S. HRG. 107–996

SUPERFUND PROGRAM: CLEANUPS AND FUNDING ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON SUPERFUND, TOXICS, RISK, AND WASTE MANAGEMENT

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF THE ENVIRONMENTAL PROTECTION AGENCY'S MANAGEMENT OF THE SUPERFUND PROGRAM

APRIL 10, 2002

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SUPERFUND PROGRAM: CLEANUPS AND FUNDING ISSUES

TUESDAY, APRIL 10, 2002

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON SUPERFUND, TOXICS, RISK AND WASTE MANAGEMENT,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:10 a.m. in room 406, Dirksen Senate Office Building, Hon. Barbara Boxer (chairman of the subcommittee) presiding.

Present: Senators Boxer, Clinton, Chafee, Corzine, and Carper.

Senator BOXER. The committee will come to order.

We have a very important hearing today on the status of the Superfund program at EPA, and we're going to depart from our usual way of opening statements of the committee because Senator Nelson has 11 university presidents waiting for him in his office, and we all understand the importance of his being there, so, Senator Nelson, we are very pleased to have you, so why don't you proceed with an opening statement.

OPENING STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM THE STATE OF FLORIDA

Senator NELSON. Madam Chairman, I wanted to come and personally give you testimony because the subject matter of this hearing today not only affects the Nation, but Florida is particularly affected because we are ranked sixth of all the 50 States in the number of Superfund sites. Currently there are listed 51 Superfund sites in Florida that are on the National Priority List, and I have visited several of those sites, including places like Tampa, Pensacola, and Jacksonville.

What I'm finding is that the old politics that we've grown up with—and this is a new day—we have got to think outside the box. The old politics was business versus the environment. Well, it doesn't play out like that any more. Take, for example, the community of Pensacola. Some of the most vigorous people in advocating the cleanup of the environmental pollution in that community are the Chamber of Commerce, because they recognize that businesses are not going to want to move to Pensacola and Escambia County, and those that are there may be considering moving away, or certainly not expanding, if they don't get that environmental cleanup straightened out.

I've seen the other human effects, as well. I've walked through a neighborhood that was totally abandoned. It was shut down. It

was located next to something known as "Mount Dioxin." All of that mountain of polluted materials is still there.

These are the kinds of things that are facing us, and so the old ways of looking at it between business versus environmentalists just isn't there. We're talking about the quality of life in our communities, so I wanted to come and share these thoughts with you.

Now, I think it is also interesting when you look back at the history of Superfund. I had the privilege in 1980 of being in the House of Representatives and I voted for it. There was a deal that was struck then between oil and chemical companies, and there was going to be—under the theory that the polluter pays, we were going to create a trust fund and, for future cleanups, if you couldn't get the money from the particular entity that was responsible for it, if they had gone bankrupt, if they had flown the coop, if there weren't any assets, then at least you had this fund that you could tap, and that fund was funded and re-nourished on a continuing basis under the philosophy that the polluter will pay.

It is also interesting—it is my understanding, and I wish you'd correct me if I am in error, but I think this is an accurate statement—that part of the negotiation that went on back in 1980 with the oil companies was there would be a release of liability for those oil companies in exchange for them agreeing to have this polluter pay or the funding source coming in from the companies.

Senator BOXER. That's right.

Senator NELSON. Now suddenly the Administration is saying, "Well, we want to eliminate that source of funding for these trust funds"? Well, wait a minute. That was part of the deal 22 years ago.

The bottom line is, with the trust fund running out of money—and I think it is down to something pitifully low, like about $20 million—so cleanup of Superfund sites, cleanup of polluted sites is a very expensive proposition and you're not going to always be able to find the person who is responsible that has the financial resources to do it, and so in the interest of the Nation it is important that we continue with the policy, the public policy set forth back in 1980 and supported by subsequent Administrations, be they Democrat or Republican, that gave a source of funding so that we could clean up our neighborhoods and not let our children be exposed to these various toxic substances that are there.

Now, that's the essence of my statement. I have a fancy written statement, Madam Chairman, and I'd be happy, with your permission, to insert it for the record.

Senator BOXER. Without objection.

Senator NELSON. That's why I'm passionate about this. This is a question of quality of life. This is a question of good business practices for communities. Because of that, there should be no question of environmentalist or business bent. There should be no question of partisanship. This is a question about the quality of life in America, and I wanted to come and lend my thoughts to this, Madam Chairman.

[The prepared statement of Senator Nelson follows:]

STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM THE STATE OF FLORIDA

The Superfund Oversight Hearing will examine the underlying basis for change in projected site cleanups, the impact of Superfund site cleanup progress on communities, and whether the shift in funding composition has played a role in slowing down Superfund site cleanups.

Madame Chairwoman, Members of the Environment & Public Works Committee, thank you for allowing me to give a statement regarding the Superfund program and its impact on Florida.

Out of the 50 states, Florida is ranked 6th in the number of Superfund sites with 51 currently on the national priority list.

I have visited several Superfund sites in Florida including those in and around Pensacola, Jacksonville and Tampa.

Each site I visited reinforced to me the great need each of these communities have for fast, efficient clean up—without funding delays. Every day a cleanup initiative is put off, the ill health effects, environmental damage and economic hardship compound.

As you all know, the purpose of the Superfund program was to ensure that polluters pay.

The Bush administration's decision to not re-authorize the corporate polluter's tax shifts the burden of clean up of these hazardous waste sites to the taxpayer.

As a result, taxpayers will be paying more and fewer sites will be cleaned up.

Enacted in 1980, Superfund's (CERCLA's) purpose is to authorize the Federal Government to respond swiftly to hazardous substance emergencies and protect public health and the environment by cleaning up the nation's worst hazardous waste sites.

The law seeks to make those responsible for the improper disposal of hazardous waste bear the costs and accept responsibility for their actions, and it also established the Hazardous Substance Superfund Trust Fund to finance response actions where a liable party cannot be found or is incapable of paying cleanup costs.

Taxes were re-authorized under Pres. Reagan and Pres. Bush Sr. The Republican House did not re-authorize the tax in 1995 when Pres. Clinton requested it.

In the past 2 years, there has been a steep decline in the pace of Superfund cleanup completions.

From 1997 to 2000, EPA averaged 86 construction completions per year.

In 2001, the Administration weakened this pace by setting a lower goal of 75 construction completions, which EPA missed by 28 completions. The Administration's 2003 budget lowers the goal to 40 construction completes.

This is unacceptable.

It appears from the EPA's own website that at least two sites in Florida have been negatively impacted by this slowdown.

The Tower Chemical Company Site in Lake County, Florida Superfund site, an abandoned pesticide manufacturing facility, has been in need of funding for an alternative water supply for more than a year.

The Solitron Microwave Superfund site in Port Salerno, Florida is awaiting funding to install badly needed water lines. However, according to the EPA website, obtaining the necessary funding in fiscal year 2002 is "unlikely."

These funding deficiencies highlight the impact of the 46 percent decline in the pace of cleanup of the nation's most contaminated toxic waste sites in the past 2 years.

This slowdown impairs public health and environmental quality.

The Administration must ensure a continued source of future funding to rebuild the Superfund surplus, which enables EPA to protect public health and environmental quality at sites that have no viable parties or which have recalcitrant parties who refuse to clean up the contamination.

For these reasons, I support re-authorizing the polluter's pay tax and urge the EPA to release all of its information about those sites that are being deprived funding. Our communities deserve this information and it is imperative to their health that they get it.

Senator BOXER. Senator, we really thank you very, very much for your eloquent statement that you made from the heart. We put your official statement in the record. We thank you so very much for being here.

Senator NELSON. You're welcome, Madam Chair.

OPENING STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Believe me, your thoughts are shared by many of us.

What we're going to do now is have opening statements by members of the subcommittee. We'll have more people joining us because we just had a vote on the floor of the U.S. Senate and people will be coming forward. When they come, I will allow them to put their statement in the record.

I will give my statement for the record.

Today the Superfund, Toxics, Risk and Waste Management Subcommittee will conduct an oversight hearing on the Superfund program at EPA.

After Love Canal in 1980, Congress enacted the Superfund law to address the serious threat posed by the most toxic waste sites threatening public health and the environment in communities all across this Nation. At the heart of the Superfund law is a commitment to clean up these highly toxic sites as quickly as possible, given the dangers posed by widespread disposal of chemicals, including carcinogens, at these sites. So this isn't some theoretical program, it's a real program that has real benefits to the communities.

Also central to the Superfund law is the commitment to ensure that the polluters responsible for the contamination, not the general public, pay for the cleanup. I often say my mother always said, "Clean up your room. If you make a mess, you've got to clean it up. You've got to be held responsible." That's another basic premise of this program.

Here's the good news: the Superfund program has made excellent progress. Over the past 4 years, there has been an average of 87 final cleanups each and every year. An industry group—and I'd underscore "industry group"—known as the "Superfund Settlements Project" issued a report in December 2000, finding:

> "that in the years since 1995, Superfund has achieved levels of operational progress and public acceptance it has never before experienced. EPA deserves to be extremely proud of what has been accomplished in the field. Certainly the end is now in sight to complete the basic remediation at those high-priority sites."

That was 1995.

I want to say that in my own home State this is an extremely important issue because California has the second-highest number of Superfund sites in the country, second only to New Jersey. Over 40 percent of Californians—let me repeat that—over 40 percent of Californians, and we have 34 million people, live within 4 miles of a Superfund site. So, again, this is not theoretical for me or for many members of the committee.

Anyone who lives anywhere near a Superfund site knows about the terrible damage these sites do to the community. Parents worry if their kids are safe when they find out there's a toxic mess down the street, real estate values go down the drain, and major challenges must be overcome to get the responsible parties to own up to their responsibility.

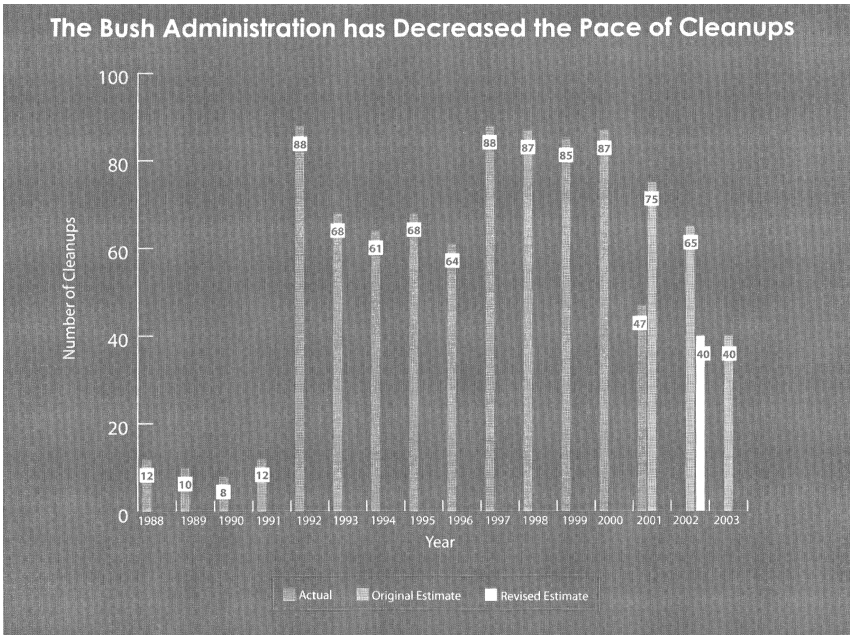
The good news is that fantastic progress was being made, and that progress has made a real difference in people's lives. Unfortu-

nately, the most important parts of the program—the pace of the cleanup and the principle that polluter must pay—are now under attack by this Administration. Let me repeat that. The pace of the cleanup and the fundamental principle that the polluter must pay are now under attack.

As recently as May 2001, Administrator Whitman confirmed in writing that 75 National Priority List sites would be cleaned up in 2001 and 65 would be completed in 2002. Just 4½ months after making this promise, only 47 sites had been completed, not 75. Somehow, 28 of the Nation's most heavily-contaminated sites fell right off the list. Twenty-eight communities that worked for years and finally saw the end in sight are now waiting and wondering why.

Clearly, the problem is compounded when we look at EPA's new revised projections in the President's fiscal year 2003 budget, which proposed that 40, not 65, cleanups will be completed in 2002. Let's just look at this chart, because you can see what the pace is. In 2001, the actual cleanup, 47 sites when 75 were promised; 2002, we see the original estimate of 65 going down now, revised estimate to 40. So we are seeing a terrible trend here in what was originally promised and what is actually going to happen. No question the slowdown is dramatic. You can see it on this chart.

[The referenced chart follows:]



Senator BOXER. So when we saw what happened, that statement in 1995 of excitement, that things were moving, suddenly everything is reversed.

Interestingly, it is very hard to get a good picture of which sites have dropped off the list. Some communities were told specifically

they would not get funding. Then a story appeared in the "*New York Times*," and we're going to put that in the record with unanimous consent. After that story appeared in the "*New York Times*," Assistant Administrator Horinko, who is with us today, directed that an e-mail be distributed throughout EPA. It went to anyone who might know which sites would likely be cut off this year. The e-mail says, "Anyone who calls should be told there is no formal list." The gag order went out and the information was hidden from the people most affected. You see here this e-mail we were able to get from inside the EPA.

[The referenced document follows:]

E-Mail To 31 EPA Management & Staff

Date: February 27, 2002
Subject: URGENT: NOTE FROM MARIANNE HORINKO

Marianne Horinko has asked me to contact each of you to request that if questioned about which Superfund sites will not be funded for cleanup, that such decisions are premature at this time; that no formal list of such sites exists; and that any questions directed to you regarding these sites should be referred to Joe Martyak, 202-564-7864.

We are working on a desk statement to more fully address these issues that we will get to you as soon as possible.

Marjorie Weidenfeld Buckholtz
Office of Solid Waste and Emergency Response
Partnerships, Innovation and Communication

Senator BOXER. I think one of the most interesting things is that we are really hiding from the country, from the people, what is the future of their communities, and it is being done by design and it is exceedingly upsetting to this Senator.

I think what else is interesting is that you see that any questions being called from throughout the country are not directed to people who know about the cleanup but to the communications people in the EPA. This is about spin. All the calls have to go to the communications people.

I have a chart that contains the text of those e-mails. I think what was also interesting is how many people actually got that. Do we have that?

Thirty-one people got this particular e-mail, and then later there were 200 e-mails sent out to another 200 people saying the same thing. I find it implausible that halfway through this fiscal year there's no list of the sites that will be cleaned up this year, this

fiscal year, no list. That's what they're telling people. Now everyone is in limbo. It makes it hard for those who want their communities cleaned up to know what to do.

I believe that these communities have a right to know where they stand. Some were told they were off the list for funding before the e-mail went out, and one of those communities will testify at our hearing today. They were told before, and then the individual who told them was told, "Don't say anything else. Don't tell the people."

Now, the Environment and Public Works Committee asked for documents and information on these issues. It was requested several weeks ago. Despite numerous calls and promises to deliver the information, we received yesterday a skimpy, unresponsive reply to our questions, and it is difficult for us to get to the bottom of this apparently serious problem when such an effort is made, in my opinion, to hide information from the American people, including their representatives in the Congress.

[The referenced documents follow:]

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC, March 8, 2001.

WAYNE NASTRI, *Regional Administrator,*
Environmental Protection Agency,
San Francisco, CA.

DEAR ADMINISTRATOR NASTRI: We are writing to gather information on whether there is a backlog of Superfund sites that are ready to proceed but stalled by a lack of funding. On behalf of the Senate Committee on Environment and Public Works, we would appreciate your cooperation in gathering information pertinent to your region's Superfund program so that we may better understand this situation. Specifically, we are interested in answers to the following questions.

(1) Please identify (by name and state) each non-Federal NPL site where a remedial design, remedial action, or work on an operable unit was not initiated or carried forward due to lack of funding for such design, action, or work in fiscal year 2001 or fiscal year 2002.

(2) Please provide all memoranda, electronic mail, or other documents that identify or discuss in any manner the non-Federal sites that were or are candidates for construction completion in fiscal year 2001, fiscal year 2002, or fiscal year 2003.

(3) Please provide all memoranda, electronic mail, or other documents that discuss funding, or the lack thereof, for a remedial action, a remedial design, or work on an operable unit in fiscal year 2001 or fiscal year 2002 at any non-Federal NPL site.

(4) Please identify (by name and state) each non-Federal NPL site which initiated a remedial action or began work on an operable unit in fiscal year 2001 or fiscal year 2002. Further, please indicate whether the remedial action or initiation of work on an operable unit was the first start at the site.

(5) For the 436 non-Federal sites that were listed on the NPL in fiscal year 1998 or earlier and are not yet construction complete, please identify (by name and state) whether it is a potentially responsible party lead site, a fund lead site, or undetermined. Further, for the sites that are a potentially responsible party lead site, identify the lead PRP(s) and indicate whether the potentially responsible parties are doing the cleanup pursuant to a consent decree or unilateral administrative order, or administrative order or consent.

(6) For each of the non-Federal fund lead site that have not completed construction but where a final Record of Decision has been signed, please indicate the estimated cost of the remedial work necessary to reach the status of construction complete. Please identify the site, the state, and the estimated cost of the work remaining to get to construction completion status. Further for all other fund-lead NPL sites, please estimate the cost of the remaining remedial work.

(7) For all non-Federal NPL sites, please estimate the total cost of the cleanup at the site or if necessary provide a range of costs.

Please provide us with this information by March 18. If your staff has any questions, they may contact Cameron Taylor, EPW Committee majority staff, at 202–224–3339, or Marty Hall, EPW Committee minority staff at 202–224–6187.

Sincerely,

JIM JEFFORDS,
Chairman.

BOB SMITH,
Ranking Member.

BARBARA BOXER, *Chair,*
Superfund, Toxics, Risk & Waste Management Subcommittee.

LINCOLN CHAFEE, *Ranking Member,*
Superfund, Toxics, Risk & Waste Management Subcommittee.

RESPONSES BY EPA ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM REPRESENTATIVE DINGELL

Question 1. In the past 4 years, the Superfund program has made excellent progress by averaging 85 construction completions per year. Will you manage the program in a manner that will maintain at least 85 construction completions per year?

Response. EPA will continue to emphasize construction completions as a key priority for the Superfund program, and will continue and build upon its past efforts to expedite the rate at which Superfund sites are cleaned up. EPA has been anticipating a reduction in construction completions due to prior year Superfund budget reductions. Further, when determining cleanup targets for each year EPA evaluates the status of sites on the NPL and the best estimates of program managers concerning when each site can be brought to construction completion given the complexity of the site, progress to date, remaining work, and availability of resources to complete construction. In particular, as the number of construction completion sites has grown we have found that sites with remaining work tend to be more complex, on average, than those already complete. *Given these considerations, in February 2000, EPA set a goal of 75 construction completions for fiscal year 2001. For fiscal year 2002, the Agency's target is 65 construction completions.*

Question 2. The Clinton administration, in testimony before this Committee, made a commitment that it would reach construction completions at 900 Superfund NPL sites by the end of fiscal year 2002. Will the EPA under the Administration of President Bush reaffirm the commitment to reach "construction complete" status at 900 Superfund NPL sites by the end of fiscal year 2002?

Response. In the fiscal year 1998 budget request, EPA set the goal of reaching 900 construction completions by the end of fiscal year 2002. *Reaching 900 construction completions remains EPA's goal. Current estimates indicate that the Agency will achieve construction completions at 897 NPL sites by the end of fiscal year 2002.* This reflects 757 construction completions achieved through the end of FY 2000, and *the goals of 75 and 65 construction completions in fiscal year 2001 and fiscal year 2002, respectively.*

Question 3. Does the Superfund budget proposed by President Bush contain the necessary level of funding to (a) maintain the pace of achieving 85 construction completions per year and (b) keep the Superfund program on the path to achieve 900 construction completions by the end of fiscal year 2002? Please provide an explanation of how the President's budget will, at a minimum, maintain the excellent progress in cleanups.

Response. The President's budget provides resources consistent with EPA's goal for construction completions provided in the responses to questions 1 and 2. Moreover, because of the lag between when. funds are appropriated and when they are expended for construction, funding in any given fiscal year primarily influences construction completions in the following years. Typically, Superfund construction outlays are expended over a 4- to 5-year period.

Question 4. How does President Bush's budget for the Superfund program in fiscal year 2002 compare with the budget request submitted by President Clinton for fiscal year 2001?

Response. The fiscal year 2001 budget request for Superfund was $1.450 billion. The fiscal year 2001 appropriated funding level was $1.267 billion, which reflected reductions attributed to no longer funding the Agency for Toxic Substances and Disease Registry (ATSDR) and the National Institute of Environmental Health Sciences

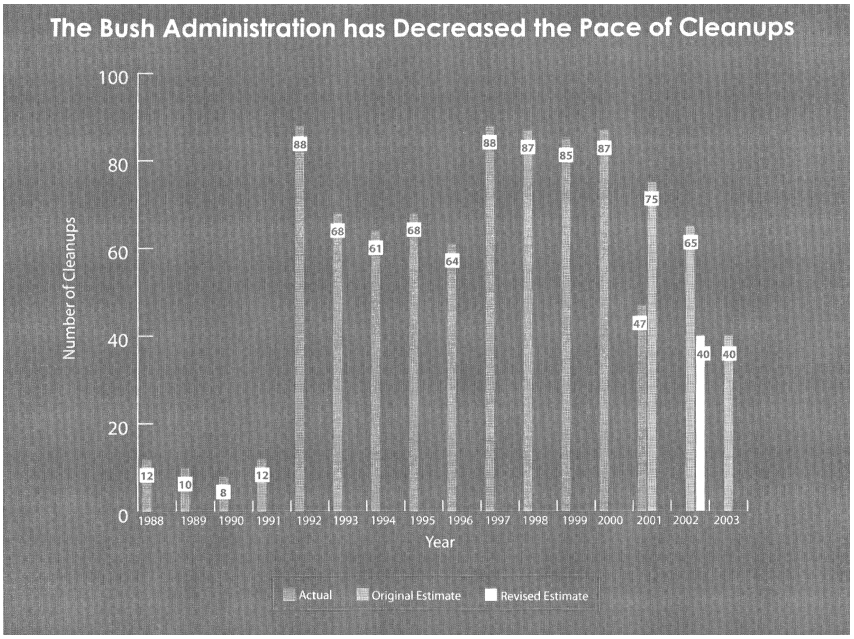
(NIEHS) through Superfund program appropriations. The President's fiscal year 2002 budget requests $1.268 billion for the Superfund program.

Question 5. With respect to new site listings on the Superfund NPL, in the past 2 years (FY 1999–FY 2000) the top four states have accounted for 38 percent of the total new listings: New York (10 sites); Texas (7 sites); New Jersey (6 sites); and Louisiana (5 sites). What is the EPA's understanding of why these states felt it was necessary to rely on the Federal program to clean up the sites as opposed to individual state programs? If there are different reasons for different states or sites please provide them. What did the state officials indicate was the reason for the State Governors concurring in the listing of the site on the NPL?

Response. NPL listing decisions are made in close collaboration with our state partners in order to appropriately address the needs of individual sites and their surrounding communities. Typically, a site is listed when EPA and the state agree that it is most effectively addressed under the Federal program and that listing enables EPA and the state to most efficiently apply their resources to protecting public health and the environment. An explanation of the Superfund listing process can be found at 46 FR 8845, subsection 300.425.

Senator BOXER. Now, I fully expect EPA today will try to convince us that there's a reason for this slowdown. Let's put up that chart again on the slowdown.

[The referenced chart follows:]

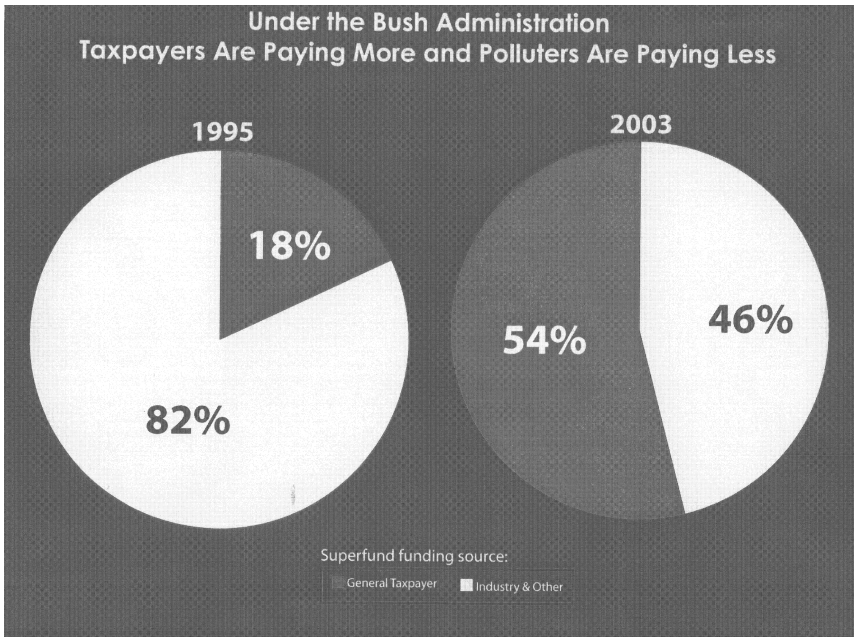


Senator BOXER. They're going to say, "Well, the sites that were cleaned up before in the Clinton administration, those sites were pretty much the easy sites, the garden variety sites. They have been cleaned up, and only the tough sites remain." We will disprove that point today. We have a witness from Montebello, CA, who lives next to one of the most complex, heavily-contaminated sites in the country. She will report on the successful work completed at that site during the previous Administration, a tough, tough site.

Superfund also faces another major problem that flies in the face of the polluter pay principle. The problem is that revenues from the Superfund tax previously paid by the oil companies and the chemical industry, as Senator Nelson alluded to, is nearly gone. The tax expired in 1995. President Clinton repeatedly tried to get it reinstated. President Bush has specifically said he will not do so in his current budget. This means that a greater and greater share of the cost of Superfund cleanups are born not by the polluters but are shifted to all taxpayers.

Let's look at this chart, because it shows you what is happening to the general taxpayer at the current rate it is going. We see that in 1995, 82 percent was paid by industry and the taxes industry paid, the general taxpayer 18. It is moving to 54 percent general taxpayer under an Administration that says it abhors burdening taxpayers.

[The referenced chart follows:]



Senator BOXER. We've got a scenario here, I say to my colleagues, that is extremely serious. First we have a situation where the number of cleanups are being dramatically cut back—cut back even from this Administration's own projections—and now we have a serious situation where the burden is shifting to the taxpayers from the polluters that caused the trouble in the first place.

Polluter pay is fair. It has worked well. To shift the burden to all taxpayers is wrong, and many of us will fight to stop this trend.

To conclude, let me say that I view Congress' oversight function as an extremely important one. We will get answers to our questions, even if we have to resort to subpoenas to get the information. We are going to do that if we have to. There is no reason to hide

from the American people who live in these communities what their future is going to be. Too much is hanging on this—health and safety, real estate values, the quality of life for these people. So we're going to work very, very hard.

[The prepared statement of Senator Boxer follows:]

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Today the Superfund, Toxics, Risk and Waste Management Subcommittee will conduct an oversight hearing on the Superfund Program at EPA.

After Love Canal in 1980, Congress enacted the Superfund law to address the serious threat posed by the most toxic waste sites threatening public health and the environment in communities throughout the country. At the heart of the Superfund law is a commitment to clean up these highly toxic sites as quickly as possible given the dangers posed by widespread disposal of chemicals, including known carcinogens, at these sites. Also central to the Superfund law is the commitment to ensure that the polluters responsible for the contamination, not the general public, pay for the cleanup.

The Superfund program has made excellent progress. During the past 4 years, there has been an average of 87 final cleanups a year. An Industry Group known as the Superfund Settlements Project issued a report in December 2000 finding that "[i]n the years since 1995, Superfund has achieved levels of operational progress and public acceptance it had never before experienced . . . EPA deserves to be extremely proud of what it has accomplished in this field . . . Certainly the end is now in sight to complete the basic remediation at those high priority sites."

This is an important issue in California. California has the second highest number of Superfund sites in the country after New Jersey. More than 40 percent of Californians live within 4 miles of a Superfund site.

Anyone who lives anywhere near a Superfund site knows about the terrible damage these industrial sites do to the community. Parents worry if their kids are safe when they find out there is a toxic mess down the street; real estate values go down the drain; and major challenges must be overcome to get the responsible parties to own up to their responsibility. The good news *was* that fantastic progress *was* being made, *which made a real difference in people's lives.*

Unfortunately, the most important parts of the program—the pace of the cleanup and the principle that the polluter must pay—are now under attack.

As recently as May 2001, Administrator Whitman confirmed in writing that 75 National Priority List sites would be cleaned up in 2001 and 65 would be completed in 2002. Just 4½ months after making this promise, just 47 sites had been completed for the year.

Somehow, 28 of the nation's most heavily contaminated sites fell right off the list. 28 communities that worked for years and finally saw the end in sight, are now waiting and wondering why.

Clearly the problem is compounded when we look at EPA's new revised projections in the President's fiscal year 2003 budget which proposes that 40, not 65 cleanups, will be completed in 2002. Another 40 are projected to be cleaned up in 2003.

No question, the slow down is dramatic. I have a chart that illustrates exactly how dramatic the changes are. This chart shows the final cleanups achieved and projected since the start of the program. The slow start, the jump up after the Administrative reforms in 1995, and the steep decline with the new Administration.

Interestingly, it is very hard to get a good picture of which sites have dropped off the list. Some communities were told specifically they would not get funding. Then, after a story appeared in the *New York Times*, Assistant Administrator Horinko directed that an e-mail be distributed throughout EPA. It went to anyone who might know which sites would likely be cutoff this year. The e-mail says anyone who calls should be told there is no formal list. The gag order went out and the information was hidden from the people most affected.

I have a chart that contains the text of one of those EPA e-mails—this e-mail makes clear that EPA officials are to follow a script and not identify which sites are being kicked off the list.

I find it totally implausible that half way through the fiscal year there is no list of the sites that will be cleaned up and those that won't.

Now everyone is in limbo. This makes it hard for those who want their communities cleaned up to know what to do. I believe that these communities have a right

to know where they stand. Some were told they were off the list for funding before the e-mail went out. One of those communities will testify at our hearing today.

The Environment and Public Works Committee asked for documents and information on these issues. They were requested several weeks ago. Despite numerous calls and promises to deliver the information, we have received on Tuesday, weeks late, a skimpy and unresponsive reply to our questions. It is difficult to get to the bottom of this apparently serious problem when such a conscious effort is made to hide information from the American people.

I expect EPA to come here today and to try to convince us that the sites have become more complex—that garden variety sites have been cleaned up—and the tough sites remain.

We will disprove this point today. We have a witness from Montebello, California who lives next to one of the most complex, heavily contaminated sites in the country. She will report on the successful work completed at that site during the previous Administration.

