303 Mr. Barton. And is reputed to be a holy terror.

1304 [Laughter.]

1305 Mr. Breen. I will take that back.

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1306 Mr. Barton. I don't normally admit to that up here in
1307 Washington, since I am a conservative Republican. But she goes
1308 at them. She goes and gets them.

1309 Mr. Breen. Thank you.

1310 Mr. Barton. Has almost a 100 percent conviction rate, at
1311 least that's what she tells me.

1312 What of the -- of the -- you know, our Congressman Carter
1313 from Georgia was just, rightfully so, complaining about Superfund
1314 site in his district that apparently nothing has been done on in
1315 22 years.

1316 Can you tell me how many Superfund sites have actually been
1317 cleaned up in the history of the program?

1318 Mr. Breen. Yes, and I ought to get you the exact number.

1319 Cleanup is a term that really occurs in stages. So we have
1320 deleted hundreds from the National Priorities List. But even
1321 before a site is deleted it can be ready for anticipated use and
1322 we have hundreds more ready for anticipated use.

1323 And even sometimes cleanup is when is the construction
1324 complete, even if the public isn't ready to use it yet, and we
1325 have even more yet.

1326 So I will get you specific numbers on all of the --

1327 Mr. Barton. Just kind of a ballpark number. Seven or 800?

1328 Mr. Breen. For construction completion, I think we are
1329 higher than that.

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1330 Mr. Barton. Okay. Now, the staff briefing says that there
1331 are 1,341 sites that are still listed.

1332 Mr. Breen. Right.

1333 Mr. Barton. Do you agree with that number?

1334 Mr. Breen. It's -- if the question is whether it includes
1335 the list we just put out a few weeks ago so I could --

1336 Mr. Barton. For debating purposes -- -

1337 [Simultaneous speaking.]

1338 Mr. Breen. Yes.

1339 Mr. Barton. What's a reasonable number for Congress to
1340 expect of the existing sites to be cleaned up per year?

1341 Mr. Breen. How many?

1342 Mr. Barton. Yeah. Ten per year? Twelve per year?

1343 Mr. Breen. So we will make projections in our budget
1344 forecast that we'll give you in a week and a half for what we would
1345 project to do. I would probably be best to wait to get you those
1346 numbers.

1347 Mr. Barton. Okay. But, I mean, is it reasonable for the
1348 Congress to expect double digit sites per year to be cleaned up?

1349 Mr. Breen. Yes, for construction completions I think so.
1350 How many double digits, you know, whether it's 10 or 30 or
1351 whatever, I am going to wait.

1352 Mr. Barton. Now, is -- and our chairman allude to this --
1353 is the primary reason we don't have more progress on sites like

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1354 Congressman Carter's because we just don't have the funding? Is
1355 that the primary reason? Or is it the complexity and the
1356 technical issues involved with the actual cleanup?

1357 Mr. Breen. It's a mix. We think -- we think there are
1358 things we can do and that we are undertaking to be more efficient
1359 and we are going to push hard on those.

1360 In the end, though, there may be sites that still we can't
1361 get to and that's been the case for years. For probably every
1362 year but one out of the last, say, 10 or 15 there are sites we
1363 haven't gotten to.

1364 Mr. Barton. Okay. Well, my time is expired. But we do
1365 appreciate your service and I think we've got a bipartisan
1366 agreement on the subcommittee that we need to modernize the
1367 Superfund process.

1368 But we also need to fund it if it's a funding issue. We need
1369 to clean these sites up. I mean, you know, Congressman Carter's
1370 got a very legitimate issue. When this sites' been on the list
1371 for 22 years and it doesn't appear that anything has been done
1372 --

1373 Mr. Shimkus. The gentleman's time has expired.

1374 Mr. Barton. I yield back.

1375 Mr. Shimkus. Gentleman yields back. The chair now
1376 recognizes our own holy terror from the state of Colorado, Ms.
1377 DeGette, for five minutes.

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1378 [Laughter.]

1379 Ms. DeGette. Thank you so much for that vote of confidence,
1380 Mr. Chairman.

1381 Mr. Barton. Holy terror is a compliment.

1382 Ms. DeGette. All right. From you, probably.

1383 So, Mr. Breen, Congressman Carter -- in your conversation
1384 with him you talked about the potential of using Brownfields money
1385 for Remediation. But, of course, we are prohibited from using
1386 Brownfields money, yes or no?

1387 Mr. Breen. I didn't mean to suggest Brownfields money.

1388 Ms. DeGette. Okay. Yes. Yes. We are prohibited from
1389 using Brownfields money for Superfund cleanup, right?

1390 Mr. Breen. Yes.

1391 Ms. DeGette. And, in fact, the whole idea of Brownfields
1392 is very different from Superfund, right?

1393 Mr. Breen. Not necessarily.

1394 Ms. DeGette. You wouldn't want to take all the Brownfields
1395 money and use that for Superfund?

1396 Mr. Breen. We wouldn't want to do that.

1397 Ms. DeGette. Thank you.

1398 Now, I want to ask you a couple of other questions. You told
1399 Mr. Tonko that there's a list of the members of the task force.
1400 Is that right?

1401 Mr. Breen. Yes.

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1402 Ms. DeGette. Can we get a copy of that list?

1403 Mr. Breen. Yes.

1404 Ms. DeGette. Thank you so much.

1405 Now, do we have records of when the task force met?

1406 Mr. Breen. What we have are a hundred people's meeting notes
1407 that they took from the meetings that --

1408 Ms. DeGette. But do we have actual records of when the
1409 meetings were?

1410 Mr. Breen. I would have to check.

1411 Ms. DeGette. If you have them can we get a copy of that,
1412 too? And were there minutes of what was requested at those
1413 meetings?

1414 Mr. Breen. Not to my knowledge.

1415 Ms. DeGette. Just the notes of the --

1416 Mr. Breen. Of individuals.

1417 Ms. DeGette. Okay. Now, in your experience, is it a normal
1418 practice at the EPA for a task force to develop a report with nor
1419 written records?

1420 Mr. Breen. It's not the case that we have no written
1421 records.

1422 Ms. DeGette. Well, okay. Let me ask you this then.

1423 Is it the practice for a task force to meet and to have no
1424 minutes or other records of what was discussed?

1425 Mr. Breen. Minutes would be pretty unusual. Other records

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1426 is kind of the same situation as --

1427 Ms. DeGette. Do we have other records of the task force?

1428 Mr. Breen. Sure.

1429 Ms. DeGette. Okay. Can we get a copy of those?

1430 Mr. Breen. I will have to turn that over to the people who
1431 actually manage --

1432 Ms. DeGette. But you don't have an objection?

1433 Mr. Breen. I don't personally have --

1434 Ms. DeGette. Okay. I just have to say, Mr. Chairman, it
1435 seems a little odd to me that you'd have a task force with a
1436 recommendation but no minutes, no nothing. So I will be eager
1437 to see what I can get, Mr. Breen.

1438 I want to talk to you for the time I have remaining about
1439 the Gold King Mine. I imagine you'd assume that.

1440 The Gold King Mine in Colorado, it was included on the EPA
1441 list released on December 8 targeted for immediate intense action.
1442 A lot of us from Colorado have been focused on addressing the
1443 environmental damage caused by the August 2015 release of toxic
1444 mine water that tainted the Animas River and caused hardship for
1445 Coloradoans, New Mexicans, and members of the Navajo tribe living
1446 downstream.

1447 So I want to ask you a couple questions. First of all, I
1448 understand that the EPA is currently conducting a remedial
1449 investigation and feasibility study. Can you give us a time line

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1450 for when that study will be released?

1451 Mr. Breen. It is the case we are undertaking remedial
1452 investigation. I don't have a target date for conclusion of it.
1453 I will get that to you.

1454 Ms. DeGette. That would be great. Thanks.

1455 Now, one of the goals highlighted by the Superfund task force
1456 was "engaging partners and stakeholders." What actions is the
1457 EPA taking to engage stakeholders while the remediation plan is
1458 being developed?

1459 Mr. Breen. Thank you.

1460 So, first of all, we are providing -- have provided more than
1461 \$2 million to states and tribes to support water quality
1462 monitoring while the work is going on.

1463 Ms. DeGette. Right. Well, that's great. But what are
1464 you doing to engage the stakeholders? Are you having meetings?
1465 Are you -- what efforts are you --

1466 Mr. Breen. There are community involvement coordinators
1467 who are working on the Bonita -- what we call the Bonita Peak Mining
1468 District because --

1469 Ms. DeGette. Right.

1470 Mr. Breen. -- because the Gold King Mine and several dozen
1471 more.

1472 Ms. DeGette. Is part of that. Yes.

1473 Mr. Breen. Let me ask them to summarize for you what they're

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1474 doing and get that to you.

1475 Ms. DeGette. That would be excellent. Thank you, because
1476 I know -- I know people are concerned.

1477 Also, in terms of funding, the EPA spent about \$29 million
1478 responding to the release and about \$5 million in additional
1479 cleanup at the site. Is that correct?

1480 Mr. Breen. The number \$29 million is in my notes. I didn't
1481 have the other \$5 million.

1482 Ms. DeGette. The \$5 million was after that.

1483 Mr. Breen. Okay.

1484 Ms. DeGette. So my question to you is, is the EPA committed
1485 to providing sufficient funding to complete the cleanup that we
1486 need to do?

1487 Mr. Breen. Yes.

1488 Ms. DeGette. Okay. Great.

1489 Finally, I understand the EPA is opening a water treatment
1490 plan to clean up the water from Gold King Mine at the cost of \$1.2
1491 million. What is the EPA's long-term plan for the plant's
1492 operating cost?

1493 Mr. Breen. Well, we -- if we are talking about the same
1494 thing, we know that in 2018 we'll continue to treat all the water
1495 --

1496 Ms. DeGette. Right.

1497 Mr. Breen. -- Gold King Mine. Beyond 2018, I don't have

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1498 written down. I will have to get that for you.

1499 Ms. DeGette. You don't -- you don't know who's going to be
1500 in charge of that after --

1501 Mr. Breen. Oh, I know who will be in charge. I just don't
1502 have it to tell you at the minute.

1503 Ms. DeGette. Okay. Great. If you can --

1504 Mr. Breen. But we'll get that for you.

1505 Ms. DeGette. -- if you can let me know I would appreciate
1506 it. Thank you so much. Thanks for your years of service to the
1507 agency, too.

1508 Mr. Breen. Thank you.

1509 Mr. Shimkus. Gentlelady's time has expired.

1510 The chair now recognizes the gentleman from Ohio, Mr.
1511 Johnson, for five minutes.

1512 Mr. Johnson. Thank you, Mr. Chairman, and Mr. Breen, thank
1513 you for joining us today.

1514 How can the EPA use incentives to encourage responsible
1515 parties to cooperate and come to the table early in order to avoid
1516 the increased transaction costs associated with protracted
1517 negotiations?

1518 Mr. Breen. Yes. The statute gives us considerable tools
1519 and I can explain a few of them and tell you we are eager to find
1520 whatever more tools, and that's one of the recommendations is to
1521 look at this.

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1522 Mr. Johnson. Okay.

1523 Mr. Breen. This is probably the most powerful statute in
1524 terms of civil liability that the Congress has written for
1525 environment law.

1526 If we give an order and the responsible party does not comply,
1527 in addition to daily penalties of \$25,000 or more per day, when
1528 we ultimately clean up the site ourselves, we can sue for punitive
1529 trouble damages.

1530 So if we -- if we clean up for \$5 million, the defendant is
1531 exposed to our \$5 million cost recovery, \$15 million in punitive
1532 damages, and \$25,000 or more per day. It's an enormous exposure
1533 on the defendant's part -- not one that companies take on lightly.

1534 Mr. Johnson. Okay. Well, that actually answers my second
1535 question -- how can you use enforcement authorities and that's
1536 some of the enforcement leverage that the EPA has to get a cleanup
1537 started or to help reach settlement, right?

1538 Mr. Breen. Right.

1539 Mr. Johnson. Okay. How does the EPA ensure the timeliness
1540 and the cost effectiveness, consistency, and quality of cleanups?

1541 Mr. Breen. We have a number of methods in place. First of
1542 all, the remedial project managers are well-trained and they all
1543 have branch chiefs who are experienced and veterans.

1544 And so the natural -- just the natural thing is to design
1545 remedies by people who are well-trained and expert. For most

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1546 remedies above a certain amount, we then take it into what's
1547 basically an internal peer review process.

1548 For about the last 20 to 25 years we have used what's called
1549 a remedy review board, and remedies over a certain size get
1550 discussed by all 10 regions before the remedy selection is
1551 finalized.

1552 And now for the largest remedies we take them to the
1553 administrator himself and that in that way the whole region,
1554 including the regional -- we take them to the U.S. EPA
1555 administrator. So the regional administrator will be involved
1556 as well as headquarters.

1557 Mr. Johnson. Okay. All right.

1558 You know, finding new ways to efficiently addressing clean
1559 up sites on the National Priority List is certainly commendable
1560 and we've talked a lot about that here today.

1561 That's why I am encouraged by EPA's focus on this issue
1562 through the Superfund task force and its recommendations. So
1563 while the Superfund task force notes that there is no need for
1564 statutory changes to carry out its recommendations, were there
1565 ideas omitted that did require congressional action and are there
1566 any recommendations that could be most effective through a
1567 statutory change?