Superfund also faces another major problem that flies in the face of the polluter pays principle. The problem is that revenues from the Superfund tax, previously paid by the oil and chemical industries, is nearly gone. The tax expired in 1995. President Clinton repeatedly tried to get it reinstated. President Bush has specifically said he will not do so in his current budget. This means that a greater and greater share of the cost of Superfund cleanups are borne not by polluters, but instead shifted to all taxpayers.

Funds for cleanups are still recovered from the responsible parties. EPA says it will continue to enforce against viable polluters. But, that begs the question. In a time of growing demands on limited Federal funds, where will the money come from to investigate sites, to pursue responsible parties, to do the work when the polluters refuse? The responsible parties can be sued later. But, the community should not have to wait forever for action. What about the sites where the polluter's assets cannot be reached, where they go bankrupt? The answer has been: the polluting industries will pay a tax that makes additional revenue available in these cases.

I have a chart here that shows just how the burden has been shifting, with general taxpayers contributing just 18 percent in 1995. The number is rising and taxpayers will pay 54 percent of the Superfund budget by 2003.

Polluter pay is fair. It has worked well. To shift the burden to all taxpayers is wrong, and I will fight to reinstate this fee on industry.

To conclude, let me say that I view Congress' oversight function as a very important one. We will get answers to our questions and we will not rest until we get some answers and some action. This program is too important to people's lives to deal with it any other way.

Senator BOXER. I want to thank Senator Chafee for his leadership on the environment. His family has quite a record on this, and he is vigilant on this. At this point, what I'd like to do is ask him if he has an opening statement, then I'll turn to Senators Clinton, Corzine, and Carper.

Senator, welcome.

OPENING STATEMENT OF HON. LINCOLN CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you, Madam Chairwoman, very much. It is a pleasure to be here. Certainly, the evolution of the Superfund program since 1980 has been controversial from the years of spending months and enormous costs in court, evolved into actually spending the money on cleanup. That's because EPA was successful in court through the years in supporting the polluter pays principle, even retroactively. So I do support the reinstitution of the Superfund tax. I know that a lot of the projects that are coming up are the expensive ones—Coeur d'Alene, Hudson River certainly, and the project in OII in California, which I think we'll hear about later. These are just enormously expensive cleanups, and a lot of the easy ones have been done, but, nonetheless, I do support the reinstitution of the Superfund tax.

Thank you very much, Madam Chair.

Senator BOXER. Thank you so much, Senator Chafee.

Senator Clinton.

OPENING STATEMENT OF HON. HILLARY RODHAM CLINTON, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Thank you very much.

I really appreciate the chairperson's leadership on this because she has been a strong champion of not only clean environment but health and safety, and I think they go hand in hand. I appreciate also our colleague, Senator Nelson, coming to testify and giving us his perspective from Florida.

Remember that Superfund really came out of Love Canal in New York, and it is, I think, a real tribute to the way our system works that we sought a way to assign responsibility for these polluted sites, and it is, frankly, disturbing that here we are in 2002 talking about whether or not we're going to hold corporations responsible for their actions. I mean, I believe in responsibility, personal responsibility and corporate responsibility, and I hope that, as a result of this subcommittee's oversight, we're going to change some minds in this Administration so that they will support what is a workable program.

Right now, as we look at the future of the Superfund program, I think we have to conclude that we're going to be calling it the "not-so-Superfund," then we're going to be calling it the "non-existent fund." Right now the trust fund will be down to $28 million at the end of fiscal year 2003. That's from a high of $3.6 billion. Those dollars were collected not from the people who were suffering from the ill effects of Superfund sites, but collected from the people who profited from the misuse of various materials and chemicals that resulted in the toxic sites.

Now, I want to welcome Mr. Ken Cornell, executive vice president and chief underwriting officer for AIG Environmental, a New York-based company. He will be educating us today on the financial and insurance tools that are available to help speed up and oftentimes reduce the costs of the cleanups. Nobody wants to exacerbate the costs of cleanups. We want to come with a sensible proposal that puts the responsibility where it needs to be and has adequate funds to get back on the track we were on that Senator Boxer's chart showed. We were making real progress. Why do we want to reverse that? I don't understand it. It is just stunning to me that we would have a 19th century mentality about a 21st-century problem.

Now, there are a number of pressing sites around the country, and I think that we're going to mobilize opinion about these sites if we don't get this matter addressed appropriately. There are literally millions of people who are within a few miles of a lot of these toxic Superfund sites, and I don't think they would take kindly to learning that the people who put the pollution there are getting let off the hook by this Administration.

I'm also concerned that we did something really good finally last year in getting the brownfields bill passed, and I particularly want to commend Senators Chafee and Boxer for their leadership on this. But I think some people have gotten the wrong impression.

They are misinterpreting our enthusiasm for the brownfields program that something doesn't need to happen also with Superfund; somehow we've taken care of the problem because we finally have a mechanism in place to address brownfields. Well, I think that is far from the case. In fact, we need to remain as vigilant as possible with respect to the Superfund sites, which everybody understands are different from the brownfield sites. I mean, a dry cleaning store that went out of business or an old gas station on a corner can be a brownfield site, but we talk about some of these large Superfund sites, like the Hudson River, which was just finally resolved with a record of decision, you know, that can only be undertaken with much more effort and focus.

I think in New York we have somewhere between 85 and 90 Superfund sites, and we have a number of new sites proposed for the listing on the Superfund National Priority List, or the NPL. I guess that puts us fourth behind my colleague, Senator Corzine from New Jersey and Senator Boxer from California, and Pennsylvania is third.

Now, according to a recent report by Resources for the Future, in the next several years the number of sites added to the NPL as we learn more is likely to increase, not decrease. That makes common sense to me. I mean, we did a lot of things in the last 100 years we didn't know the implications of, and now we do. That's why this responsibility issue is so critical. I mean, it's one thing if—you know, frankly, in 1945 or 1950, in the midst of industrialization and war factories and industries people were dumping stuff in the aquifer and dumping stuff in the rivers and the lakes, and the old industrial plants that were churning out products at a great rate, you know, polluted the environment. You know, eventually they, too, learned they shouldn't be doing it, but a lot of things were done out of ignorance. That's no longer an excuse, and that, to me, is one of the key issues that we have to address here.

Many of the Superfund sites that we are going to be confronting are potentially developable sites, even Superfund sites. We need all the land we can put back into productive use for development or for other kinds of social uses.

When the taxes that supported the fund expired in 1995 and the Congress refused to reauthorize them, we were on a glide path to where we find ourselves today—inadequate funds, increasing number of sites, slowdown in cleanups. In fiscal year 2004, when there will be no money left in the fund at all, where will the cleanup costs come from?

Now, those of us who serve on the Budget Committee know we're already facing some terrible choices about very difficult decisions that have to be made because of the shortfalls in revenues that we're confronting. We've moved in just a year from surplus to deficit. When we look at who should be responsible for certain functions in our society, I just find it impossible to believe that the general public wants a tradeoff between general revenues paying for cleaning up Superfund sites as compared to prescription drugs, for example, or continuing to fund the Leave No Child Behind Act. In the failure to reauthorize the Superfund polluter paid program, we are, in effect, leaving a lot of people behind, leaving them behind with polluted sites that they can't cope with on their own. No city,

no State has the resources alone to clean up what is really a national responsibility.

So I hope that, as we move forward under the leadership of our chair and our ranking member, we are going to persuade the Administration or else engender enough public outrage that we will get back to the basic principle that if you pollute you pay, you know, and at some point I think the public, adequately informed about this, will agree 100 percent that they shouldn't foot the bill for somebody else's profiteering that led to pollution that rendered a site in their community unusable and unlivable.

I thank the subcommittee chair for making sure that this issue is on the agenda.

Senator BOXER. Thank you so much, Senator.

Senator Corzine.

OPENING STATEMENT OF HON. JON S. CORZINE, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator CORZINE. Thank you, Madam Chairman. Let me compliment you and the ranking member for your leadership in this area. Certainly last year's brownfield bill is a step in the right direction, but we have a lot of work to do here in the Superfund arena.

There are a lot of great things about New Jersey. I love it, getting more chauvinistic as days go by. But the fact is that we have the unfortunate title of having the greatest number of Superfund sites in America—111, I believe—and there are a number of other sites that have been identified that most people would feel qualified, and it is an extraordinarily important issue to the quality of life of everyone that lives in our community, and I know that's true across this country. It's essential that the vitality and the forward direction of this program be addressed and supported. The concept of "polluter pay" has broad consensus in our society, from 1980 and forward. Frankly, the program has worked well. It has been revised as time goes on. It had many of the controversies that the ranking member talked about, but it has evolved into a program that can work, but now we are in a position where $28 million are in this Superfund and there's a real issue about how we are going to fund it going forward.

Having money come from the general taxpayers to address these real issues for real people and real circumstances I find not a conundrum at all. We have had a successful "polluter pays" tax situation which could provide the resources that allow for more rapid cleanup.

I hope that we will have the will. As Senator Clinton has said, if we don't have the will, then we are going to have to generate the discussion with the public to make sure that they give us the will, because these tradeoffs that leave Superfund sites out of our Nation's agenda is unacceptable, in our view.

Just this week Senator Torricelli and I had a series of town hall meetings, one of them in Edison, NJ, and we had two people stand up, one in virtual tears, with regard to a cleanup of a site that has been ready to go for a number of years. We are going to hear about it from one of our folks who will give testimony today, Bob Spiegel. There is an enormous groundswell of support—Republican, Demo-

crat, regardless of background—to put back into safe usage a plot of land. This is just one example. The Hudson River is another. By the way, it does butt up against New Jersey, and so we are more than concerned about these kinds of issues.

This is something that impacts real people's lives every day. It's dangerous, and it also is economically depriving of resources to local communities, and we ought to move forward. We ought to do it expeditiously, and we ought to understand what we're doing. The idea of cutting back on the number of cleanups I just think is outside the realm of the imaginable, and this slowdown must stop and we must reverse course and get on with it.

In fact, I think the ranking member said it right—we have many of the most difficult cleanups ahead of us, which only reinforces the view that we need to have a financing source that will be sound and consistent, and so the Superfund tax that expired in 1995, I firmly believe, should be reinstated. We need to move forward on this, staying with that polluter pays principle, and support the American people, and I'd like to say the New Jersey citizens, as well, in making sure that we do what I think all of us find is a necessary and positive step for the quality of life of American people.

Thank you.

Senator BOXER. Thank you, Senator.

[The prepared statement of Senator Corzine follows:]

STATEMENT OF HON. JON S. CORZINE, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Thank you Madame Chairman. I want to thank you for holding this important hearing. I want to welcome my constituent Bob Spiegel to the hearing. I look forward to his testimony.

SUPERFUND IS AN IMPORTANT AND EFFECTIVE COMPONENT OF OUR ENVIRONMENTAL PROTECTION SYSTEM

Superfund is the last line of defense for Americans who live near hazardous waste sites.

That's certainly true in New Jersey, where our state's industrial heritage has left us with more Superfund sites than any state in the nation.

During today's hearing, Mr. Spiegel will testify about how important this program is at one of New Jersey's 111 Superfund sites—I hope I will be able to secure a commitment from EPA today to start cleanup on that site, and I'll have more to say about that later.

I think Mr. Spiegel's testimony vividly illustrates how vital this program is to the people of my state and to Americans everywhere who find themselves living near a Superfund site.

THE PROGRAM HAS BEEN WORKING WELL

The good news is that the program has been working well.

Since enactment in 1980, the Superfund program has matured, and has undergone both legislative and administrative changes.

Targeted reform bills—such as the brownfields bill that this committee reported out last year—have exempted small businesses, recyclers, innocent landowners, and other parties from Superfund liability. In addition, the Clinton administration made a series of administrative reforms to the program in the 1990's.

As a result of these reforms, the program has been working really well, averaging 86 cleanups a year over the last 4 years of the Clinton administration.

WHY THE SLOW DOWN?

In light of all that progress, I think one the important questions we need to answer here today is why we have seen such a sudden and dramatic slowdown in cleanups in the last year.

I won't repeat the statistics that Senator Boxer has already gone through in detail. But I will repeat the question: what is happening with the Superfund program?

By way of explanation, EPA has maintained that the remaining sites on the NPL are more complex, and therefore will take longer to clean up. I am skeptical about this claim, and EPA has not yet backed the claim up with data. We need to get to the bottom of this issue, and I call on EPA to provide Congress with all of the information that we have asked for.

FUNDING SOURCES AND LEVELS REMAIN AN ISSUE

Whatever the reason for the slowdown, it is clear that the second big question about the program is "who is going to pay for the cleanups in the future?"

A report commissioned by Congress concluded last year that "a rampdown of the Superfund program is not imminent," and that current or higher levels of funding will be required through at least fiscal year 2009.

Ironically, at the same time, we're running out of money in the Superfund, which has been steadily dwindling since the Superfund tax expired in 1995. Since that time, the fund has dropped from a balance of $3.6 billion to an estimated $28 million in it at the end of the next year.

So starting next year, general taxpayers will be paying for nearly the entire Superfund program—which has cost about $1.3 billion per year in recent years.

Madame Chairman, I think that's unfair. We need to restore the "polluter pays" principle by reinstating the Superfund tax. That way we will ensure that polluters—not general taxpayers—will pay for cleanups of sites where responsible parties can be found. I would venture to guess that most of the sites left in the program are sites where we're not going to find responsible parties to pay. That's certainly the case in New Jersey, based on information provided to the committee by EPA.

CONCLUSION

So we need to reinstate the Superfund tax and reinvigorate the pace of cleanups under the program, regardless of the cause. The people of New Jersey and all Americans are counting on us. Thank you, Madame Chairman. I look forward to the testimony of our witnesses.

Senator BOXER. You are so right. As the chart shows, we are looking at cutting the cleanup number of sites in half here, down from this Administration's own original estimate, so it is just a pathetic chart here. It goes against the very grain of our country making progress, just reversing course.

Senator Carper.

OPENING STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF DELAWARE

Senator CARPER. Thank you, Madam Chair.

Several of our colleagues have spoken this morning about the prevalence of Superfund sites in their own States and who is first, who is second, who is third. Delaware is known as the first State—the first State that ratified the Constitution. In fact, our State slogan, our brand, is, "It's good being first." There are some things you don't want to be first in, and this is one of them.

Senator CORZINE. Thanks a lot.

[Laughter.]

Senator CARPER. There are probably some things we're first in that we don't want to be, either. But, having said that, we still have a real concern about Superfund sites in our State that remain to be cleaned up.

Madam Chairman, I came to the House of Representatives in 1982, about 2 years after Superfund was authorized and was created. In looking back through the 1980s, much of the focus with respect to Superfund sites focused more on litigation and less on construction and completion. That changed in the 1990s. We started

using, I think, a whole lot more common sense. We had the resources, and instead of focusing as much on litigation in the 1990s we began to make real progress in terms of cleaning up Superfund sites.

This year, among the factors I hope we'll consider in this hearing and those that might follow is not just the matter of should we renew the Superfund tax as it exists. We have—our position says we ought to reauthorize it as it has existed. The President's position is we ought not to reauthorize it. There may be some position in between those two polar positions.

The second thing I would hope that we would look at, we approached Superfund cleanup a whole lot different in the 1990s than we did in the 1980s. We learned a lot in the 1980s, and hopefully we've learned a lot in the 1990s, and my hope is that, rather than just focusing on the source of where the revenues are going to come from, that we'll also make sure that the dollars that we do raise, whether they're from a Superfund tax or general revenues, that we're putting those dollars to the best use.

I'd say the President's position of not reauthorizing the Superfund tax would probably ring with more clarity, more truthfulness, if we were awash in monies and we were faced with a surplus. As it is, we all know that this is a year in which we're faced with recession, a war and slowing economy, and significant tax cuts. We're not awash with general fund revenues any more. We are in a deficit situation and back to borrowing from the Social Security and Medicare trust funds, and we need to keep that in mind as we approach these issues.

I look forward to the testimony, and thank you for the chance to offer these words, Madam Chair.

Senator BOXER. Thank you so much for joining us, Senator Carper.

Our first witness today is Ms. Marianne Horinko. Ms. Horinko serves as assistant administrator for the Office of Solid Waste and Emergency Response at the Environmental Protection Agency. I've asked her if she is willing to be sworn in and she has, so I would ask if you would raise your right hand.

Do you swear to tell the truth, the whole truth, and nothing but the truth?

Ms. HORINKO. Yes, I do.

Senator BOXER. Thank you very much. We would look forward to your testimony.

STATEMENT OF MARIANNE LAMONT HORINKO, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC

Ms. HORINKO. Madam Chair, thank you, and members of the subcommittee. I very much appreciate the opportunity to appear before you today in my capacity as assistant administrator of the Office of Solid Waste and Emergency Response at EPA to discuss the Superfund program and identify some of the new challenges that EPA faces today as the program enters its third decade.

Administrator Whitman and the Bush administration are fully committed to Superfund's mission—protecting human health and

the environment by cleaning up our Nation's worst hazardous waste sites. Today I will briefly outline the innovative ways in which EPA is addressing the Superfund program's important new tasks. With your permission, Madam Chair, I will submit my longer statement for the record.

Senator BOXER. Without objection.

Ms. HORINKO. The Superfund program continues to make progress in cleaning up hazardous waste sites on the National Priorities List. Thanks to a decade of bipartisan reforms that were launched in the first Bush administration and continued in the previous Administration, some 92 percent of the sites on the National Priorities List are either undergoing cleanup construction or have completed construction. EPA has maintained the number of construction projects underway at NPL sites, more than 730 per year from fiscal years 1991 through 2001. The President's fiscal year 2003 budget request continues a commitment to clean up hazardous waste sites by maintaining EPA's budget for the Superfund program with a request of $1.3 billion.

This Administration reinforced its commitment to the polluter pays principle by securing cleanup from responsible parties, the companies that caused the mess at these sites, at 70 percent of Superfund sites. Fiscal year 2001 produced a near record in Superfund cost recovery and cleanup commitments from the responsible parties.

I am proud to report that EPA's enforcement program generated $1.7 billion last year, nearly $300 million more than fiscal year 2000 and the second-highest amount in the history of the Superfund program. The cumulative value of responsible party commitment since the inception of the program now exceeds $20 billion.

EPA's emergency response program was on the front lines at the World Trade Center, at the Pentagon, and the anthrax incidents around the country, and the agency is proud of our groundbreaking work. EPA, in partnership with the Centers for Disease Control, the Agency for Toxic Substances and Disease Registry, and the District of Columbia Department of Public Health successfully completed the anthrax cleanup in the Hart Senate Office Building, a monumental task never before achieved in history. EPA is also examining ways to improve chemical site security. We have been working closely with representatives from the industry, first responders, communities, and environmental groups to ensure that high levels of prevention are maintained, along with preparedness and responsiveness.

Thanks to the hard work of the members of this subcommittee and others in Congress with the enactment of bipartisan brownfields legislation, we can expect to see even greater success by States, tribes, and local communities in reclaiming brownfield sites and encouraging the cleanup and reuse of sites by the private sector. The President's commitment to this new law is reflected in our budget, which more than doubles proposed brownfields funding to $200 million.

As the Superfund program continues into its third decade, new challenges must be met in order to continue the progress in cleaning up hazardous waste sites. In particular, prior to fiscal year 2001 EPA had anticipated the potential for a reduction in achiev-

ing site construction completions and had lowered the annual target, even before this Administration took over.

The reduction in the construction completes results from a variety of factors, including decisions made over the last decade on funding priorities to those sites that were closest to construction completion, the size and the number of construction projects at the remaining sites, and also the need to balance competing environmental priorities in the Superfund program.

In previous years, EPA focused resources on Superfund sites that needed very little construction work to get over the line and be deemed construction complete. These sites that were further along were priorities for the agency and created a backlog of sites with significant work that remained to be done.

The size and complexity of these remaining sites generally indicate longer project durations. There is now a greater number of Federal facilities in very large sites, megasites exceeding $50 million in cleanup costs, as a percentage of the remaining NPL sites than ever before. Of the remaining 675 final NPL sites, some 35 percent are megasites and Federal facilities, as opposed to only 8 percent of the completed sites.

Given the nature of the remaining sites on the NPL, the use of construction completion as the overriding measure of Superfund program progress is becoming less meaningful. The timeframe needed to complete these larger and more-complex sites represents so many years that newer, more meaningful environmental indicators need to be developed.

Currently, the Superfund program is credited with one cleanup, whether it is a 100-square-mile former mining site or 1-acre wood treating site. The public needs tools for measuring success that describe the significant accomplishments at these more-challenging sites over time, in addition to the construction complete.

EPA is looking for new ways to improve the program's performance. The agency has initiated a comprehensive pipeline management review of all Superfund projects approaching the most expensive phase of our project pipeline, which is construction. I would expect the first phase of this review to be complete in the spring, with a draft 3-year plan for improving construction completes at the end of the summer. We are also launching a national dialogue through the National Advisory Council on Environmental Policy and Technology, NACEPT, a Federal advisory committee comprised of a broad cross-section of stakeholders. The NACEPT Committee will examine the role of the Superfund program in addressing these very challenging megasites, the appropriate role of listing sites on the NPL as one of many tools to address contaminated sites, and strategies to improve the program's effectiveness and efficiency through coordination with States, tribes, and the public. We will work very closely with the members of this committee as the NACEPT expert panel debates these important public policy issues.

The President is fully committed to the Superfund program's success. Our goal is to fashion a sustainable future course for the program as it meets these new challenges and continues into its third decade. I look forward to working with Congress in a cooperative and a bipartisan fashion as we strive to meet our common goal of

protecting human health and the environment at the Nation's hazardous waste sites.

Thank you very much. I will be pleased to answer any questions you may have.

Senator BOXER. Thank you, Ms. Horinko.

We're going to each take 8 minutes in our questioning so we can try to get a little more done, and then we'll come back for as many rounds.

You mentioned Federal facilities in your opening statement being complicated and expensive. You realize that that has nothing to do with what we're talking about today?

Ms. HORINKO. Actually, it does, Senator. It's——

Senator BOXER. It doesn't come out of the Superfund money.

Ms. HORINKO. It doesn't come out of our budget, but——

Senator BOXER. Right.

Ms. HORINKO [continuing]. They are still counted on the NPL towards meeting our goals, and so——

Senator BOXER. But I just want to make it clear for everyone to understand. Today we are focused on the non-Federal sites. We're focused on the sites that get cleaned up with the Superfund.

Ms. HORINKO. Actually, I believe both Federal facilities and non-Federal facilities are included in those numbers.

Senator BOXER. But the money, in terms of your own budget, does not come out of your budget to clean up the Federal sites, so if you were to do all Federal sites in 1 year the money wouldn't come from this; is that correct?

Ms. HORINKO. That's right, but we——

Senator BOXER. OK.

Ms. HORINKO [continuing]. Would still be——

Senator BOXER. I understand.

Ms. HORINKO. But it would still——

Senator BOXER. I'm just making——

Ms. HORINKO [continuing]. Hold us back from achieving our goals.

Senator BOXER. I'm just trying to make a point here that we are talking about the spending of the Superfund tax and Superfund that deals with the non-Federal sites is really the focus of this hearing. I mean, I'm for cleaning it all up, but the funding there comes from that particular agency. If it's a Navy site, it will come out of that budget.

Ms. HORINKO. You illustrated the point.

Senator BOXER. A Department of Energy site—I just wanted to make that clear.

In your opening statement you said that the Bush administration is committed to the mission of Superfund. How does this show a commitment to Superfund? You're going backwards here. You are going backwards even from your own estimates. You went backwards from your original estimate of 75 to 47, and then, looking out to the future, you're moving back. So how does this commitment—I'm an average person and I'm saying you say you're for the Superfund program and you're cutting the cleanups in half and you've gone down from your own estimates. How does that translate to a commitment to this program?

Ms. HORINKO. Senator, it is important to note that the sites that are just now coming complete actually reflect work that has been done over many years, so it is not as though we've actually just stopped completing sites. It is as a result of spending decisions that were made over a number of years.

The analogy that I will use is it is akin to building a neighborhood. It is as if we came on board and the previous developer had spent a lot of time focusing on those homes that were already far along and only needed sort of a coat of paint and not paying attention to the sites that needed foundation work. We now come on board and face the result of the buildout in terms of sites that really just have the foundation, and we need to do much more construction work to get those sites completed.

But we are going to be really focusing on how we can address these more challenging sites where the cleanup construction is less far along. Both through the pipeline review and the NACEPT process, we hope to examine how to reach the right equilibrium in the program between having a good, robust listings program, having the right mix of assessment and construction work, and then focusing on getting it done in a way that a mature, responsible construction management program addresses its challenges.

Senator BOXER. OK. Well, I don't see the evidence for what you're saying. We have seen the previous Administration clean up some extremely difficult sites. We'll have testimony talk about just how difficult some of those sites were. But I think, you know, facts are stubborn things, as a very famous former President said a long time ago, and the numbers are the numbers are the numbers. Well, not only do we see a cutting in half of what happened in the previous Administration, but we see a cutting back from your own estimates and we see the President not even trying to get this Superfund tax in place.

I think that Senator Carper made a good point. If we had a huge surplus, the situation would be very different, but this Administration has led us back to deficit. We're in deficit, so now is not the time to walk away from a dedicated, targeted fee paid by the people who are responsible.

So when you say this Administration is committed, words are easy, but I'm hoping people see behind this because I don't think your Administration—you may be, personally, maybe Administrator Whitman is. This is not a personal attack, but it is an attack on the priorities of this Administration when it comes to the environment, because I don't think they have a priority.

Now, do you think people deserve to know if the site next door to them is, in fact, still on the list or has been removed from the list? Do you think they deserve to know if they call your agency?

Ms. HORINKO. On the list of?

Senator BOXER. The cleanup, of your proposed cleanups.

Ms. HORINKO. I believe the public knows, should know everything possible about——

Senator BOXER. Yes.

Ms. HORINKO [continuing]. A site that we can disclose publicly.

Senator BOXER. OK. Well, could you put up the e-mail, please? If that's the case, how could you send out this e-mail telling people not to call the people who know but to call the communications per-

son, Joe? Then there was another e-mail that went out to an even larger list which said, "Don't talk—" you know, essentially, "Don't say anything. Just make sure that these questions are referred to you," and the people who originally made the point of telling people were told not to continue to do that.

So I don't—I can't square your answer that people deserve to know with your e-mail. How do you square it?

Ms. HORINKO. Actually, Madam Chair, we specifically sent out that e-mail because we had concerns about sites that are in the current fiscal year that may or may not get funding in 2002, and we generally don't disclose sites that are eligible for funding or not, whether we plan to fund them, for enforcement reasons. Often, as a site is proceeding through the early phases of the assessment or the cleanup, that is when the potentially responsible searches investigation is being done for parties to do the cleanup, and we need to use the threat of Federal funding as a club to get responsible parties to the table, and if they find out that we're actually not going to find a site, there's no incentive for them to come forward.

Senator BOXER. And that was the agency? All the people knew this in your agency, I assume, since that is your fundamental principle not to talk, right?

Ms. HORINKO. That is a fundamental principle in our enforcement program.

Senator BOXER. Then why do you have to send out an e-mail if they already knew it telling them not to talk? If that was your philosophy, to protect a lawsuit, why do you send out an e-mail? Shouldn't they have known that?

Ms. HORINKO. We're a large agency, Madam Chair, and not everyone is always singing off the same page.

Senator BOXER. Another question. Why didn't you send us—we asked—four of us, bipartisan sent a letter to the EPA. We wanted all the e-mails that related to cleanups or the pace and everything that had to do with it. Why wasn't this sent to us. Why did we have to get this from a whistleblower inside?

Ms. HORINKO. My understanding, Madam Chair, is that my Congressional Affairs staff worked with your staff to narrow the scope of the request, because had we had to look for all of the e-mails it would have taken much longer, and we wanted to get something to you before this hearing. Certainly we can look into that and get back to you, but my understanding is that since, in the interest of time, you all wanted to have as much information as we could get to you before this hearing——

Senator BOXER. Well, when we found out about this e-mail we didn't have it in our hands. My staff asked the individual at your agency about this. He said, "Is there an e-mail that tells people, 'Talk to the communications people. Don't give anybody answers'?" That individual said, "I know of no such e-mail." That individual wrote this.

Ms. HORINKO. I would be surprised if that person spoke to your committee staff, because generally only our Congressional affairs folks talk to your committee.

Senator BOXER. He did. So I guess someone didn't get your rule, but the bottom——

Ms. HORINKO. There you go.

Senator BOXER [continuing]. The bottom line is the individual who actually wrote this denied the existence of this e-mail. So what I'm saying—and I'll stop here because my time is up, but I'll come back for another round—you'll be happy to know I'll take a break now from my questions. The picture I'm getting here is not a pretty picture, really. The picture I'm getting is of an Administration that says they're concerned. I mean, your language, this great program, we have a commitment, and yet the facts are cutting back the cleanup sites. Then, when there's a "*New York Times*" story that comes out that says, "Polluter pays is being abandoned. Sites are being cut back," an e-mail goes out 2 days after that story and basically puts a gag order on folks who were compassionate inside the agency to tell people their sites might be in trouble and so on and so forth.

So I don't think this is a very pretty picture. Furthermore, we're not getting the e-mails. We're not getting everything that we've asked for. Do you know of any other e-mails that we haven't gotten from within the agency?

Ms. HORINKO. I don't know of any, but I'm sure there must be some, because my understanding is that, again, in order for us to be responsive in a timely way for this hearing, our folks talked to your staff and said, "Can we narrow the scope of the request to specific correspondence?" But we can look into that.

Certainly, Senator, Madam Chair, we would be pleased to follow up and provide a full list of e-mails that address this issue.

Senator BOXER. Well, we got almost no correspondence, so I'm glad to hear we can continue to work with you, because we are not satisfied with what we have. Again, this e-mail I consider very significant, because, guess what, the people in my State don't know what the future holds. We have a lot of sites. I'll come back to that when I continue my next line of questioning.

Senator Chafee.

Senator CHAFEE. Thank you very much.

Two years ago this subcommittee did have a hearing on the pace of cleanups in the Superfund program, and at that time EPA testified that they believed they were on track to meet their goal of 970 construction completions by the end of fiscal year 2002, and now 2 years later it appears that they're not even going to meet 900 construction completions by the end of fiscal year 2003, and I just want to know the background of not being able to meet that goal and what role the funding plays in it in the absence of having the Superfund tax available, the funds available from having the implementation of that Superfund tax, why is the EPA not meeting their own goal and what role the funding plays in that.

Ms. HORINKO. Thank you, Senator. Those are two important questions.

First of all, concerning the funding, I would note that throughout the entire period of years spanning the chart that Senator Boxer had put up, that the program was essentially level funded, both in the early years when very little cleanup was taking place and then during the 1990s when so many construction completes were recorded.

Then, furthermore, during those years, during the early years of the 1990s, the tax was in place and the tax actually expired in

1995, and during the years that there was no tax being collected the program was still level funded.

So it is important to note that the cleanup activities reflect what Congress appropriates to us every year, and historically, over the 20 years of the program's existence, the mix of revenues has come—mix of appropriations has come, some from the Superfund Trust Fund, some from general revenues every year. Even when the trust fund contained many billions of dollars throughout Democratic and Republican administrations and Congresses, the Superfund appropriation stayed relatively level and always contained some mix of both trust fund money and appropriations.

As the person charged with managing the program, the figure I care most about is the money that is appropriated to me to do cleanups with, so certainly the tax is an important issue but not directly relevant to the cleanups, particularly because so many of the cleanups are done directly by the responsible parties, by the polluters, and that has, again, continued to be level through Republican, Democratic, and again Republican administrations. Of the cleanups, 70 percent are done by polluters. This Administration continues to be very committed to that principle.

In terms of the number of constructions that you see there and how they could not be forecast to be so high, part of what you see on that chart is what former Administrator Lee Thomas in the 1980s used to call "the slug." During the early years of the program there was a very large number of sites that were listed. As you can imagine, it was a new program, and so Superfund really focused its attention on putting sites on the NPL. Very little construction work was done.

As the program neared the end of its first decade in 1990, the first Bush administration looked at the program priorities, much as we are now, and said, "Wait a second. We need to focus less on listing and more on getting things done," and so much more emphasis was put on getting construction work done. In fact, the whole phrase "construction completed" was created as a goal for the agency to run at. That's why you see in the first Bush administration that first line of the cleanups being so high. We really focused on construction completion.

The previous Administration, the Clinton administration, built upon that goal and they continued that focus on construction completes, and they were able to complete a large number of the slug of sights that were listed in the 1980s. Throughout that period in the 1990s, comparatively many fewer sites were listed on the NPL, only about 10 per year, and it takes about 8 to 10 years to get a site to construction complete from the time when it's listed.

So what you see on that curve is we are getting now to the end of the universe of sites that were listed in the 1980s and we have a relatively smaller pool from which to draw upon construction completes in the 1990s. I wasn't around, but I have a lot of respect for my predecessors in the previous Administration, and I understand that the program had actually forecast that we would start to see the end of that curve in fiscal year 2000 and, in fact, before this Administration even came over started lowering its targets.

So what you see is basically a program evolution in terms of the composition of the NPL, and that's why you see our goal now is to

try and set the program on a sustainable course where we have a good, robust listing programs, a good assessment of cleanup program, and still the focus on getting to completion so that we really get these sites in, clean them up, stamp them done, and hand them back to communities.

Senator CHAFEE. You said that the number you like to focus on is the amount that Congress appropriates, and, considering that Senator Carper said—and I'm sure it's true—that we're coming into very tough financial priorities to set here in Congress, wouldn't you like to have a funding source more—something you could depend on better than an annual congressional appropriation, and therefore doesn't this Superfund tax make sense?

Ms. HORINKO. In an ideal world, if I knew we could reinstate the tax and the money would all immediately flow right over to EPA, that would be a wonderful thing. But because the history of the program is such that, no matter what the size of the trust fund is, the appropriation tends to stay really level, I tend to focus more on the appropriation.

A good example would be in the petroleum area, where we have $200 million in the LUST trust fund, yet every year my appropriation is about $70 million.

So I'm certainly not ruling out the tax. The Administration this fiscal year felt that in the 2003 budget we still had a relatively robust funding source in the remaining trust funds, that we did not have to propose the Superfund tax, but we will look at that again in 2004 and see if we need to revisit our position.

Senator CHAFEE. Lastly, a lot of the opponents of the Superfund tax say, "We want to see reform of Superfund first before the tax is implemented." What's EPA's position on reform? The program seems to be very successful. Where should the reform be, if there should be any at all?

Ms. HORINKO. Senator, I think the program really is successful, and the challenges you see are successful, mature program challenges. I think it is premature for us to predict what kind of legislative reforms or administrative reforms are appropriate for the program until we go through this NACEPT dialogue. We'd like to use this very public, broad-based dialogue to build consensus on needed reforms to the program.

Senator CHAFEE. Thank you very much.

Senator BOXER. Senator Clinton.

Senator CLINTON. Thank you very much. I appreciate your being here to testify. I think you understand our concern to try to, first of all, get the facts. I mean, it is very difficult to get the information that we're looking for to be able to make good decisions, and I'm grateful for your stated willingness to continue to work with the committee.

I wanted to ask a couple of specific New York questions. In the last couple of days, General Electric has met the deadline for filing an offer regarding the Hudson River cleanup; is that correct?

Ms. HORINKO. That is correct.

Senator CLINTON. Now, what I'm interested in is whether you view what GE has filed as a good faith offer.

Ms. HORINKO. Senator, I can't comment specifically with respect to the enforcement aspects. The negotiations, of course, are con-

fidential between my EPA Region Two office and GE. Certainly, as a lay person, I view it as a step in the right direction and, you know, as the person who is the guardian of the taxpayers' dollars in Superfund, I firmly am committed to the polluter pays principle, and I firmly believe that wherever we have a viable, capable PRP, that they should do the cleanup. I'm not approaching the Hudson any differently than I approach any other site.

Senator CLINTON. Well, I appreciate your commitment to the polluter pays principle, because I think that has to remain at the center of everything we're doing. Do you know whether GE is committed to carry out and pay for the cleanup as laid out in the record of decision?

Ms. HORINKO. I believe they have committed to carry out the cleanup and pay for EPA's cost in overseeing the cleanup, but discussions are underway with the company and my Region Two office and I can't comment on those discussions, so we'll see within the next few weeks how those discussions come to fruition. I'm very hopeful.

Senator CLINTON. I would like to submit some very specific questions in writing and receive specific answers as soon as you're able to do that.

On another issue of grave concern to us in New York, I appreciated greatly the decision by EPA to help set up an Indoor Air Quality Task Force with respect to our air quality problems in lower Manhattan. I met with Governor Whitman yesterday, and we discussed some of the difficulties that EPA is encountering, and we are trying to get to the bottom of this problem. I told the governor I would do so, and we're having difficulty getting information about what EPA has actually requested from FEMA for the task force activities, and I would appreciate getting that information today, because clearly Governor Whitman said that they made such a request and now we're having difficulty actually putting dollars behind that information.

I also believe that this committee and Congressman Nadler have outstanding information requests pending at EPA, and I would very much appreciate, again, having those requests expedited in order to get the information that we requested. Time is ticking away in lower Manhattan. People are very concerned about the quality of their air in their homes and businesses, and every day that goes by I don't think we're keeping faith with people in terms of what our commitment has been.

I'm also concerned that, even in your testimony today and in testimony that will shortly be given to this committee by Councilwoman Lopez-Reid, we know that the EPA has tested homes for migrating gases, to determine whether there's elevated levels of vinyl chloride or methane gas. We also know other examples where, under the Superfund, EPA has taken actions to test and conduct cleanups in private homes and places of business, such as in Libby, MT, and even right here in the Hart Building. I don't understand, Administrator Horinko, why the EPA cannot conduct indoor air quality testing and perform the necessary cleanups in the homes and businesses in lower Manhattan. What is the difference between what was done in Libby, MT, and California and in the Hart Building?

Ms. HORINKO. In general, Senator Clinton, my understanding—and this is policies that arose prior to this Administration—the Superfund program has articulated a number of principles under which it will actually proceed into people's homes and test indoor surfaces and air and so forth, simply out of the concern that the program was designed to be an environmental cleanup program and there were concerns that we would be inside people's homes cleaning up lead paint and consumer products and things of that nature, but where we can document that environmental contamination has migrated into a home, then we do go in and test and so forth.

The situation at the World Trade Center involved EPA working in cooperation with FEMA and the city and a number of other agencies, health agencies, and so we had to make sure all of our partners were on board, and this Indoor Air Task Force is really a way to get everyone in a cooperative fashion on board with the EPA's testing regime. But, in fact, EPA was testing inside homes, proposing protocols and proposing fundings to ATSDR last fall. We were the most aggressive in terms of testing inside people's homes.

But I agree with you that we need to continue, we need to press harder. We need to secure additional funding and we need to get the information to the residents as quickly as we possibly can.

Senator CLINTON. Well, I really hope that we can work together in the next couple of days to try to get some answers to these questions, because this has caused a great deal of concern. I will ask my staff to work with you and others at EPA to try to make sure we move on this.

Now, I'm also confused by the information that we are getting. I know that, in looking at trying to determine which of the fund-lead sites will be started this year, which are listed on the NPL, you know, we've gotten contradictory information. I've got three lists in front of me, all of which were provided to the committee by EPA. On one list we have no proposed new start remedial actions for New York, on another list we have one, and on another list we have five. It's very difficult to sort all this out. I'm particularly concerned that either information is not being conveyed or the right and left hands are not communicating and we have different ways of compiling and assessing the information, and I would like to know specifically which sites are going to be targeted for cleanup, which are on the NPL in New York so that at least I can adequately communicate with my constituents who ask what is going to be happening. I'm sure every other State similarly would like to get that information.

Finally, in your written testimony you discuss the issue of so-called "megasites," and you state that "the EPA will examine the role of the Superfund program in addressing very large megasites." Now, I don't know what that means. Does this mean that the EPA, on its own authority, is going to create a new program for megasites, and without any legislative authority apart from the Superfund program? Doesn't that send exactly the wrong message, contradicting your own statement about polluters pay, that somehow you are lifting out these megasites and saying they're so terrible that we can't hold anybody responsible for them?

Ms. HORINKO. Senator, not at all. We are not creating a new administrative program for megasites, nor are we asking that a new legislative program be created. We are simply teeing up for public dialogue through this NACEPT process the fact that these megasites present different challenges than some of the other more standard Superfund sites in terms of both their wide area, their relationship with other statutes that we administer, and also the complex nature of the pollution.

Sediment sites are a terrific example. The Hudson is unique in that we have contamination that is pretty much attributable to one polluter, but at many other sediment sites that are on the NPL there is pollution from a number of different sources—nonpoint source runoff, combined sewer overflows, pesticide runoff, industrial pollution. Certainly there are industrial polluters there that should be held accountable and pay, but there are also a number of other, more diverse sources of pollution, and it is complicated by the fact that often, because of title movements or stormwater runoff, there is recontamination, re-suspension. These sites cover entire watersheds, and cleaning them up is going to be a challenge, especially in the 8- to 10-year timeframe that we are used to judging Superfund sites by.

So what we are asking the NACEPT to do is figure out what are appropriate milestones or environmental indicators to measure progress at these sites so that it simply doesn't look like we're not cleaning up sites. Even though we are spending tremendous money every year on progress at these sites, it will be decades before many are completely ecologically safe.

Senator CLINTON. Do I take from your answer there's no plan to characterize the Hudson River as a megasite?

Ms. HORINKO. The Hudson River is certainly characterized as a megasite in terms of the narrow definition—sites costing more than $50 million—but there is no plan to do anything different at the Hudson than we were doing yesterday or that the previous Administration was doing, which is to aggressively pursue cleanup.

Senator CLINTON. Thank you.

Senator BOXER. Senator Corzine.

Senator CORZINE. Thank you, Madam Chairman.

First of all I want to identify with the confusion that I find in looking at the data that was presented to us that Senator Clinton talked about, because I can't tell from that data with any certainty what's going to be cleaned up or isn't going to be cleaned up in New Jersey.

As you well know, Madam Administrator, in the next panel Mr. Spiegel will be speaking about the Chemical Insecticide Corporation's Superfund site in Edison, NJ. This is a site where agent orange and other toxic chemicals were manufactured. It has been a serious problem to the local community. It is one that—as I mentioned in my opening statement, there's serious concern in the community, and I think rightfully so.

There has been an enormous amount of planning. It is a project that is ready, willing, and able to go, I think by everyone's assessment, and whether appropriately or inappropriately, relative to the memo that Senator Boxer displayed, EPA pledged at a public meeting that the beginning of the cleanup would occur in November,

and then, as we'll hear in Mr. Spiegel's testimony, it's not certain that that will go forward. As I said, as I look at the papers that were presented to us, we can't make hide nor hair of whether it is on the list.

So my question is a simple one. Will EPA begin cleanup on this site this year, as was promised to the people in Edison?

Ms. HORINKO. Senator Corzine, I am loathe to answer questions about any 2002 funding because of the enforcement sensitivity I talked about. I don't know if there are PRPs at this site or not.

Senator CORZINE. In your earlier comments you said the enforcement policy was developed in the early stages of a plan. This has gone on for years in preparation—not in the early stages. The individual that was potentially responsible for this project is bankrupt. There are no identified PRPs. I don't understand where that leverage is responsible of responsive to the particular circumstances in this issue.

Ms. HORINKO. Well, Senator, it certainly is a site that the region has flagged of concern that they would like to start this year, but it is not clear whether they will have funding. We have two additional break points this fiscal year. We don't give all the money——

Senator CORZINE. By the way, that gets at one of the fundamental reasons we're having this hearing. There isn't the funding available, and therefore a real reason to be for reinstitution of this polluter pay tax.

Ms. HORINKO. Senator, the next two break points for making additional funding decisions this year are in May and then August. Actually, congressionally mandated, we have $100 million that Congress has asked us to hold back until September 1 and make final funding decisions for the fiscal year, so all the votes aren't in is the short answer to your question, and we'll certainly take your concerns——

Senator CORZINE. Who are the voters? I mean——

Ms. HORINKO. You're talking to one of them, and so you're talking to the right person, Senator, and I'm certainly noting your concerns here now today and will take them back with me as I and my team of folks in the Office of Emergency and Remedial Response make these very difficult decisions.

Senator CORZINE. You can imagine, when you raise expectations by verbal statements that it is going to be cleaned up, and then there becomes uncertainty, and then the confusion again, it undermines the credibility of both the program, the Administration, and government, in general.

Let me move to another question. I think this is actually—you know, generalities always cover up details that are really important. Your testimony indicates that you secure cleanup funding from responsible parties. I think the number was 70 percent. As I analyze best I can—I'm not too good at math—and to the extent that I can, the data show that only 19 of the 69 public New Jersey sites are being paid for by PRPs in the listing—again, there's some confusion in that—and only another 30 percent are fund-lead sites. That's about 55 percent.

I'm concerned, again, because it gets at is it fair for the general taxpayers to be cleaning up all these fund sites? You know, to put it into stark terms, since—and I will be very direct about this—now

that we are using Social Security and Medicare trust funds, is it fair to have payroll taxes that are designed to support Social Security and Medicare used to clean up privately-created messes that our public is exposed to? I think it is absolutely essential that we get into a mode of understanding or accepting that there is a responsibility for the actions taken, and private sector has been a place where this has come from. Why are we not aggressively not supporting this polluter pay tax?

Ms. HORINKO. Senator, I could not agree with you more that polluters should step up to the plate and they should pay. In fact, you will see our actions and our commitments demonstrated, not just the words, as they have been in the last year, that polluters will pay. At specific sites where we can hunt them down, we will hold them accountable.

In terms of the tax issue, as I indicated to Senator Chafee, in the current fiscal year, because there was still adequate money in the trust fund, there was——

Senator CORZINE. The $28 million——

Ms. HORINKO. No. That's actually at the end of 2003 there will be $28 million, not at the end of 2002. So going into 2003 the President's budget looked at what was in the trust fund and felt there was enough to——

Senator CORZINE. What do we think will be in it at the end of 2002?

Ms. HORINKO. I can tell you in one second, Senator—$427 million.

Senator CORZINE. We're spending roughly?

Ms. HORINKO. It's $1.3 billion.

Senator CORZINE. Is it $1.3 billion? I don't know that that sounds like that finishes up the kind of sourcing for funding that is responsible, and I again think if the American public knew we were using payroll taxes to clean up pollution sites that are really an issue of private companies having not attended to proper care for the environment, we would have a different result in the discussion of this issue. It's hard to say that that's a commitment to cleanup and polluter pays.

One other question. Last fall I introduced a bill to improve security and reduce hazards at chemical security plants. I noticed you mentioned you're working with industry and other folks with regard to this. Senator Boxer is a cosponsor. I think Senator Clinton is, as well.

We held a hearing on this last November which EPA chose not to participate in, and I wonder whether you have reviewed the bill. We don't have to go through that today, but I'd like to have a serious dialogue about moving forward some of the elements that I think are very important for our homeland security and whether it is on technical basis or whether they're strategic issues so that we can get to a response to a very vulnerable part, certainly of New Jersey, but I think across the country about the safety and soundness of homeland security issues. Chemical plant siting is certainly one of those and I've been somewhat disappointed in our dialogue as it relates to this issue. It's one that we hope to move to markup, I hope, this spring, and if we do that it would be better that we

worked in a bipartisan, cooperative fashion to try to get to a solution that worked for all.

I'm going to submit, Madam Chairman, a series of questions about New Jersey sites so that I can have a clear view not only about the Edison site but a whole series of others and their prioritizations.

Thank you.

Again, I want to emphasize one of the things that the chairwoman said. This is not about personalities. This is about the seriousness with which I think the American public takes the cleanup of these sites and its impact on the health, safety of the communities where these sites are. We need, in my view, a more serious prioritization of this process as we go forward.

Senator BOXER. Thank you, Senator. Let me say I have one more round of questions here for you. Again, I have trouble with your rhetoric and the facts. Again you said, "We're committed to the principle of polluter pays," Ms. Horinko, but if you look at the facts they tell the story. We're moving from an 82 percent polluter pay to a 46. We're moving from an 18 percent taxpayer pay to a 54 percent taxpayer pay. But you're committed to polluter pay doesn't add up.

So I just hope the American people will look at the rhetoric and the facts and, I mean, I'm going to remind them of this, because we know. We have your own facts and figures.

Now, I want to get back to this tendency to gag people in your agency when it comes to revealing what is on the list and what is not on the list. You said that your agency doesn't reveal what sites will get fund money because that information could affect enforcement cases. Senator Corzine just proved the point. In his particular case in New Jersey, the Chemical Insecticide site, which is filled with agent orange, as I understand it, there isn't any enforcement. There are many sites where there isn't any enforcement, where you can't find the parties, so that your answer simply doesn't make sense.

Then I would challenge you this—obviously, you believe it. You said it from the heart. But why did you say it in your e-mail then? Could we put the e-mail back up there? You told your people not to talk about the sites. You didn't say because it could, in fact, harm our ability to enforce. So I question that response. It's a neat and pat answer, but, A, it doesn't hold for the sites where there are no responsible parties; B, you had a chance to send an e-mail out and you never said the reason they shouldn't talk to people is because it would hurt the enforcement.

So I am extremely troubled by this, so I want to ask you: did you bring with you today, since we heard about a couple of lists that are confusing, did you bring with you a list of the cleanup sites for 2002?

Ms. HORINKO. I have—you mean the sites that potentially may not——

Senator BOXER. That will be taken off the list, sites that will be taken off the list, sites that will be added onto the list for 2002.

Ms. HORINKO. First of all, we don't have a list of sites, you know, that we take them on or off. Generally, all of our sites are potential candidates for funding and then we make decisions as we go.

Senator BOXER. Doesn't somebody compile what sites will be cleaned up and which will not?

Ms. HORINKO. Certainly, the regional offices do, and I——

Senator BOXER. Good. Very good. So you could just simply call the regional offices and get us what the sites—do you have that information with you today?

Ms. HORINKO. I do actually—based upon the compilation that we did for you all and sent up—I have a list of sites that are proposed new starts that are candidates for funding, and I would be pleased to share that with you all with the proviso that you please keep it confidential until the end of this fiscal year because PRPs, in fact, do pop up during the course of our fund-lead cleanups.

Senator BOXER. Wait a minute. These are sites that are going to be cleaned up, begun in 2002——

Ms. HORINKO. That's right.

Senator BOXER [continuing]. Is what we're talking about. How many months are left in the fiscal year of 2002?

Ms. HORINKO. Four or five months, Senator.

Senator BOXER. OK. You're telling me that I can't share with people decisions that affect their lives in decisions that are going to have to be made shortly? I don't understand this——

Ms. HORINKO. Certainly——

Senator BOXER [continuing]. Compulsion for the secrecy here.

Ms. HORINKO. Certainly, Senator, you are welcome to share that with them. I would simply request that you not, only because sites do, in fact, start out as fund-lead sites, and then we become aware of PRPs and they cross over to become PRP-lead sites. This is actually fairly common. So there's no incentive for PRPs to get involved if they know that we may not fund the site. So——

Senator BOXER. But I don't understand how an agency can run a shop in a—for cleaning up—a list that has to come forward from the regional agencies in this fiscal year and you still don't want us to talk about what's going to be started in this fiscal year?

Ms. HORINKO. Well, one reason is we don't yet know, Senator. We actually make a decision—there's a congressionally-mandated holdback. Under the law, we are required to save $100 million of our cleanup budget until September 1 so that we don't actually make our final funding decisions until August, so——

Senator BOXER. Is there a congressional mandate not to tell people what's——

Ms. HORINKO. No, there is not a congressional mandate.

Senator BOXER. Thank you.

Ms. HORINKO. That is simply——

Senator BOXER. Well, that's because we believe people ought to know, and unless—I will tell you right here and now, as one Senator, that I'm happy you have the list today and I want to see it.

Ms. HORINKO. We'll be pleased to share it.

Senator BOXER. Unless I see that there's a possibility of enforcement problems or whatever, I'm not going to keep it a secret. I don't work in a secret government. I don't work for the CIA. I'm going to let people know in their communities if their site—suppose a site is just taken off the list and it's not there. In New Jersey they don't even know whether their site is on or off. Guess what? Your agency told them they were off the list. Then you sent out an

e-mail and they called back and said, "Well, sorry, we shouldn't have said anything." People don't know. It's a matter of their quality of life.

So I would just say that it is, just in summing up how I feel about this, which is probably pretty obvious to you, I'm worried about this hiding of information—that's what I would call it—for an excuse that doesn't exist, because in many cases there are no—there's no litigation, there's no enforcement. I'm worried about, you know, an e-mail that goes out that doesn't even say the reason you want people not to talk is because of enforcement. It sounds to me like there was a bad story in the "*New York Times*" and this Administration doesn't want people to know—if you could put up that other list again of the number of cleanups—that, in fact, there's going to be this tremendous decline, and they may be affected, and that there's not going to be any tax, and that the taxpayers are going to have to pick up—let's put up that one again—more and more of the funding. That's what it sounds like to me.

Now, I wasn't born yesterday. It's obvious. I have been around here a long time and e-mails reveal a lot and they contradict what you said here. Now, maybe you just forgot to tell them that, of course, the reason you sent this out is you're very concerned about enforcement. That doesn't sound right to me. It doesn't feel good to me.

You know, we can have a disagreement on the priority of Superfund. I may find it to be much more important than perhaps this Administration does. That's a fair fight. I will debate that. What I don't feel is fair fight is when there are documents that aren't turned over to this committee, when there's confusion, when Senators are saying they're spending their time and their staff looking at lists that don't match up, that don't make sense, when I can't tell people in my community whether they are going to be cleaned up, they're not going to be cleaned up. So the message I want to give you and which I hope you will give Administrator Whitman, which I'm sure you will, is that I speak on behalf of a number of my colleagues when I say to you that we are strong supporters of this program, that we want to see this Administration have their actions match their rhetoric, that we are strong supporters of open government, that I don't expect, when my people call the region to get information, that there's a gag order and they have to call the communications person.

While I'm at it, I don't appreciate your suggesting that my staff can't talk to people in your shop, that they have to go through congressional liaison. We ought to be able to talk to whomever we want. How can I represent the people that elected me?

So I hope you'll reconsider that when you said, "Well, no one should have been talking to you but the congressional liaison," because if that happens we'll have another hearing about that, because that is not appropriate.

I hope that people within your agency who have been cooperating with us continue to do it, continue to send us these internal memos. We asked for them. I didn't go on a witch hunt. We asked for them. We'd heard about it. We were told no such e-mail existed.

So I am, you know, very troubled by the status of this program, and I am just completely mystified of how an agency can come up

here when there's 5 months left in the fiscal year and say, "Well, we haven't made our decisions yet and, you know, we really—it's Congress' fault." I just don't buy it and I'm troubled by it. So this is just the first hearing.

I'll turn it over to Senator Chafee.

Senator CHAFEE. Thank you very much.

I want to get back to your statement that 70 percent of the cleanups are being done by the responsible parties, and so that leaves 30 percent that are being done by some other kind of funding, and that leads to the wisdom of not having this Superfund tax again available.

What is the percentage of the congressional funding, the annual appropriation that is spent on those 30 percent sites that aren't being paid for by the responsible party?

Ms. HORINKO. What is the percentage, Senator? I'm sorry? Could you ask me that question again?

Senator CHAFEE. Yes. Let's assume that 30 percent of the sites are not being funded by the polluter. Who is paying for the cleanup then? Is it the annual appropriation from Congress?

Ms. HORINKO. Yes. The annual appropriation from Congress, Senator, includes both some moneys drawn from general revenues and some money that is drawn out of the trust fund, and historically that has fluctuated over the years. Some years the majority of the annual appropriation comes out of the trust fund, some years the majority comes out of general revenues, and that has historically been the case over the life of the program.

Senator CHAFEE. Isn't that going to be harder to defend as we go forward, the wisdom of using dwindling resources? As you look forward, doesn't that cause you to say, "We are going to need this Superfund tax"?

Ms. HORINKO. It certainly causes us to revisit the issue, and we will look at it very carefully as part of the 2004 planning process, which is just beginning right now.

Senator CHAFEE. I don't know if you have the information, but, out of the, I guess, breaking down these percentages—this is similar to Senator Corzine's question—we have 30 percent that aren't funded by the responsible parties. How much of those 30 percent—I don't know if you have this information—is from the annual congressional appropriation which, if you want to take Senator Corzine's logic, is coming from the Medicare or from Social Security?

Ms. HORINKO. We can track that down for you.

Senator CHAFEE. What would you guess? Is it 50 percent, 80 percent, 90 percent?

Ms. HORINKO. I hesitate to hazard a guess, as that also has fluctuated over time.

Senator CHAFEE. Fair enough. Thank you.

Senator BOXER. Just following up on the tax question, because Senator Chafee and I are going to work together on this polluter pays—I'm looking forward to that—you said you're revisiting the tax? Because President Bush came out against the tax in 2003. Has he agreed to visit it for 2004?

Ms. HORINKO. The Administration will look very carefully at this issue for 2004.

Senator BOXER. So that, even though he did away with the tax in 2003, he doesn't support it in 2003, he's going to look at the polluter pays tax in 2004?

Ms. HORINKO. Yes, Madam Chair. Actually, the tax expired in 1995.

Senator BOXER. Right. But he didn't put it in 2003, and he said he didn't support it; is that correct?

Ms. HORINKO. Yes, for 2003 that's absolutely right, Madam Chair.

Senator BOXER. But he might change his mind in 2004?

Ms. HORINKO. We'll look ahead and see what the future holds for us.

Senator BOXER. We'll look ahead and see what the future holds? Well, I think the future holds that there's not going to be a Superfund at all then. The future holds deficits. The future holds taxpayers paying, picking up the tab. Senator Chafee and I will talk to you about this and maybe you can come on board and help us get a fund paid for by polluters to help us do what needs to be done.

Thank you very much.

Ms. HORINKO. You're most welcome. Thank you, Madam Chair.

Senator BOXER. Regards to Senator Whitman—Senator Whitman. I made her a Senator.

[Laughter.]

Senator BOXER. Administrator Whitman.

Ms. HORINKO. I will pass the administrator along your regards.

Senator BOXER. Thank you very much.

Ms. HORINKO. Thank you.

Senator BOXER. We'll call our second panel: Ms. Norma Lopez-Reid, Mr. Robert Spiegel. I'm going to swear them in, as well, unless they have a problem with that.

Would you be willing to be sworn in, Mr. Spiegel?

Mr. SPIEGEL. Yes, I would.

Senator BOXER. And you, as well?

Ms. LOPEZ-REID. Yes.

Senator BOXER. OK. Will you raise your right hand? Do you swear to tell the truth, the whole truth, and nothing but the truth?

Ms. LOPEZ-REID. I do.

Mr. SPIEGEL. I do.

Senator BOXER. Thank you very much.

Our second witness is Ms. Norma Lopez-Reid. Ms. Reid is a council member for the city of Montebello, CA, lives next door to a major Superfund site in my State.

I would like to welcome you to Washington, DC, Ms. Lopez-Reid. I want to thank you for coming such a long way to tell your story.

STATEMENT OF NORMA LOPEZ-REID, CITY COUNCIL MEMBER, MONTEBELLO, CA

Ms. LOPEZ-REID. Thank you very much for allowing me to come to testify at this hearing today, and good morning, everyone. My name is Norma Lopez-Reid. I reside in, and am a councilwoman for, the city of Montebello, CA. Today I am here to speak to you both as a resident who lives one house away from the landfill I will describe and in my official capacity with the city.

I would like to talk about the positive experience that my community has had with EPA and what they have done at one of the largest Superfund sites to assist us with our problem. When my neighbors and I moved into this development of new homes, we had no idea that the area was infested with toxic hazardous waste which included vinyl chloride, a known carcinogen. Had it not been for the remarkable cleanup efforts of EPA, with their program, the authority to make responsible parties accountable, and the funds to begin the project, our health and the well-being of our community would still be at stake.

The Operating Industry's landfill site is a 190-acre parcel located 10 miles east of Los Angeles, downtown Los Angeles. The landfill began operation around 1950 and continued until 1984. Originally, this was supposed to be a trash landfill where no liquids were to be deposited. The list of toxic and hazardous chemicals, including liquids, was exhaustive.

When EPA took over in 1986, they took significant steps to reduce health risks to nearby residents by addressing impacted residences adjacent to the site. These efforts included collecting the migrating gases in the homes, such as methane and vinyl chloride, treating the migration of liquid leachate into the yards, and fencing off the park areas where many of our children played, and dealing with the threats of slides from unstable slopes onto the homes.

In addition to these emergency response actions, EPA was able to take steps to have the responsible companies pay for their part of the cost in the cleanup. EPA invested several million dollars to begin the investigation and emergency response. That money came from Superfund.

EPA leveraged the Federal dollars by obtaining agreements for the polluters to pay for this multi-hundred-million-dollar effort at this site. If the Federal Government had not stepped in with dollars toward this project, our community would still be suffering from this horrible threat. Making this a priority has made a tremendous difference in our lives.

It is important to note that soon after the landfill was closed the owner quickly declared bankruptcy and walked away from the situation. I can assure you that many of the thousands of culprits involved would have done the same had it not been for EPA making them accountable for their actions.

It is also important for me to mention that one of the most notable efforts from EPA has been the unique level of community involvement that they have always sought. They not only kept us informed of their discoveries, their plans, and processes, but gave us the opportunity to give feedback and to become actively involved in the decision-making efforts. This, in itself, made a tremendous difference for our neighbors and their peace of mind.