1568 Mr. Breen. So in the deliberations of the task force, we
1569 just put aside anything that might lead to statutory -- a need

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1570 for statutory change. It just wasn't within the scope.

1571 I did observe that in last month's hearing the administrator
1572 -- when one of your colleagues asked that question, the
1573 administrator said that perhaps there are lessons to be learned
1574 from the new Brownfields legislation that could be carried into
1575 Superfund. We would be prepared to discuss those kinds of ideas
1576 or others with you.

1577 Mr. Johnson. Okay. All right. Thank you.

1578 Mr. Chairman, I yield back a whole minute and 13 seconds.

1579 Mr. Shimkus. The chair thanks and the chairman yields back
1580 his time.

1581 Now we recognize the gentleman from California, Mr.
1582 McNerney, for five minutes.

1583 Mr. McNerney. Okay. Thank you, Mr. Chairman, and thank
1584 you, Mr. Breen, for appearing this morning.

1585 When Administrator Pruitt was here last month I brought up
1586 the importance of enforcing all of our environmental laws, not
1587 just relating to Superfund.

1588 If we fail to enforce all of our environmental laws we will
1589 continue to create new dangerous sites, adding to the national
1590 Superfund priorities list.

1591 Unfortunately, I think this administration's efforts to
1592 delay and dismantle regulations will do just that. Mr. Breen,
1593 as deputy administrator for the Office of Land and Emergency

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1594 Management, I would like to ask you some -- about some of the rules
1595 that have been delayed or repealed.

1596 The risk management planning program amendments would have
1597 made chemical facilities with large stores of dangerous chemicals
1598 safer. Those amendments were about to take effect last year but
1599 had been repeatedly delayed and are now being reconsidered.

1600 If a disaster were to strike a facility covered by the risk
1601 management planning program, leading to a large-scale release of
1602 toxic chemicals, could that release lead to the creation of new
1603 Superfund sites?

1604 Mr. Breen. Thank you.

1605 So the risk management program, the public comment period
1606 in 2016 ended within a couple of days -- a few days of an important
1607 ATF finding that the west Texas explosion, which had motivated
1608 so many of us to do better -- that the west Texas explosion was
1609 associated with arson rather than an accident.

1610 That important fact needed to be taken into account. So we
1611 delayed the effective date in order to take that and similar kinds
1612 of input into account.

1613 But to answer your question, any site could explode and
1614 create a Superfund site.

1615 Mr. McNerney. Well, turning now to the requirements for
1616 safe disposal rule of waste under the resource conservation and
1617 recovery rule, we all know that unsafe disposal of waste can lead

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1618 to the creation of Superfund sites.

1619 Despite this, the EPA announced in September that the agency
1620 would reconsider the final rule governing the disposal of coal
1621 ash. When the Kingston coal ash impound burst in 2009, the
1622 contaminated water that was released created a new Superfund site.
1623 Is that right?

1624 Mr. Breen. I don't know if it created a new Superfund. But
1625 it certainly released material that we responded to.

1626 Mr. McNerney. Thank you.

1627 Your office also handles emergency response including
1628 response to hurricanes.

1629 Mr. Breen. Yes.

1630 Mr. McNerney. As we've seen this year, and also illustrated
1631 by my friend, Mr. Olson, hurricanes can damage Superfund sites
1632 and cause dangerous release from refineries and chemical plants.

1633 In my state of California, we've seen devastating wildfires
1634 and mud slides, which also have the potential to spread
1635 environmental contamination.

1636 Do you agree that extreme weather events have the potential
1637 to create or worsen Superfund sites?

1638 Mr. Breen. Yes.

1639 Mr. McNerney. Hasn't the EPA found that Superfund sites are
1640 vulnerable to the effect of climate change including flooding,
1641 rising sea levels, increasing wildfires, and changes in

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1642 temperature?

1643 Mr. Breen. So we took a study on this ourselves and found
1644 that, first of all, we have to respond to climate change and that's
1645 just part of what we -- part of our mission set and so we need
1646 to design remedies that account for that.

1647 And we don't get to pick where Superfund sites are. We deal
1648 with the waste where it is. So we found in our own study that
1649 our procedures were, for the most part, satisfactory but that we
1650 needed to be careful and attentive and have some additional tools
1651 to meet those procedures.

1652 But as well I think there are external reviews both by the
1653 general -- Government Accountability Office and the inspector
1654 general and we'll look forward to working with them to understand
1655 whether they think we need to be doing different, not just better.

1656 Mr. McNerney. Well, thank you.

1657 Mr. Chairman, I have here a June 2014 climate change
1658 adaptation implementation plan adopted by Mr. Green's office to
1659 address the risk of climate change to Superfund sites.

1660 Unfortunately, this document does not appear on the EPA's
1661 website. So I would like to include it for the record.

1662 Mr. Shimkus. Hearing no objection, so ordered.

1663 [The information follows:]

1664

1665 *****COMMITTEE INSERT 4*****

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1666 Mr. McNerney. All right.

1667 Mr. Shimkus. And I thank you.

1668 Mr. McNerney. Despite this evidence, the climate change
1669 will make Superfund sites more dangerous and potentially create
1670 new additional Superfund sites.

1671 The Trump administration and the Pruitt EPA are undermining
1672 and rolling back our efforts to fight climate change. If the
1673 president and Administrator Pruitt are serious about addressing
1674 contaminated sites in our country, they need to abandon the
1675 regulatory rollbacks and strongly enforce all of our
1676 environmental laws including the Clean Air Act to address climate
1677 change.

1678 Thank you. I yield back.

1679 Mr. Shimkus. The gentleman's time is expired.

1680 The chair now recognizes the gentleman from Michigan, Mr.
1681 Walberg, for five minutes.

1682 Mr. Walberg. Thank you, Mr. Chairman, and thank you, Mr.
1683 Breen, for being here.

1684 One of the questions that always comes up about special
1685 accounts and I would like to ask if you could -- you could give
1686 us a brief overview of how special account funds are collected.
1687 If you would tell us what the current balance of the special
1688 accounts is and if you could walk us through how special account
1689 funds are spent.

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1690 Mr. Breen. Yes, sir.

1691 So the current balance is about \$3.2 billion in special
1692 accounts and over the -- all the years we've collected about \$6.8
1693 billion. So \$6.8 billion collected, \$3.2 billion approximately
1694 on hand.

1695 In nearly every case, special accounts are funded as a result
1696 of a consent decree with a responsible party and they give us cash.
1697 We can settle for cash or work or both, and there are plenty of
1698 times they would give us cash.

1699 The United States has the authority under legislation that
1700 the Congress gave us to not turn that money over to the
1701 miscellaneous receipts account, which is where it would otherwise
1702 go, but to instead keep it in the EPA accounts at the Treasury
1703 in order to spend it at the site.

1704 So this is -- this is thanks to you that we do this.

1705 Mr. Walberg. So that's why the balance is so high at this
1706 point right now?

1707 Mr. Breen. I will just add one more thing.

1708 Mr. Walberg. Okay.

1709 Mr. Breen. We earn interest on it and Treasury credits us
1710 interest. So not just we get -- not just get just the money from
1711 the PRPs but we get money from the Treasury as interest grows.

1712 Many of these sites it's smart to take the money now because
1713 we don't know -- if we said to the PRP, "Give us a million a year

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1714 for the next 30 years," we are betting on that PRP having that
1715 money for the next 30 years and it's just smarter to take it now
1716 and put it in the Treasury where it's safe and then spend it as
1717 it's needed. So for that \$3.2 billion that's on hand, we have
1718 multi-year plans for every site with a material amount of money
1719 for how that money will be used year by year into the future.

1720 Mr. Shimkus. Would the gentleman yield just a minute -- for
1721 one second?

1722 Mr. Walberg. I certainly would.

1723 Mr. Shimkus. Just -- so why we are asking this question is
1724 really following up on what Buddy Carter had said on his site and
1725 it would be interesting in the discussions if some of his -- the
1726 litigation or whatever went into that special account and if so
1727 why isn't that money being then used. That's kind of how we are
1728 following up this line of questioning.

1729 Mr. Breen. Thank you. We will -- we will factor that in
1730 then. Thank you.

1731 Mr. Shimkus. Thank you, Mr. Walberg.

1732 Mr. Walberg. One of the recommendations of the task force
1733 is to use special account funds as financial incentives to
1734 potentially responsible parties perform cleanup work. Can you
1735 explain how these incentives would work?

1736 Mr. Breen. There are important discussions to be had with
1737 the Justice Department on this and the Office of General Counsel.

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1738 Obviously, we can only do what's statutorily authorized and most
1739 of these accounts are created because we have a consent decree,
1740 which the Justice Department has been instrumental in providing.

1741 But it may be that within the terms of the consent decree
1742 the money doesn't have to be used only in the way it was originally
1743 visioned but it can be used in the way that's needed now.

1744 So we would be open to thinking about that and seeing what
1745 can be done.

1746 Mr. Walberg. So you could -- you could give incentives.
1747 Could you reimburse a potentially responsible party that
1748 completes the work early at the site?

1749 Mr. Breen. That I would need to get counsel on to give --
1750 to give a good answer for.

1751 Mr. Walberg. Okay. Does the statute need to be updated to
1752 clarify what special account funds may be used for?

1753 Mr. Breen. We'd like to work with you on that. We'd want
1754 to make sure we sort of articulated for you what the need is. So
1755 let us work with you on that.

1756 Mr. Walberg. Okay. Well, thank you. I yield back.

1757 Mr. Shimkus. The gentleman yields back his time and the
1758 chair thanks him -- my colleague for that round of questions.

1759 The chair now recognizes the gentlelady from Michigan, Mrs.
1760 Dingell, for five minutes.

1761 Mrs. Dingell. Thank you, Mr. Chairman, and I want to thank

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1762 you and Ranking Member Tonko for having this hearing, and Mr.
1763 Breen, I do believe that you deeply care about this program but
1764 I still have a lot of concerns, which I think you have been hearing
1765 all of my colleagues, Republican and Democrat, express today.

1766 The EPA's Superfund program is really one of our cornerstone
1767 environmental pieces, so legislation that has always shared great
1768 bipartisan support.

1769 Today, as you look at the future of the program, you can tell
1770 that all of us here are really worried about it and we are really
1771 worried about what's not happening, and I think -- I hope that
1772 we are all going to work together in Congress to provide and
1773 protect full robust funding during the annual appropriation
1774 process.

1775 Without strong and continued funding, we continue to
1776 increase the risks to our public health and the environment long
1777 term. We would also see negative economic consequences in
1778 communities plagued by contaminated pollution sites.

1779 Of the 1,345 sites on the National Priorities List, Michigan
1780 has 88 listed Superfund sites and in my district alone we've got
1781 three contaminated sites that need serious attention.

1782 Only one of them has been designated as an official -- it's
1783 been put on this National Priorities List -- and I guess -- I am
1784 going to go off script, which I always do, and make this point
1785 that I've been in the Congress for three years. Walked into, in

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1786 my first year, a meeting that the city people had asked me to
1787 organize for Brownfield sites and was told by my region that this
1788 was on the list for the national priority site. It was -- it was
1789 already -- it was a serious site. It's the Trenton McLouth Steel
1790 site, as you know.

1791 And by the way, my colleague, Mr. Walberg, abuts and shares
1792 with me the Gelman Science dioxin plume in Ann Arbor as well, which
1793 we've been doing many meetings, and you know that you too have
1794 shared concerns on that.

1795 But I think, unfortunately, I've been in too many meetings
1796 on both of these sites and what stuns me is that the site is
1797 leaking, that we are not telling the community there could be
1798 danger, and this Superfund site or potential Superfund site that
1799 you have told me is going to be listed at some point on the national
1800 priority site there was raw sugar being stored that was then being
1801 distributed in Michigan.

1802 So I think all of us are concerned that there are many more
1803 sites that are even on the site that need to be cleaned up and
1804 it's taking too long to be designated, and then I've even been
1805 told on both sites but even when you get designated it's going
1806 to take years to get the money to clean it up.

1807 Now, we founded this law to keep communities clean. So I
1808 think all -- you know, you heard my colleague, Mr. Carter, talk
1809 about how long that site had been sitting there.

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1810 This is a crisis in our country that we've got sites that
1811 are hurting areas that aren't being cleaned up. So with my
1812 remaining time, I think funding for EPA's Superfund program
1813 matters so it's going to be the focus of what's left.

1814 Appropriations to the Superfund program have generally
1815 declined between fiscal year 1999 and 2016 by about 45 percent.
1816 Additionally, cuts were announced for fiscal year 2018.

1817 Mr. Breen, in EPA's budget for fiscal year 2018 the Superfund
1818 program was decreased by 30 percent? Yes or no.

1819 Mr. Breen. That's approximately right, certainly.

1820 Mrs. Dingell. Concerning, this long decline in funding had
1821 delayed the start of the new remedial action projects in many
1822 states that I was just talking about and additional cuts will only
1823 delay further projects.

1824 And yet, despite declining funds and a slowdown of completed
1825 remedial actions, Superfund sites continue to be added to the
1826 National Priorities List which, by the way, I think they should
1827 be.

1828 Mr. Breen, why were dramatic cuts made to the Superfund
1829 program in the fiscal year 2018 budget? How do you justify these
1830 cuts as the National Priorities List grows and can we expect future
1831 cuts to the program, and what the hell does that mean?