In the meantime, there's still a tremendous concern about our health. There is one specific cul de sac that backs up into the landfill area in which three families have had confirmed cancer diagnoses. The worst fears have come true for some of our neighboring families. Several of our neighbors have already died of cancer.

While EPA has prevented further exposure to contaminants, the fear of more health problems continues to permeate throughout our

neighborhood, and we hope that the Public Health Department would monitor the long-term effects of the original contamination.

In conclusion, the EPA's involvement and incredible heroic efforts at the Operating Industry's landfill have been enormously successful. It is critical that these efforts be continued in other areas where these monstrous problems have taken place. This example should serve as a powerful reminder that no population should be forced to shoulder and live in such burdensome environments. This is the reason it is important that a strong Superfund program be available to assist others in this type of situation.

Senator BOXER. Thank you so very much.

It's a good story, but it is still so worrisome because of all those years of exposure.

Mr. Spiegel, welcome.

STATEMENT OF ROBERT SPIEGEL, EXECUTIVE DIRECTOR, EDISON WETLANDS ASSOCIATION, INC., EDISON, NJ

Mr. SPIEGEL. Thank you.

Superfund is not merely about numbers and budgets, Superfund is about people living in poisoned communities, it's about promises made to the American people by our Federal Government that are about to be broken.

My name is Robert Spiegel, and I am the executive director of the Edison Wetlands Association. We are a nonprofit environmental organization in central New Jersey that has been working for over a decade to clean up the Chemical Insecticide Superfund site. We are also working actively on 7 Superfund sites and 15 State-lead sites.

I'm here today to tell you about a story about one Superfund site, the impact that it has had on the surrounding community, and the consequences that the lack of funding will result in the cleanup. I'm also here to ask that the funding for the remediation of these sites be continued. It is imperative that we deal with these sites swiftly and conscientiously, or we'll continue to endanger the lives of our citizens and our future generations.

I have been closely involved with the Superfund process since 1991. For 11 years, I have worked on the CSC site in Edison. From 1954 to 1972 the CIC site manufactured pesticides, herbicides, fungicides, including agent orange and other experimental defoliants that were used during the war in Vietnam. After owner Arnold Livingston declared bankruptcy and moved along to his next site, the buildings were razed, leaving a vacant lot where the soil and groundwater are highly contaminated with arsenic, heavy metals, pesticides, and dioxin.

In spring of 1991, a friend asked if I wanted to see green rabbits. Armed with a video camera, we took a short ride to the Chemical Insecticide site, and the first thing that struck me was the smell. It was the smell of death and decay. Nothing grew on the property except a strange fluorescent green moss. Small animal carcasses littered the area, and there were, indeed, green rabbits living on the site. The rabbits had developed an abnormal greenish-yellow undercoat that I would later discover was the result of Dinoseb, a pesticide disposed of in large quantities throughout the site.

We followed the trail of yellow liquid draining from the back of the site downstream past a neighboring industrial bakery and into the Edison Glen and Edison Woods developments. There we videotaped a child playing in a poison stream who told us it was a good place to hang out to look for frogs and turtles. I subsequently found out that the vacant CIC site was also a playground for local children, the chemical lagoons were their wading pools, and adults routinely scavenged material from the site.

I contacted the EPA and I spoke with the project manager and sent him a copy of the videotape, and about 2 weeks later the EPA posted that warning sign along the brooks and the creeks. You can imagine the panic that erupted as residents assumed the worst—that they were at risk from exposure to a witches' brew of chemicals and the value of their homes had plummeted overnight. The EPA, however, refused to conduct additional testing. It seemed that, having posted the signs, they felt that the problem had been solved.

Well, I started a small citizens group to work on gathering and disseminating reliable information. We held a series of public meetings to inform the local residents and public officials about the contamination and to discuss what could be done.

From 1991 to 1993, the newly-formed Edison Wetlands pursued a vigorous and continuous interaction with the EPA, the State, and local health officials. Public meetings were held and the issue was widely publicized in both television and in print. I also assisted in the relocation of several families who were plagued by illness—illness widely believed to be the result of living downstream from what the Agency for Toxic Substances and Disease Registry labeled a "public health hazard."

A local police officer had a rare form of rare blood disease, his wife had reproductive problems, and their two children were showing signs of arsenic exposure. I worked with the family and their attorney to relocate them to a safer home in East Brunswick, NJ.

Several employees of a bakery adjoining the property died as a result of cancer believed to be caused from toxic runoff from the CIC site. The attorney for several of their widows called me to testify, and since I had witnessed and videotaped the yellow ooze draining from the site onto the bakery property, I was naturally the one that they brought up to testify.

No one should have to die because they work near a Superfund site.

By spring of 1993, the Edison Wetlands Association's relationship with the EPA began to develop into a more productive one. At the suggestion of the EPA, we applied for and were awarded an EPA technical assistance grant. The grant allowed us to hire technical experts to help us to understand the scientific and technical issues, as well as the limitations of the Superfund program, and we were able to secure comprehensive cleanup and restoration of the Edison Glen and Edison Woods, as well as the Mill Brook. The EPA also installed a temporary liner at the site to prevent direct contact with the most contaminated soil.

Since 1993, we have worked closely with the EPA at the CIC site, as well as other Superfund sites in central New Jersey. While we have had vocal and sometimes heated disagreements with

them, we've also seen tangible results. By 2001, the CIC site was considered to be a national model for the Superfund program, demonstrating effective public participation resulting in the full—well, actually, it was a plan for the full and permanent cleanup of the site. Three Presidents, three governors, and three remedial project managers later, all interested parties decided that the best course of action was to remove the contaminated soil from the CIC site, the adjoining bakery, and several other neighboring industrial properties. The estimated cost of the cleanup for the CIC site was $40 million, and the CIC was on the Superfund appropriations list.

At our last joint public meeting in January, the EPA announced to the community that this work was to begin in November 2002. Several weeks ago I received a call from the EPA informing me that there was no money to begin this or any new cleanups in the region, and that there probably would not be funding for several years. Meanwhile, the temporary cap at the CIC site is breaking down and now has holes in it. When it fails, the brook and the nearby residential developments will once again be exposed to contamination. It's obvious that we need a permanent solution now, not some time in the distant future.

Today I've talked about just one Superfund site and its impacts on just one community. There are 1,235 Superfund sites impacting tens of thousands of communities across the country. Chemical pollution has severely impacted our water, our air, and our soil. Manufacturers, residents, and governments, as stewards of these resources, must protect them and work towards their restoration.

The Superfund program was begun not only to protect human life but also to clean up and restore our natural resources, and we need the funds generated by this tax, and only with your help can we get Superfund back on track. I ask you to assist us in making our communities whole again.

Thank you for the opportunity to testify.

Senator BOXER. Thank you so very much, both of you. So we have the story of a site cleaned, a community relieved, and a story of a site in limbo.

Mr. SPIEGEL. Yes.

Senator BOXER. Mr. Spiegel, when the EPA staff told you that your site would not get funding for a year or more, and then they—did they tell you later that you couldn't talk about the future of the site, that they could not talk to you about the future of the site? Did they say why they couldn't tell you more?

Mr. SPIEGEL. Well, they said that they didn't know, that there was actually no money for any new startups in Region Two, so that mine wasn't the only site. I mean, the whole region—New York and New Jersey and Puerto Rico—had no new startup money at all for any cleanups, just emergency removal and existing, ongoing cleanup efforts.

Senator BOXER. But now it's interesting because the EPA administrator here today told us that there really was no decision made. How did you feel when you heard that? In other words, first they tell you no hope, now—I mean, it just doesn't square. This is what is troubling me. If they told you don't count on it, it wasn't going to happen, then they tell us no decision is made, how does that make you feel? I mean, I know how it makes me feel, but you——

Mr. SPIEGEL. In New Jersey, alone, I know that there's about 13 sites that were ready to begin construction that are now in limbo. What do we tell the residents? I mean, what do we tell the residents? These people now are told that the cleanups are going to begin. They're promised that these poisonous sites are going to be cleaned up. I personally have not talked to all the residents because I don't know what to tell them. You know, they had a lot of hope that these sites were going to be cleaned up, and now, you know, they feel the rug has been pulled out from underneath of them. As one of the residents said, they felt that there was a light at the end of the tunnel, and the light had been shut off.

Senator BOXER. Right. Well, Mr. Spiegel, I just think—I just want to say how terrific I think you are to have formed this organization and be involved in it, and you should just keep pushing and don't take no for an answer, because I think we can just put some pressure on together and see where we go from here.

Mr. SPIEGEL. Absolutely.

Senator BOXER. Because clearly they're not willing to say today what is on or what is off.

Mr. SPIEGEL. Well, I have been working on this site for over a quarter of my life, for almost 12 years, so I'm certainly not going anywhere, and I've made a personal commitment that I'm going to get this site cleaned up.

Senator BOXER. Well, then you're going to make a difference, I know.

Ms. Lopez-Reid, if you were in the shoes of many communities around the country such as the one Mr. Spiegel comes from, and you were being told by the EPA there was no picture of whether your site would get cleaned up this year, maybe next year, what would the community's reaction have been?

Ms. LOPEZ-REID. Well, obviously we would have been extremely frustrated. We would have been terribly confused. We would have really felt that there wasn't much hope.

Senator BOXER. Your experience was very different, was it not? It seemed to me, from what you've said, that you've said nothing but glowing things about the EPA, and I'm assuming that they had a very open process, that the community was involved every step of the way. Is that true?

Ms. LOPEZ-REID. Exactly. The community was involved every step of the way, and, as I mentioned, that really made a difference for us, because knowing what was going to happen, what had been discovered, how we might be able to see some progress in having this dealt with just, in itself, made a tremendous difference. But actually seeing the cleanup taking place on a consistent basis, watching the trucks, even though obviously we had to contend with a great deal in terms of dust and noise and just incredible efforts on our parts to hang in there, it made a tremendous difference because we knew that something was being done.

Senator BOXER. Well, I want to thank both of you so very much because we talk about a lot of—you know, we show charts and we show the number of sites that are not going to be cleaned, and it is real. It is not just a number on a chart. It's Mr. Spiegel's lifelong commitment here that's being toyed with. It just seems like there has been a tremendous shift from an EPA that was excited

about its mission, that was ready to roll, that was open with the community to suddenly a pulling back and obvious effort not to talk that much.

Now, I want to say the people in EPA are wonderful people.

Mr. SPIEGEL. I know quite a few of them myself.

Senator BOXER. This isn't something that they've changed about. It's instructions they have been given with an e-mail. It is instructions they have been given from the top. So the shift isn't among the rank and file. I want to make sure of the EPA. Those people are frustrated, as well, and upset, and obviously believe in what they are doing. I just wanted to make sure that I know that you both agree with me on that point.

Ms. LOPEZ-REID. Absolutely.

Senator BOXER. Well, I again want to thank both of you very much.

Mr. SPIEGEL. Yes, Senator. I want to thank you, too.

Ms. LOPEZ-REID. Thank you very much.

Senator BOXER. Thank you so much. We'll keep talking about these two side-by-side experiences, because it shows that—Ms. Lopez-Reid shows us what can be done, what should be done, and what was done, and Mr. Spiegel shows us the face of fear in a community when they're not given answers, there's no definitive plan out there that's going to really be undertaken.

Mr. SPIEGEL. I thank you for your support because it means a lot to us. It's easy to remember—it's easy to just talk about it in merely numbers.

Senator BOXER. Right.

Mr. SPIEGEL. But when you put a face on it, when you talk to a child that lives near the site, it really changes the dynamic of the discussion.

Senator BOXER. No question. Thank you both.

Mr. SPIEGEL. Thank you.

Ms. LOPEZ-REID. Thank you. I just wanted to add that I brought some pictures. I don't know if you'd like to enter them.

Senator BOXER. Yes, I would like that.

Ms. LOPEZ-REID. They are of before and during the EPA involvement. I would like to be able to submit those.

Senator BOXER. Would you give—our staff will take that and we will put those in the record and I thank you both very, very much.

Mr. SPIEGEL. Thank you, Senator.

Ms. LOPEZ-REID. Thank you very much.

Senator BOXER. Our third panel: Mr. Grant Cope, who is an attorney with the U.S. Public Interest Research Group in Washington; Mr. Michael Steinberg, an attorney with the law firm of Morgan, Lewis & Bockius—I hope I said that right—in Washington. Mr. Steinberg is representing the Superfund Settlements project. Our final witness is Mr. Kenneth Cornell, an executive vice president and chief underwriting officer at AIG environmental. I want to welcome all of you.

Would you mind taking the oath? If you could just stand? If any of you don't want to do it, it's all right.

Do you swear to tell the truth, the whole truth, and nothing but the truth?

[All witnesses respond to the oath in the affirmative.]

Senator BOXER. Thank you so very much.

Mr. Cope, we'll start with you.

STATEMENT OF GRANT COPE, STAFF ATTORNEY, U.S. PUBLIC INTEREST RESEARCH GROUP, WASHINGTON, DC

Mr. COPE. Thank you, Senator Boxer. Thank you very much for the opportunity to testify on the Bush administration's management of the Superfund program.

My testimony will address three issues. First, I will discuss the potential causes of the Bush administration slowdown of cleanups. Second, I will discuss the impacts on other cleanup programs that flow from the Bush administration's policies. Third, I will outline concrete steps that the Administration should take to remedy the potentially devastating impacts of its continued mismanagement of the Superfund program.

Now, the Bush administration has given essentially three answers to the question, "Why has the pace of cleanup precipitously declined in less than 2 years?" Their answer mirrors the classic bunker mentality response to an impending crisis. First of all, deny it, then blame something else, and finally pursue a course of action that tries to advance your claims but will ultimately hurt what really matters, the Superfund program.

The Administration refuses to admit that there is any slowdown, despite level funding that occurs at the same time cleanups have declined by over 50 percent. They blame unexpectedly complex sites, despite having studied and worked on these sites for, in some cases, more than 10 years. This is tantamount to telling your boss that you didn't get the project done because somehow you got lost on your way to the desk. It just doesn't add up.

Finally, the Administration says they will undertake a thorough review of the program and try to develop ways to deal with these complex sites. I would suggest that there are two other potentially inter-connected answers to the above question. First, the Administration has under-funded the program by about $1 to $1.4 billion from 2001 to 2003. This would have an impact on any program. Second, it is possible that cleanups have slowed down while the Administration considers what reforms it may want to implement.

What potential reforms might the Administration be considering? First, there have been reports about an administrative program that would take over mining and contaminated sediment sites; however, no other program possesses Superfund's powerful liability system and cleanup standards. If it could, administrative efficiency would just dictate that EPA use Superfund.

By contrast, polluters can make good use of such an administrative program. With voluntary cleanup agreements, cooperative partnerships, waivers of liability, and little or no EPA oversight, polluters of the Nation's largest and most-contaminated toxic waste sites would benefit at the expense of protections for public health.

Second, behind a veil of enforcement confidentiality, the Administration could negotiate sweetheart deals with big polluters that designate contaminated areas as NPL caliber sites. Polluters would voluntarily agree to clean up these sites with minimal EPA oversight. EPA negotiations would cut the public out of the process, other than a perfunctory 30-day comment period. EPA would also

funnel trust fund money to these sites, rather than spending it on Superfund sites.

A third potential reform is the use of investment funds in conjunction with insurance policies and waivers of liability. This combination allows polluters to pay pennies on the cleanup dollar, while leaving taxpayers holding the bag. Now, there's nothing obviously inappropriate about allowing a PRP to give money to an insurance company to invest as a way of paying for long-term cleanup costs. However, a serious problem arises when taxpayers are left to hold the liability if cleanup costs exceed expectations. This is particularly true at mining sites, where acid mine drainage can last forever and become worse over time.

These potential reforms all have one thing in common—they all weaken Superfund as it applies to some of the Nation's most contaminated toxic waste sites.

Now, for my second point. Superfund is the keystone cleanup program that makes all other Federal and State cleanup programs effective. Superfund is a largely unseen yet ever-present gorilla in the closet that Federal and State cleanup officials use to make intransigent polluters clean up their sites. Superfund provides vital funding, technical assistance, and policy guidance to other programs that helps them clean up their sites. When other programs do not have the administrative capabilities or political will to clean up a site, they call in Superfund.

By undercutting the ability of Superfund to protect public health, this Administration is also undercutting every other cleanup program in the country. This is great for polluters but devastating for public health.

Third, and finally, the Administration should take three simple steps to remedy these problems. First, respect the public's right to know by telling the public which sites are going to be affected by the policies. Second, support reauthorization of Superfund's polluter pays taxes. Third, just let the program do what it does best and clean up sites.

Thank you.

Senator BOXER. Thank you.

That sort of put it straight ahead.

Mr. Steinberg, we welcome you. Again, you are an attorney with the firm of Morgan, Lewis & Bockius. Did I say that right?

Mr. STEINBERG. Yes. That's correct.

Senator BOXER. And you're representing the Superfund Settlements Project. We welcome you.

STATEMENT OF MICHAEL W. STEINBERG, MORGAN, LEWIS & BOCKIUS, WASHINGTON, DC, REPRESENTING THE AMERICAN CHEMISTRY COUNCIL

Mr. STEINBERG. Thank you, and good morning. I appreciate this opportunity to share some industry perspectives on the Superfund program and on its future.

Superfund today is a mature program that has largely accomplished its original goals. The gaps in our environmental laws that led to the creation of so many Superfund sites have long been filled. Today, private parties are cleaning up most of the sites on the NPL. They are paying the full costs of those cleanups, which

are sometimes extravagantly high. Our nine companies, alone, have spent over $2 billion on remediation since 1980, in addition to paying hundreds of millions more in Superfund taxes.

The trust fund, on the other hand, is paying for cleanups at the relatively few orphan sites where no responsible party exists or can be located. By the way, it is important to note that the trust fund is also paying for many administrative functions that have little to do with cleaning up sites.

The key point here is that Superfund has already addressed most of its original workload. Construction of the remedy has now been completed at most of the sites on the NPL. Superfund today is working on the remaining sites, which do include some of the largest, most complicated, and most challenging sites on the NPL.

I'd like to focus, as an example, just on the Federal facilities situation. It is interesting to note that, although construction is complete at roughly 75 percent of the non-Federal sites on the NPL, construction is complete at just 20 percent of the Federal facility sites. It often takes much longer to select, design, and construct remedies at the Federal sites than it does at the other sites, and there are several reasons for this.

First, these Federal sites are very large, often extremely large. Second, they contain many operable units, each of which must be addressed individually.

Third, these Defense Department and Energy Department sites have on going public missions that cannot easily be disrupted by cleanup activities.

Fourth, as the chair noted earlier, these sites are remediated using funds from the Defense or Energy budgets subject to extensive EPA oversight.

Sites like these are what largely account for the recent drop in the number of construction completions being achieved each year. This drop in no way reflects a slowdown in the pace of cleanup or a dropoff in the commitment to cleanup.

Looking now to the future, we face some fundamental questions about the purpose of the NPL. Today, most of the contaminated sites in this country are either being addressed by increasingly robust State cleanup programs or else they pose no immediate risks to human health or the environment. There is no reason to make a Federal case out of these sites by listing them on the NPL. Instead, going forward, the NPL should be the tool of last resort.

Specifically, the NPL should be reserved for sites that are severely contaminated, that pose severe risks to health or the environment, and that have no near-term prospect of being cleaned up by private parties. Other sites should be managed under other programs. This includes the RCRA corrective action program, the LUST program, and also the full range of State cleanup programs.

If these other programs are viewed as deficient in some respects, then those programs should be improved rather than just shifting sites over to Superfund as a default.

Making the NPL the tool of last resort in this way would require some modest changes in current practice. EPA would explain in each proposed listing what it hopes to achieve by adding the site to the NPL. EPA would describe which other cleanup programs or other approaches it considered for the site and explain why it be-

lieves those other programs or approaches are not suitable. The public would have a chance to address these issues in the comment period on the proposed listing, and the site would be listed only if no other cleanup program or approach seemed likely to achieve results.

It is fully expected that private industry will continue to perform and fund the cleanups at sites they have contaminated, regardless of which cleanup program is being used. The point here is that Superfund, with its famous inefficiency and its very high costs, is not the appropriate mechanism for most of these sites.

Finally, I want to talk very briefly in the time remaining about removal actions. The Superfund removal program should be restored to its original intended purpose of addressing emergency situations. EPA currently spends about $250 million each year on removals, most of which do not involve emergencies in any sense of the term. The point here is not to quibble about the definition of "emergency," but rather to refocus the removal program on its original purpose.

Thank you very much.

Senator BOXER. Thank you so much.

Mr. Cornell.

STATEMENT OF KENNETH CORNELL, EXECUTIVE VICE PRESIDENT, AIG ENVIRONMENTAL, NEW YORK, NY

Mr. CORNELL. Thank you, Madam chairwoman.

I'm Ken Cornell, executive vice president of AIG Environmental. Thank you for allowing us to present our views on the Superfund program and suggest ways that the program can be improved to speed cleanups and reduce costs by using financial and insurance tools that can benefit both the private and public sector.

I'm summarizing my testimony and request that the committee enter my full statement into the record.

AIG Environmental is a division of American International Companies. AIG's general insurance operations are the largest underwriters of commercial and industrial insurance in the United States, with the most extensive international property and casualty network.

We are a AAA-rated company by Standard & Poors, with over $450 billion in assets and a wide variety of insurance and financial products to serve our clients. AIG Environmental has over 20 years of experience underwriting environmental risks and is currently the Nation's leading provider of environmental insurance.

We are here today to focus on three areas where we believe the use of environmental insurance can lead to more and faster cleanups of NPL sites within the existing framework of the Superfund statute. These are: cleanup cost cap insurance for fund-lead work by EPA, de minimis settlements for PRPs, and blended finite insurance programs that provide long-term funding for the cleanup of sites conducted by PRPs.

First I'd like to talk about cleanup cost cap for fund-lead work by EPA. Based on our experience with other Federal agencies, we believe that we can devise a program for hazardous waste sites being cleaned by the EPA to help the Agency budget more effectively. Programs supported by insurance can maximize the use of

existing Superfund dollars, provide protection against unexpected costs that can postpone or stop current projects while moving sites into redevelopment sooner because costs will be quantified and capped. Cleanup cost cap insurance can provide the EPA with a high degree of certainty as to what cleanup costs will be and provide private sector expertise in cost estimating.

Cleanup cost cap protects responsible parties against unknown and unexpected cost overruns during cleanups. I've included an example in my written testimony.

EPA often sees cost overruns of between 20 to 30 percent at fund-lead NPL sites. When these overruns occur, funds are often diverted from other future planned cleanups, thereby delaying cleanups at other sites. We've used similar programs with the Department of Defense in addressing both active and closing military bases, and also at formerly used Defense sites. An example of these are also included in my testimony.

If the committee is interested in this approach, we would welcome the opportunity to work with you and the EPA to develop a program for fund-lead Superfund cleanups.

Next I would like to speak about de minimis settlements for PRPs. One of the complaints often heard about the current Superfund process is the settlement of de minimis parties at sites. In order to get a full release of liability from EPA at its settlement, de minimis parties are usually charged a "premium" by EPA to cover unexpected cost overruns at the site. These "premiums" may run between 50 to 100 percent of cleanup costs allocated to the de minimis parties, and most parties object to paying this "premium."

We believe an insurance approach could significantly lower the premium for de minimis parties. This would work too through the use of cleanup cost cap insurance. As an example, if we assume that 200 de minimis parties at a site each has a cleanup liability of $20,000 for an aggregate of $4 million, if the de minimis parties were allowed to purchase a cleanup cost cap policy covering $4 million of cost overruns, their premium would vary between roughly 8 to 12 percent of the policy amount. The settlement would still provide EPA with the same dollars in cost overrun protection it was looking for, while at a much lower cost to the PRPs.

This approach should result in faster settlements with the Government. Again, we would suggest that the committee might ask that EPA and the Department of Justice could make Superfund a fairer program for small parties while protecting the Government against unexpected costs.

Finally, I'd like to speak about blended finite insurance programs. One of AIG Environmental's most important achievements occurred in November 2000 with the settlement of liability at the Iron Mountain Superfund site in California. This innovative settlement involving multiple private and public entities will provide funding for cleanup and cost overrun insurance over the next 30 years and fund a trust in perpetuity for the largest source of acid mine drainage in North America. This was achieved through the use of blended finite insurance and a guaranteed investment contract. Blended finite insurance is, very simply, a risk management tool utilizing cleanup cost cap insurance in conjunction with environmental loss control expertise. It is a flexible program combining

insurance with discounted funding techniques for existing liabilities.

The use of blended finite insurance programs may well prove to be one of the most effective tools to quickly settle liability at sites. It will provide funds for cleanup, even if in the future PRPs involved in the cleanup are no longer financially able to pay for the cleanups. I've also included an example of how this works in my written testimony.

Blended finite insurance could prove to be a valuable policy tool. We believe that it should be considered much more frequently by the Government. Our belief is that this approach can lead to faster settlements and encourage faster cleanups.

We would welcome the opportunity to work with the committee, EPA, and the Department of Justice to develop guidelines for the use of this approach at Superfund sites.

Finally, Madam Chairwoman, thank you for this opportunity to present our views and solutions on Superfund issues. We look forward to being part of solutions with you, the committee, and the EPA, and our belief is that the approaches outlined here can assist Superfund in achieving its mission of protecting public health and the environment.

Thank you.

Senator BOXER. Thank you, Mr. Cornell.

I am very interested in exploring some of these ideas with you, because, unlike Mr. Steinberg, I think we have a lot more to do, and so I am absolutely committed to looking at some of these ideas that you have, so we will work together.

Mr. CORNELL. Thank you. We look forward to it.

Senator BOXER. Yes.

Mr. Steinberg, I just have a couple of questions.

You said you're representing Superfund Settlements Project today.

Mr. STEINBERG. That's correct.

Senator BOXER. In your statement you said that Superfund is known for its famous inefficiency. That confuses me, because in December 2000, you issued a report—your group—and said:

> "In the years since 1995, Superfund has achieved levels of operational progress and public acceptance it had never before experienced. EPA deserves to be extremely proud of what it has accomplished in this field."

Mr. STEINBERG. That's correct.

Senator BOXER. Now, how does that square with your referring to the program and just dismissing it as known for its famous inefficiency.

Mr. STEINBERG. I think both statements are true. I think the program did achieve some dramatic up-turn in its success rate following the introduction in 1995 of the administrative reforms that that report discussed in some detail.

Senator BOXER. Yes.

Mr. STEINBERG. I think Superfund has been and continues to be a highly inefficient program. It is not effective when it comes to purchasing goods and services in an efficient and cost-effective fashion. I don't think that's a particularly startling revelation.

Senator BOXER. Well, I think it is startling to hear what you just said. You said it has achieved levels of operational progress it had

never before experienced. That says to me, "operational progress" means that it was operating in a much more efficient fashion. I think that, in fact, if I might say so, it is. Do you stand by both statements? Is that what you're saying?

Mr. STEINBERG. Another way to think of it is Superfund has achieved very impressive results. The cost we have paid for those results has often been much higher than it needed to be.

Senator BOXER. Yes. OK.

The other thing, you were saying that the only sites left were not really—that the Superfund has basically done its job is essentially what I'm getting. There's not many sites——

Mr. STEINBERG. Superfund has addressed a great deal of its original work load. Of the sites remaining on the NPL, there are 140 Federal facility sites, for example, where construction has not yet been completed, and, as Assistant Administrator Horinko pointed out earlier, the remaining sites will take longer to finish because of their nature. Yes.

Senator BOXER. Yes. You also said there's no slowdown. How would you know that?

Mr. STEINBERG. My point is that the tapering off of construction completes achieved on an annual basis does not, by itself, show a slowdown in the pace of cleanup because sites have to be worked for years before you get to the point where they can become construction complete.

Right now we have a slug of sites at the end that will take years before they can be made construction complete. That doesn't mean less work is being done.

Senator BOXER. You said there was no slowdown. How would you know? I don't know. We don't even have any information. Have you seen a list of what they're going to do this year?

Mr. STEINBERG. I've seen no list that you haven't seen.

Senator BOXER. OK. So, from what you've seen, you've decided there's no slowdown, when the administrator tells us she doesn't know what she's doing for this year and there are 6 months left, but you already know there's no slowdown?

Mr. STEINBERG. Well, we have level appropriations throughout this period. We have the same number of FTEs. We have the same number of dollars, more or less, devoted to Superfund work.

Senator BOXER. Well, it doesn't mean that you have the same level of dollars. Those dollars may be inefficiently used. Maybe they're going for things that—we were talking about that before—administration. There is, in fact, a slow—I'm just suggesting to you—I appreciate your testimony, and, believe me, I do, but you sound as if you have more information than I have, because I can't tell you whether there's a slowdown or not in 2002 because the Administration won't tell us what they're doing.

We have testimony from a New Jersey site here today from an individual who has given a lot of his life to this cleanup who was told there is a slowdown; that, in fact, the information he had that things were moving forward in November, that's off. How can you sit here and say there's no slowdown when we have a gentleman who was told that there was going to be a cleanup—and, sir, am I correct, it was made publicly that there would be a cleanup start-

ed. They were now told it would not be started. You're saying there's no slowdown?

Mr. STEINBERG. Well, I was speaking about the program as a whole across the board, not about any individual site.

Senator BOXER. Fine. Well, may I suggest to you that it's not about charts, it's about real things happening on the ground. If you live in New Jersey and you were told there was going to be a cleanup in a site that had agent orange—and I was also taken with your point that, well, most of the sites have been taken care of. The fact is this site had agent orange on it. That's directly involved with the Vietnam War and what was being experimented with. There's a national problem here.

By the way, it's not a particularly large site. It's a $40 million site.

So I just say, before you make these sweeping statements, I just would say, you know, in a friendly fashion, not as a critical fashion, I think you may be able to make that statement once you know and I know what is going to happen this year, but we have no information. People who were told they were on for a cleanup are now being told we don't know. So I would suggest that when we have our next hearing maybe we'll reassess our statements whether there's a slowdown or not. I would suggest on a number of sites clearly there is a slowdown. You can't deny that. When the Administration, itself, is going from its projection of 75 to 47, how can you say that's not slowdown?

Mr. STEINBERG. But that's not a measure of the amount of cleanup work being done in a given year. That's simply——

Senator BOXER. It is a measure of how many sites are going to be cleaned up, from 75 sites. You can cut it any way you want, but if you are in those—you know, this is a drop of almost half—actually, more than half from what happened in the Clinton administration. You say there's no slowdown? I'm suggesting to you that there are 40 places in this country that expected to get cleaned and they're not going to get cleaned.

So I guess, you know, you can slice it any way you want, but we obviously slice it a little differently when we look at the problem.

But I just want to say that this has been a terrific hearing, however troubling, and this is just the first.

Thank you. We stand adjourned.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned, to reconvene at the call of the chair.]

Additional statements submitted for the record follow.

STATEMENT OF HON. JAMES M. JEFFORDS, U.S. SENATOR FROM THE STATE OF VERMONT

I commend Senator Boxer for conducting today's hearing on the Superfund program. Oversight of the Superfund program is a critical task for the Subcommittee on Superfund, Toxics, Risk, and Waste Management. Senator Boxer's efforts have the full support of this Committee.

The Committee on Environment and Public Works is committed to the success of the Superfund program. This goal transcends party lines as demonstrated by the March 8 audit request to each of the EPA's 10 regional offices. Senators Bob Smith and Lincoln Chafee joined Senator Boxer and myself in requesting information on whether a shift in Superfund revenue composition is affecting site remediation progress.

I am concerned that it took EPA a full month to comply with this request. The information we sought about site progress and cost estimates should have been

readily available from the regions. I have to believe that EPA's regional offices are better organized than this exercise has demonstrated. Therefore, it raises questions and concerns about EPA's intent, especially in light of the e-mail that has come to the Committee's attention. In this message, EPA headquarters directed regional managers not to discuss site slowdowns or financial shortfalls. I should not need to, nor will I again, remind EPA that it is not their prerogative to limit information provided to this Committee and to Congress.

All evidence points to a slowdown in the Superfund program. EPA's own data illustrates several areas of concern. First, EPA reports that eight NPL sites did not proceed due to a lack of funding in FY 2001. This number is unknown for FY 2002. Second, every region but one will experience a decline in construction completions from FY 2001 to FY 2003. Third, every region will experience a decline in new starts from FY 2001 to FY 2002. Finally, concerns are raised by a discrepancy in the regions' estimated numbers of fund-lead sites, and therefore what portion of the total cost of NPL site cleanup, estimated by EPA to exceed $9.3 billion in nine of the regions, will fall on to the shoulders of taxpayers.

Currently, Superfund projects are moving forward as expected in Vermont. However, I understand that funding could present a problem as early as this fall. I am particularly concerned about the Pownal Tannery and Elizabeth Mine Superfund sites and the availability of funds to keep pace with ongoing progress at these Vermont sites.

EPA's response to this Committee's inquiry leaves many questions unanswered. What is the reason behind EPA's slowdown of the Superfund cleanup program? Is the Administration's refusal to seek reauthorization of the Superfund taxes contributing to this slowdown? Is EPA headquarters providing the regions with the necessary guidance and support to ensure the Superfund program's success?

I am hopeful that today's hearing will shed some light on these issues.

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

I would like to thank Senator Boxer for holding this timely hearing on the Superfund program. As many of my colleagues on this Committee know, the Superfund program has had an enormous impact on my state. The most recent and most dramatic example has been in Libby, Montana.

Libby stands out because the human cost from wide-spread environmental contamination has been so great—over 200 people have died from exposure to asbestos contaminated vermiculite from the now-defunct mine owned and operated by WR Grace. Many hundreds, if not thousands, more are expected to die over the next few decades. Unfortunately, WR Grace has declared bankruptcy. Who knows how much WR Grace will ultimately contribute to the long-term health and well being of the Libby community.

Although the Environmental Protection Agency should have addressed the problem in Libby many years before it did, the EPA, once it invoked its authorities under CERCLA, has done a very good job in Libby in responding to the most immediate public health hazards posed by the vermiculite contamination. I hope and believe that EPA will continue to make Libby one of its top priorities for long-term clean-up now that the Governor has chosen Montanan's only "silver bullet" for Libby.

But, I do want to point out that EPA's positive activities in Libby illustrate how very important the Superfund program is, in providing the resources, the authority and the expertise needed to address serious environmental and public health disasters, such as occurred in Libby. The program is not perfect, no program is perfect, but it is effective and it is working in Libby, Montana.

I remember very clearly when Congress was debating Superfund, and thinking what an awesome legacy we in Congress could leave America by enacting this historic legislation. Seeing how Superfund has played out in Libby 25 years later means a lot to me personally; I know what it's meant to the people in Libby.

Libby is the highest-profile Superfund site in Montana, but it is not the only Superfund site in Montana. Montana is also home to one of the largest Superfund sites in the Nation in the Clark Fork Basin. The site, contaminated by abandoned and active hardrock mine wastes stretches for more than 100 miles in Southwestern Montana, and includes the mile-deep Berkeley Pit in Butte, Montana. Despite the size of this site, and the sheer amount of contamination, the Clark Fork has seen a lot of success from the Superfund program, not only in terms of clean-up, but also economic benefits for the local community.

There are many other sites in my state, the legacy of our mining and industrial past. Ultimately, all of these sites must be cleaned-up. Like many of my colleagues,

I don't want to see cleanup delayed. As the Chairwoman said in her opening statement, a Superfund designation is not a trivial event for the communities involved—it invokes fear and uncertainty about the future and about the effects of any contamination on public health, it affects real estate prices and it can impact local business. It's just not fair to saddle communities with that burden for any longer than is necessary. I am concerned, as are many of my colleagues on this Committee, that the Administration may be reducing the Federal Government's commitment to protecting the health and well being of our citizens through the Superfund program. I am particularly concerned that sites in my state may not get funded next year, even sites that are in the middle of the clean-up process.

I look forward to the testimony of our witnesses today, and I hope the Administration will be able to respond to my concerns satisfactorily.

STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

I want to welcome all of the witnesses who have come before this subcommittee to testify on an issue that I have been closely involved with for quite some time. Before I became chairman of the full committee in 1999, I had been the chairman of this subcommittee. Needless to say, I have quite an extensive background on Superfund. It would be a vast understatement to say that, historically, Superfund has been a challenging issue. That challenge has not diminished with time.

We are entering a period where we are addressing some of the most complicated and complex Superfund sites—sites that do not allow for simple remediation. It is inevitable that these sites will take a longer period of time to clean up—that is simply a fact.

I know some will try to score political points by comparing the time it takes to clean up the sites of today, and the number of sites we clean up, with the less complicated sites of the past. Unfortunately, that comparison doesn't paint an accurate picture. I am also aware that the Superfund tax will be the subject of political posturing. That tax expired in 1995—a time when I was heavily involved in trying to pass comprehensive Superfund reform. It didn't make sense to reauthorize a tax for a program that was broken. I have consistently held that position.

Superfund still needs to be reformed. If you don't believe that to be the case, then come to New Hampshire and talk to anyone who has been involved in Beede Superfund site. It is a disgrace what the law has done to so many good people who were only trying to do the right thing. I have introduced legislation once again to address these problems, but so far there has been a lack of will to do the right thing.

Until we can fix the problems with Superfund, we shouldn't consider renewing the tax. I want a Superfund program that is a success. One that will be fair and will clean up the problems created in the past. I have fought hard to get many sites in New Hampshire cleaned up, and I continue to do so. It has not been rare to fight to keep sites off of the Superfund list out of fears that listing would delay clean up efforts.

We must fix this law. For years there has been tremendous resistance to comprehensive reform. When I was chairman, I decided that we should try a piecemeal approach—one step at a time. We took a big step last year with our Brownfields bill. That effort took strong leadership and a bipartisan commitment for us to achieve our ultimate success. I hope we can take the next step toward comprehensive reform soon.

I want to welcome our witnesses today and thank them for sharing their thoughts on the Superfund program—a special welcome to Assistant Administrator Marianne Horinko. I appreciate and commend you for the approach you have brought to your office—one that encourages innovation and thinking outside the box.

If we are to meet the current and future challenges of Superfund, we must be able to think and act outside the box. A leading insurance company—AIG—will present one such approach today. This company has been on the forefront of innovative approaches to the financial side of Superfund and Brownfield cleanups since 1980. Their testimony raises some interesting approaches to Superfund that could provide cost savings to both the government and private sector. I know that the Department of Defense has utilized this approach and found it to be very effective in managing costs at a number of sites. I would certainly encourage EPA to take a serious look at this innovative concept.

I will be following up with EPA on this and other innovative ideas that will help to speed up cleanups and are in the best interest of the taxpayer. Superfund isn't an easy issue, but we must continue to find ways to make it a better program for

all involved. Again, I want to thank you all for your appearance before this subcommittee and I look forward to your testimony.

STATEMENT OF MARIANNE LAMONT HORINKO, ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good morning Madam Chairman and Members of the Subcommittee. I am Marianne Horinko, Assistant Administrator of the Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency. I am pleased to appear today to discuss the Superfund program and identify some of the new challenges facing EPA as the program continues into its third decade.

Administrator Whitman and the Bush administration are fully committed to Superfund's mission, protecting human health and the environment by cleaning up our Nation's worst hazardous waste sites. Thanks to a decade of reforms launched by the first Bush administration and continued by the previous Administration, the Superfund program has achieved dramatic success. In that same bipartisan spirit, we embrace the new issues facing the program as it matures. Further, as the members and staff of the Environment and Public Works Committee located in the Hart Senate Building learned first hand, one of the many challenges of the Superfund program is to address threats posed to Homeland Security. Today, I will outline the innovative ways EPA is addressing the Superfund program's important tasks.

SUPERFUND PROGRESS

The Superfund program continues to make progress in cleaning up hazardous waste sites on the National Priority List (NPL). Through fiscal year 2001, 92 percent of the sites on the NPL are either undergoing cleanup construction or have cleanup construction completed:

- 804 Superfund sites reached construction completion
- 401 Superfund sites had cleanup construction underway

In fiscal year 2001, EPA completed construction at 47 Superfund sites. However, the decline in the number of NPL sites that reached construction completion in fiscal year 2001, as compared with fiscal year 2000, did not reflect the amount of cleanup construction underway at Superfund sites. EPA has maintained the number of construction projects underway at NPL sites, more than 730 per year, from fiscal years 1999 through 2001. The President's fiscal year 2003 budget request continues a commitment to clean up hazardous waste sites by maintaining EPA's budget for the Superfund program with a request of $1.29 billion.

SUPERFUND CLEANUP COMMITMENTS AND COST RECOVERY

This Administration reinforced its commitment to the "polluter pays" principle by securing cleanup from responsible parties at approximately 70 percent of non-Federal Superfund sites. Fiscal year 2001 produced a near record in Superfund cost recovery and cleanup commitments from responsible parties. EPA's enforcement program generated $1.7 billion, nearly $300 million more than in fiscal year 2000 and the second highest amount in the history of the Superfund program. The cumulative value of responsible party commitments since the inception of the program now exceeds $20 billion.

HOMELAND SECURITY/BIOLOGICAL HAZARDS

EPA's Emergency Response program was on the front lines at the World Trade Center, the Pentagon and the Anthrax incidents and the Agency is proud of our ground-breaking work. EPA, in partnership with the Centers for Disease Control and Prevention (CDC), the Agency for Toxic Substances and Disease Registry (ATSDR), and District of Columbia public health officials, successfully completed anthrax cleanup in the Hart Senate Building—- a task never before achieved in public health history. EPA continues to provide technical assistance at three U.S. Postal facilities that have not completed anthrax cleanup and at the AMI building in Boca Raton, Florida. EPA is also examining ways to improve Chemical plant site security. We have been working closely with representatives from the chemical industry, first responders, and community and environmental groups to ensure that high levels of prevention are maintained, along with protectiveness and responsiveness.

BROWNFIELDS PROGRAM

EPA's brownfields program, through its grants, loans, and other assistance, continues to promote the cleanup, development and reuse of blighted, abandoned

brownfield sites throughout the country. The brownfields program has successfully supplemented the cleanup and development efforts of states, Tribes and local governments. I am pleased to report that EPA's brownfields cleanup program has leveraged more than $3.7 billion in cleanup and redevelopment funds, and has generated more than 17,000 jobs. EPA funding has provided the resources to states, Tribes and local communities to assess more than 2,600 brownfield sites.

Thanks to the enactment of bipartisan brownfields legislation, we can expect to see even greater success by states, Tribes and local communities in reclaiming brownfield sites and encouraging the cleanup and reuse of sites by the private sector. EPA is now in the process of planning implementation of the provisions in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107–118). The fiscal year 2003 budget reflects the President's priorities and our commitment to cleaning up and revitalizing communities by doubling the brownfields budget to $200 million.

PUBLIC LAW 107–118 IMPLEMENTATION

EPA has formed a number of internal workgroups to develop policy implementing the new law. We are conducting listening sessions, both here in Washington and at the regional level, to gather stakeholder views prior to issuing new policies. EPA is developing brownfields grant application guidelines for the new funding that will be available in the fall of 2002.

Further, EPA's enforcement program is carefully reviewing key brownfields liability and enforcement provisions in the Act and will undertake several activities, such as issuing guidance to regions on key terms in the statute and promoting a consistent approach onsite-specific questions. In addition, EPA's enforcement program will be working to develop guidance on certain key provisions of the de micromis and Municipal Solid Waste (MSW) exemptions. EPA is also evaluating what new settlement procedures might be necessary under the revised CERCLA § 9122(g).

REDEVELOPMENT AND REUSE

I have made land revitalization a top priority for the Office of Solid Waste and Emergency Response and it is an integral part of the way EPA is implementing all waste cleanup programs. Achieving cleanup is not enough. It is necessary to view a property in terms also of the future economic, recreational or ecological benefits it represents to those who live nearby. It is important that we build on our success in the Brownfields program and make land revitalization a part of the Agency's organizational culture. We are making progress in the Superfund program. More than 260 Superfund sites have been put back into reuse, generating more than 15,000 jobs and representing $500 million in economic activity. While our fundamental mission remains to protect human health and the environment, we need to ensure that we fully consider a community's desired future land use for a property as we make cleanup decisions. We are working on tools to assist EPA managers and staff as they work closely with state, public and private stakeholders in facilitating property revitalization.

NEW CLEANUP CHALLENGES

As the Superfund program continues into its third decade, new challenges must be met to continue the progress in cleaning up hazardous waste sites. Entering fiscal year 2001, EPA had anticipated the potential for a reduction in achieving site construction completions. The Superfund process, from site listing to cleanup construction, on average has taken roughly 8 to 10 years. Decisions made 5 years before a site ever reaches the construction phase, for instance delaying the Remedial Investigation/Feasibility Study (RIFS), will have an impact on when that site reaches construction completion many years later. This is the current situation we face in the Superfund program. The reduction in construction completions has resulted from a variety of factors, including decisions made years ago on funding priorities; the size and number of construction projects at remaining non-construction complete sites on the NPL; and the need to balance competing environmental priorities within the Superfund program. In prior years, EPA focused resources on Superfund sites that needed less construction work and that were further along in the cleanup process, thus creating a backlog of sites with significant years of construction work remaining.

The remaining number of Superfund sites that have not reached the completion stage includes area-wide ground water sites, mining sites, sediment sites, and Federal facility sites. The size and complexity of these remaining sites generally indicate longer project durations and increased costs required to complete cleanup construction. There are now a greater number of Federal facilities and very large sites

(mega-sites exceeding $50 million in cleanup costs) as a percentage of NPL sites not construction complete than ever before. Of the remaining 675 final NPL sites not construction complete, 138 are Federal facilities and an additional 93 sites are mega-sites.

Given the nature of the remaining sites on the NPL that have not been completed, the use of construction completion as the overriding measure of Superfund program progress is becoming less helpful. The timeframe needed to complete Federal facility sites and mega-sites represents so many years, that newer, more meaningful environmental indicators need to be developed. Currently, the Superfund program is credited with only one construction completion whether the site completed would be a 100 square mile former mining site or a one-acre former wood-treating site. The public needs tools for measuring success that describe significant accomplishments at these challenging sites over time.

SUPERFUND PIPELINE MANAGEMENT REVIEW

Although the number of Superfund sites completing construction in a given year is being affected by program decisions made years before, EPA is looking for new ways to improve program performance. The Agency has initiated a comprehensive review of all Superfund projects in or approaching the most expensive phase of our project pipeline, construction. After completion of this analysis and implementation of some challenging decisions, EPA intends to work toward an optimal balance between the achievement of risk reduction, construction progress, and beneficial reuse at Superfund sites. I would expect the first phase of the review to be complete in late spring with a draft 3-year plan at the end of the summer.

NACEPT PROCESS

EPA is also launching a public dialog through the National Advisory Council on Environmental Policy and Technology (NACEPT), a Federal advisory committee comprised of a broad cross-section of stakeholders, that will examine the role of the Superfund program in addressing very large "mega-sites", the appropriate role of listing sites on the NPL as one of many tools to address contaminated sites, and strategies to improve program effectiveness and efficiency through coordination with states, Tribes, and the public. We will work closely with the Environment and Public Works Committee as the NACEPT expert panel debates these important public policy issues.

CONCLUSION

EPA will continue its efforts to improve Superfund program performance and meet the many new challenges facing the Agency in cleaning up hazardous waste sites. The President is fully committed to the Superfund program's success and toward fashioning a sustainable future course for the program as it continues into its third decade. We also will continue our efforts in protecting Homeland Security, improving chemical plant security, and working with other Federal Agencies in responding to biological hazards. I look forward to working with Congress in the months and years ahead as we strive to meet our common goal of protecting human health and the environment.

STATEMENT OF COUNCILWOMAN NORMA LOPEZ-REID, MONTEBELLO, CA

My name is Norma Lopez-Reid. I reside in, and am a councilwoman for, the city of Montebello, California. I began my involvement in addressing the problems of the Operation Industries Landfill as a resident of this community. Today I am here to speak to you, both, as a resident who lives one house away from the landfill, and in my official capacity with the city.

I would like to talk about the positive experience that my community has had with EPA and what they have done, at one of the largest Superfund sites, to assist us with a monstrous problem. When my neighbors and I moved into this development of new homes, we had no idea that the area was infested with toxic, hazardous waste, which included vinyl chloride, a known carcinogen. Had it not been for the remarkable clean up efforts of EPA with their program, the authority to make responsible parties accountable, and the funds to begin the project, our health and the well being of our community would still be at stake.

In the city of Montebello, California, residents living near the Operating Industries Landfill (OII) came home each evening to an area filled with migrating gases, that made them suffer from headaches, nauseating odors, and grass-less yards due to the hazardous liquid waste, called leachate, that seeped out of the ground. These

difficult circumstances made the quality of life in this bedroom community decrease considerably, we couldn't even open our windows on hot summer nights. Little did our residents know the extent to which companies, large and small, had been allowed to dump incredible amounts of hazardous waste, including carcinogens, into the landfill that was only supposed to contain regular trash. By the time the Environmental Protection Agency (EPA) got involved, approximately 180 million gallons of hazardous waste had been illegally dumped in our backyards creating massive numbers of safety hazards for the people of Montebello. Although many of the residents here began their campaign with local and state officials to close the OII landfill, the real work and relief began when EPA declared the landfill a Superfund Site in 1986.

BACKGROUND INFORMATION

The OII site is a 190-acre parcel located in the city of Monterey Park, California, 10 miles east of downtown Los Angeles. The landfill property marks the boundary between the city of Monterey Park and the city of Montebello. The residential neighborhoods are on the south and east ends of the parcel, which is bisected by the Pomona (Rte. 60) Freeway. Landfill operation began in approximately 1950 and continued until 1984. EPA listed the site on the National Priorities List in May 1986.

When EPA entered the picture, they took significant steps to reduce health risks to nearby residents by addressing impacted residences adjacent to the site. These efforts included treating the migration of methane and other gases in the houses, the migration of liquid leachate into the yards and park areas and the threats of slides from unstable slopes onto the homes, to mention a few items. In addition to these emergency response actions, EPA was able to take steps to have the responsible companies pay for their part of the cost in the clean up. EPA invested several million dollars to begin the investigation and emergency response, that money came from the Superfund. EPA leveraged the Federal dollars by obtaining agreements for the polluters to pay for this multi-hundred-million dollar effort at this site. If the Federal Government had not stepped in with dollars toward this project, our community would still be suffering from this horrible threat. Making this a priority has made a tremendous difference in our lives.

When EPA took over the site, they had to assess all that was there and they literally had to "triage" the site in order to begin their efforts. They realized that the gasses and liquid leachate were probably the most significant threats to the community's health and safety and, therefore, built a gas collection and treatment facility and a leachate collection treatment plant.

In 1992–93 approximately 200 homes were tested for the possibility of migrating gases, such as vinyl chloride, seeping into the homes. Six homes were found to have an elevated level of vinyl chloride or methane gas. (I recall hearing about small explosions in the fireplace of one of my neighbors.) EPA installed gas collection systems in these homes. For 10 years the EPA monitored these homes with incredible patience and dedication.

There were 8 consent decrees that outlined the problems and remedies needed. This included additional landscaping for the buffer zone in Iguala Park, where many of our children played as they waited for the school bus, since that had been a designated bus stop prior to our awareness of the contamination that had taken place in the area. Fortunately, EPA fenced off the area, immediately, in order to avoid further contamination so that our children could be safe.

An aspect of this situation that is important to note is that, soon after the landfill was closed, the OII owner quickly declared bankruptcy and walked away from the monstrous situation he had allowed to be created. I can assure you that many of the thousands of culprits involved would have done the same had it not been for EPA making them accountable for their actions.

One of the most notable efforts from EPA has been the unique level of community involvement that they have always sought. They not only kept us informed of their discoveries, plans and processes but gave us the opportunity to give them feedback and become actively involved in the decisionmaking efforts. This, in itself, made a tremendous difference for our neighbors and their peace of mind.

ADDITIONAL OBSTACLES AND FEARS

During these difficult times many of our neighbors thought that maybe selling their homes and leaving the area would be best for their families. Unfortunately, the value of our property plummeted and those who were even able to sell did not get their market value's worth.

In the meantime, there was still a tremendous concern about our health and the health of our children. Even some of our pets came down with inexplicable tumors

and growths. There is one specific cul-de-sac that backs up into the landfill area in which three families have had confirmed cancer diagnosis. The worst fears have come true for some of our neighboring families—several of our neighbors have already died of cancer—including one of our neighborhood leaders and heroes, Hank Yoshitake. To this day, the fear continues to permeate throughout the neighborhood that, in time, others of us may come down with cancer. While EPA has prevented further exposure to contaminants, we hope that the Public Health Department will monitor the long-term effects of the original contamination.

MOST RECENT AND FUTURE EFFORTS

The most dramatic work that has been done on the site was the construction of the permanent landfill cover in 2000. This involved major earth moving to remove old dirt and replace it with a six-foot-thick cover of clean soil and vegetation on the slopes of the landfill. The purpose of the multi-layer cover is to prevent rainwater from entering the landfill and to stop landfill gas from migrating out. In December of 2001 EPA completed the construction of the ground water remedy. Maintenance of operation and maintenance of site systems is still in progress.

EPA has continued to work with the city of Monterey Park and private industries to re-develop the 45 acre parcel of land to the north of the freeway which did not have significant quantities of hazardous waste. This land has been one of the largest pieces of underdeveloped property in the Los Angeles area. The Monterey Park City Council is working with the Montebello City Council to build a center for retail shopping on the site.

In conclusion, the EPA's involvement and incredible heroic efforts at the OII landfill have been enormously successful. It is critical that these efforts be continued in other areas where these monstrous problems have taken place. This example should serve as a powerful reminder that no population should be forced to shoulder and live in such burdensome environments, this is the reason it is important that a strong Superfund program be available to assist others in this type of situation.

STATEMENT OF ROBERT SPIEGEL, EXECUTIVE DIRECTOR, EDISON WETLANDS ASSOCIATION, INC.

Superfund is not merely about numbers and budgets. Superfund is also about people living in poisoned communities. And about promises made to the American people by the Federal Government that are about to be broken.

My name is Robert Spiegel. I am the Executive Director of the Edison Wetlands Association, a non-profit environmental organization in central New Jersey that has been working for the cleanup of Superfund sites for more than a decade. The Edison Wetlands Association is now actively involved in seven Superfund site cleanups and 15 state-led cleanups in New Jersey.

I am here today to tell you the story of one Superfund site—the impact it has had on the surrounding community, and the consequences that will result from the lack of funding to clean the site up. I am also here to ask that funding for remediating these sites be continued. It is imperative that we deal with these sites swiftly and conscientiously, or we will continue to endanger the lives of our citizens and future generations.

I have been closely involved with the Superfund process since 1991. For 11 years, I have been working to have the Chemical Insecticide Superfund Site in Edison, New Jersey, cleaned up. From 1954 to 1972, the Chemical Insecticide Corporation, CIC, manufactured pesticides, herbicides, and fungicides, including Agent Orange and other experimental defoliants that were used during the war in Vietnam. After owner Arnold Livingston declared bankruptcy and moved along to his next site, the buildings were razed, leaving a vacant lot where the soil and ground water are highly contaminated with arsenic, heavy metals, pesticides, and dioxins.

In the spring of 1991, a friend asked if I wanted to see "green" rabbits. Armed with a video camera, we took a short ride to the Chemical Insecticide Superfund Site. The first thing that struck me was the smell—the smell of death and decay. Nothing grew on the property except a strange florescent green moss. Small animal carcasses littered the area, and there were, indeed, "green" rabbits living there. The rabbits had developed an abnormal greenish yellow undercoat that I would later discover was the result of Dinoseb, a pesticide disposed of in large quantities throughout the site.

We followed a trail of yellow liquid draining from the back of the site downstream past a neighboring industrial bakery and into the Edison Glen and Edison Woods residential developments. There we video taped a child playing in the poisoned stream who told us it was a good place to hang out and look for frogs and turtles.

I subsequently found out that the vacant CIC lot was a playground for local children, the chemical lagoons were their wading pools, and adults routinely scavenged materials from the site.

I contacted the Environmental Protection Agency (EPA), spoke with the project manager and sent him a copy of the videotape. About 2 weeks later the EPA posted warning signs along the brook. Panic erupted as residents assumed the worst—they were at risk from exposure to a witches' brew of chemicals, and the value of their homes had plummeted overnight. The EPA, however, refused to conduct additional testing. It seemed that, having posted the signs, they felt that the problem had been solved.

I started a small citizens group to work on gathering and disseminating reliable information. We held a series of public meetings to inform the local residents and public officials about the contamination and discuss what could be done. From 1991 to 1993, the newly formed Edison Wetlands Association pursued vigorous and continuous interaction with the EPA, and state and local health officials. Public hearings were held and the issue was widely publicized on television and in print.

I also assisted in the relocation of several families who were plagued by illnesses—illnesses widely believed to be the result of living downstream from what the Agency For Toxic Substance and Disease Registry had labeled a "Public Health Hazard". A local police officer had a rare blood disease, his wife had reproductive problems, and their two children were showing symptoms of arsenic exposure. I worked with the family and their attorney to relocate them to a safer home in East Brunswick, New Jersey. Several employees of a bakery on adjoining property died as a result of cancer believed to be caused by toxic runoff from the CIC site. The attorney for several of their widows called on me to testify, since I had witnessed and video taped the yellow ooze draining from the site onto the bakery property. This was one of the most difficult things I have ever had to do. No one should have to die because they work near a Superfund Site.

By spring 1993, the Edison Wetlands Association relationship with the EPA began to develop into a more productive one. At the suggestion of the EPA, we applied for and were awarded an EPA Technical Assistance Grant (TAG). The grant allowed us to hire technical experts to help us understand the scientific and technical issues as well as the limitations of the Superfund program. We were able to secure a comprehensive cleanup and restoration of the Edison Glen and Edison Woods residential developments and the Mill Brook. The EPA also installed a temporary liner on the site to prevent direct contact with the most contaminated soils.

Since 1993, we have worked closely with the EPA on the Chemical Insecticide site, as well as other Superfund sites in central New Jersey. While we have had vocal, and sometimes heated disagreements, we have also seen tangible results at the site. By 2001, the CIC Site was considered as a national model for the Superfund Program, demonstrating effective public participation and resulting in a full and permanent cleanup of the area. Three presidents, three Governors, and three remedial project managers later, all of the interested parties decided that the best course of action was to remove the contaminated soil from the CIC Site, the adjoining bakery, and several other neighboring industrial properties.

The estimated cost for cleanup of the CIC site is $40 million and CIC is on the Superfund appropriations list. At our last joint public meeting in January, the EPA announced to the community that this work was to begin in November 2002. Several weeks ago, I received a call from the EPA informing me that there was no money to begin this, or any new cleanups in our region and there probably would not be funding for several years. Meanwhile, the temporary cover at the CIC Site is breaking down and now has holes in it. When it fails, the brook and the nearby residential developments will once again be exposed to contamination. It is obvious that we need a permanent solution now, not sometime in the distant future.

Today I've talked about just one Superfund site and its impact on just one community. There are 1,235 Superfund sites impacting thousands of communities across the country. Chemical pollution has severely impacted our water, air and soil. Manufacturers, residents, and government, as stewards of these resources, must protect them and work toward their restoration.

The Superfund program was begun not only to protect human life but also to cleanup and restore our natural resources. We need the funds generated by the Superfund tax and only with your help can we get Superfund back on track. I ask you to assist in making our communities whole again.

Thank you for the opportunity to testify.

STATEMENT OF GRANT COPE, ON BEHALF OF THE U. S. PUBLIC INTEREST RESEARCH GROUP

I. SUMMARY

Superfund, the nation's preeminent law for cleaning up our country's most heavily contaminated toxic waste sites, is heading for serious trouble. Since 1980, Superfund has cleaned up a steadily increasing number of sites, which has translated into tangible public health and economic benefits for communities across the country. Conversely, the recent and dramatic decline in the pace of cleanups could portend a continuation of serious public health and environmental threats and delayed economic revitalization for communities and people across the country.

Toxic waste sites are a significant and widespread threat to public health and environmental quality. While the Superfund program has made great strides in expediting the remediation process, there are still hundreds of sites in Superfund's pipeline that must be cleaned up. Resources for the Future's report to Congress noted that EPA officials expected a dramatic increase in the number of annual listing, to around 50 sites per year in some cases. This nation's industrial development, aided by industry's poor management of its toxic wastes, has created a legacy of sites that EPA and state officials recognize will not soon disappear. The Nation must vigorously respond to this public health threat by redoubling its dedication to cleaning up toxic waste sites.

By contrast, the Bush administration has presided over a greater than 50 percent decline in the pace of cleanups in just 2 years. During this decline, the administration has under funded the Superfund program by $1 to $1.4 billion from 2001 to 2003. Superfund's surplus, which has fueled cleanups since Superfund's taxes expired in 1995, will have dwindled from a high of $3.6 billion in 1995, to only $28 million in 2003. In short, the future of Superfund's ability to protect public health and environmental quality from the nation's worst toxic waste sites is in jeopardy.

Thus far, the Bush administration's response has included denying that any sites have been affected, claiming that any problems are related to the increased number (or percentage) of mega-sites in the program, and opposition to any reauthorization of Superfund's polluters-pay taxes unless the program is "reformed", a term often associated with weakening the program's protections. All three responses ignore facts that naturally lead to a more satisfying and complete answer.