1832 Mr. Breen. Thank you.

1833 First of all, of course, we always support the president's

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1834 budget. Secondly, it's always true that we will work with what
1835 you give us.

1836 Let me now turn to what we can do within that. First, we
1837 are looking for ways to save money no matter what. Even if you
1838 were going to give us more money, we should be looking for ways
1839 to save money.

1840 The inspector general told us a few months ago that they
1841 thought we could reallocate where Superfund personnel are
1842 assigned and be more efficient. The inspector general told us
1843 that some regions are having to hold up work because of
1844 insufficient people to do it and other regions are not.

1845 So we are going to undertake a way to, in a multi-year plan,
1846 look at how we distribute FTE among regions. We are looking at
1847 ways to do contracting better with a remedial action framework
1848 and, frankly, we think the 42 recommendations some of those will
1849 yield savings. In the --

1850 Mrs. Dingell. Mr. Breen, can I ask you -- because we are
1851 now in positive -- do you need more money to do what you need to
1852 do?

1853 Mr. Breen. So there are -- there are choices we even make.

1854 Mrs. Dingell. But that's not my point. Do we have sites
1855 that need to be cleaned up that are threatening people that need
1856 dollars to clean them up?

1857 Mr. Breen. So I can answer that in this way. In each --

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1858 in almost every year for the last 10 or 15, at the end of the year
1859 we have had sites that are ready to be funded but that we didn't
1860 have funds to get to. These are projects that we didn't fund.
1861 That's been true for a very long time.

1862 Mr. Shimkus. The gentlelady's question has been answered
1863 and she yields back her time, and the chair thanks Mr. Breen for
1864 his attendance and I think it was an excellent job in answering
1865 the questions as we put forward, based upon the place where you're
1866 at.

1867 Are you ready to ask questions, Mr. Cardenas?

1868 Mr. Cardenas. Thank you.

1869 Mr. Shimkus. So you're not excused. We still have one last
1870 member. The gentleman from California is recognized for five
1871 minutes.

1872 Mr. Cardenas. Thank you very much, Mr. Chairman.

1873 Sorry about that. You were almost excused. But thank you
1874 for holding this important hearing. Let me gather my thoughts
1875 really quick.

1876 When it comes to environmental cleanups and it comes to the
1877 status of where we are at in this country today, are we up to par?
1878 Are all in order? Or do we have much work to do?

1879 Mr. Breen. We have a -- first of all, we have a remarkable
1880 legacy that I couldn't be prouder of. We also have a lot more
1881 to do.

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1882 Mr. Cardenas. Okay. Is it -- is it specifically confined
1883 to one region or one state where we have more work to do?

1884 Mr. Breen. We have nationwide a considerable amount of work
1885 to do.

1886 Mr. Cardenas. When there's -- I would venture to believe
1887 that there's probably not a state in the nation that doesn't have
1888 some effort that we need to address.

1889 Mr. Breen. I would have to check on whether it's every
1890 state. I would need to get back to you on that.

1891 Mr. Cardenas. Probably likely that -- again, not every
1892 corner of the country but there's probably no state exempt from
1893 work that still needs to be done.

1894 Mr. Breen. We have unfinished work in lots and lots of
1895 places.

1896 Mr. Cardenas. Uh-huh. When it comes to the amount of
1897 funding that we have afforded ourselves to address these issues,
1898 are we where we need to be or should we figure out a way to make
1899 sure that we responsibly try to help our local governments and
1900 our local communities address these issues?

1901 Mr. Breen. We are looking for ways to be more efficient with
1902 the dollars that we get.

1903 Mr. Cardenas. Sure. Always.

1904 Mr. Breen. And in fact, one of the things the Superfund
1905 program does is fund on-the-ground emergency response and there's

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1906 a choice to be made about how much to put into emergency response
1907 and how much to save for the long-term cleanups.

1908 It's kind of a pick your favorite child situation. You want
1909 to do more of both but that's a judgment call.

1910 Mr. Cardenas. Is potable water -- I mean, we are a very
1911 blessed nation. We have a pretty high standard of living, et
1912 cetera. But is potable water still an issue in parts of our
1913 country and also is potable water being affected by activities
1914 that, unfortunately, we've affected that potable water in
1915 communities around the country?

1916 Mr. Breen. Indeed, in your district. As you certainly know
1917 so well, better than me, we've produced 95 billion gallons of clean
1918 drinking water, thanks to the work of the Superfund sites in your
1919 district.

1920 Mr. Cardenas. And those Superfund sites are still going on,
1921 literally, today.

1922 Mr. Breen. Exactly.

1923 Mr. Cardenas. As my neighbors and even my children said,
1924 "Dad," thinking I know everything, "what's that?" You know, they
1925 cordon off a portion of a street and I said, "Well, they're
1926 cleaning up the ground water below us," et cetera. With issues
1927 as dangerous as chromium-6 and, again, your average American says,
1928 "Chromium what?" But the bottom line is it's dangerous elements,
1929 heavy metals, et cetera, that we, unfortunately, allowed to leach

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1930 into our drinking water.

1931 So that being the case, Los Angeles has been fortunate that
1932 -- I believe, that with the cooperation of the state and support
1933 and the federal government and with a -- the largest department
1934 of water and power that serves my community of the 4 million people
1935 of Los Angeles we've been able to do a little bit of catch up but
1936 we still have much work to do.

1937 Let's take a community like Los Angeles. People think it's
1938 a big city. But it is spread out. We have many aquifers. We
1939 have many sources of water, et cetera.

1940 What -- can you give me an example of what we could do more
1941 together with local government and the federal government when
1942 it comes to the cleanup that still has to be done in a community
1943 like Los Angeles?

1944 Mr. Breen. Yes. One thing that we aren't doing right now
1945 is seeing whether we can make upgrades to the Superfund remedies
1946 presently installed in the sites in your district rather than just
1947 say that we are going to let them run themselves down.

1948 We want to see if we can upgrade them and that work is ongoing.

1949 Mr. Cardenas. Okay. Again, to the earlier point that you
1950 and I agreed, much work to do.

1951 Mr. Breen. Absolutely.

1952 Mr. Cardenas. Now, that being the case, what can Americans
1953 do today to help make sure that we reduce the number of future

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1954 Superfund sites, et cetera?

1955 And I am not picking on business. I am just saying as a
1956 populace whether it's business or individuals or government what
1957 could we do to be more preventative?

1958 Mr. Breen. This is a complicated question and some of it
1959 is not law. Some of it is the ways in which we make things. One
1960 of the programs in my office at the EPA is sustainable materials
1961 management. It's a use of things that don't have to be thrown
1962 away -- that can be reused or repurposed -- and there's a lot of
1963 progress that could be made there.

1964 Mr. Cardenas. Uh-huh. And, unfortunately, sometimes
1965 regulation is labelled as bad. But when it comes to, for example,
1966 potable water, it's so precious and to every community.

1967 Isn't it important that we have right size regulation and
1968 responsible efficient regulation?

1969 Mr. Breen. Yes.

1970 Mr. Cardenas. Okay. Thank you very much.

1971 I yield back.

1972 Mr. Shimkus. The gentleman yields back his time. All time
1973 is expired and we want to thank Mr. Breen again.

1974 We are going to talk real quick so you can get out of here
1975 before someone else shows up.

1976 Thank you very much and we would like to sit the second panel
1977 and we will dismiss Mr. Breen.

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1978 Thank you all for being here and thank you for listening to
1979 the first panel. I think that could be helpful and as we have
1980 our discussion here today because we want -- the whole intent is
1981 to try to see if there's legislative changes we can do to make
1982 the system work better.

1983 So we want to thank you for being here today and taking the
1984 time to testify.

1985 At the second panel we have Mr. Steve Cobb, chief of land
1986 division, Alabama Department of Environmental Management on
1987 behalf of the Association of State and Territorial Solid Waste
1988 Management Officials.

1989 We have John Winston Porter, environment and energy
1990 consultant. We have James McKenna, Portland Harbor policy
1991 analyst for Governor Brown's Natural Resources Office. Debbie
1992 Mans is executive director and baykeeper, New York/New Jersey
1993 Baykeeper, and Katherine Probst, who is an independent
1994 consultant.

1995 Your full records have been submitted for the record. You
1996 will have five minutes. And with that, I would like to turn to
1997 Mr. Cobb to start.

1998 You are recognized for five minutes.

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2000 DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, ON BEHALF OF THE
2001 ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT
2002 OFFICIALS; DR. J. WINSTON PORTER, ENVIRONMENTAL AND ENERGY
2003 CONSULTANT; JAMES MCKENNA, PORTLAND HARBOR POLICY ANALYST,
2004 GOVERNOR BROWN'S NATURAL RESOURCES OFFICE; DEBBIE MANS, EXECUTIVE
2005 DIRECTOR AND BAYKEEPER, NY/NJ BAYKEEPER; KATHERINE PROBST,
2006 INDEPENDENT CONSULTANT

2007

2008 STATEMENT OF MR. COBB

2009 Mr. Cobb. Thank you for the introduction, Mr. Chairman.

2010 Good morning, Chairman Shimkus, Ranking Member Tonko,
2011 members of the subcommittee. I want to thank you for the
2012 opportunity to speak at today's hearing.

2013 Representing ASTSWMO, which is the State and Territorial
2014 Solid Waste Management Officials and the waste management
2015 officials including those responsible for the oversight of
2016 cleanups, we appreciate the opportunity to present our thoughts
2017 on the topic of modernizing the Superfund cleanup program.

2018 As you're aware, much has changed and many lessons have been
2019 learned in the almost 40 years since CERCLA has been enacted.

2020 For example, robust cleanup programs have been developed by
2021 the states and EPA. The methods and technologies have been
2022 expanded. States have become key co-regulators and program

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2023 partners with EPA in protecting human health and the environment.

2024 Given the history and growth of our cleanup programs both
2025 state and federal, I will describe several recommendations to
2026 consider in evaluating the modernization of the cleanup program.

2027 CERCLA is a vitally important tool in the EPA and state
2028 toolboxes for ensuring and implementing needed cleanup at many
2029 sites across the country.

2030 However, effective tools must be periodically sharpened and
2031 maintained to ensure their continued relevance and effectiveness.

2032 As a part of any effort to modernize the program, the national
2033 contingency plan should be updated to reflect important lessons
2034 learned from the almost 40 years of cleanup experience by states
2035 and EPA.

2036 In order to truly affect streamlining and efficiency
2037 improvements for the long term, changes to the program must be
2038 incorporated into the fabric of the program and communicated to
2039 those individuals who conduct the day to day implementation.

2040 The NCP is the rule book that project managers, supervisors,
2041 and legal support refer to on a regular basis for guidance and
2042 direction in managing cleanup and decision making and the
2043 foundation that CERCLA cleanup program guidance is based upon.

2044 The NCP should also be updated to provide for a more
2045 streamlined and efficient process for managing responsible
2046 party-led and funded cleanups as compared to those cleanups

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conducted directly by EPA using funds from the Superfund trust fund, where additional documentation is often required in order to support future litigation and cost recovery efforts.

By providing for a more streamlined process for sites where the responsible party is funding and implementing the process, a further incentive is created to encourage responsible parties to step forward and work with EPA and the states cooperatively to clean up sites in a more timely, efficient, and cost-effective manner.

The process for identifying and selecting ARARs is also an area which should be addressed as part of modernizing the program. In addition, the statute and regulations should be updated to make sure -- make clear the state environmental covenant, laws, and regulations are essential components of many remedial actions, especially those that require longer-lasting remediation activities.

As a part of improving the ARAR's identification and selection process and in recognition of the co-regulator role of the states, it's important that the role for state co-regulators in CERCLA decision making is enhanced. As a part of the evaluation of the ARAR process perhaps the long-standing CERCLA exemption for permits should be reconsidered.

While this exemption may have been advantageous in the beginning of the program to ensure that cleanups were timely, the

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2071 states' and EPA's permanent programs have matured to the point
2072 where this may no longer be a benefit.

2073 Modernization of the program should include strengthening
2074 and clarifying the federal facilities compliance provisions of
2075 CERCLA. In implementing the cleanup provisions of CERCLA, it is
2076 imperative to ensure that both industry and government
2077 responsible parties are held to the same high standards.

2078 Recognizing that robust state cleanup programs have been
2079 developed and implemented in the four decades since the enactment
2080 of CERCLA, the program should also more clearly recognize the
2081 cleanups conducted under other cleanup authorities achieve
2082 results at least as productive as CERCLA actions.

2083 The states generally consider the nomination of a site for
2084 the NPL as a last resort and only after exploring and exhausting
2085 all other available state and federal programmatic enforcement
2086 and incentive options to either motivate a recalcitrant PRP or
2087 entice an unliable party interested in taking on the cleanup as
2088 a part of redevelopment.

2089 It is not wise to give the impression that only CERCLA cleanup
2090 actions are protective. By ensuring that CERCLA recognizes the
2091 merits of other programs, we increase the overall effectiveness
2092 and efficiency of cleanups regardless of the program under which
2093 they're conducted.

2094 States' concerns related to cost share related to fund-lead

2095 cleanup should also be addressed including consideration of
2096 greater flexibility and credit for states in providing in-kind
2097 contributions to cleanups which may be used to fulfil these cost
2098 contribution obligations, and modernization should include
2099 provisions to ensure that needed regulatory cleanup standards are
2100 developed and updated in an expeditious manner using sound science
2101 and the best information available.