The pace of clean ups has dramatically slowed down without any appreciable change in the composition of sites in Superfund's pipeline over the last 2 years. The administration should acknowledge this and respect the public's right-to-know about the impacts of policy decisions on their communities. Therefore, the administration should tell the public which sites might be affected by a lack of clean up resources. The administration should also preserve Superfund's protections by working to reauthorize Superfund's polluters-pay taxes, without any associated proposals that weaken protections. Finally, the administration should acknowledge that the composition of Superfund's pipeline has not changed so dramatically in less than 2 years, but rather, the administration has simply under funded cleanups.

II. SUPERFUND SITES THREATEN PUBLIC HEALTH

There are about 600,000 toxic waste sites across the country. About 1,223 are currently listed for clean up under the Superfund. One out of four people in America lives within one mile of a Superfund site. Eighty-five percent of all Superfund sites have contaminated groundwater. Fifty percent of people, and virtually 100 percent in many rural areas, rely on groundwater for drinking water. Children born to parents who live within one-quarter mile from toxic waste sites have an increased risk of birth defects, including heart defects. Many Superfund sites are located in urban areas, are accessible to children, and expose people to dangerous contamination. Others are located in our rivers and water bodies, where they pose a risk to the environment and to people who eat the fish from such waters. Furthermore, people are moving into contaminated areas where officials did not contemplate communities 20 years ago. This occurs in urban settings, where old industrial parks become new condominiums, and rural areas where sprawl spreads into regions impacted by past mining activities.

III. SUPERFUND HAS STEADILY INCREASE THE PACE OF CLEANUPS UNTIL 2001

Superfund had steadily increased the pace of cleanups until 2001. In its early years, Superfund got off to a slow start, due in part to mismanagement and the difficulty of creating a new national program to clean up the nation's worst toxic waste sites. From 1980 to 1990, Superfund cleaned up an average of only 6 sites per year. In 1989, EPA initiated its "enforcement first" policy, where EPA would undertake

a thorough search for all of the PRPs at a site, and then issue a unilateral administrative order directing them to clean up their contamination. If the PRPs disobeyed the order or negotiated with EPA in bad faith, then the agency would cleanup the site and charge the PRPs up to three times the cleanup costs, plus penalties. This policy, the success of which is predicated upon EPA having adequate resources to conduct cleanups, helped dramatically increase the pace of the program, from cleaning up an average of 6 sites per year to an average of 70 per year, from 1991 to 1995. In 1995, EPA undertook a series of reforms and made good use of available funding to increase the pace of cleanups to an average of 86 per year, from 1996 to 2000. However, the pace of cleanups has dramatically declined to an average of 42 cleanups per year, from 2001 to 2003 (2002 and 2003 are estimated).

1. The Bush Administration's Response Inadequately Describes The Cause of This Slowdown

The Bush administration's response has been to deny that any sites have been affected, claim that the program is now cleaning up more mega-sites than previously envisioned, and oppose any reauthorization of Superfund's polluters-pay taxes unless the program is "reformed", a term often associated with weakening the program's protections.

A. The Bush Administration's Denial Of A Problem Is Unconvincing

U.S. PIRG doubts the administration's response that no sites have been affected by a lack of funding. For example, on February 24, 2002, the *New York Times* quoted EPA's head of the Superfund program for Region 6 as saying that he did not have adequate funds to move forward on five cleanups. *Waste News* flagged one of these sites as the Delatte Metals site in Ponchatoula, La., back in November 2001. On March 13, 2002, The Post and Courier quoted an EPA Regional Project Manager as saying that he did not have adequate funding to move forward with a cleanup in South Carolina. Then, on March 22, 2002, ABC News highlighted a site in New Jersey that EPA could not clean up due to a lack of funding. Clearly, Superfund's ability to clean up sites has been affected by a lack of funding.

1. The Bush Administration Has Avoided Giving The Public Information About Affected Sites

During the week of February 25, 2002, U.S. PIRG called EPA personnel in every region to ask which sites were affected by a lack of funds. At first, EPA officials were forthcoming, and said that they would give me the information. However, when I later called back to followup with some offices and got around to calling other offices, EPA personnel told me that EPA headquarters had told them that they were not to talk to anyone about the impact of funding onsites, and that they were to direct all such calls to Joe Martyak, EPA spokesperson. I subsequently called Mr. Martyak and asked him the same questions that I had posed to EPA regional officials. While he stated that he would get back to me, after I called several times to followup, Mr. Martyak never called me back. Similarly, in early March, I received a call from the staff of Marianne Lamont Horinko, who asked me to describe the specific information that I wanted. I conveyed this information but, after I called a number time to followup, her staff never contacted me with the information.

B. EPA's Data And Common Sense Contradict The Administration's Claims

U.S. PIRG also doubts the administration's claims that the slowdown in cleanups is a result of the program unexpectedly cleaning up more mega-sites than earlier in the program. The pace of cleanups has declined by over 50 percent in less than 2 years. From 1996 to 2000, the program cleaned up an average of 86 sites per year. Now, only 2 years later, the program is slated to clean up 40 sites. The average Superfund site takes about 9 to 12 years to clean up. Therefore, the types of sites in the pipeline would not change so dramatically in such a short amount of time.

However, a 2001 report by Resources for the Future predicted that Superfund might list a higher percentage of complex sites, but not necessarily mega-sites, in the future. However, it will be years before future listing begin to impact rates of cleanups. Therefore, unless EPA vastly underestimated the number of mega-sites in the program, and upon discovering the increased number of sites EPA decided to shift substantial resources to cleaning them up, rather than remediating sites that were almost at the construction complete stage, new mega-sites should not impact sites at the end of Superfund's pipeline.

Further, EPA predicted in 2000 that it would clean up 900 sites by 2002 based on timely and accurate data derived from decades of experience cleaning up sites. In less than 2 years, it is clear that the Bush administration will miss this target by over 50 sites. For example, the administration missed its projected cleanup target

of 75 sites in 2000, by only cleaning up 47 sites. The administration also revised its initial cleanup target of 65 sites for 2002, to only 40 sites.

C. The Administration's Under Funding Of The Program Provides A Far More Plausible Explanation

The administration has under funded the Superfund program by at least $1 to $1.4 billion from 2001 to 2003. This under funding provides a far more plausible explanation than a dramatic and unexpected transformation of the types of sites cleaned up by Superfund in less than 2 years. If the administration does not give Superfund adequate resources, then the program cannot protect public health and environmental quality from the nation's most heavily contaminated toxic waste sites.

2. A Weakened Superfund Program Threatens Protection Under Other Federal And State Cleanup Programs

The success of other Federal and state programs heavily depends on the Federal Superfund program providing a credible deterrent against polluters who refuse to clean up sites under state programs. For example, politically powerful polluters may negotiate in bad faith with state clean up officials over how to conduct cleanups. With an effective Superfund program, the state officials can threaten to request that EPA clean up these sites using Superfund. This threat makes polluters negotiate in good faith with state officials.

However, Superfund is only a credible deterrent if the program has money to conduct cleanups, since EPA must spend money on a cleanup before it can sue a polluter. For example, EPA can use its Superfund authority to order a polluter to clean up its contamination. If the polluter refuses to comply with the order, EPA can spend money—if it has funds—to clean up the contamination. Thereafter, EPA can sue the polluter for up to three times the cleanup costs plus penalties. However, if EPA does not have the money to conduct clean up activities, the agency cannot sue the polluter to recover costs.

Federal cleanup officials in other programs also rely on Superfund to provide a deterrent effect on polluters. Fro example, the Resource Conservation and Recovery Act's Corrective Action Program uses the threat of a Superfund listing to spur intransigent facilities to clean up their contamination. Therefore, a crippled Superfund program will have a cascading effect that debilitates other Federal clean up programs.

Data on state programs also demonstrates that numerous states lack adequate financial resources for, and assurances of public participation in, cleaning up hazardous waste sites. A well-funded Superfund program provides a vital Federal safety net that can protect public health when states do not have the technical ability or financial means to protect communities from toxic waste sites. State officials openly acknowledge that their programs need Superfund's financial assistance, technical support, and program guidance. Therefore, reducing the effectiveness of Superfund adversely affects the ability of state programs to clean up contaminated sites.

3. The Bush Administration Should Tell The Public Which Sites May Be Affected

The Bush administration should tell the public which sites will or may be impacted by a lack of funding. The public has a right-to-know if Superfund sites in their communities may sit idle or if EPA intends to decrease the amount of oversight given to PRP clean up activities. People who have lived with the dread of a toxic waste site in their midst deserve no less than complete openness from this administration, which thus far has been lacking.

IV. SUPERFUND'S SURPLUS IS DWINDLING

Superfund's surplus, which has fueled the program's success in getting sites cleaned up since 1995, is disappearing. From a high of $3.6 billion in 1995, the last year that the Federal Government collected Superfund's polluters-pay taxes, the amount of money in the fund has steadily declined: the surplus was $860 million in 2001, $427 million in 2002, and will shirk to an expected $28 million in 2003. A large surplus is critical because it allows the administration to request and Congress to appropriate increased funds to ensure the program in protecting public health.

Without a surplus, the Bush administration has essentially three funding choices. First, they can take an increasing amount of money from taxpayers, which could jeopardize protections under other programs paid for with discretionary funds, such as drinking water and clean air act programs. The administration can continue making taxpayers pay the already exorbitant amount of $700 million per year, turning Superfund's polluter pays principle on its head and slash the pace of cleanups

even further. Alternatively, the administration can work to reauthorize Superfund's polluters-pay taxes and maintain Superfund's record of success.

Thus far, the Bush administration's response is to disavow the founding principle of the Superfund, that polluters—not innocent taxpayers—should pay to fund cleanups when EPA cannot locate polluters or when polluters refuse or do not have the funds to conduct clean up activities. This principle is largely responsible for the programs past success in cleaning up toxic waste sites. By eschewing the most direct, efficient, and common-sense approach to funding cleanups, the administration is needlessly jeopardizing Superfund's ability to clean up toxic waste sites.

1. The Bush Administration Can Easily Solve This Problem

The solution to this problem is rather simple. The Bush administration should support reauthorization of Superfund's crude oil, chemical feed stock, and the corporate environmental income taxes. Former Presidents Reagan, George H.W. Bush, and Clinton all collected and supported reauthorization of Superfund's polluter pays taxes. The taxes expired in 1995, and thereafter President Clinton urged their reauthorization. The Congress refused to work with President Clinton to reauthorize the taxes, demanding that the program first show results.

However, there is a new administration in the White House that can work more closely than its predecessor with the House. The Senate is more likely to support reauthorization if it ensures the program continues to clean up sites. Also, Supefund has demonstrated it can quickly clean up sites.

Failure to reauthorize the taxes continues a taxpayer-subsidized holiday for polluting industries. Since these taxes expired in 1995, polluters have enjoyed a $4 million a day tax holiday, totaling over $10 billion. Instead, the Bush administration has taken increasing amount of taxpayer money to fund the program: $634 million in 2001, $635 million in 2002, and a projected $700 million in 2003. This means that taxpayers, who paid about 18 percent of Superfund's costs in 1995, will pay 54 percent in 2003.

If reauthorized, these taxes will once again provide Superfund with the resources to protect communities across the Nation by cleaning up toxic wastes sites and conducting appropriate oversight activities. It will ensure that Superfund continues to provide other Federal and state cleanup programs with an unspoken, yet credible deterrent that those programs use to make intransigent polluters clean up their mess. Reauthorizing the taxes can also put back into place important disincentives on the use of products and undertaking of activities that create toxic wastes sites. Using taxes to leverage market forces for promoting good behavior and deterring bad behavior is good policy, and makes good economic sense.

2. The Bush Administration Is Threatening To Weaken Superfund's Protections

Rather than embracing these common-sense solutions, the Bush administration appears to be dragging this Nation back to a time when battles raged between industries that wanted to weaken Superfund and people who wanted to preserve its protections. The administration has stated that it opposes reauthorizing any of Superfund's polluter-pays taxes unless Superfund is "reformed". This statement sounds similar to industry's call to weaken the program by gutting its liability and clean up standards and natural resource damages provisions.

A. Superfund Has Undergone Over 30 Reforms In 8 Years

The administration's statement ignores the over 30 reforms implemented administratively and legislatively—including some of the more sweeping reforms that members on this committee drafted in 2000 and 2001, and which this administration signed into law at the beginning of 2002—over the last 8 years. Under the Small Business Liability Relief and Brownfields Revitalization Act, Congress reformed Superfund to reduce liability for small parties (including small businesses and developers), protected people and small businesses from being sued by big polluters, exempt developers of brownfields and landowners who unknowingly purchased contaminated property from liability, and expedited settlements for polluters, among other reforms. In other legislation, Congress has protected financial institutions and legitimate recyclers from Superfund liability.

Further, EPA has initiated three rounds of reform since 1995 that have transformed many aspects of the program. EPA has reformed Superfund's enforcement program to reduce litigation and expedite settlements. This includes EPA agreeing to pay 25 percent of the response costs at a site, if this does not exceed the orphan share amount, or the total past and future oversight costs, if the polluter agrees to conduct clean up operations. EPA has also reformed Superfund's clean up process, to expedite the pace of cleanups and reduce litigation. This includes EPA decreasing costs by treating only "principle threats", using institutional controls, and heavily increasing the use of natural attention. Further, EPA has streamlined the clean up

process by reducing oversight and designating one state or Federal agency as the "lead agency" to oversee clean up work at the site. EPA also uses a "risk-based" priority setting process, where the agency reviews and compares public health and ecological risks, stability and toxicity of contaminants, and economic, social, and program management considerations when deciding to list sites under Superfund. (Please note that U.S. PIRG does not necessarily endorse these reforms, including EPA's interpretation and implementation of its "principle threats" policy.)

B. The General Accounting Office Has Recognized That Superfund is Reformed

In 2001, the General Accounting Office ("GAO") removed Superfund from its list of "high priority" sites for waste and mismanagement. The GAO had originally put Superfund on this list in 1990 because the GAO did not believe that EPA was correctly prioritizing cleanups, recovering appropriate amounts of money from PRPs, and effective controlling contractor costs. However, in January 2001, the GAO stated, "Because of the progress that [EPA] has made in addressing the management problems we have identified [] we are removing our designation of high risk for the Superfund program." *GAO, High Risk Series: An Update,* 17 (2001).

C. The Administration Has Called For Reforms That The Administration Already Signed Into Law

The Bush administration has already given some examples of reforms that it desires. For example, the administration has stated that Superfund must be reformed because "it has become a haven for lawyers." However, this administration has already signed into law substantial reforms that expedite the settlement process and reduce settlement amounts, protect small parties from being sued by big polluters, and eliminate liability for contributing small amounts hazardous and solid waste, among other provision. If further reforms are undertaken, they will likely only benefit big, corporate polluters who often sued small parties in contribution claims, in an effort to discredit the program as one that hurt the "little guy".

3. By Making Polluters Pay, The Administration Can Protect Public Health

The administration's call for "reform" presents a false choice between maintaining Superfund's protections for public health and environmental quality (while losing the financial capability to vigorously enforce such protections) or reauthorizing Superfund's polluter pays taxes to fund a substantially weakened Superfund program. The public should not have to choose between maintaining protections without funding or making polluters pay their taxes while weakening clean up and liability standards. Indeed, U.S. PIRG believes that the Federal Government can and should maintain all existing protections while reauthorizing Superfund's taxes. This would also ensure that Superfund has adequate resources to pay for cleanups, which would maintain the trust and certainty between states and EPA that has developed over the years on clean up issues. It would also create disincentives for the use of products and undertaking of activities that are environmentally harmful, while also increasing funds for programs that protect public health and environmental quality.

V. EPA SHOULD BE WARY OF REFORMS THAT MAY INCREASE COSTS AND WEAKEN PROTECTIONS

There are a number of reports that EPA is considering various reforms to Superfund that may ultimately cost the program more money that it saves, and which may weaken protections for public health, environmental quality, and public participation in the clean up process. For example, EPA may consider creating a new administrative program for mining and contaminated sediment sites, a waiver of liability in conjunction with insurance policies that provide a finite amount of long-term funding, and consent decrees that may usurp Superfund's Congressional mandated prioritization process for cleaning up toxic waste sites. Rather than attempting to get around Superfund's process for cleaning up sites and making polluters pay, EPA should work to vigorously apply these tools at these sites. This would maintain an equal level of protection for communities who live near or on Superfund sites, while ensuring that EPA does not send the wrong signal by weakening Superfund's liability provisions and clean up standards for polluters who create the biggest problems.

1. A New Administrative Program Could Weaken Protections

EPA may be considering the creation of a new administrative program for contaminated sediment sites and mining sites. While the contours of this program are not yet clear, the potential ramifications of this action are disturbing. For example, at contaminated sediment sites, EPA may choose to create a new program that does

not have apply Superfund's liability or clean up standards. It is conceivable that such this administration may chose to emphasize cooperative and voluntary clean up agreements with polluters under such a program. Further, it may also choose to grants waivers of liability for participating in the voluntary program. In these instances, if clean up costs are greater than expected, taxpayers could ultimately pay to clean up these large mega-sites. Further, since many of these agreements would like be negotiated between EPA and the polluters, the public may lose Superfund's provisions that ensure the local community has the ability to affect the clean up plans.

If the agency is concerned about big polluters dragging small parties into litigation at contaminated sediments sites, then the agency should use its recently enacted authority to exempt small parties from such litigation. If the agency is concerned about PRPs absconding with assets oversees, then the agency should use existing law to put a stop to such practices. If the agency is concerned about the large number of bankrupt PRPs at mining sites, then as a true advocate for the program, it should push for increased funding, paid for by polluting industries associated with the activities and products that cause toxic waste sites.

2. EPA's Use Of Insurance Policies And Liability Waivers At Mining Sites Could Leave Taxpayers Paying For Perpetual Clean Up Activities

In October 2000, EPA agreed to let Aventis CropSciences USA (Aventis) invest a sum of money with an insurance company to pay for clean up and operation and maintenance activities at the Iron Mountain Mine Superfund site, rather than paying for the upfront costs of the cleanup. Aventis agreed to pay $164 million AIG insurance company $80 million to invest, and which AIG expects will provide funding in the hundreds of millions of dollars over the next 30 years. Aventis also gave AIG a $64 million balloon payment, which AIG expects will provide $514 million for operation and maintenance costs beginning in 2030. Aventis also paid EPA $8 million and the trustees $10 million. In return, EPA released Aventis from liability for future costs overruns and waived $150 million in past costs. Aventis will only be liable if there is a shortfall in expected returns.

There is nothing intrinsically inappropriate with allowing PRPs to give insurance companies money to invest, and which EPA, states, or PRPs can later use for costs associated with a cleanup. However, a PRP already derives a tremendous benefit from such an agreement, since the party only pays a percentage of the actual expected costs. There is no reason for EPA to sweeten the pot by eliminating the polluter's liability and transferring it to innocent taxpayers or, assuming Superfund's polluters-pays taxes are reauthorized, using trust fund resources that should go to clean up sites where EPA cannot locate any PRPs or polluters refuses to clean up their contamination.

EPA should allow the funding mechanism, but not waive future liability. The financial markets and corporate America have been rocked by too many scandals. Insurance companies can over commit their resources to one particular industry or geographic region. In these instances, a crash in the price of a commodity or an earthquake or hurricane can seriously undermine an insurance company's financial stability. Alternatively, insurance companies can get caught in reinsurance schemes, where the bankruptcy of one institution can weaken many others. This combined with the fact that acid mine drainage can get worse over time and may require perpetual treatment means that taxpayers may have to pay for the costly and perpetual treatment of mining sites that use this funding scheme. EPA should not willfully strap taxpayers with the potentially huge cost burdens associated with these types of sites by waiving a polluter's liability.

3. EPA Should Not Enter Into Consent Decrees And Use NPL-Caliber Designations That Weaken Protections

EPA recently entered into a consent decree with Monsanto and Solutia that could seriously undercut local citizens' efforts to make these PRPs clean up PCB contamination in Anniston, AL. It may also usurp Congress's prioritization scheme embodied in the National Priorities List. EPA should try to avoid both of these results.

After years of inaction by state clean up officials, EPA appropriately stepped in to oversee future clean up operations in Anniston. However, EPA chose to file a consent decree that may jeopardize a suit brought by citizens against Monsanto and Solutia. Citizens in Anniston were successfully prosecuting a suit seeking compensation for health and environmental damage left behind by the company's production of PCBs. As part of the damages phase of this suit, the citizens could have asked for a variety of remedies that would have addressed community concerns about irregularities and inadequacies of past testing, the establishment of a community health center, and clean up of the site under the protections afforded by the Super-

fund program. Instead, EPA's consent decree may actually provide Monsanto/Solutia with an opportunity to argue that the citizens have no right to many of these remedies.

This type of consent decree could be used to frustrate common law claims brought by citizens against polluters at other sites. EPA should take some common sense steps to ensure this does not occur. First, EPA should always act to expeditiously protect public health. However, where citizens are pursuing a private cause of action that could result in a desired cleanup, and EPA retains the right to order a future clean up if the initial work is inadequate, then the agency should consider allowing the community's litigation to run its course. Alternatively, the agency should, at a minimum, work with the affected community to ensure that their concerns are addressed in any consent decree.

Thank you very much for the opportunity to present testimony on these important issues.

RESPONSES BY GRANT COPE TO ADDITIONAL QUESTIONS

Question 1. Please provide supporting information for the statement in your testimony that "the administration has under funded the Superfund program by $1 to $1.4 billion from 2001 to 2003."

Response. I derived these figures from comparing actual (2001 and 2002) and projected (2003) amounts that the budget authorized for the Superfund program, against Resources For the Future's "baseline" and "high" estimates of the program's financial needs for the same time period. RFF's estimates are contained in the book, *Superfund's Future: What Will It Cost*?

Question 2. Did all of the companies that paid the four Superfund taxes "pollute"? Are they all directly responsible for Superfund sites?

Response. Conservatives and liberals alike both agree that taxes can be an exemplary tool for creating disincentives or incentives for particular activities that benefit or harm society. To this end,

Congress structured Superfund's polluter pays taxes to focus on those polluting activities, corporations, and products that are closely associated with contamination at toxic waste sites. These taxes create a disincentive on the use of products or undertaking of activities that are associated with the creation of future toxic waste sites. They also shift the market to the use of more environmentally safe alternatives, while potentially saving society money on future cleanups, reducing incidents of adverse health effects, and creating new industries and products that benefit economic growth and the environment.

Congress created three polluter-pays taxes: (1) Chemical Feedstock Tax; (2) Petroleum Tax; and (3) Corporate Environmental Income Tax.

Chemical Feedstock Tax.—Congress created Superfund's Chemical Feedstock Tax by surveying the types of chemicals that often appeared at toxic waste sites, and then taxing those chemicals, or their precursors, to create a disincentive for the use of those chemicals. Specifically, Congress taxed the purchase of 42 toxic chemicals associated with dangerous substances at toxic waste sites. The amount of tax ranged from $0.22 to $4.87 per ton, except xylene, which was taxed at $10.13 per ton. Also, this tax exempted certain chemicals when used for certain purposes (e.g. methane and butane when used for fuel) or when produced in certain ways (e.g. any listed chemicals derived from coal).

If Congress reauthorized Superfund's polluter pays taxes, it would apply to chemicals found in 13 out of the 20 most dangerous substances at Superfund sites. The Federal Government has already banned six other chemicals found in the 20 most dangerous substances at Superfund sites. These facts demonstrate that reauthorization of Superfund's polluter pays taxes would create disincentives for the use of dangerous products that are associated with the creation of the nation's worst toxic waste sites.

Petroleum Tax.—Congress created Superfund's Petroleum Tax through a political compromise. The oil industry is one of the most polluting industries on the planet. Each year, there are at least 14,000 oil spills in the United States. The oil industry got exempted from liability for most types of oil contamination at Superfund sites, and in return Congress places a moderate tax on the purchase of oil (9.7 cent per barrel). Since the tax expired, oil companies have little liability for their contamination, and polluting industries that use oil have enjoyed a tax holiday.

Corporate Environmental Income Tax.—Congress created the Corporate Environmental Income Tax to shift costs on some large corporations that earned over $2 million a year. Specifically, Congress created taxes at a rate of 0.12 percent on taxable profits in excess of $2,000,000. If Congress reauthorized this tax, corporations

in the manufacturing industrial sector (e.g. chemical and allied products, petroleum and coal products, electrical and electronic equipment) and mining sectors would pay about 41 percent of the tax. Similarly, these sectors are responsible for about 43 percent of all Superfund sites.

Superfund's polluter pays taxes expired in 1995. Since then, polluters have enjoyed a $4 million a day tax holiday, totaling $10 billion. Superfund's reserves have dwindled from a high of $3.6 billion, to an expected $28 million in 2003. EPA uses these reserves, as requested by the President and appropriated by Congress, to clean up contamination when polluters refuse to clean up their contamination, are bankrupt or cannot be located.

Without these funds, taxpayers—not polluting industries and activities—will pay an increasing amount to cleanup the nation's worst toxic waste sites. This means, rather than spending money on maintaining or increasing protections for clean air or drinking water, or ensuring the long-term financial stability of our nation's Social Security Trust Fund or Medicare programs, the government will use this money to subsidize a tax holiday for polluters. At the same time, the government is failing to use the market to apply accepted methods of creating disincentives for activities that harm public health and which, conversely, create incentives for the use of safer alternatives.

STATEMENT OF MICHAEL W. STEINBERG ON BEHALF OF THE SUPERFUND SETTLEMENTS PROJECT

EXECUTIVE SUMMARY

Status of Superfund Program.—Superfund today is a mature program that has largely accomplished its goals. Private parties are cleaning up most of the sites on the NPL and paying the full cost of those cleanups. Superfund has also addressed most of its original workload; construction of the remedy has already been completed at most of the sites on the NPL.

Pace of Cleanups.—Ironically, Superfund's accomplishments have given rise to a concern that cleanups may be slowing down. *But cleanups are not slowing down.* Instead, Superfund is working on the remaining sites, which include some of the largest, most complex, and most challenging NPL sites. For example, *construction has been completed at roughly 75 percent of the non-Federal NPL sites, but at just 20 percent of the Federal facility NPL sites.* Selecting, designing, and constructing remedies at these Federal facility sites takes longer for a variety of reasons, including the technical challenges they pose.

The NPL Should Become the Tool of Last Resort.—Looking ahead, we confront many thousands of sites perceived to be impacted by contamination, most of which either are being addressed by increasingly robust State programs or else pose no immediate risk to human health or the environment. There is no reason to "make a Federal case" out of these sites. Instead, NPL listing should be the tool of last resort, reserved for sites that:

(1) are severely contaminated;
(2) pose severe risks; and
(3) have no near-term prospect of cleanup by responsible private parties.

Most Large Mining Sites and Sediment Sites Do Not Belong on the NPL.—These two types of sites differ greatly from the type of site that the Superfund process was designed to handle. To date, there has been no Congressional or societal debate about whether the Superfund program—or indeed any other Federal program—should attempt to handle these extremely large and complex sites, which may prove to be so costly that the risks and benefits involved would not warrant such expenditures.

Removal Actions Should Be Limited to "Emergencies."—EPA spends about $250 MM/yr on removal actions, 75 percent of which do not involve "emergencies" of any kind. The removal program should be refocused to its original purpose.

INTRODUCTION

The Superfund Settlements Project appreciates the opportunity to share with the Subcommittee some perspectives on the status and future of the modern Superfund program. The Superfund Settlements Project is a not-for-profit association of nine major companies from various sectors of American industry.[1] It was organized in

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[1] The current members of the Superfund Settlements Project are Ciba Specialty Chemicals Corporation, E.I. duPont de Nemours & Co., Inc., [CHECK SPELLING!!] General Electric Com-

1987 in order to help improve the effectiveness of the Superfund program by encouraging settlements, streamlining the settlement process, and reducing transaction costs for all concerned.

The members of the Superfund Settlements Project share an extraordinary degree of practical, hands-on experience with the Superfund program. These companies have been involved at hundreds of Superfund sites across the country over the last 20 years. Representatives of the Superfund Settlements Project have testified before Congress on numerous occasions regarding various aspects of the Superfund program. The Superfund Settlements Project has also played an active leadership role in the national policy debate over many Superfund issues, and has been a strong supporter of EPA's Superfund Administrative Reforms since they were first announced in 1995.[2]

Collectively, these nine companies have paid out well over *two billion dollars* in site cleanup and site study costs since 1980. They have also paid out hundreds of millions of dollars more in dedicated Federal Superfund taxes paid during the first 15 years of the program's life. These payments far exceed any fair or equitable measure of their responsibility for the contamination at these sites.

The Superfund Settlements Project regards Superfund as a mature program that has largely accomplished its goals (albeit at a cost that was not always justified by the risks being addressed). The gaps in environmental regulatory programs that led to the creation of many Superfund sites have been filled. Today, private parties are cleaning up most of the sites on the National Priorities List ("NPL"), and they are paying the full cost of those cleanups. The Superfund Trust Fund is paying for cleanups at the "orphan" sites where no responsible party exists.[3]

Superfund has also largely addressed its original workload. Significantly, construction of the remedy has already been completed at most of the sites on the NPL. Ironically, this progress has given rise to a concern that cleanups may be slowing down. *But cleanups are not slowing down.* Instead, Superfund is working on the remaining sites, which include some of the largest, most complex, and most challenging NPL sites.

For example, *construction has been completed at roughly 75 percent of the non-Federal NPL sites, but at just 20 percent of the Federal facility NPL sites.* Selecting, designing, and constructing remedies at these sites takes longer due to the technical challenges they pose.

In the body of this statement, we address several key aspects of the Superfund program's past, present, and future. First, we describe the evolving partnership between EPA and industry that has enabled the program to achieve successes, particularly since the announcement of the administrative reforms in October 1995.

Second, we address more fully the concern about the current pace of cleanups. In this discussion, we explain why the number of "construction complete" sites is tapering off and why this does not represent a slowdown in the pace of the cleanup program.

Third, we focus on the future scope of the NPL, proposing that it be "the tool of last resort," to be used only for sites that meet the relevant criteria.

Fourth, we briefly discuss the reasons why large mining sites and contaminated sediment sites, in particular, typically do *not* belong on the NPL.

Fifth, we show how, despite the passage of recent brownfields legislation, Superfund remains a major impediment to the goal of restoring contaminated sites to productive use.

Sixth, and last, we propose refocusing the removal action program so that it will serve its original intended purpose—addressing "emergency" threats to human health or the environment.

I. SUPERFUND TODAY REPRESENTS A HIGHLY SUCCESSFUL PARTNERSHIP BETWEEN EPA AND INDUSTRY

Although the Superfund program has generated extraordinary levels of controversy and criticism, EPA has, over time, developed institutional capability and

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pany, General Motors Corporation, Honeywell International Inc., IBM Corporation, Solutia Inc., United Technologies Corporation, and Waste Management, Inc.

[2] In addition, members of the Superfund Settlements Project are also active members of other organizations analyzing the Superfund program, including the Superfund Action Alliance, the American Chemistry Council, the Business Roundtable, and the National Association of Manufacturers.