2102 The program consists of at least four distinct components
2103 -- the assessment and identification of releases, referred to as
2104 the preliminary assessment site investigation component,
2105 short-term removal actions, long-term removal actions conducted
2106 and funded by responsible parties, and long-term actions
2107 conducted by EPA using the trust fund.

2108 Many states have the resources and desire to play a greater
2109 role in the process, and when willing and able those states should
2110 be encouraged to do so.

2111 Consideration should be given to authorizing states to
2112 directly implement both the PA/IS and the responsible party-led
2113 and funded removal and remedial components, which would add
2114 substantial capacity to the cleanup and decision making authority
2115 of the program and free up precious federal resources to focus
2116 on those "orphan" sites and fund-lead sites.

2117 In conclusion, states consider the Superfund cleanup program
2118 to be a vitally important tool for cleaning up our nation's

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2119 contaminated sites and protecting human health and the
2120 environment.

2121 States have positioned themselves to be effective partners
2122 and co-regulators with EPA in implementing the cleanup program
2123 and look forward to working with EPA, Congress, and others in our
2124 collective efforts to continue to modernize and improve the
2125 effectiveness and efficiency of this program.

2126 Thank you.

2127 [The prepared statement of Mr. Cobb follows:]

2128

2129 *****INSERT 5*****

2130 Mr. Shimkus. Thank you.

2131 Dr. Porter, you're recognized for five minutes.

2132 STATEMENT OF MR. PORTER

2133

2134 Mr. Porter. Good to be here. Let me see if I am turned on
2135 here. Am I? Can you hear me? Can you hear me okay?

2136 Mr. Shimkus. Try again. No, I don't think it's -- lift it
2137 up maybe.

2138 Mr. Porter. Here we go. Can you hear me now okay?

2139 Mr. Shimkus. Yes, sir.

2140 Mr. Porter. It's good to be here. I want to be very direct
2141 this morning. I used to run this program for a long time and I
2142 was going to tell Mrs. Dingell that I spent a lot of time with
2143 her husband. I would certainly call the him Father of Superfund.

2144 Mr. Shimkus. We have all dealt with Congressman Dingell.

2145 Mr. Porter. We all -- and Mr. Oxley and many other people
2146 have dealt with this committee.

2147 Anyway, I want to be very, very direct here, if I can. I
2148 am in private practice now but I spent a lot of time in Superfund.
2149 I still spend a lot of time in Superfund.

2150 And I want to -- - I liked the 40 items that the previous
2151 speaker -- Barry Breen's a good guy. I know him well. He's very
2152 smart. He's not the -- he's not in the position to make the kind
2153 of things you need to make this program going. You need somebody
2154 that represents the president, and I'll talk more about that
2155 later.

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2156 One of the things I want to mention is that, as several people
2157 have said today, the most important thing in Superfund -- we got
2158 a lot of people who worked on the Superfund. EPA has got a lot
2159 of good people. The states have done a lot of good work.

2160 But the basic thrust today, Superfund costs way too much and
2161 does not nearly as much work as it should, period. That's my
2162 bottom line.

2163 Now, how do we improve this situation? And by the way, I
2164 think we can do it. I've seen several assistant administrators
2165 who have done quite well. Others have not done so well. It's
2166 a tough job and you need people who can really run this program.

2167 In fact, I would say the most important thing I can say to
2168 you today I'll start out with. It's critical that the president
2169 put in someone in my old job or other assistant administrators.

2170 They had the ability to do it. They are authorized by law
2171 to make remedy selections. So if you really have a site that's
2172 not being done, you go to my old position and that person has the
2173 authority in the CERCLA statute to make the decision.

2174 Otherwise, it's a huge committee process -- a very large
2175 committee process.

2176 So it's critical, in my opinion, that the president appoint
2177 an assistant administrator to run the Superfund program on a
2178 day-to-day basis.

2179 He or she has the authority to make the key decisions and

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2180 can run the projects. I don't mean micro manage them all but to
2181 be sure things get done, and make the tough decisions.

2182 Excuse the name dropping, but I've spent -- I've talked to
2183 at least a dozen or so governors when I was there, many, many
2184 hundreds or dozens, at least, of people, Congressmen, where you
2185 had to kind of get down to making a decision, and I think that's
2186 really critical that you get somebody who can do that.

2187 That person, in my judgement, should have a technical
2188 background probably, is a good manager, understands the program,
2189 and is willing to make tough decisions and is, frankly, a pretty
2190 good communicator.

2191 Let me go -- now, there are three or four things I want to
2192 present today, some of which you heard, some of which you haven't.
2193 Probably the most -- the next most important thing is to set and
2194 enforce deadlines.

2195 One thing I used to do, every quarter I would send all 10
2196 regional administrators, here's what we are going to finish this
2197 quarter -- give me a call -- send your staff up if you don't make
2198 it.

2199 I grew up in the private sector where I ran large projects
2200 around the world and I try to treat this just as seriously. So
2201 you set and enforce deadlines, and that's -- a key job of the
2202 assistant administrator is to be sure we get these things done.
2203 When I tell the governor or I tell a member -- Congressmen or

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2204 Senators I'll bring in and finish the site, we finish it.

2205 Love Canal, just a quick name we all know -- I spent a lot
2206 of time with senior people in the state of New York. I spent a
2207 lot of time in Buffalo, et cetera, and a lot of time with Mr.
2208 LaFalce who was a Congressman at that time.

2209 We made -- when I said we were going to do it in a year and
2210 a half, we did it in a year and a half. I am not the only one
2211 that can do that. Many people can do that. You just got to get
2212 the right people.

2213 Set and enforce deadlines and, particularly, help with the
2214 selection of remedy. That's the key thing in this program is what
2215 are we going to do here. I have a couple sites -- well, I may
2216 mention several, and I gave a lot of names here. But there have
2217 been sites where you've spent \$100 million in 10 years and don't
2218 have a remedy.

2219 I am not saying don't clean up the site. I am saying don't
2220 even have a remedy, and these are fairly recent sites and there
2221 is many others.

2222 One thing that's not been discussed today -- and Mrs. Dingell
2223 might be interested in this, from what she said -- there is a very
2224 -- an A+ program at EPA called Emergency Removals and Early
2225 Actions.

2226 It's not done as well as it could be done but it's very --
2227 when I was interviewed, a reporter when I left said what would

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2228 you give -- you give yourself an A on anything. I said, well,
2229 I'd get some B's and B minuses, but A+ is the Emergency Removal
2230 program.

2231 And what that basically means is I can -- I, and other people
2232 in the regions, can agree to do something that's, like, they might
2233 say to me, "Can you give me a couple million dollars to go out;
2234 these barrels are leaking," and stuff like that. Very good
2235 program.

2236 In fact, one of the guys -- I'll mention one name here --
2237 several people I know that have been in that position and one or
2238 two of them became assistant administrators. They were very good
2239 because they were used to doing things quickly.

2240 So I think Emergency Removals are going to be important.
2241 Number three, I wanted to take a little different tack on one
2242 issue. The term PRP -- potential responsible parties -- has not
2243 been mentioned much today.

2244 Those are the companies or the cities or the other people
2245 who have to -- are caught up in this program. They are going to
2246 have to pay for it, et cetera.

2247 And that needs improvement. And I've talked a lot to my
2248 industry colleagues out there about how I am kind of concerned
2249 that most -- many large companies, when they start a program like
2250 this, they immediately turn to their legal department.

2251 My dad was a lawyer. Many of you are lawyers. I have

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2252 nothing against lawyers. But you need top managers to do this
2253 work. And I think I talked to -- most of the EPA when I was there
2254 was the general counsel. He was extremely good, extremely
2255 helpful. He would always tell me, "Where do you want to get to
2256 and how do we get there?"

2257 So it's important that the PRPs, or responsible parties, be
2258 dealt with and they need to improve because they have the know
2259 how. I don't need to necessarily tell a Dupont or a Monsanto or
2260 AT&T how to run a project.

2261 But what I do need to do is say, "You're going to pay for
2262 this. Let's do it in the most cost-effective way we can and let's
2263 really get on with it."

2264 So I think that's -- it hasn't been talked about enough.
2265 There is some real failure here, in some cases, of the companies
2266 involved to get serious, work with us. Not listen only to their
2267 lawyers but also their engineers and, frankly, their senior
2268 management -- that we want to get this thing done. It's a terrible
2269 PR problems, et cetera.

2270 One thing that has most --

2271 Mr. Shimkus. Give me your last or quick -- you're already
2272 over so give me --

2273 Mr. Porter. Okay. Just going to say I'd like to see us get
2274 rid of some of the things that are just a drag on us.

2275 Mr. Breen mentioned the Remedy Review Board. It's worse

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2276 than nothing. It takes a lot of time and stuff. Nice people and
2277 all that, but it takes a lot longer. It's because that one thing.
2278 So there is many other things like that, too.

2279 [The prepared statement of Mr. Porter follows:]

2280

2281 *****INSERT 6*****

2282 Mr. Shimkus. That's the kind of testimony we like to hear.
2283 We appreciate your time.
2284 The chair now recognizes the gentleman from Oregon, Mr.
2285 McKenna. Welcome. It's good to see you again. You're
2286 recognized for five minutes.

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2287 STATEMENT OF MR. MCKENNA

2288

2289 Mr. McKenna. Thank you.

2290 Chairman Shimkus, Ranking Member Tonko, and members of the
2291 subcommittee, I thank you and Governor Brown thanks you for
2292 providing this opportunity to provide testimony today on
2293 modernizing the Superfund program.

2294 Before I get into the details of the testimony, please allow
2295 me to convey a little bit of my background and my expertise in
2296 Superfund.

2297 I've been involved with Superfund sites for over 30 years
2298 starting off as an environmental coordinator for NASA's Jet
2299 Propulsion Laboratory in Pasadena which, in and of itself, had
2300 a contaminated groundwater plume impacting the city of Pasadena
2301 water wells.

2302 Prior to joining Governor Brown's Natural Resource Policy
2303 Office, I was a private consultant, owned my own firm doing
2304 primarily Superfund work.

2305 I know my time to testify is limited so you have my written
2306 material. So I am going to kind of cut to the chase of the issues
2307 I want to bring forth in terms of improving the program.

2308 Any attempts to modernize or revamp the Superfund program
2309 should consider four existing principles. In other words, these
2310 are principles we wouldn't support changing in any way, shape,

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2311 or form and that is, number one, the "polluter pays" principle
2312 -- that the polluters each pay their fair share at the end of the
2313 day for the contamination and not put that burden on the public.

2314 Number two, there could be no adverse impact or unjust burden
2315 placed on at-risk or underserved communities in the neighborhood
2316 of Superfund sites. In fact, we should be looking for ways to
2317 develop family wage jobs for those at-risk community members
2318 associated with the cleanup as the cleanup is progressing to see
2319 if we could actually do job force, work force development to get
2320 them involved in the cleanup as well as the Brownfield
2321 redevelopment sites' post-cleanup.

2322 Number three, there's no cookie cutter approach to revamping
2323 Superfund. All these sites are very unique. Portland Harbor is
2324 a very large mega complex site and so the fixes for a Portland
2325 Harbor-like site are not necessarily going to be the appropriate
2326 fixes for smaller Superfund sites. We need to keep that in mind.
2327 There's no cookie cutter approach.

2328 And number four, any efforts to reduce or obviate the timely
2329 and meaningful input of the public and the Native American
2330 sovereign governments at these sites would not be acceptable to
2331 the state of Oregon.

2332 We have a very complex site. We have numerous community
2333 involvement. Community groups have been involved since the
2334 beginning in 2000. We have six Native American tribes, all

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2335 sovereign governments that have been actively involved. The Nez
2336 Perce, Yakima, Warm Springs, Umatilla, Grand Ronde, and Siletz
2337 are all at the table. They need to be -- there need to be seats
2338 maintained at that table for those parties to make sure that they
2339 have meaningful input in the process.

2340 So that being said, the state of Oregon has a list of proposed
2341 modifications to the program. I will go through this list very
2342 quickly and then happy to answer questions at the end.

2343 We believe that we need to increase the funding for
2344 Superfund. That's been a part of the conversation here this
2345 morning. The Superfund program needs a sufficient budget in
2346 order to ensure that there's adequate staffing and resources
2347 available at the headquarters and regional offices to push these
2348 NPL sites to closure.

2349 We need to reinstate a revenue source -- the Superfund tax
2350 -- to replenish the fund for the "orphan" sites. Again, the topic
2351 has come up a number of times this morning. We need to have the
2352 orphan fund money available for those sites where there are no
2353 viable PRPs to do the cleanup.

2354 For mega Superfund sites, the complex ones like Portland
2355 Harbor, we think EPA should consider breaking those sites up into
2356 manageable areas. Some call them operable units or some form of
2357 smaller areas. So you could attack the sites and get to cleanups
2358 sooner than later.

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2359 And then for sites with numerous PRPs, again, focusing on
2360 the Portland Harbor site, we have 19 Superfund sites in Oregon
2361 but, obviously, Portland Harbor is the most complex for a number
2362 of reasons.

2363 We have over a hundred PRPs at that site. We recognize the
2364 difficulty of EPA negotiating one settlement offer with all of
2365 those PRPs at once.

2366 So we suggest that EPA develop tools to give the PRPs enough
2367 certainty that they can settle out their respective liabilities
2368 and move on with cleanup while maintaining the government's need
2369 for prudent reopeners of that cleanup.

2370 And then, finally, accommodating flexibility and cleanup
2371 design at each specific location. So a site like Portland Harbor
2372 where you got about 14 different cleanup areas each one will be
2373 unique.

2374 Our record of decision, which came out in January of 2017,
2375 accommodates flexibility at each of these sites. We promote that
2376 so that you can consider the unique conditions at each location
2377 and the future land use and ground water uses at those locations.

2378 I know I am running out of time. But I am happy to answer
2379 questions. I have a lot of other information to talk about in
2380 terms of Portland Harbor, in terms of Brownfield redevelopment.

2381 [The prepared statement of Mr. McKenna follows:]

2382

2383

*****INSERT 7*****

2384 Mr. Shimkus. Very good. Appreciate it, and thank you for
2385 your testimony.

2386 And now we'd like to turn to Ms. Debbie Mans. You're
2387 recognized for five minutes. And I am very generous with the time
2388 so don't feel too pressured. You know, we can go over.

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2389 STATEMENT OF MS. MANS

2390

2391 Ms. Mans. Thank you. I just cut some more testimony so --

2392 [Laughter.]

2393 So good morning. Thank you for this opportunity to testify.

2394 Again, my name is Debbie Mans and I am the co-chair of the Passaic
2395 River Community Advisory Group, or CAG, and the CAG provides
2396 advice and recommendations to the EPA and its partner agencies
2397 to help ensure a more effective and timely cleanup and restoration
2398 of the Lower Passaic River. It's a construct of the Superfund
2399 law.

2400 In 2015, our CAG won the Community Involvement Award from
2401 the U.S. EPA, a national award that recognizes outstanding
2402 achievements in environmental protection.

2403 I am also the executive director and baykeeper for New
2404 York/New Jersey Baykeeper, which works to protect, preserve, and
2405 restore the New York Harbor Estuary, which includes the Lower
2406 Passaic River, and we hold the technical assistance grant for the
2407 Passaic River Superfund site.

2408 I am here today to represent the communities that have been
2409 harmed by the pollution in the Passaic River. The site was first
2410 listed on the NPL in 1984, so I think we might win the bets here.

2411 Dioxin, PCBs, metals, PHs, and pesticides are found in the
2412 sediment of the Lower Passaic River and the primary polluter on

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2413 the river was a company called Diamond Alkali, which produced
2414 Agent Orange during the Vietnam War, and they used to shovel the
2415 byproduct of that production, dioxin, off the bulkheads into the
2416 Passaic River.

2417 The Superfund site now consists of 17 miles of the Passaic
2418 River, Newark Bay, and other portions of New York Harbor, and over
2419 the years the cleanup has progressed slowly along, primarily
2420 consisting of a constant back and forth negotiation between the
2421 PRPs and the EPA over sampling locations and methodologies,
2422 sampling results, newfangled ideas to clean the river, fish swaps,
2423 or recommendations to let the river heal itself.

2424 The recalcitrants of the PRPs was further amplified by the
2425 lack of funds to allow EPA to move forward with the cleanup itself
2426 due to the lapse of the Superfund tax.

2427 In March 2016, a record of decision was selected for the lower
2428 8.3 miles of the river, the most contaminated section of the
2429 Superfund site and the source for ongoing contamination,
2430 spreading throughout the New York Harbor estuary.

2431 However, the remainder of the Superfund site -- an additional
2432 nine miles of waterway upriver in Newark Bay -- is still under
2433 investigation, and recently the Diamond Alkali Company, AK Upper
2434 Lower Passaic Section, was listed as a Superfund site targeted
2435 for immediate and intense action by EPA Administrator Pruitt.
2436 This is the upriver portion of the Superfund site.

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2437 This announcement, coupled with the May 2017 announcement
2438 by Administrator Pruitt revising EPA's delegation of authority
2439 to ensure that decision making comes straight from the
2440 administrator to select remedies estimated to cost \$50 million
2441 or more -- and we will be over that amount -- rather than the
2442 assistant administrator and the regional administrators gives me
2443 pause.

2444 The May 2017 memo further states that as part of effectuating
2445 this adjustment to the remedy selection process I ask that you
2446 involve the administrator's office early on and throughout the
2447 process of developing and evaluating alternatives and remedy
2448 selection.

2449 This would appear to add a layer of bureaucracy rather than
2450 make processes more efficient at EPA. Now the regional offices
2451 must involve EPA headquarters early and often throughout the
2452 process.

2453 Now technical experts at the regional offices must confer
2454 with political appointees based in Washington, D.C. on developing
2455 and evaluating cleanup alternatives and remedy selections per
2456 site.

2457 This makes no sense to the stakeholders on the ground. The
2458 people who know these sites the best are the local EPA technical
2459 experts who come to our community meetings and inspect the sites.
2460 My best guess as to why the Upper Passaic site is on the list of

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2461 Superfund sites targeted for immediate and intense action is that
2462 EPA headquarters would like to test out adaptive management, a
2463 strategy outlined in the task force report for the use of an early
2464 action being promoted by the PRP.

2465 What concerns me is that the PRPs are potentially getting
2466 another chance to move forward with a concept that was earlier
2467 reviewed and rejected by the EPA due to lack of scientific basis
2468 and protections to public health.

2469 Now, under the guise of a task force report and new directives
2470 from the headquarters, indeed, regional staff recently informed
2471 us that our CAG will be updated on this potential cleanup proposal
2472 at our February CAG meeting and the proposal was also a subject
2473 of an upcoming Contaminated Sediments Technical Advisory Group,
2474 CSTAG, meeting in Region Two.

2475 On a contaminated site like the Passaic River it could be
2476 years before we understand how an early action has reduced public
2477 health risks and by then how will we ever bring the PRPs back to
2478 the table to finish a cleanup.

2479 One last point on the reuse of -- on the emphasis on reuse
2480 of Superfund sites, in New Jersey we've had for several years a
2481 private sector program that the -- our state agency delegates to
2482 private consultants to do cleanup of sites. It's called the
2483 Licensed Site Remediation Professional Program, and simply
2484 transferring a program like this over to sites that are Superfund

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2485 sites would be inappropriate.

2486 Generally, in New Jersey Superfund sites are, as we talked
2487 about, the last result, and they ask the EPA to take over sites
2488 that are very complicated or the PRP is not cooperating.

2489 This LSRP program in New Jersey has actually resulted in less
2490 transparency and public engagement because the use of private
2491 consultants with less agency oversight results in less public
2492 participation and transparency.

2493 So I have the rest of my information in my written testimony.
2494 Thank you again for this opportunity.

2495 [The prepared statement of Ms. Mans follows:]

2496

2497 *****INSERT 8*****

2498 Mr. Shimkus. Thank you.

2499 And now we'll turn to Katherine Probst, independent
2500 consultant. You are recognized for five minutes. Thank you for
2501 being here.

2502 STATEMENT OF MS. PROBST

2503

2504 Ms. Probst. Thank you very much, members of the
2505 subcommittee, and thank you for inviting me to testify before you
2506 today.

2507 My testimony today is going to focus on three issues --
2508 improving the effectiveness of the Superfund remedial program,
2509 estimating the funding needs for the Superfund program, and the
2510 Superfund task force recommendations.

2511 The first question that must be asked -- and this has already
2512 come up many times today from both Republicans and Democrats, is
2513 why does it take so long to clean up sites on the NPL.

2514 It's a great question and it's really sad we don't have any
2515 answers. At the end of fiscal year 2016, there were 441
2516 nonfederal NPL sites that were not yet construction complete.

2517 Just over 40 percent of these sites were added to the NPL
2518 before fiscal year 2000. Some have been on the NPL since 1983.

2519 EPA needs to conduct an objective analysis to determine why
2520 these sites are still not construction complete in order to
2521 develop effective program reforms.

2522 Is the obstacle lack of funding, PRP inaction, bureaucratic
2523 morass, technical challenges, or something else? Until we know
2524 why these sites are taking so long, we really can't develop
2525 solutions.

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2526 And if it's worth noting that more than half of remedial
2527 actions at NPL sites are PRP lead. Much more attention needs to
2528 be paid to whether at some sites PRPs are in fact responsible for
2529 lengthy cleanup durations.

2530 Second, the agency needs to determine why there are still
2531 NPL sites where human exposure is not under control and what can
2532 be done about it.

2533 The most important goal for the remedial cleanup program is
2534 to protect public health. Yet, at the end of fiscal year 2016,
2535 there were over a hundred nonfederal NPL sites where human
2536 exposure was not under control and at another 150 sites there was
2537 insufficient information to determine if it was under control or
2538 not.

2539 This issue should be the top priority of the Superfund
2540 program. Interestingly, the July 25th, 2017 memo from
2541 Administrator Pruitt directs senior staff to, and I quote,
2542 "Prioritize and take action to expeditiously effectuate control
2543 over any site where the risk of human exposure is not fully
2544 controlled," close quote, and to provide a report that identifies
2545 these sites and describes where such risks are expected to be
2546 controlled within 60 days, which I think would have been the end
2547 of September.

2548 No information on this effort has been made public. To
2549 address this pressing issue, EPA should issue a report lifting

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2550 all nonfederal NPL sites where human exposure is not under control
2551 or whether there is insufficient data to determine if it is under
2552 control and detail what steps are needed to address potential
2553 exposure and when these actions will be implemented.

2554 Some have suggested there is little or no need for a federal
2555 cleanup program and that the program should be delegated to the
2556 states. Yet, few if any states have the financial resources to
2557 pay for the cleanup of an average NPL site, much less a mega site
2558 with costs of \$50 million or more.

2559 In fact, states have increasingly raised concerns about
2560 their ability to come up with the funds to cover the state cost
2561 share for fund lead actions at NPL sites.

2562 To address this issue, EPA should commission an independent
2563 analysis of the financial resources and NPL cost burden for all
2564 states and territories that have NPL sites.

2565 As Congress seeks to improve the Superfund program, one key
2566 question which, again, has come up this morning is whether the
2567 program is receiving adequate annual appropriations to
2568 successfully carry out its responsibilities.

2569 EPA is not provided a public estimate of future funding needs
2570 to implement the program for many, many years. Congress should
2571 require that EPA issue an annual estimate of future costs of
2572 completing work at all nonfederal sites on the NPL.

2573 EPA should also develop an estimate of the amount needed for

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2574 a PRP reserve fund. One of the important tools for EPA to get
2575 PRPs to agree to pay for and implement cleanups is the threat that
2576 if they don't EPA will do so and then seek cost recovery or,
2577 potentially, treble damages.

2578 For this threat to be real, EPA needs to have a sizeable
2579 reserve fund to draw on, which is not the case. EPA should also
2580 investigate the potential savings of an optimal cleanup funding
2581 approach.

2582 Given the very real constraints on annual EPA funding for
2583 site construction, which was only \$187 million for fiscal year
2584 2017, it is almost certain that site cleanups are not funded in
2585 an optimal manner.

2586 This results in work at some sites being spread out over many
2587 years, likely increasing total costs. If an analysis of a
2588 different funding approach showed substantial cost savings,
2589 Congress could consider whether a few years of surge funding would
2590 be worthwhile as a mechanism to get some of the more expensive
2591 NPL site completed faster and at a total lower cost.

2592 Finally, as you know, in July EPA issued a Superfund task
2593 force report with 42 recommendations. As of yesterday, there
2594 have been no public information on the implementation status of
2595 any of the recommendations except for the release in December of
2596 the list of the 21 sites targeted for immense -- immediate and
2597 intense action, and yesterday the release of a list of 31 sites

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2598 with high redevelopment potential.

2599 Congress, the public, other interested parties and, most
2600 importantly, residents living near NPL sites have no information
2601 on the status of the many task force recommendations nor on the
2602 impact of these recommendations on the day-to-day operations of
2603 the Superfund program.

2604 Neither has there been any information on exactly what it
2605 means to be included on the list of 21 sites targeted for immediate
2606 action.

2607 The lack of transparency is staggering.

2608 Thank you for asking me to testify before you today. Be
2609 happy to answer any questions.

2610 [The prepared statement of Ms. Probst follows:]

2611

2612 *****INSERT 9*****

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2613 Mr. Shimkus. Thank you very much, and I will recognize
2614 myself five minutes for the first -- for the members' questioning.

2615 And Mr. Cobb, in your written testimony you note that the
2616 national contingency plan should be updated and you specifically
2617 suggest perhaps the national contingency plan should be revised
2618 to apply separately to cleanups funded by potential responsible
2619 parties, or PRPs, versus cleanups paid for by the federal
2620 government.

2621 Can you walk us through your suggestion for updates to the
2622 national contingency plan? And if you can do it quickly. I want
2623 to try to get to as many people as I can.

2624 Mr. Cobb. Yes, sir. I will be glad to.

2625 Yes. First, the NCP was written almost 35 years ago. We've
2626 learned a lot since then. We need to update it for the lessons
2627 that we've learned, and related to the -- recognizing the
2628 difference between PRP-led cleanups and fund-led cleanups,
2629 recognizing that we have many PRPs who now get it, who are -- who
2630 want to be able to resolve their issues, want to be able to move
2631 forward and conduct cleanups, yet the NCP was written as though
2632 every site was going to litigation, every site was going to cost
2633 recovery. So it is very detailed.

2634 We need to make a difference there to enable sites and
2635 facilities that want to resolve their issues to be able to move
2636 forward quickly. That provides a greater incentive to encourage

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2637 more sites to do that and still reserves the detail for those sites
2638 that need to go through the trust fund type cleanup and cost
2639 recovery.