[3] This includes "orphan" sites where the responsible party is insolvent, or has been exempted from liability by Congress. The Trust Fund is also paying for general informational and outreach programs such as technical assistance to community groups, research and development, remedial and brownfields policy development, and public participation.

expertise, solved problems, improved relationships, and ultimately established a program that operates relatively effectively and performs a critical function in society. Tens of thousands of contaminated sites have been evaluated, short-term removal actions have been taken at several thousand of those sites, longer term remedial actions have been completed at most of the non-Federal sites on the National Priorities List, and construction is underway at most of other NPL sites, which are among the most severely contaminated sites.

Superfund, a topic of intense public concern—once dominated by controversy and emotion—has fundamentally achieved its objectives and accordingly has receded in the public focus. Today a general public recognition exists that the actions which should be taken now are being taken.

In the process and in recent years, EPA has also worked to improve relationships with PRPs and has minimized its previously confrontational approach to private parties. For the most part, there now exists an atmosphere of cooperation and mutual respect. EPA should be commended for its accomplishments in this field.

It should also be recognized that industry has made major contributions to the success of this program. Perhaps unfairly, industry initially bore the brunt of criticism for past disposal practices that in essence reflected the values and scientific knowledge of society in an earlier era. Stung by such criticism and offended by a liability system that many regarded as totally unfair, much of industry initially protested and resisted the obligations imposed on it by the Superfund statute.

By the mid to late 1980's, however, those attitudes had changed, and most national corporations accepted the imperative that they must participate constructively in addressing this national problem. At site after site across the country, those companies rose to the challenge. They organized PRP groups, established committees within those groups, investigated the conditions of contamination, and developed action proposals. Once EPA selected the remedies, those companies carried out remedial actions, and today they are managing long-term operation and maintenance at most sites. They provided the leadership, the technical resources, and the funding to perform required work at an ever-increasing percentage of contaminated sites. That percentage is now greater than 70 percent of NPL sites.

Welcoming the more cooperative spirit that EPA has demonstrated since adoption of the administrative reforms in 1995, those companies have themselves taken pride in the results of this program. They have earned the right to be regarded as constructive partners in the achievement of success under Superfund. They will continue to be constructive partners in addressing other sites through other cleanup programs.

II. SUPERFUND IS MAKING RAPID PROGRESS ON CLEANING UP THE NPL

Specifically, in the years since 1995, Superfund has achieved levels of operational progress and public acceptance it had never before experienced. Much of the credit for that improvement is attributable to the set of administrative reforms announced by EPA in October 1995, which reduced the elements of confrontation between the government and PRPs and achieved a number of specific improvements in program management. In addition, building on past experience and accomplishment, EPA made solid progress each year in moving sites on the NPL into remedial construction and bringing sites to construction completion.

Today, Superfund can point to a remarkable 810 sites where construction of the remedy is already complete, and another 400 or so where construction is underway. The vast majority of these cleanups were conducted and paid for by private parties. What does this means in practical terms? It means two things.

First, it means that the great majority of NPL sites either already have remedies in place, or are well on their way toward that status.

Second, and equally important, it means that if we measure progress solely in terms of the number of "construction complete" sites achieved in each fiscal year, then we will see an apparent tapering off in the rate of progress from this point forward. There are fewer sites available each year for "construction completion," of course, and, more importantly, those that remain are among the largest, most complex, and most challenging sites of all.

This apparent tapering off does not represent a real-world slow-down in the pace of cleanup. Instead, it reflects the fact that *Superfund, having addressed most of its original workload, must now focus on those sites that remain.* The nature of these sites makes it inherently more difficult—and thus more time-consuming—to select, design, and construct remedies.

A good example of this phenomenon is the roughly 140 Federal facility NPL sites at which construction has not yet been completed. By far the largest and most threatening sites in the country are those created by the Federal Government,

mainly the U.S. Department of Energy and the U.S. Department of Defense.[4] Thus, Federal facilities comprise 13 percent of the total sites listed on the NPL, but a much lower percentage of the "construction complete" sites. *Today, construction is complete at nearly 75 percent of the non-Federal NPL sites, but only 20 percent of the Federal facility NPL sites.*

Many of these Federal facility NPL sites are particularly challenging to remediate for one or more of the following reasons:

(1) they are very large, sometimes extremely large;

(2) they contain numerous distinct operable units;

(3) they have ongoing public missions that cannot easily be disrupted by site study or cleanup activities; and

(4) they are remediated with funds from the DOD or DOE budgets.

These unique features of Federal facility NPL sites help explain why only 20 percent of them have reached the "construction complete" stage to date. It also explains why, going forward, these sites will not reach that stage as quickly as many of the non-Federal NPL sites addressed in earlier years.

In sum, Superfund has made remarkable progress in cleaning up the NPL. The sites that remain will likely take somewhat longer to complete than the sites already completed. This should be viewed as an indicator of progress made, *not* as a sign that the pace of cleanup, or the commitment to cleanup, is waning.

III. THE NPL SHOULD BE "THE TOOL OF LAST RESORT" FOR ADDRESSING CONTAMINATED SITES

Based on 20 years' worth of experience with Superfund, it is also timely to reconsider the purpose and scope of the NPL itself. Indeed, this is one of the specific recommendations made by Resources for the Future in its July 2001 report to Congress. In response to that recommendation, EPA has already taken steps to convene a broad-based dialog on this subject, with a new NACEPT subcommittee likely to begin meeting in the very near future.

In thinking about the purpose and scope of the NPL, it is helpful to bear in mind the lessons learned during the past 20 years in three main areas:

(1) the universe of contaminated sites;

(2) the alternatives available for addressing those sites; and

(3) the strengths and weaknesses of the Superfund program.

We address each of these points below, before presenting our specific proposal on the future role of the NPL.

First, experience has dramatically changed our knowledge about the number and character of contaminated sites throughout the country, as well as the risks associated with them. Rather than having only a few hundred of sites, each of which was initially believed to pose severe threats to public health, it now is clear that we have a great many contaminated sites, most of which pose relatively small risks. For example, one EPA count of potential Brownfield sites indicated over 600,000 sites perceived to be impacted by contamination, the great majority of which either are being addressed through State programs or pose no severe or immediate risk to human health or to the environment. These factors mean that contaminated sites should be managed by leveraging all appropriate private and public resources. The framework for response should emphasize state, local, and private efforts, rather than "making a Federal case" out of each site.

Second, the choices available to society to address contaminated sites are far greater today than the situation that existed when Superfund was enacted in 1980. Virtually all states have developed strong regulatory programs to control such sites. Most states also have developed their own "mini-Superfund" programs and voluntary cleanup programs that have achieved success. In addition, at the Federal level, EPA's RCRA corrective action program now governs operating facilities, and another program (UST) covers underground storage tanks.

Third, Superfund's strengths and weaknesses as a cleanup program can now be seen far more clearly with the benefit of 20 years' worth of experience. As to its *strengths,* Superfund has focused attention on the need to remediate sites contaminated as a result of the inadequacies of pre-1980 disposal requirements. It has galvanized cleanup efforts, and it has achieved cleanups at most of the nearly 1,500 sites listed on the NPL. Superfund has also performed thousands of successful removal actions, most of them at non-NPL sites.

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[4] Superfund policy debate tends to focus on the sites associated with private industry, especially because Superfund dollars are not used to clean up the federally owned DOD or DOE sites. But in evaluating both problems and successes, we should not forget the huge involvement by government on both sides of this program.

As to its *weaknesses,* Superfund has attached a lasting stigma to those sites and to some of the communities that surround them. In many cases, Superfund has also imposed excessive operational, legal, and financial restrictions on these sites that will interfere with their future reuse or redevelopment. Moreover, the cost at which Superfund has achieved results—over $30 billion in EPA appropriations alone since 1980, and at least $30 billion more in private sector spending—is widely viewed as far higher than necessary or justified in light of the risks being addressed.

In hindsight, at least, it seems clear that many of the sites addressed under Superfund never presented major risks to human health or the environment.[5] Instead, sites were listed or targeted based on fairly crude assessments of their potential threats. Once a site is listed or targeted under Superfund, however, the focus shifts from potential risk to "cleanup." Instead of focusing on risk reduction, where the program has actually achieved dramatic results, Superfund has tended to focus on "cleanup," where progress is much slower and closure is maddeningly elusive. Ironically, this focus on "cleanup" often delays or limits the reduction of risk that should be Superfund's principal objective.

In light of this experience, it is clear that the Superfund NPL must be regarded as just one tool among many to address the full range of contaminated sites. In fact, the NPL should be *the tool of last resort*—a tool that because of its unique nature should only be used in those rare situations that require such a high-cost, inefficient mechanism. EPA itself adopted this term—"the tool of last resort"—as its unofficial policy some years ago, but EPA has failed to change its actual decisionmaking in any concrete way to reflect this policy.

The special circumstances that might warrant use of the Superfund NPL as "the tool of last resort" might include sites that:

(1) are severely contaminated;

(2) pose immediate or severe risks; and

(3) have no near-term prospect of cleanup by responsible private parties.

Some so-called "mega sites," such as large mining sites and sediment sites, might meet these criteria, but not simply because of their size. Many, perhaps most, "mega sites" simply do not belong on the NPL. In fact, their very complexity and potential huge cost make them presumptively unsuited for NPL listing, as we discuss below.

Apart from those sites that meet the above criteria for NPL listing, nearly all other sites should be managed under whatever other programs are most appropriate for them. This would include the RCRA corrective action program as well as the full range of state cleanup programs. If those other programs are viewed as deficient in some respects, then they should be improved rather than shifting sites to Superfund and thereby removing the incentive to remedy the shortcomings of those programs.

It is fully expected that private industry will continue to perform and fund cleanups, either individually or in conjunction with regulatory agencies, at sites they have contaminated. The point here is simply that Superfund is not the proper mechanism to address these sites.

The implementation of this "tool of last resort" approach would require only modest changes to current EPA policy and practice. EPA should continue to treat the Superfund NPL the tool of last resort. To that end, EPA should identify in each new proposed NPL listing which other cleanup programs or approaches it has considered, why it believes such other programs or approaches are not suitable, and what it hopes to achieve through listing on the NPL. The Office of Emergency and Remedial Response at EPA Headquarters should carefully review these findings before it concurs with a proposed NPL listing. These issues should also be explored during the public comment period on proposed new NPL listings.

Finally, it would be consistent with the above to implement this approach with regard to NPL delistings or deletions, not just NPL listings. This raises some additional complications, and careful thought would be needed as to practical aspects of changing the current criteria for NPL deletion. The core idea is that if the studies and cleanup work performed at an NPL site have brought it to the point where the remaining risk would no longer justify application of "the tool of last resort," then EPA should find a way to remove that site from the NPL so it can be addressed in a more appropriate way. Whatever the criteria for NPL listing, it makes little sense to keep a site in the NPL universe once it no longer meets those criteria.

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[5] *See, e.g.,* U.S. General Accounting Office, *Environmental Protection—Meeting Public Expectations With Limited Resources* 17–18 (1991) (GAO/RCED–91–97) (risks from contaminated sites ranked relatively low by EPA scientists, but relatively high by the public).

IV. MOST LARGE MINING SITES AND MOST SEDIMENT SITES DO NOT BELONG ON THE NPL

A special case of the NPL listing issue discussed above involves the large mining sites and sediment sites that make up many of what are now called "mega sites" due to the extraordinarily high cost of cleaning them up under Superfund. Like any other sites, they should not be listed on the NPL unless they meet the criteria described above. In addition, however, these two types of sites present some unique features that warrant a presumption against adding them to the NPL. We summarize below some of those distinctive features.

First, these sites are very different from the type of site that Superfund was intended to address. Unlike abandoned disposal sites and drum burial sites, there has never been a public debate about whether large mining sites or sediment sites belong in the Superfund program. Nor has Congress ever indicated its view as to whether the Federal Government should assume responsibility for these sites or whether they would be properly addressed through the Superfund approach.

Second, in the case of large mining sites, we are looking at the legacy of a domestic industry that has been economically devastated. Many large mining sites will therefore be orphan sites. Their cleanup costs will be staggeringly high, and those costs will be paid by the Trust Fund if these sites are added to the NPL. At a minimum, it would be fiscally prudent to explore alternative options for addressing these sites before seizing on the Superfund program as a vehicle for obtaining cleanups. It would also be appropriate to consider ways in which the industry responsible for creating these sites can absorb as large a share of the costs as possible.

Third, in the case of sediment sites, the question of how to deal with contaminated sediments in rivers, harbors, and estuaries remains a daunting challenge.[6] EPA is beginning to recognize that dredging is not the solution for all instances of contaminated sediments. Unfortunately, dredging remedies are being selected at certain locations but without any clear policy rationale as to their selection.

The implications of starting down this path are staggering. Virtually every industrialized river system in this country could trigger remediation if overly stringent criteria were to be applied. However, given the limitations of existing dredging technology, these remedial efforts may cause more damage than allowing natural processes to address the contamination.

Society presently faces the prospect of enormous disparities in treatment between sediment sites that are subjected to dredging action and those that are not. Ironically, municipalities are among the larger sources at many sediment sites. Along with much of private industry, these cities and towns will face the prospect of sharing in the extreme costs of dredging remedies. These potentially responsible parties will have little choice but to seek judicial review of these ad hoc remedies, and the courts should be able to hear such challenges (on an expedited basis, so that cleanup is not delayed).

In sum, most large mining sites and most sediment sites presumptively should not be listed on the NPL.

V. THE KEY OBJECTIVE IS TO RETURN LAND TO PRODUCTIVE USE

In recent years, it has been increasingly recognized that a major objective of programs addressing contaminated sites must be to achieve the return of such property to productive use in society. Particularly in areas of historical industrial development where major sections of urban and metropolitan areas were long devoted to industrial operations, it is unacceptable to leave those properties sealed off and consigned to "warehouse" status simply because the costs of remediation of such areas would exceed their market value after remediation. The prevalence of such areas, commonly referred to as "brownfields," has driven policy debate to confront difficult realities of the tension between goals of restoration to original background purity and goals of returning land to productive use after effective controls have been achieved to prevent risks to health.

During the past 5 years, increasing attention has been placed on returning contaminated sites to productive use. Often that has involved redevelopment for industrial or commercial purposes, while other sites have been converted to recreational use or wildlife preservation. Such constructive accomplishment may easily be precluded by unrealistic requirements as to acceptable levels of concentration that must be achieved before reuse will be permitted. That risk would be exacerbated if these

[6] The issue is further complicated by the fact that sediment sites, unlike most Superfund sites, typically involve both (1) continuing movement of contamination into the area being remediated and (2) continuing expectation of public use and/or access to the area for recreational or commercial purposes.

sites were addressed under Superfund. *The unwillingness of EPA and the Department of Justice to support state decisions on brownfields by withdrawing the threat of future Superfund action is a serious deterrent to many projects.*

An intensive bipartisan effort to address these problems resulted in the Brownfields Revitalization and Environmental Restoration Act of 2001, Pub. L. No. 107–118, which is an important first step. But Superfund—particularly the fear of EPA second-guessing state cleanup decisions—remains an enormous obstacle to redevelopment at many brownfields sites around the country. EPA and the Department of Justice should seriously reassess their policies on waiving Superfund claims at sites cleaned up under state programs. Incentives also must be provided to owners of contaminated property, analogous to those currently authorized for purchasers of contaminated property, in order for the full potential brownfields programs to be achieved.

VI. THE REMOVAL ACTION PROGRAM SHOULD BE REFOCUSED IN ORDER TO ADDRESS ITS ORIGINAL INTENDED PURPOSE.

The Superfund removal action program poses somewhat different issues. The true emergencies it was originally meant to address now account for only one-fourth of all removals. The other three-fourths consist of so-called "time-critical" actions, where EPA believes work should be commenced within a period of 6 months, and even "non-time-critical" actions. For example, of the 2,440 removal actions commenced during the period from fiscal year 1992 through fiscal year 1999, a total of 1,892 (77.5 percent) were either "time-critical" or "non-time-critical" actions.[7]

Many of these non-emergency actions are undoubtedly beneficial. But it is unclear why a continuing $250 MM/yr Federal program is needed to perform primarily non-emergency removal actions. Instead, Superfund removal actions should be limited to those contaminated sites, orphan or otherwise, that need immediate action to avert an actual health or environmental emergency.

The idea here is not to bog down in endless debate about the precise contours of the term "emergency." Rather, the idea is to limit the removal program to sites that present an "emergency" under some reasonable definition of that term. Most Superfund removal actions today, by EPA's own definition, simply do not involve "emergencies" in any sense of the term. Accordingly, the removal program should be narrowed in order to refocus on its original intended purpose. EPA can accomplish this change as a matter of policy, without the need for any legislative action or any protracted rulemaking.

RESPONSES BY MICHAEL W. STEINBERG TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. How can we change Superfund to make the program more successful and efficient in cleaning up superfund sites?

Response. There are a number of changes that would make Superfund more successful and efficient. This letter focuses primarily on two: First, the NPL should be recognized as "the tool of last resort" for addressing contaminated sites. Second, the removal action program should be refocused to address the emergency situations for which it was originally intended. In addition, EPA should take several other important actions to improve the program; this letter presents those other reforms below in summary fashion.

A. *The NPL Should Be the Tool of Last Resort.* Although hundreds of sites on the NPL have been and are being cleaned up, Superfund has attached a lasting stigma to many of those sites and to some of the communities that surround them. In many cases, Superfund also has imposed excessive operational, legal, and financial restrictions on these NPL sites that will interfere with their future reuse or redevelopment. Moreover, the cost at which Superfund has achieved results—over $30 billion in EPA appropriations alone since 1980, and at least $30 billion more in private sector spending—is far higher than necessary or justified in light of the risks being addressed.

Looking ahead, Superfund is a poor choice for the government to rely upon to clean up future sites, other than in truly exceptional cases. NPL listing should be the tool of last resort—a tool that should only be used in those rare situations that require a high-cost, inefficient mechanism. EPA itself adopted this term—"the tool of last resort"—as its unofficial policy some years ago, but EPA has failed to change its actual decisionmaking in any concrete way to reflect this policy.

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[7] Probst et al., *Superfund's Future—What Will It Cost?* at 25, Table 2–4 (2001).

The special circumstances that warrant use of the Superfund NPL as "the tool of last resort" include sites that:

(1) are severely contaminated; and

(2) pose severe risks; and

(3) have no near-term prospect of cleanup being initiated by responsible parties.

Apart from sites that meet these three criteria for NPL listing, nearly all other sites should be managed under other appropriate programs, such as the RCRA corrective action program and the full range of state cleanup programs. Under those programs, responsible parties will continue to perform and fund cleanups, either individually or in conjunction with regulatory agencies, at sites they have contaminated. It is not necessary to resort to an NPL listing to secure the cleanup of these sites.

B. *The Removal Program Should Be Refocused to Its Original Intended Purpose.* The removal action program should be refocused. The true emergencies it was originally meant to address, such as the recent decontamination of the Hart Senate Office Building, today account for just one-fourth of all removals. The other three-fourths consist of so-called "time-critical" actions, where EPA seeks to have work commence within 6 months, and even "non-time-critical" actions. Of the 2,440 removal actions commenced during the period from fiscal year 1992 through fiscal year 1999, a total of 1,892 (77.5 percent) were non-emergency situations.

It is unclear why a continuing $250 MM/yr Federal program is needed to perform primarily non-emergency removal actions. Instead, Superfund removal actions should be limited to those contaminated sites, orphan or otherwise, that need immediate action to avert a significant health or environmental emergency.

C. *Other Reforms.* Beyond the two points described above, a number of other reforms would also help to make Superfund faster, fairer, and more efficient. We present several of these reforms here in summary fashion:

- EPA should strengthen the effectiveness and authority of the National Remedy Review Board by (1) giving responsible parties a fair opportunity to participate in the process, (2) allowing non-EPA technical experts from states, local governments, NGO's, and the private sector to present their views, and (3) requiring the EPA Regions to implement the Board's recommendations or else explain publicly why they will not do so;
- EPA should extend to all NPL sites its strategy for optimizing ground water pump-and-treat remedies, which is currently limited to Fund-lead sites;
- EPA should follow through on its 1995 commitment to reduce oversight activities, establish clear criteria to determine what level of oversight is needed, and devise an accounting system to track oversight costs at specific sites in real time;
- EPA should strengthen its 1995 orphan share funding reform by removing the arbitrary 25 percent "cap" it adopted on an interim basis in 1996;
- EPA should develop practical ground rules for using funds in site-specific accounts as incentives to reward responsible parties who perform cleanups and incur costs far in excess of their own fair shares of liability; and
- EPA should use its new authority under the Small Business Liability Relief and Brownfields Revitalization Act to (1) provide sellers of contaminated property with appropriate and practical relief from liability and (2) construe broadly the universe of "eligible response sites" that will benefit from the finality provisions in the new Act.

Question 2. What is your view on renewal of the Superfund tax?

Response. The SSP strongly opposes any effort to re-impose the Superfund tax, for many reasons.

First, it is important to recognize that the Superfund tax itself has little or nothing to do with the pace of the cleanup program. The pace of cleanup is determined primarily by the annual appropriation for Superfund. This amount has remained remarkably constant (at about $1.4 billion) over the past 10 years, regardless of how much money was in the Trust Fund at any given time, and regardless of whether the Superfund tax was in effect. In other words, imposing the tax *per se* does nothing to maintain or increase the pace of cleanup.

Second, the financial health of the Superfund program is actually better than one might think. Over and above the hundreds of millions of dollars remaining in the Trust Fund today, EPA has nearly $1 billion parked in site-specific accounts at hundreds of Superfund sites.[1] EPA can spend that money at its own discretion to clean up those sites, without further appropriation by Congress. In addition, the Trust Fund typically takes in several hundred million dollars each year from (1) cost re-

[1] These funds are often overlooked, perhaps because the special site accounts have not been widely publicized.

coveries from PRPs, (2) collections from other Federal agencies for services rendered, (3) interest earned on investments, and (4) several other categories of recurring collections.

Third, most new cleanups—about 70 percent of them—are performed and paid for by private parties, not by EPA. This is not at all what Congress expected when it levied the tax to finance cleanups that would be performed by EPA. Currently, EPA spends only about half of its annual Superfund appropriation on cleanup. The rest is spent on other things, including administration, management, research, and grants. Virtually all other Federal programs (including all EPA programs other than Superfund) receive money from general revenues to pay for their administration, management, research, and grants.

Fourth, the Superfund program has addressed most of its original workload and accomplished the major part of its mission. In addition, EPA will soon convene a Superfund Subcommittee under the National Advisory Committee for Environment, Policy, and Technology ("NACEPT") to deliberate on "fundamental issues related to the future of Superfund," including the role and scope of the NPL.[2] Thus, although work is ongoing and will be for some time, a massive infusion of new funds for the program is unnecessary and inappropriate. It also would encourage "mission creep" in a program justly famous for its inefficiency and poor cost control.

Fifth, the companies targeted by the Superfund tax—oil, chemical, and large manufacturing companies—have already paid not once, but twice, and, in some multiparty cases, three times, for Superfund. As responsible parties, they have paid directly to clean up the sites they contaminated. As corporate taxpayers, they paid again. And as the only remaining "deep pockets" at many multi-party sites, they paid the shares of responsible parties that were defunct, insolvent, or bankrupt.

Sixth, the Superfund tax is not needed to maintain the so-called "polluter pays" principle, because Superfund is already overwhelmingly a "polluter pays" program. At most sites, responsible parties (private companies, DOD, DOE, etc.) pay virtually all the costs themselves. Even at the sites where EPA pays up front, the Department of Justice recovers those costs from viable responsible parties. As the Chief of DOJ's Environmental Enforcement Section just recently told a D.C. Bar Association symposium, "The funding issue will have no direct impact on enforcement of Superfund sites."[3] This is because general revenues are used for cleanup only at "orphan" sites where no responsible party exists. This use of general revenues is entirely fair, because the companies targeted by the Superfund tax did not create those sites.

Seventh, and last, to the extent that Superfund is used to clean up large mining sites—the vast legacy of an economically devastated American industry—it would be both illogical and unfair to use money raised by the Superfund tax. The companies targeted by the Superfund tax—oil, chemical, and large manufacturing companies—did not create or contaminate these large mining sites.

In sum, imposing a tax on oil, chemical, and large manufacturing companies has little or nothing to do with the pace of cleanups under today's Superfund program. If Congress believes there is a need to raise additional revenues for other purposes, such as urban redevelopment and job training initiatives in connection with the brownfields program, then it should initiate a broader dialog on the need(s) and the potential revenue source(s). The Superfund tax is not the answer.

STATEMENT OF KENNETH CORNELL, EXECUTIVE VICE PRESIDENT, AIG ENVIRONMENTAL

Madame Chairwoman and members of the committee, I am Ken Cornell, Executive Vice President of AIG Environmental. Thank you for allowing us to present our views on the Superfund program and suggest ways that the program can be improved to speed cleanups, and reduce costs by using financial and insurance tools that can benefit both the private and public sector.

AIG Environmental is a division of American International Companies. AIG's General insurance operations include the largest underwriters of commercial and industrial insurance in the United States, and the most extensive international property-casualty network. We are a Triple A rated company by Standard and Poors with over $450 billion in assets and a wide variety of insurance and financial products to serve our clients. AIG Environmental has over 20-years of experience underwriting environmental risks and is currently the nations leading provider of environmental insurance. Our portfolio of environmental insurance products ranges

[2] 66 Fed. Reg. 56,104 (Nov. 6, 2001).
[3] 24 Hazardous Waste/Superfund Week 151 (April 22, 2002).

from coverage for underground storage tanks, to environmental remediation contractors to insuring the cleanup of hazardous waste sites across the country—including Brownfields and Superfund sites. We are also the endorsed environmental insurance carrier for the Commonwealth of Massachusetts' Brownfields Redevelopment Access to Capital program. This innovative environmental insurance program has resulted in more than 70 Brownfield redevelopment projects in Massachusetts in the last 3 years.

We view ourselves as a solutions company, as we work to provide innovative approaches to handling environmental liability and cleanup issues. Throughout our history, we have developed new insurance products to respond to new and emerging risks for the public and private sectors. In the 1980's, we offered insurance for Superfund Remedial Action Contractors (RAC), RCRA Treatment Storage and Disposal facilities (TSDF), and Underground Storage Tanks operators. In the 1990's, we offered insurance for lender liability and private sector cleanups. In the new millennium, we are looking at mold, terrorism and bioterrorism risks. We are here today to focus on three areas where we believe the use of environmental insurance and financing can lead to more and faster cleanups of NPL sites within the existing framework of the Superfund statute. These areas are Cleanup Cost Cap Insurance for Fund lead work by EPA; De Minimis settlements for PRPs; and blended finite insurance programs that provide short and long term funding for cleanup of sites conducted by PRPs.

CAPPING THE CLEANUP COSTS FOR EPA LEAD SUPERFUND SITES

Based on our experience with other Federal Agencies, we believe that we can devise a program for hazardous waste sites being cleaned up by the EPA to help the Agency budget more effectively. A program supported by insurance can maximize the use of existing Superfund dollars, provide protection against unexpected costs that can postpone or stop current projects and move sites into redevelopment sooner because costs will be quantified and capped. Cleanup Cost Cap insurance can provide the EPA with a high degree of certainty as to what cleanups will cost, and provide private sector expertise in cost estimating.

Briefly, Cleanup Cost Cap protects the responsible party(ies) against the unknown and unexpected cost overruns during cleanups. An example would be an estimate that the cost of cleanup is $10 million. The responsible party(ies) purchases Cleanup Cost Cap to cover cost overruns above the $10 million (plus a buffer). The buffer usually is about 10 percent of the expected cost of cleanup—or in this example $1 million. The limits on the policy can range from a low of $100,000 to as high as $150 million. Going back to our example of a $10 million cleanup—the responsible party(ies) might elect to cover 100 percent above their expected cleanup cost of $10 million so they would buy a Cleanup Cost Cap limit of $10 million. In this example the responsible party(ies) would pay the first $11 million of cleanup (the original estimated cost of $10 million, plus the 10 percent buffer or $1 million). Once cleanup costs exceed $11 million, the Cleanup Cost Cap would pay the next $10 million in cost. In others words, by buying the policy the responsible party(ies) is providing that $21 million dollars will be available for cleanup.

EPA often sees cost overruns of between 20 percent to 30 percent at Fund lead NPL sites. When these overruns occur, funds are often diverted from other future planned cleanups, thereby delaying cleanups at other sites due to cost overruns.

A program of this type would protect EPA's budget against these cost overruns. We have used similar programs with U.S. Department of Defense in addressing both active and closing military bases, Formerly Used Defense Sites (FUDS), as well as on transferring Department of Interior sites. For example:

• *Mare Island (CA).* The Department of Navy was able to transfer the site "dirty" to the remediation firm with the stipulation that no additional funding would be available. The remediation firm purchased Cleanup Cost Cap, which assured that the site would be cleaned up to the reuse standard—without returning to the Navy for additional funding. In the absence of Triple A rated paper supporting the remediation firm, transfer with provisions against future recourse may not have been possible.

• *Fort Leavenworth (KS).* The Department of Army was able to guarantee a finite cleanup on an active military base. In this instance, environmental insurance made it possible for the military to appropriate the cost of cleanup at the site thus being assured that the remediation firm would not try to return to the Army to request additional funding. The environmental insurance product assured that if there was more contamination than originally discovered, the Cleanup Cost Cap would cover the remediation costs.

• *Portland-Bangor Waste Oil Facility (ME).* This is a joint private sector-Federal government State Superfund Remediation. The insurance allows a long-delayed cleanup to occur by financially securing a realistic settlement and eliminating hundreds of PRPs. The Army agreed to fund their portion of the cleanup at this formerly used defense site (FUDS), with the stipulation that the remediation firm not return to them for additional cleanup funds. The cleanup firm took this assurance and approached the other PRPs at the site. After "buying out" the PRPs liability at the site, the cleanup firm used a finite insurance product to assure the cost of remediation and address future liability issues at the site.

These programs can be cost effective and result in faster and more cleanups because the threat of cost overruns is reduced or eliminated. As the insurer our interest are aligned with EPA in that we minimize our risk by making sure the project is completed satisfactorily at minimal cost.

Further, when the policy is underwritten by AIG Environmental the resources of AIG Consultants is included. They are a dedicated staff of environmental engineers who will review planning, designs, and costs to help the insured implement a cost effective remedy given the requirements of the cleanup goals. During the course of the cleanup AIG Consultants work with the insured to monitor costs and watch for potential overruns.

If the committee is interested in this approach, we would welcome the opportunity to work with you and the EPA to develop a program for Fund lead Superfund cleanups.

CREATING A CONSTANT REVENUE STREAM FOR LONG-TERM CLEANUPS

One of AIG Environmental's most important achievements occurred in November, 2000 with the settlement of liability at the Iron Mountain Superfund Site in California. This innovative settlement, involving multiple private and public entities, will provide funding for cleanup over the next 30 years and fund a trust fund in perpetuity for the largest source of acid mine drainage in North America. This was achieved through the use of Blended Finite Insurance and a guaranteed investment contract.