2640 Mr. Shimkus. And I appreciate that. And for the panel as
2641 a whole, just as a statement, and I am not sure where we as a
2642 committee can get to -- I think a lot of you have raised the issue
2643 in observing us, we are frustrated, it takes too long, we are
2644 looking for recommendations, and if we as members could eventually
2645 decide on how do we -- what the solution to that goal is together,
2646 we maybe start writing something that would help update some of
2647 these -- you know, these records and files and time lines and
2648 stuff.

2649 So I would encourage a continued dialogue with us as we move
2650 forward.

2651 Back to Mr. Cobb. Do you -- and part of this debate is do
2652 you think -- and it was raised by other panelists, do you think
2653 that certain authorities under the Superfund act could be
2654 delegated to states?

2655 Mr. Cobb. Yes. As I stated in my written testimony, I think
2656 that where responsible parties are willing and able to go forward
2657 with cleanup, states certainly have the expertise and the capacity
2658 to be able to do that.

2659 The advantage of that is it doesn't take away from EPA's
2660 actions under fund-lead cleanups. In fact, it enhances them

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2661 because it removes some of the decision making and technical
2662 bottlenecks that we see of everything going through the federal
2663 project managers through the federal decision makers and freeze
2664 up resources to be able to move sites faster through the process.

2665 Mr. Shimkus. And I don't know if it was Ms. Mans, Ms. Probst
2666 -- someone mentioned this. Ms. Mans, with your Passaic River
2667 issue, is there a problem with a proposal that some Superfund
2668 responsibilities be delegated to the states?

2669 Ms. Mans. Well, the Passaic River -- I mean, there's a close
2670 partnership with the states for that cleanup. I mean, it's one
2671 of the largest and most complicated in-water Superfund sites in
2672 the country. So I don't think that's an appropriate site to do
2673 that.

2674 I mean, the state of New Jersey has a lot of expertise in
2675 cleaning up contaminated sites.

2676 Mr. Shimkus. So is it fair to say that states don't --
2677 wouldn't want a huge one maybe like -- even like the Portland area,
2678 but smaller ones that can be managed, Mr. McKenna?

2679 Mr. McKenna. Yes. I think this is one of those issues where
2680 it's really state-specific and site-specific.

2681 In Portland, we have the Portland Harbor Superfund site,
2682 which is about 11 miles, and EPA is the lead for the in-water
2683 cleanup there. The state of Oregon is the lead for the in-water
2684 sediment cleanups immediately upstream of that -- immediately

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2685 adjacent and immediately upstream because we need to control those
2686 --

2687 Mr. Shimkus. Because when I toured it, there was one site
2688 that was relatively remediated by the state --

2689 Mr. McKenna. Right.

2690 Mr. Shimkus. -- where all the surrounding areas, in
2691 essence, were not, if I remember that.

2692 Mr. McKenna. That was McCormick and Baxter, which is a
2693 separate Superfund site and which it was an abandoned site --
2694 orphaned site, federal funds and the state implemented the cleanup
2695 there.

2696 The state also implemented the cleanup at sediment sites
2697 immediately upstream of the Portland Harbor Superfund site and
2698 in that area where there were multiple cleanup sites, they dealt
2699 with each one separately and the PRPs of those sites separately,
2700 and they've actually got the cleanups done at the same cleanup
2701 goals as Portland Harbor. But they're actually done as opposed
2702 to the continuing work that's going on at Portland Harbor.

2703 So I think there are ways and we are happy to sit down with
2704 anyone and talk about the lessons learned and some of the progress
2705 we've made in those areas.

2706 Mr. Shimkus. Thank you. And Dr. Porter, I don't have time
2707 for a question but I appreciate your blunt straightforward
2708 analysis and we look forward to working with you on ways if we

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2709 get a decision to try to move forward on trying to at least clean
2710 up the process legislatively.

2711 So I will yield back my time and turn to the ranking member,
2712 Mr. Tonko, for five minutes.

2713 Mr. Tonko. Thank you, Mr. Chair.

2714 Ms. Mans, as I mentioned, I've been very concerned with
2715 transparency, the Superfund task force process and the
2716 development of the administrator's targeted list.

2717 Did anyone at EPA engage with you before the Diamond Alkali
2718 site appeared on the administrator's targeted list?

2719 Ms. Mans. No. We actually, subsequent to the listing,
2720 requested a meeting with the regional administrator, Peter Lopez,
2721 and we just met with him last week to ask more. We didn't really
2722 get much more information about what it means.

2723 Mr. Tonko. And are you going to continue to pursue to get
2724 information on that?

2725 Ms. Mans. Yes, we will. I mentioned we are anticipating
2726 a proposal by the PRPs for that cleanup for that portion that was
2727 put on the list next month and then we'll have to turn around and
2728 provide technical comments on that on behalf of the community for
2729 the CSAG meeting on March 1st.

2730 Mr. Tonko. Did EPA -- for a little more clarification here,
2731 did they give any explanation to you as to what it means to have
2732 the site on the list?

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2733 Ms. Mans. No. They were as helpful as they could be but
2734 it was very -- just different variations of the word intense and
2735 immediate.

2736 Mr. Tonko. Okay. People can accuse me of cynicism if they
2737 want but I do believe that this is a strategy for generating future
2738 press releases more than actually working toward remediating
2739 sites for the standard of protecting human health and our
2740 environment.

2741 So Ms. Mans, can you explain the role that local stakeholders
2742 play in making a remediation successful?

2743 Ms. Mans. Sure. Our CAG is very highly educated. We've
2744 been meeting since the fall of 2009 almost on a monthly basis,
2745 and we've done everything to provide advice on the community
2746 health and safety plan, the job training program. We created
2747 local jobs at our request on emergency action there or initial
2748 cleanup and as well as provide, like I said, technical advice to
2749 the --

2750 Mr. Tonko. And how important is that engagement within
2751 buy-in from the local community?

2752 Ms. Mans. It's the most important thing you can have at a
2753 Superfund site. When we -- when the EPA announced the March --
2754 in 2016 ROD we had both senators, every single congressional
2755 representative in the region, the community, the mayor, all
2756 standing up to support that decision and that's what made the

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2757 difference.

2758 Mr. Tonko. Well, I will not argue with Dr. Porter -- that
2759 many cleanups could happen more quickly and more cost effectively.
2760 But I really do believe a well-funded EPA is critical to get these
2761 cleanups done.

2762 Ms. Probst, has a lack of EPA funding caused a delay in
2763 starting some cleanups?

2764 Ms. Probst. Well, as Barry Breen mentioned, we know from
2765 EPA's own data, I think it's 14 of the last 17 years they've had
2766 to delay remedial actions that are -- you can document that.

2767 I think it's fair to say that if you listen to Mr. Carter
2768 or anybody who has a site, sites are taking a long time. One has
2769 to assume that the lack of actual funding for construction is
2770 causing EPA to spread things out over multiple years.

2771 That is much harder to capture. So all we know is the
2772 specific actions that have been delayed. But you have to assume
2773 that if you only have \$187 million, which I would love to have
2774 personally, but is not a lot money for this program for cleanups,
2775 for construction, that things are being parceled out over years.

2776 So we don't know exactly how much but I think it's fair to
2777 say it contributes to the delay.

2778 Mr. Tonko. And can you explain how EPA needs both
2779 enforcement and cleanup resources in order to ensure responsible
2780 parties remediate these sites?

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2781 Ms. Probst. Sure. Although I am not a lawyer but, you know,
2782 the enforcement program the whole goal is that the responsible
2783 parties will actually pay for and implement cleanups themselves.
2784 In theory, they see that as an advantage because they assume
2785 they're more efficient than EPA, although one actually doesn't
2786 know that. But it's in their interest to have more control.

2787 So under the enforcement program, and usually we are talking
2788 settlements here, EPA works with responsible parties and the
2789 implement, as Barry said, I think, we think it's 60 or 70 percent
2790 of remedial actions.

2791 The other thing that's important that I mentioned in my
2792 testimony is EPA being able to step in if there's a site that has
2793 been sitting there for five, 10, 15, or 20 years and the
2794 responsible party isn't doing anything, and there are at least
2795 two of the 21 sites on the lists that it clearly says the PRPs
2796 have been sitting on this site.

2797 The idea is that EPA should have the funding to go in there
2798 and say okay, PRP, there's been this remedial action ready to go
2799 for three years or five years -- you're dragging your feet --
2800 forget it, we are going to implement. That's part of the program.

2801 Mr. Tonko. And just quickly here, Ms. Mans, I mentioned the
2802 issues facing the Hudson River this morning. It is clear how
2803 important it is to get the remedy right the first time. Can you
2804 explain how an insufficient assessment for sampling or modelling

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2805 or an incomplete cleanup will make it more difficult to make sites
2806 protective of human health and bring responsible parties back to
2807 the table?

2808 Ms. Mans. Well, I mean, if you move forward with that type
2809 of thing, I don't see how you can bring them back to the table,
2810 especially years later for, like, a sediment thing site when you
2811 only then figure out decades later that the fish are not getting
2812 healthier and you're not reducing the cancer risk.

2813 The ROD that we have now is a bank-to-bank dredging and we
2814 look to what happened at the Hudson River with just the hot spot
2815 removal as, you know, informing us about what should be happening
2816 for that river, and that's what concerns us about the upper river
2817 and that maybe they'll try hot spot removal.

2818 Mr. Tonko. Thank you so much.

2819 With that, I yield back, Mr. Chairman.

2820 Mr. Shimkus. Gentleman yields back.

2821 The chair now recognizes the gentleman from Georgia, Mr.
2822 Carter, for five minutes.

2823 Mr. Carter. Thank you, Mr. Chairman.

2824 Dr. Porter, I want to echo the comments of the chairman. I
2825 find your testimony to be quite refreshing and I appreciate that,
2826 and I want to associate myself with you that I think it takes more
2827 than just throwing money at a problem than to cure it. So often
2828 up here in Washington we think that's the cure. If you can get

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2829 enough money to it, then it's going to be solved. You, obviously,
2830 don't adhere to that -- to that advice, although agreed that we
2831 probably do need to do better than what we are doing.

2832 I wanted to ask you, you have also, in your testimony I
2833 noticed that you said that nearly a \$100 billion that EPA has spent
2834 in public and private funds really is not proportional to the
2835 amount of work that's been done.

2836 You mentioned in your testimony the need to move the site
2837 remediation decisions to the key subordinates of the secretary.
2838 Can you elaborate on that? Is that going to help? Is it going
2839 to make it more timely? How is that going to work?

2840 Mr. Porter. Well, I think you have got a very important
2841 project here where you have got to get people who -- the key people
2842 are the administrator, who spends some time out, and I am very
2843 happy the administrator at least is putting focus on this thing.
2844 I have not seen too many of the administrators has spent this
2845 much time on Superfund. So that in itself is kind of interesting.

2846 But below that, you have got my old job, which is the national
2847 program manager who can actually make remedy decisions, him or
2848 herself, and you've got the ten regional administrators and you've
2849 got the Superfund chiefs in the region. They're all important.

2850 So I think it's important. What I am trying to do is --
2851 frankly, I am very disappointed in recent years or quite a few
2852 years actually, that the management of the projects has been

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2853 sitting lower and lower and lower at EPA. More and more
2854 committees, more and more whatever.

2855 So I think that's important. I also want to point out that
2856 the remedy itself is critical. I've seen -- I've see sites with
2857 a \$50 million remedy, \$800 million remedy, or \$2 billion remedy.
2858 You know, and the \$500 million is five times as good as the 10
2859 or the 20. They're just different. For example, the comment
2860 just here recently about -- and I am familiar with all these sites
2861 -- of the Passaic River and the Hudson or whatever and maybe hot
2862 spot removal is better than wall-to-wall dredging of the river,
2863 which is billions of dollars.

2864 And so I think it's important, as you have a lot of judgement
2865 for it, and by the way, the first thing in the statute of this
2866 law -- back to Mr. Dingell's day -- is that the president shall
2867 pick, meaning people like me -- the president shall pick a
2868 cost-effective remedy -- a cost-effective remedy. That means a
2869 good remedy has not another criteria that go in there.

2870 And so I think it's very important to have the people at
2871 pretty senior things -- mainly at the region. I want the region
2872 to go as far as they possibly can. Most sites they can handle.
2873 But when they can't handle the site or they want help, someone
2874 -- like in my old job -- has got to get in there and help them
2875 and, frankly, I might even say I think we ought to do this.

2876 I had lots of time in the early days of Superfund of having

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2877 regions come in and talk to me about that we are going to -- here's
2878 the site we're going to do, and I won't get in a lot of detail.
2879 But I will say, I would ask them the following five or six
2880 questions.

2881 For example, real simple, you say EPA is going to do this
2882 -- well, you do know that Mr. Dingell, et cetera, put in there,
2883 which is good, that the state shall pay -- if EPA have to pay for
2884 it, the state has to pay 10 percent. Does Oklahoma have 10
2885 percent, just to pick a name at random?

2886 And the answer often is no. So you have to be careful and
2887 I would say, well go back to the remedy and the PRPs will do it.
2888 Well, they'll do it. They'll do the \$80 million remedy but they
2889 won't do the \$90 billion remedy. Had nothing to do with the cost.
2890 It's just they'll go to court on that. You can ask the people
2891 in the area, well, do you want -- do you want the \$90 million remedy
2892 or the \$80 million remedy -- no, we don't want to be moved out
2893 of our houses. I think of that Love Canal as a good example of
2894 things. That kind of dialogue would happen all the time.