The use of blended finite insurance programs, coupled with SEC Regulation 468b trust funds for funding of environmental liabilities, may well prove to be one of the most effective tools to quickly settle liability at sites. This will provide funds for cleanup even if in the future PRPs involved in the cleanup are no longer financially able to pay for the cleanups.

Blended Finite insurance is, very simply, a risk management tool that is used in conjunction with Cleanup Cost Cap and Pollution Legal Liability insurance and provided with environmental loss control expertise. It is a flexible program combining insurance with discounted funding techniques for existing liabilities. While seemingly complex at first glance, blended finite insurance programs establish trust funds, coupled with environmental insurance, to provide short and long term funding for the cleanup of sites. The Federal Government has a guaranteed source of funds to cleanup a site, even if PRPs become unable to pay for a variety of reasons. In many instances the government may be able to transfer the liability for cleanup from a company on shaky financial footing to a trust fund backup by a Triple A rated insurance company. This could prove to be a significant advantage for the government to insure that funds are available to cleanup the site—even over many years. It would also mean that if a PRP was no longer able to pay for the cleanup that EPA would not have to use scarce Fund dollars to conduct the cleanup.

PRPs will be required shortly to make more accurate the disclosure of their environmental liabilities as a result of new congressionally mandated SEC disclosure laws. The blended finite insurance program will allow companies and related responsible parties to demonstrate that they are managing their environmental liabilities appropriately. For PRPs, there may be significant benefits as well, thereby motivating them to settle faster. This would end lengthy settlement negotiations and move the sites into the cleanup stage faster than is currently occurring.

For the community that lives around the site—it has the additional security of knowing that the money will be there for cleanup, that the litigation surrounding the settlement is over more quickly, and that the site will be cleaned up as expeditiously as possible.

An example of blended finite insurance is as follows. A site has an estimated cost of $20 million to cleanup. It has soil contamination and needs 10 years of ground water treatment. Blended finite insurance looks at the estimated cost of cleanup for each year and then adjusts those figures for inflation. In this example, the estimated cost is $20 million. The net present value of the total cost is adjusted based upon the expected payout pattern and market interest rates. If one assumes that

under this example the net present value of the expected costs is $15 million, that would mean if we were paid $15 million today we would be able to pay for $20 million in cleanup costs based upon the estimated payout pattern. Added to this could be coverage for cost overrun protection, or for the actual costs being spent sooner than estimated. Under this example we may be willing to provide $40 million of cleanup cost and cost overrun coverage (the original $20 million estimated cost, plus an additional $20 million of Cleanup Cost Cap) for an up front payment of $17 million. The policy would pay all costs of cleanup up to the $40M policy limit. In this situation the government has the actual estimated cost of cleanup served on day one, plus protection for unforeseen costs that may arise. The government could then consider partial, accelerated or full releases of liability for the PRPs who establish these accounts.

Blended Finite insurance could prove to be a valuable policy tool. It will not solve every Superfund problem nor can it be used at every site. We do believe though that it should be considered much more frequently by the government. Our belief is that this approach can lead to faster settlements and encourage faster cleanups.

We would welcome this opportunity to work with the committee, EPA and the Department of Justice to develop guidelines for the use of this approach at Superfund sites.

REDUCING DE MINIMIS PARTY CLEANUP COSTS

One of the complaints often heard about the current Superfund process is the settlement of De Minimis Parties at sites. In order to get a full release of liability from EPA at settlement, De Minimis parties are usually charged a "premium" by EPA to cover unexpected cost overruns at the site. These "premiums" usually run between 50 percent to 100 percent of cleanup cost allocated to the De Minimis parties. Most De Minimis parties object to paying this "premium", but wind up paying it anyway in order to receive the release of liability.

We believe an insurance approach could significantly lower the premium for De Minimis parties. This would work through the use of Cleanup Cost Cap insurance. As an example let us assume there are 200 De Minimis parties at a site and each has a cleanup liability of $20,000 for an aggregate of $4 million. In a traditional settlement EPA would seek up to an additional "premium" of $4 million (100 percent of cleanup liability) and charge each De Minimis PRP an additional $20,000 or a total of $40,000. However, if the De Minimis Parties were allowed to purchase a Cleanup Cost Cap policy for $4 million their premium would vary between 8 percent to 12 percent of the policy limit or an approximate high end total cost of $480,000, resulting in a cost of $2,400 each. This would make the De Minimis parties settlement cost $22,400 as opposed to EPA's $40,000 or a savings to the De Minimis parties of $17,600. However the settlement would still provide EPA with the same $4 million dollars in cost overrun protection it was looking for.

This approach should result in faster settlements with the government. De Minimis parties may not view the Cleanup Cost Cap premium in the same light as the EPA "Premium" since it is significantly less costly and therefore would agree to settle faster, and thereby move the site into the cleanup phase sooner.

Again, we would suggest that the committee might ask that EPA and the Department of Justice could make the Superfund program fairer for small parties, while protecting the government against unexpected costs.

Madame Chairwoman, thank you for this opportunity to present our views and solutions to Superfund issues. We look forward to being a part of solutions with you and the committee and EPA on these issues. Our belief is that the approaches outlined here can assist Superfund in achieving its mission of protecting public health and the environment.

I will be happy to answer any questions you or the committee members may have.

RESPONSES OF KENNETH CORNELL TO ADDITIONAL QUESTIONS FROM SENATOR JEFFORDS

Question 1. Could you briefly describe how Cleanup Cost Cap insurance works and how other Federal Agencies have used it?

Response. Briefly, Cleanup Cost Cap protects the responsible party(ies) against the unknown and unexpected cost overruns during cleanups. An example would be an estimate that the cost of cleanup is $10 million. The responsible party(ies) purchases Cleanup Cost Cap to cover cost overruns above the $10 million (plus a buffer). The buffer usually is about 10 percent of the expected cost of cleanup—or in this example $1 million. The limits on the policy can range from a low of $100,000 to as high as $150 million. Going back to our example of a $10 million cleanup—

the responsible party(ies) might elect to cover 100 percent above their expected cleanup cost of $10 million so they would buy a Cleanup Cost Cap limit of $10 million. In this example the responsible party(ies) would pay the first $11 million of cleanup (the original estimated cost of $10 million, plus the 10 percent buffer or $1 million). Once cleanup costs exceed $11 million, the Cleanup Cost Cap would pay the next $10 million in cost. In others words, by buying the policy the responsible party(ies) is providing that $21 million dollars will be available for cleanup.

Question 2. The Iron Mountain Superfund Site settlement in California was identified by the Clinton Administration as one of the most innovative Superfund settlements. Could you briefly describe the settlement, how it worked to benefit the government and what other types of Superfund sites it could be used?

Response. One of AIG Environmental's most important achievements occurred in November 2000 with the settlement of liability at the Iron Mountain Superfund Site in California. This innovative settlement, involving multiple private and public entities, will provide funding for cleanup over the next 30 years and fund a trust fund in perpetuity for the largest source of acid mine drainage in North America. This was achieved through the use of Blended Finite Insurance and a guaranteed investment contract.

The use of blended finite insurance programs, coupled with SEC Regulation 468b trust funds for funding of environmental liabilities may well prove to be one of the most effective tools to quickly settle liability at sites. This will provide funds for cleanup even if in the future PRPs involved in the cleanup are no longer financially able to pay for the cleanups.

Blended Finite insurance is, very simply, a risk management tool that is used in conjunction with cleanup Cost Cap and Pollution Legal Liability insurance and provided with environmental loss control expertise. It is a flexible program combining insurance with discounted funding techniques for existing liabilities. While seemingly complex at first glance, blended finite insurance programs establish trust funds, coupled with environmental insurance, to provide short and long term funding for the cleanup of sites. The Federal Government has a guaranteed source of funds to cleanup a site, even if PRPs become unable to pay for a variety of reasons. In many instances the government may be able to transfer the liability for cleanup from a company on shaky financial footing to a trust fund backup by a Triple A rated insurance company. This could prove to be a significant advantage for the government to insure that funds are available to cleanup the site—even over many years. It would also mean that if a PRP was no longer able to pay for the cleanup that EPA would not have to use scarce Fund dollars to conduct the cleanup.

PRPs will be required shortly to make more accurate the disclosure of their environmental liabilities as a result of new congressionally mandated SEC disclosure laws. The blended finite insurance program will allow companies and related responsible parties to demonstrate that they are managing their environmental liabilities appropriately. For PRPs, there may be significant benefits as well, thereby motivating them to settle faster. This would end lengthy settlement negotiations and move the sites into the cleanup stage faster than is currently occurring.

For the community that lives around the site—it has the additional security of knowing that the money will be there for cleanup, that the litigation surrounding the settlement is over more quickly, and that the site will be cleaned up as expeditiously as possible.

An example of blended finite insurance is as follows. A site has an estimated cost of $20 million to cleanup. It has soil contamination and needs 10 years of ground water treatment. Blended finite insurance looks at the estimated cost of cleanup for each year and then adjusts those figures for inflation. In this example, the estimated cost is $20 million. The net present value of the total cost is adjusted based upon the expected payout pattern and market interest rates. If one assumes that under this example the net present value of the expected costs is $15 million, it would mean if we were paid $15 million today, we would be able to pay for $20 million in cleanup costs based upon the estimated payout pattern. Added to this could be coverage for cost overrun protection, or for the actual costs being spent sooner than estimated. Under this example we may be willing to provide $40 million of cleanup cost and cost overrun coverage (the original $20 million estimated cost, plus an additional $20 million of Cleanup Cost Cap) for an up front payment of $17 million. The policy would pay all costs of cleanup up to the $40M policy limit. In this situation the government has the actual estimated cost of cleanup served on day one, plus protection for unforeseen costs that may arise. The government could then consider partial, accelerated or full releases of liability for the PRPs who establish these accounts.

Blended Finite insurance could prove to be a valuable policy tool. It will not solve every Superfund problem nor can it be used at every site. We do believe though that it should be considered much more frequently by the government. We believe sites that have large cleanup costs or will take a number of years to conduct the cleanup and/or sites with long-term operation and maintenance activities are good candidates for Blended Finite insurance settlements. Our belief is that this approach can lead to faster settlements and encourage faster cleanups.

STATEMENT OF ALFRED PEONE, CHAIRMAN, SPOKANE TRIBE OF INDIANS

Thank you Mr. Chairman and members of the Committee for the opportunity to present this testimony in support of EPA's Superfund efforts. I am submitting this testimony on behalf of the Spokane Tribe of Indians to ask for your help in ensuring that the Superfund is funded, either through appropriations or the Superfund tax, at a level sufficient for EPA to continue working toward cleaning up hazardous substances that threaten the human health and environment of our Reservation.

To begin, I would like to provide you with some background information on our people and our Reservation, which is located in eastern Washington. All lands along the full length of the Spokane River were once held by our Tribe. These lands, and the waters that flowed through them, were a gift to us from the Creator. Through the waters, the Creator also sent to us vast numbers of salmon to feed us and to provide us with our culture. We are a salmon people. A river people.

Our homeland has now been reduced to our current Reservation at the confluence of the Spokane and Columbia Rivers. The dams on these rivers that provide electricity for the entire northwestern United States, killed off our historic salmon runs. But the waters, fish, and other parts of our remaining river ecosystems are still a critical part of who we, the Spokane people, are. They sustain us, both physically and spiritually.

The Spokane people use the fish, plants, animals, and waters of the Spokane River in ways different from the ways others use these resources. Some of our members live permanently along the waters. Many who do not live there camp along the waters for large parts of the good weather months. These are permanent seasonal residences, and our people who set up these camps spend a great deal more time there than a typical recreational camper or fisherman would. We have children playing on the beaches. We drink the waters, and we eat the fish, animals and plants that grow from them. These resources also provide us with traditional medicines, and are used in our religious ceremonies and in other cultural practices. Thus, our exposure to contaminants in natural resources is greater than the exposure the general population receives from contaminated natural resources.

As we struggle to maintain the health of our people and Reservation through practicing our traditional ways, the rivers that once brought salmon to our Tribe now carry to our homeland the uncaptured poisons of mining and industry. Heavy metals from Idaho's historic Silver Valley mining district flow to our Reservation in the Spokane River, which also carries industrial waste from upstream cities. The Midnite Uranium Mine in the heart of our Reservation and a uranium mill adjacent to our lands leak radioactive contaminants into our only inland waterways. And while we know little about the pollutants in the Columbia River, we are beginning to learn that they are health-threatening and come from sites in northern Washington, as well as Canada.

EPA's Region 10 Superfund program is in varying stages of examining these threats to our health and our Reservation's environment. It is our hope that once our contamination problems are cleaned up, it will be safe and healthy for our members to continue to use our gifts from the Creator as they were meant to be used. Otherwise, a part of the Spokane Tribe, as a people, will die.

Unfortunately the Superfund is being depleted to a point where Region 10 is forced to either slow down or stop the work that is needed to protect our health. The President's insufficient budget request and the absence of the Superfund tax combine to ensure the impossibility of timely Superfund cleanups. The harmful effects from this will be immediately and directly felt by our people. We have awaited cleanup of the Midnite Uranium Mine since it ceased production more than 20 years ago. For several decades, it has leaked radioactive acid mine water into our Reservation's Blue Creek drainage. Its pollutants affect our surface water, ground water, plants, animals and fish. This condition leaves our people with the unacceptable choice of either not using that area's resources, or using them and ingesting their contaminants. The Midnite was placed on the National Priorities List in 1999, but we are now told that EPA Region 10's diminished Superfund budget will require a slowdown this year, and may mean that EPA's work will stop altogether during

fiscal year 2003. If that happens, Region 10 will not be able to complete its Remedial Investigation and Feasibility Study for at least 3 years, and probably more. Cleanup cannot begin until these studies are completed. Any delay of the Remedial Investigation and Feasibility Study will therefore mean longer exposure of our people to the Midnite Mine's contaminants.

We understand the financial strains America's war on terrorism places on the Federal budget. When the salmon still came to our country we shared them with many other tribes that would come to our fishing places. It is our Tribal way to care for our neighbors. And we still care for our neighbors. We have sympathy for those who lost their lives in the September 11 attacks on our Country. But we also are concerned about the children in the Coeur d'Alene Basin who have high levels of lead in their blood. We are concerned about the health risks to members of the Coeur d'Alene Tribe who use their Reservations's waters and resources in their traditional ways. We are concerned about the people living along the Columbia River's contaminated waters. And we are also concerned about the citizens of Washington who use the Spokane River's resources. But we are all a part of the United States, and the death, injury or illness of an American from uncontrolled poisons in our natural resources hurts our Country no less than an American's death, injury or illness from terrorist acts.

The Spokane Tribe appreciates the efforts of all who have been working to solve this nation's serious problems. We appreciate that industry, and the Federal, state and tribal governments, spend millions of dollars annually trying to understand and address the contamination of America's resources. And specifically, we appreciate the work EPA Region 10's Superfund program has done to try to understand the problems in Washington State and on the Spokane Indian Reservation. But deciding when studies of pollution threats to human health and the environment should be performed, and what must be cleaned up, cannot be driven by the bottom line. Our Nation's health is at stake, and the answers must be driven by science, which will tell us what is healthy and what is not. In the Spokane Tribe's situation, there have been no studies to fully examine the effects that contamination from the Midnite Mine and other sources have on our people using our resources in our Tribal way. We continue to encourage EPA to look into these effects, and ask Congress to support through a well-financed Superfund the studies that will help us understand what must be done for our protection. Funding must be made available to make sure cleanup actions can be taken so the health of everyone will be protected—not just at the Midnite Mine and other sources directly harming our Reservation, but nationally as well. Simply put, this is a critical component of our Nation's effort to ensure homeland defense.

It is our Tribal way to protect future generations. Today we ask the Committee to protect the future generations of all America by supporting the Superfund at a level that will allow EPA to understand and address the threats of hazardous substances to American people and resources. A vision of a healthy America tomorrow requires no less.

Thank you.

STATEMENT ON BEHALF OF FRIENDS OF A CLEAN HUDSON

We would like to thank Senators Jeffords and Boxer for convening a hearing on the Environmental Protection Agency's management of the Superfund Program and for allowing us to submit testimony, on this issue, EPA's approach to addressing threats from large contaminated sediment sites deserves close Congressional scrutiny. The Committee must ensure that EPA acts to fulfill its Superfund mandate to safeguard human health and the environment by making polluters pay to clean up toxic Waste sites and to integrate affected communities into the cleanup decision-making process.

Toxic waste sites represent serious and ongoing threats to public health and environmental quality, In 1980, Congress enacted Superfund to address threats highlighted by now legendary sites including Love Canal, NY and Valley of the Drums, KY, Since its inception in 1980, Superfund has succeeded in cleaning up more than 800 sites, the majority of them in the last decade of this essential program.

In 2001, however, Superfund cleanups dramatically declined, resulting in more than a 50 percent decrease in a short 2 year period. Two possible expl nations exist. First, this sudden downturn could be the result of the Bush administration underfunding cleanups. Second, the decrease could be the result of the administration intentionally slowing down the pace of cleanups and blaming, this slowdown on mega sites, which are toxic waste sites costing over $50 million to clean up. This in turn would enable the administration to suggest additional reforms to the already re-

formed Superfund program and to undertake activities that weaken Superfund's polluter paysprincipleend protections for public participation.

In 1989, EPA initiated its "enforcement first" policy, by which EPA seeks to identify the party responsible for environmental contamination and requests a comprehensive cleanup from that polluting entity. If EPA's request is refused, EPA can—*if it has the money*—conduct the clean up and sue the polluter to recover up to three times the agency's costs, plus penalties for noncompliance. Because the price tag of a government cleanup generally exceeds costs to the polluter of conductingg the cleanup itself, this cost recovery threat after a government conducted cleanup provides the necessary incentive underlying EPA's successful enforcement first policy.

In recent testimony before a House Appropriations Subcommittee, EPA Administrator Whitman reported that approximately 70 percent of Superfund cleanups were in fact being conducted by these responsible parties. It is essential to understand that this success depends on EPA's ability to pay for cleanups: if EPA cannot pay for as many cleanups, then it cannot file as many cost-recovery actions.

EPA can also issue a unilateral administrative order directing, polluters to clean up their contamination and seek court enforcement of that order. However, protracted litigation over these orders delays cleanups and leaves communities unprotected from the significant health risks from ongoing exposure to environmental toxins.

Here is the crisis: The Superfund is dwindling, from a high of more than $3 billion in 1995, to only $28 million at the end of 2003. Yet from 2001 to 2003, the administration has under-funded the Superfund program by at least $1 billion to $1.4 billion. This funding shortfall would have an adverse impact on any program. For EPA, woefully inadequate funding will leave the agency unable to implement its own enforcement first policy.

United States taxpayers are increasingly bearing the burden of EPA's Superfund program: taxpayers paid $634 million in 2001, $635 million in 2002, and will pay a projected $700 million in 2003. In fact, the administration is billing taxpayers 54 percent of Superfund program costs in 2003. In contrast, polluting industries have enjoyed a $4 million a day tax break, more than $10 billion since Superfund's polluter pays taxes expired in 1995. We are gravely concerned that without renewed efforts to reauthorize the expired tax that funded the Superfund program, EPA will have neither the will nor the ability to continue to require clean up of the Hudson River and similar sites.

The second explanation for the dramatic downturn in cleanups relates to the administration's approach to mega sites, which potentially benefits polluters at the nation's largest toxic waste sites, yet could weaken or eliminate Superfund's strong clean up and liability provisions and community participation requirements. We are concerned that this approach could be applied to the Hudson River PCB Superfund Site despite the fact that the General Electric Company has been identified as the responsible party and is financially viable.

It would be regrettable if the administration could also ultimately shift the cost of site remediation from polluters to taxpayers. We fear that the administration may be planning to institutionalize—through formal or informal "reforms" to the program—the process and approach currently being used at Anniston, Alabama. If these divergences from current practice were applied to the Hudson River PCB Site, this would seriously weaken Superfund's ability to integrate citizens into the decisionmaking process and the program's ability to protect public health and environmental quality would be compromised.

Recent press reports and agency actions indicate that the slowdown of cleanups will exist during the administration's consideration of potential reforms that that may weaken Superfund's protections that would apply to mega sites. It is as recently as December 2001 that the Small Business Liability Relief and Brownfields Revitalization Act was passed, enacting reforms supported by Congress. Reforms that the administration may be considering include:

(1) Striking deals that benefit polluters while undercutting efforts by private citizens to make polluters pay for damage caused by their contamination;

(2) Creating an administrative program, which may not contain Superfund protections, to address threats at mega sites;

(3) Shifting cleanups to other programs that are ill-prepared or incapable of undertaking cleanup activities, or that shift the cost of paying for cleanups from polluters to taxpayers; and

(4) Granting polluters unnecessary and irresponsible waivers of liability.

We steadfastly oppose such "improvements" and any application of them to the Hudson River PCB Superfund Site because they threaten to weaken protections for public health and prevent vigorous public participation. More than 70,000 public

comments were received by EPA on the clean up of this Site. We would urge that EPA agreements such as the partial consent decree recently entered into at Anniston, Alabama not be used as a model. Cutting off public participation and absolving polluters of environmental liability would be an unfortunate precedent with potential national implications. We also vehemently oppose any agency imposed moratorium on Superfund cleanups during the resolution of this ongoing debate: it is contrary to the spirit and underlying policy rationales of Superfund and fundamentally unfair to communities burdened by pollution and the consequences to human health of ongoing exposure to dangerous environmental toxins.

Here in New York, we have one of the nations largest Superfund Sites and one of the most contentious cleanup debates. The Hudson River Superfund Site has harmed one of this country's most precious national resources and one of its most biologically productive estuaries. Beyond the extensive environmental risks, it poses adverse health risks to residents whose documented consumption of PCB contaminated Hudson River fish continues despite warnings of fish advisories throughout the region.

The Hudson River PCB Superfund Site is at an essential juncture: after two decades, the nationally and internationally peer-reviewed Record of Decision was signed on February 1, 2002. The willingness of the General Electric Company as tle responsible—party to finance or conduct the selected remedy remains uncertain. It is essential that EPA go to the negotiating table fully supported by an adequately funded program. EPA has selected the remedy and under Superfund tradition money to conduct that remedy must be available.

The strength of EPA is also necessarily tied to its ability to proceed with the process outlined above. The process in place works; there is no defensible reason to deviate from it. We would also have grave reservations about the impact of any new program onsites currently underway. For example, the Hudson River PCB Superfund Site could qualify as a mega site based on its estimated cleanup costs. The General Electric Company is the viable PRP for this site. EPA has finally signed the ROD and is currently reviewing GE's submitted response. We hope to move expeditiously towards the comprehensive cleanup set forth in that historic document. Any administration decision to retreat from this or other cleanups due to subsequent mega site designation could neither be legtimately defensible nor in accord with policy and congressional intent underscoring the rationale of our existing Superfund legislation.

These potential "reforms" have one thing in common; each weakens Superfund's protections as they apply to some of the nation's most contaminated toxic waste sites. Superfund is the keystone cleanup program that makes all other Federal and State cleanup programs effective. Superfund is a largely unseen yet ever-present gorilla in the closet that Federal and State cleanup officials use to make intransigent polluters clean up their sites. Superfund provides vital funding, technical assistance, and policy guidance to other programs that helps them clean up their sites. When other programs do not have the administrative capabilities or political will to clean up a site, they call in Superfund.

By undercutting the ability of Superfund to protect public health, this Administration is also undercutting every other cleanup program in the country. This is great for polluters but devastating for public health. Ultimately, citizens in communities across the country that are affected by toxic waste sites will bear the burden of less-protective remedial actions and longer cleanup delays that could result from EPA's actions.

In the end, these "reforms" are also signals to polluters that the agency charged with holdings them responsible is less interested in doing so, This is not the message we want to send to companies. What the administration is proposing, and what we are seeing based on decisionmaking at sites such as Anniston, Alabama and potentially at the Hudson River PCB Superfund Site, is a slippery slope, a potential unraveling of Superfund protections for cleanups nationwide.

Over the last 20 years, Superfund has proven that it can clan up toxic waste sites. The administration should not turn its back on this program, but rather should embrace and buildupon its more than 20 years of successes. The Administration should let the program do what it does best, clean up sites. However, the administration should not release polluters from liability and extract the public from the cleanup decisionmaking process. Superfund can protect public health and environmental quality at the nation's worst toxic waste sites now, and in the future.

STATEMENT OF ELIOT SPITZER, ATTORNEY GENERAL, STATE OF NEW YORK

The New York State Attorney General's Office has a major role in the enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") in New York. The office is often responsible for negotiating cleanup, cost recovery and natural resource damages settlements, and when a settlement cannot be reached, it is responsible for the litigation of the State's CERCLA claims. The office has been litigating hazardous waste cases for more than two decades, ever since it commenced the Love Canal case in 1980.

The Attorney General's Office has developed extensive familiarity with liability and cleanup issues in this field. We not only represent the Department of Environmental Conservation and other State agencies in relevant litigation, but have had an opportunity to consider and deal with many of the important policy issues relating to these subjects.

The Superfund program is vitally important in assuring the protection of public health and the environment from releases of hazardous substances at thousands of sites across the country. One of the essential elements of that program is EPA's ability to spend money from the Federal Superfund on cleanups. EPA's ability to conduct cleanups paid for by the Superfund is a major factor in convincing private parties to conduct cleanups themselves at their own expense. As a consequence, the Superfund should be fully funded to obtain cleanups by responsible parties rather than force the taxpayers to bear that expense.

Last month, in testimony before a House Appropriations Subcommittee, EPA Administrator Whitman reported that about 70 percent of all Superfund sites were being cleaned up by responsible parties. But the very fact that so many cleanups are privately funded is due in large part to the existence of the Superfund and the availability of funds within it to conduct government-funded cleanups.

There are multiple reasons why private parties clean up sites for which they are responsible. Some parties no doubt pay for cleanups out of a sense of responsibility and public spirit. Some are concerned about their image. For others, it is only the fact that EPA could finance a cleanup that triggers a private-funded cleanup. The potential expenditure is enough, because the responsible party realizes that the cleanup will be done, one way or another, and the party often prefers to maintain some control over the process, including ensuring that costs are contained.

The existence of the Superfund is a fundamental fact of life for all involved with site cleanups. It is not simply the decision to proceed with a government cleanup versus private cleanup that is affected. The terms, including scope and timing, of the private cleanup, which may be negotiated by the government and the private parties, may also be heavily influenced by the potential for government use of the Superfund.

In a negotiation, each party has to decide whether the terms required to satisfy the other parties in the negotiation are better or worse than a breakdown of the negotiations altogether. As David Gold of Harvard Law School has said, the question is what is the "best alternative to a negotiated agreement" for each of the parties?

Here is how that question might be answered, first, with the Superfund in place and, second, with no Superfund. Assume that the EPA insists on a thorough cleanup that costs more than a responsible party wants to pay. That party always has the alternative of refusing to do the cleanup. If the Superfund is available, EPA can then perform the cleanup itself and sue for cost recovery. In addition to evaluating the likelihood that it will be held liable, the private party must weigh the likely bottom-line cost of the government-financed cleanup, plus interest, its own attorneys' fees and those of the government, against the opportunity to do the cleanup itself as required by EPA, possibly more cheaply than the government can.

But if no Superfund money is available, the calculus is quite different. EPA will be unable to clean up the site itself and sue for cost recovery. EPA still has the option of issuing a unilateral administrative order to compel cleanup and then seeking court enforcement. But not every case can be sent for enforcement along the imminent and substantial endangerment route of section 106 of CERCLA. And the result of such litigation is a delay in cleanup, which may suit the responsible party but which continues the risks to the public created by the hazardous waste site. Thus, from a strictly self-interested perspective, in the absence of Superfund money to finance government cleanups, the best alternative in negotiations for the responsible party may actually be to refuse to cooperate.

We in New York are very mindful of these considerations for many reasons. First, we have 87 National Priority List sites in New York. If NPL sites are not efficiently cleaned up because the Superfund has become depleted, fewer of the remaining contaminated sites will be cleaned, fewer sites will be placed on the NPL in the future,

and more sites will have to be processed by State cleanup agencies. In other words, the failure to fund the Superfund is nothing less than a cost-shift from the Federal Government to the States. We know of no new consensus that toxic sites are a local problem, which would be a reversal of the commitment of the Congress years ago to bring a national solution to this pervasive problem. Without adequate funding at a level sufficient to induce private parties to clean up sites, the States will be required to pay more of the cleanup costs than during the last two decades. None of the States can afford this shift.

Second, we also have grave concerns about funding of the Superfund because one of the Nation's largest Superfund sites, the Hudson River PCBs NPL Site, is at a crucial stage. A Record of Decision was adopted by EPA in early February. The responsible party has an opportunity to implement the selected remedy, but its willingness to do so is only now about to be determined. It is crucial that at sites like the Hudson River Site, or the Onondaga Lake Sediments Site near Syracuse, the EPA come to the table with the strength of a well-financed Superfund. It must be in a position to tell responsible parties that, subject to judicial review after cleanup, the remedies selected after full investigation and study under the National Contingency Plan will be implemented, one way or another. If the responsible party wants to cooperate, that is welcome. But if not, EPA must be able to ensure that its remedy will be implemented by its own actions.

Without a fully funded Superfund, and without the cooperation that the potential use of the Superfund elicits from private parties, many sites will remain contaminated indefinitely. As hazardous substances continue to be released and risks to the public go unabated and worsen, the full promise of the mature, 21-year-old CERCLA program will fade.

We are also very troubled by suggestions that the refinancing of the Superfund be delayed until substantive changes in CERCLA's liability provisions can be legislated. Throughout the 1990's, enormous resources were expended to bring about or defeat major liability changes, without agreement being reached on a major revision. Finally, in December 2001, Congress passed the Small Business Liability Relief and Brownfields Revitalization Act, which clarified liability provisions and enacted those reforms which had Congressional support. Those at risk from hazardous waste sites cannot wait for the refinancing of the Superfund for the number of years it would likely take for additional substantive amendments to be agreed upon.

Our communities should not be held hostage to a contentious liability debate. Let the sites be cleaned up as quickly as possible; the legislative debate on other issues can follow its own separate course. We oppose any moratorium on cleanups, just as we are emphatically opposed to any emasculation of the bargaining power of the EPA in cleanup negotiations.

It is also important that when the Superfund is refinanced, industries that profited from the generation of hazardous wastes continue to carry the main burden of cleaning up hazardous waste sites. This is not a program that should be financed by general revenues. Moreover, when a petroleum tax and other industry-focused measures were adopted in 1980 to finance the Superfund, the petroleum industry obtained an exclusion from liability for petroleum products. The continued existence of that exclusion should depend on continuation of the petroleum tax.

We thank you for this opportunity to present our views to the subcommittee.

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