2895 So it takes a lot of judgment of these nine criteria and that
2896 judgement needs to be held pretty high and the reason I am telling
2897 the president or anybody else who will listen, get my old job
2898 filled with a full time person who has a lot of savvy and help
2899 you and help the regions and help everyone else, Democrats and
2900 Republicans, because the remedy itself, I've seen sites all over

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2901 the place where you're going along thinking it's \$200 million or
2902 \$300 million, next thing you know it's a billion. And that doesn't
2903 mean it's good or bad. It's just let's think, guys. The law says
2904 you pick a cost effective remedy and bunch of other things. So
2905 what we don't need is a bureaucracy. What we now have is a lot
2906 more bureaucracy than in my day -- than in my day.

2907 Mr. Carter. Let me -- let me just really quickly, Dr.
2908 Porter.

2909 So do you believe states ought to have more authority or less?

2910 Mr. Porter. Yes. In my testimony -- written testimony I
2911 think one of things I said I think looking down the road a ways
2912 I think the states should do most of this work.

2913 The states -- I've looked at a lot of sites around the country
2914 and what I find in general the states -- for similar sites, not
2915 a bad site and a not so bad site -- but those kind of sites that
2916 the states -- the "good" states that had really good programs are
2917 usually about a third of the cost and much faster.

2918 Mr. Carter. Okay. But Ms. Probst, you mentioned in your
2919 testimony that you didn't think the states could do it or they're
2920 not qualified, they don't have the money, or what?

2921 Ms. Probst. I think we are talking a little bit vaguely.

2922 Right now, there is nothing that precludes states from
2923 cleaning up sites that are on the NPL and if you listen carefully
2924 to the testimony from Mr. Cobb they want the states that don't

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2925 involve a lot of funding. They want the PRP lead sites.

2926 So I don't really know what's being recommended. There's
2927 nothing that precludes states -- I mean, a site only gets on the
2928 NPL if the state concurs. That's not legal but that's basically
2929 the policy.

2930 So it's not that EPA is adding sites to the NPL without state
2931 agreement. So I am not actually sure what's being recommended.
2932 But it is true that states don't have a lot of financial
2933 capability. They're upset about the 10 percent cost share.

2934 So I think that whatever recommendations you get on the
2935 states it needs to be clearer. I don't know what's being
2936 recommended here. And so I don't know if they want more NPL sites
2937 or what they want.

2938 Mr. Carter. Right. Well, thank all of you for your work,
2939 and I yield back.

2940 Mr. Shimkus. Yes, excellent work.

2941 The chair now recognizes the ranking member of the full
2942 committee, Mr. Pallone, for five minutes.

2943 Mr. Pallone. Thank you, Mr. Chairman.

2944 I am just -- I just want to say I am happy to have Debbie
2945 Mans here because she's really a fierce advocate for the
2946 environment in New Jersey and has a wealth of experience with the
2947 Superfund program.

2948 But I wanted to follow up, Debbie, on the issues raised by

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2949 Mr. Tonko. I have several Superfund sites in my district and
2950 stakeholders and those sites have called me to ask why they weren't
2951 included on the list. I know we have many lists now. And they
2952 wonder if that means their sites are now headed to the back of
2953 the line.

2954 As I stressed in my questions to Mr. Breen, the focus of the
2955 Superfund program has been and should remain protecting human
2956 health and the environment.

2957 I mean, obviously, you agree with that, yes?

2958 Ms. Mans. Yes.

2959 Mr. Pallone. Okay. But let me ask you, do you have concerns
2960 that the recent EPA actions have the potential to shift EPA
2961 attention and cleanup funds away from the riskier sites?

2962 Ms. Mans. I think in the current state of, you know, almost
2963 a third of the budget being cut at EPA, what's going to happen
2964 is you're going to do less with less -- you know, that you just
2965 can't do more with less.

2966 And so yes, priorities will be shifted and choices will have
2967 to be made and I think inevitably it will result in slowdowns at
2968 other cleanup sites.

2969 Mr. Pallone. Okay. Now, I am particularly concerned about
2970 yesterday's publication of the list of Superfund sites with the
2971 highest potential for economic redevelopment, which is a factor
2972 that is not really relevant to the risk posed by the site.

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2973 The Passaic River was or was not on that last list?

2974 Ms. Mans. You know, I did not get a chance -- I am still
2975 looking at the list on December 8th so I am not sure.

2976 Mr. Pallone. Okay. All right. So, but of course, my
2977 understanding is that that -- the Passaic River is not going to
2978 be redeveloped for industrial use. So, I mean, that doesn't make
2979 the cleanup less important.

2980 Ms. Mans. Right. I mean, the -- in the Passaic River, the
2981 community has been perfectly clear what they want to see for the
2982 river. They want waterfront parks, boat ramps, habitat, clean
2983 water where if you catch a fish or a crab you will not get cancer
2984 or that it's illegal to do that.

2985 I mean, that's what the community wants for their river.

2986 Mr. Pallone. Yeah, and as you say, the community often is
2987 the most knowledgeable. I am not saying they're the only factor
2988 but certainly the most knowledgeable.

2989 But then, I mean, it's not true that because the site may
2990 not be redeveloped that there aren't significant economic
2991 benefits from doing the cleanup, right? I mean, you still see
2992 significant economic benefits to what you're proposing, even if
2993 it's not redeveloped.

2994 Ms. Mans. Right. The proposed cleanup of the lower 8.3
2995 miles include a channel, which has not been dredged for 40 years.
2996 So we -- you know, we took commercial interest in account for the

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2997 cleanup.

2998 But yeah, there is a new waterfront park in Newark. The
2999 third phase was just opened last month. That's what's going to
3000 drive revitalization in our communities is places where people
3001 want to go open space and where businesses know that will attract
3002 their employees.

3003 Mr. Pallone. I mean, see, that's my concern. In other
3004 words, you have a site that will be cleaned up, it will be much
3005 more open to recreational uses. It won't be another -- it won't
3006 be, you know, primarily focused on manufacturing.

3007 But that's the very thing that actually may bring more people
3008 and economic activity to Newark or to the area. I mean, that's
3009 essentially what I think you're saying.

3010 Ms. Mans. Yes.

3011 Mr. Pallone. I don't have a lot of time. So I just wanted
3012 to ask one more thing.

3013 You raised it in your testimony and this comes up all the
3014 time, that recent actions by the EPA could undermine the quality
3015 of the cleanups done, okay.

3016 You know, can you explain why you feel the recent EPA
3017 recommendations and targets could lead to weaker or less effective
3018 cleanups?

3019 Ms. Mans. We'll find out more about this next month at the
3020 CAG. But our understanding is that the PRPs plan to propose a

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3021 cleanup for the upper nine miles. That sounds like it will be
3022 a hot spot removal. Sounds a lot like their prior proposal for
3023 sustainable remedy that was earlier rejected by the EPA when we
3024 were looking at alternatives for the cleanup.

3025 So it's a big concern and the directives from the
3026 headquarters at EPA, not the regional staff, which have been
3027 really amazing, leaves us with concern.

3028 Mr. Pallone. See, my concern is that this task force report
3029 and the substantive targeted list could lead to inadequate
3030 cleanups and not robust cleanups that are really protective of
3031 human health and the environment, and the mission of the Superfund
3032 program is to protect human health and the environment.

3033 So if you do these meaningless cleanups that don't actually
3034 address that then we are not accomplishing --

3035 Ms. Mans. We don't have a Superfund program. Yeah.

3036 Mr. Pallone. Right. All right. Thank you so much. I
3037 appreciate you being here.

3038 Mr. Shimkus. Gentleman's time has expired.

3039 The chair recognizes the gentleman from Michigan, Mr.
3040 Walburg, for five minutes.

3041 Mr. Walberg. Thank you, Mr. Chairman, and thanks to the
3042 panel for being here.

3043 Mr. Cobb, in your written testimony you discussed the
3044 modernization of the correction action program of the Resource

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3045 Conservation Recovery Act that happened in the 1990s.

3046 What could be learn from that process that can be applied
3047 to modernization of the Superfund today?

3048 Mr. Cobb. Mr. Walberg, I believe I believe what we can learn
3049 from that process is many of the things that I outlined in my
3050 testimony about enabling sites with facilities that understand
3051 their liability now and want to resolve it, enabling them to move
3052 forward.

3053 Back on the last '90s, 2000s, I was actually one of the voices
3054 against that kind of action because I believed that the more
3055 prescriptive requirement that RCRA was using up until that time
3056 worked to our benefit.

3057 I am happy to say today that I've been proven wrong on that
3058 because as RCRA was redesigned to be more flexible and allowing
3059 sites to move forward in targeting interims actions such as Dr.
3060 Porter described earlier and making quicker decisions, we've been
3061 able to get more sites cleaned up faster.

3062 Site -- facilities have recognized that if they're willing
3063 to work with us they can get through the process faster and more
3064 economically and still arrive at a very protective cleanup.

3065 Mr. Walberg. And so that's the enabling you're talking
3066 about?

3067 Mr. Cobb. That's the enabling, yes. We have to recognize
3068 that, as Mr. Breen testified earlier, only about 30 percent or

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so of the sites on the NPL require fund leave activity. Most of them are PRP leave. And there are many other sites that are not on the NPL that are also conducted as CERCLA cleanups.

Currently, the way the statute is written, all of those decisions, all of that review, is under EPA authority. None of it is delegatable to the states although the states work cooperatively with EPA on those things.

What I am proposing is that by opening that up and giving states a broader role that we increase the through-put capacity of the program we enable sites that want to move forward to move forward and get cleanup done and then we are able to focus more resources on those recalcitrants sites or the orphan sites and be able to apply the fully force of the Superfund liability scheme on those sites, which creates a greater incentive for sites to come forward voluntarily to help us out.

This has worked and we've been able to move thousands of sites through the process much more quickly and I believe it will work in the Superfund program as well.

Mr. Walberg. So it's not a fix all but it does narrow the scope. I mean, we think of the Gelman site, for instance, which seems to drag on.

Mrs. Dingell. And on and on.

Mr. Walberg. And on. Can we start this song together?

That would be one where we are not seeing that efficiency,

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3093 speed, and creativity in completing the process.

3094 Mr. Cobb. That is correct, and if I could venture to say
3095 that as has been discussed by the committee, there are issues with
3096 cleanups being funded limited.

3097 But one of the things we in the states have learned through
3098 the years is that we've got to streamline our processes. For
3099 those things that we do and do well, we've got to make those as
3100 efficient as possible to be able to wisely use the funds that we
3101 do have and then make sure we have the available funds to do the
3102 work we need to do.

3103 Mr. Walberg. And then make sure the states have the funds,
3104 and I think that is a crucial point we have to remember up here.

3105 Thank you.

3106 Dr. Porter, what are some actions EPA could take to improve
3107 Superfund cleanup program? Either changes to the statute that
3108 need to be made and taking in consideration of making them more
3109 effective and efficient?

3110 Mr. Porter. Yes. I think one of the things to think about
3111 is in my statement I believe I mentioned three things that might
3112 be worthy of legislation.

3113 One is to actually increase funding of the removal and early
3114 action programs because they're -- we've done thousands and
3115 thousands -- we, EPA -- of actual short-term things.

3116 So what I am saying instead of having a million dollars that

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3117 you can go out and pick up barrels or whatever, just make it \$3
3118 million or \$4 million, because those are very effective.

3119 First off, you do things directly like picking up barrels
3120 or whatever. You learn a lot for the next step, and we tend to
3121 do -- we at EPA tend to do is we go on and on and on, thinking
3122 about every conceivable thing.

3123 There's a lot of sites where something could be -- a company
3124 may come forward, I will spend a \$100 million or \$20 million or
3125 \$10 million on this fairly quickly. People have done that. They
3126 offered to do things in other places. And that often just ends
3127 up in lots of dialogue forever and ever and never gets done.

3128 The second thing I did, unlike Mr. Dingell in his day, and
3129 I was very supportive of his -- the statute, but and that statute
3130 many years ago, has a lot of starts. You shall do 250 studies,
3131 you do 513 of this. We met all those. You know, that was fine.
3132 I want to see things that are ending like, for example, how long
3133 will it be before you have a remedy -- you're starting the site,
3134 put it on the site and -- - by law and you can always tweak it
3135 a little bit if you're the top person. In two years you shall
3136 have a remedy or maybe it's like in one year I would like to see
3137 a statute -- a new statute to say after one year the EPA needs
3138 to tell us what do the likely remedies look like or what are the
3139 things you can do immediately.

3140 So I think there's things like that you could do.

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3141 Mr. Walberg. Well, thank you. Thanks for the pertinent
3142 advice.

3143 Mr. Porter. Everything -- everything -- there's a date on
3144 it.

3145 Mr. Walberg. Yes. Thank you. I yield back.

3146 Mr. Shimkus. Gentleman's time has expired.

3147 The chair recognizes the gentleman from Texas, Mr. Green,
3148 for five minutes.

3149 Mr. Green. Thank you, Mr. Chairman.

3150 EPA's recent recommendations for reforms in the Superfund
3151 focus on sites with viable responsible parties without paying much
3152 attention to the orphan sites that need public funds to be cleaned
3153 up.

3154 In fact, when Administrator Pruitt was here last month he
3155 told us that there wasn't really very many orphan sites and they
3156 didn't require a lot of funding.

3157 I've asked him to provide an exact number of how many orphan
3158 sites are on the NPL for the record of last month's hearing but
3159 I am still waiting for that.

3160 A good example, we have a huge one that has a responsible
3161 party, but in the Houston area in southeast Texas we have a number
3162 of them. One of them is in our district. It's an oil tanking
3163 facility that's been there for at least many, many years and there
3164 is a responsible party but they've absconded. They went to Latin

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3165 America somewhere. So that would, I hope, would be included in
3166 an orphan site because it's EPA staff working on it as best they
3167 can.

3168 Ms. Probst, what has been the coincidence of this sharp
3169 decline in the funding for the Superfund cleanup since the year
3170 2000?

3171 Ms. Probst. It's really hard to tell, frankly, without
3172 doing any analysis. I mean, I think -- I don't really have an
3173 answer and I guess I would just say that, you know, one of the
3174 things that has plagued the Superfund program for a very long time
3175 -- it's not just this administration -- is there hasn't been --
3176 again, there hasn't been how much funding they need. There hasn't
3177 been an effort to pinpoint what the problems are. If you don't
3178 pinpoint what the problems I don't care who you are, you can't
3179 solve them.

3180 So I actually can't tell you because numbers -- like the
3181 number of sites, well, sites are heterogeneous. There's a \$5
3182 million site, there's a multiple hundred million dollar site.

3183 So it's a very good question and I can't give an answer.

3184 Mr. Green. Well, and that's many administrations, not just
3185 the current one or previous but since 2000, and I've been out on
3186 that site and this is just barrels of toxic substances, crude oil
3187 mainly, sitting out in the rain rusting and every once in a while
3188 they'll come in and move some of them. But they're still at the

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3189 site and there's -- that land is fairly valuable both for
3190 industrial or commercial purposes where it's at.

3191 Do you believe that the funding for cleanups of orphan sites
3192 is an essential component of the Superfund program?

3193 Ms. Probst. Absolutely. And can I just say one thing about
3194 that? It is true that only some percent are orphan sites. But,
3195 again, you need the threat of bringing things back from
3196 responsible parties and the numbers flip in terms of the percent
3197 that are done by the fund in the earlier stages. The RIFS, the
3198 site study stage, tends to be done by EPA to get things moving.

3199 So it's not that a PRP site has no direct costs to EPA.

3200 Mr. Green. Okay. And Ms. Mans, do you agree?

3201 Ms. Mans. Yes.

3202 Mr. Green. When you were talking, by the way, the recovery
3203 there, that one site that we are working on still that was a dioxin
3204 facility, people are still crabbing and fishing off of that, and
3205 I wish we could turn it into a touristy place.

3206 But I have an industrial area and I think what'll take over
3207 there is a barging operations because that's the growth in that
3208 area, that -- the San Jacinto River there were it enters the
3209 Houston ship channel.

3210 Ms. Probst and Ms. Mans, is the federal funding also
3211 essential for sites with the responsible parties because it allows
3212 the EPA to move ahead with cleanups where the responsible parties

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3213 are hesitant, let's call it?

3214 Ms. Probst. Yes.

3215 Mr. Green. Okay. Also, what do you believe would be the
3216 consequences if EPA's budget request last year for drastic cuts
3217 in Superfund enforcement accounts were to go into effect?

3218 Ms. Probst. Well, that just means everything is going to
3219 be paid for by the taxpayers. I mean, if you don't have -- if
3220 you don't have enforcement -- you don't PRP lead sites, what you're
3221 saying is that all your sites are going to be paid for by the
3222 federal government.

3223 Mr. Green. Okay.

3224 Ms. Mans. We -- just on some numbers -- we were crunching
3225 them -- the Trump administration proposed cuts to the Superfund
3226 program of 25 percent nationally, which would result in the loss
3227 of 536 staff slots.

3228 Mr. Green. Well, and Mr. Chairman, I have other questions
3229 but I know it's time for us to leave. But, you know, it's
3230 frustrating that what we see that our own budget process now --
3231 that how do we run the Department of Defense, much less EPA, with
3232 what we are doing now. But I yield back my time.

3233 Mr. Shimkus. Thank you. The gentleman yields back the
3234 time.

3235 The chair now recognizes the other force of nature on the
3236 committee, Mrs. Dingell, for five minutes.

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3237 Mrs. Dingell. I've behaved today.

3238 It's great to see all of you and I thank you for sitting here.

3239 And Dr. Porter, I will tell the other Dingell that you referred
3240 to him many times today. It'll make his day.

3241 But I, again, am going to go off script. But Dr. Porter,
3242 you were talking about how we should have remedies. But when we
3243 do remedies in the time line, do we have the cost associated with
3244 them?

3245 I mean, one of the things that I've really learned it is
3246 taking far too long to even make the National Priority List when
3247 you know someone should be on it. How do we -- do we have the
3248 dollars we need to -- when you try to put that time line on a remedy?

3249 Mr. Porter. Yes. I think so. You know, I think there's
3250 such a broad range of things. For example, a lot of the sites
3251 you're talking about that should be on the list or not be on the
3252 list, I am a big believer in putting a fair amount of money into
3253 well, what about when you go out and deal with it this afternoon?

3254 We've done thousands of thing where someone has something
3255 that you could do fairly quickly. The other big thing --

3256 Mrs. Dingell. So why can't we do that? Because it's become
3257 such a bureaucracy.

3258 Mr. Porter. Yes. I don't think it's so much bureaucracy.
3259 The guy that did a great job was Tim Fields. He was the Clinton
3260 administration. He came out of the removal program. He had my

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3261 job a few years later.

3262 Tim was sent a million dollars here, \$2 million here, \$5
3263 million there. I would okay a lot more than sometimes than we
3264 had to, and he would cleanup sites.

3265 Now, obviously, if something is going to be \$500 million,
3266 it takes a little longer. But I think there's a lot of ways to
3267 be more creative. I would like to see more money put in these
3268 more straightforward projects where you can just go out and do
3269 it because there was a guy -- just real quickly -- a guy in Region
3270 4, for a long time back in the old days we had six cleanup sites,
3271 so the worst post every day. I had one guy clean up six in three
3272 months.

3273 When I told the 10 regional administrators, got to get all
3274 the six cleaned up back -- way back when. One guy goes back to
3275 Atlanta and he did six sites by himself, so to speak. And the
3276 reason he did it, he was creative.

3277 He said, well, first off, I am not going to bring the Army
3278 Corps of Engineers in here because we can do this with a removal
3279 program, and on and on and on.

3280 So I think there's a lot of creativity you can use, and
3281 sometimes maybe a little constraint of money is not all bad. But
3282 I want to see people that can actually think hard about what's
3283 a better way to do it.

3284 All these sites, as you may have heard me say earlier, they

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3285 have huge -- I did a quick site -- not a quick site, a big site
3286 -- I worked in my practice the Department of Energy -- I had a
3287 \$100 million remedy and a \$9 billion remedy.

3288 Well, there's a -- one of the nine criteria here you have
3289 the pick a implementable site. It's not implement able to get
3290 Congress to get \$9 billion. I am just making this up, but not
3291 totally.

3292 So I think it may well need more money. But I would like
3293 to see more money thrown where it's going to do some good because
3294 let me say real quick --

3295 Mrs. Dingell. Okay. Because I got to ask Dr. --

3296 Mr. Porter. You can take out a lot of money of this budget
3297 by not doing stupid things -- excuse the expression -- like Remedy
3298 Review Boards that go around and take all kind of time reviewing
3299 things that the region should have done.

3300 Mrs. Dingell. Okay. So let me go to Ms. Mans and Ms. Probst
3301 at the same time. So an analysis by the Government Accountability
3302 Office found that only 27 percent of the new remedial action
3303 projects were funded in fiscal year 2013 compared to 100 percent
3304 in 1999.

3305 Could both of you answer -- Ms. Mans and Ms. Probst, can you
3306 highlight some of the serious consequences we face both in terms
3307 of public health and the environment if we don't fund these
3308 Superfund programs annually at a robust level or if it keeps going,

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3309 significant cuts?

3310 Ms. Mans. Well, yes. Thank you. I just want to say I did
3311 hone my advocacy skills in your district, born and raised.

3312 Mrs. Dingell. I know. I was going to tell -- and her cousin
3313 is John Dingell's -- was John Dingell's -- unfortunately, he died
3314 two weeks ago. But George Mans was a great man.

3315 Ms. Mans. So, I mean, people -- our public health is at risk.
3316 We had people coming down to the river and catching fish and crabs
3317 that have dioxins in them, and it's unacceptable. And that's what
3318 we are dealing with.

3319 Ms. Probst. Yes. I mean, I think -- again, I think it's
3320 really informative to look at the very limited amount of money
3321 that actually goes to cleanup in the Superfund budget.

3322 So when you're talking about these cuts and -- I mean, I am
3323 very grateful I don't live near a Superfund site. My daughter
3324 lives sort of near the Gowanus site. I am a little bit less
3325 grateful about that.

3326 But I think, you know, it's easy for us who aren't living
3327 near these sites. But if you are living there and if you have
3328 children or if you do subsistence fishing or if you want to walk
3329 around New Bedford Harbor, which there's no way to enforce
3330 institutional controls -- I assume all the contaminated waterways
3331 are that way -- there are over a hundred sites where human exposure
3332 is not under control and there could be 250 sites where there are

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3333 human exposure and not under control.

3334 Mrs. Dingell. And local communities are being hurt by this.

3335 Ms. Probst. And local communities are therefore at risk.

3336 I mean, the first thing the administration ought to do is put out
3337 that list of sites which you can do from the website. But that
3338 should be the top priority.

3339 Mrs. Dingell. I am out of time but -- and he was going to
3340 give me more but I know it's -- what I want to say is I hope we'll
3341 all work together. My colleague, Mr. Walburg, works with me on
3342 this -- the dioxin plume, which gets totally get caught up in
3343 bureaucracy between two communities want a Superfund site. Two
3344 communities are in court. It's been -- and it's been 50 years
3345 and it's ready and it's not getting cleaned up.

3346 Like, yesterday the Supreme Court upheld that the original
3347 polluter has to maintain responsibility. But it's the local
3348 communities that are -- and people who were scared about what's
3349 going to happen.

3350 So I hope, Mr. Chairman, and my other remaining colleague,
3351 we can all work together to make sure we are getting robust funding
3352 and it's a priority for all of us in this country.

3353 Mr. Shimkus. Well, I thank the gentle lady and, of course,
3354 it's been a good hearing. But before we dismiss this panel,
3355 obviously, Chairman Walden is from Oregon and Congressman
3356 Schrader is a member of the full committee. Of course, I got a

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3357 chance to go out to Portland and tour that site about a year --
3358 I guess a year ago.

3359 So everybody else had multiple things to be able to say and
3360 we wanted to make sure that we'd given you a chance, based upon
3361 what you have heard to weigh in any response to some of this debate.

3362 Mr. McKenna. Well, Mr. Chairman, I truly appreciate that.

3363 A couple things -- one, I think when you talk about state
3364 involvement and leveraging some state resources, I think it's
3365 definitely worth looking into.

3366 But I think we have to evaluate that under two different
3367 buckets. One is if you have a site where there's no money for
3368 the cleanup and public moneys need to be spent first and then seek
3369 reimbursement through legal action. That will be very difficult
3370 for a state like Oregon to take on a site like Portland Harbor
3371 that's a billion dollars plus and take on that risk.

3372 But at Portland Harbor, we have the PRPs who have stepped
3373 forward to do the work and they are paying not only for the studies
3374 and the cleanup, but they pay the state and federal government
3375 oversight costs.

3376 So in situations like that around the country, I think we
3377 should look at leveraging state resources to bring more expertise
3378 to the table and help move these projects forward quicker.

3379 I think the other issue, and Dr. Porter touched on this a
3380 bit, I think for the early actions as these Superfund sites, when

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3381 you come to a site and you recognize that there's a problem and
3382 something needs to be done now, there are PRPs who are willing
3383 to step forward and do some early action. But there's also
3384 concern from the public that that quick early action becomes the
3385 final action. I think we need to develop, and the state is more
3386 than happy -- I have it in my talking points -- of sitting down
3387 and talking about ways where PRPs like Northwest Natural and
3388 Portland Harbor who want to step forward and do the work can do
3389 it, and they stepped forward and did early actions back in 2004
3390 and 2005, recognizing that the ROD was going to take longer to
3391 get to.

3392 So they stepped forward and did the early action, recognizing
3393 that they were probably going to have come back later and do more
3394 work. And I think if the PRPs recognized that, then more PRPs
3395 will step forward and do early action work.

3396 Mr. Shimkus. If I can follow up with the PRPs -- a volunteer
3397 will probably want to make sure that people know that they did
3398 some early action and get some credit for at least involved early.
3399 Would you say that that would be true?

3400 Mr. McKenna. Yes, I would. Yes.

3401 Mr. Shimkus. Well, again, I think this is a very important
3402 hearing and a very difficult topic.

3403 Thank you for your answering the questions, your testimony,
3404 and we'll stay in contact.

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3405 And with that, the hearing is adjourned.

3406 [Whereupon, at 1:10 p.m., the committee was adjourned.]