



**Hearing
U.S. Senate
Committee on Environment and Public Works
Subcommittee on Superfund, Waste Management and Regulatory Oversight
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**Testimony of
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- States value their relationship with the United States Environmental Protection Agency (EPA) and together through several types of cooperative agreements, both as individual States and ASTSWMO, continue to make great strides in addressing some of the most contaminated land in the United States.
- ASTSWMO supports EPA Administrator Pruitt's May 22, 2017 memo stating that the Superfund program is a vital function of EPA and the Agency cannot have a successful program without substantial State involvement. Furthermore, the States support the input and role of local government in the communities in which contaminated sites exist.

- Opportunities exist for improvements to the program to deal with costly and delayed cleanups that continue to have a negative impact on communities across the nation. While efficiencies can be realized administratively without legislative changes to CERCLA or EPA's authority, there exists an opportunity to modernize certain aspects of the statute to acknowledge the role of States as co-regulators who operate sophisticated programs across the country. Our members, and to some extent our regulated community, continue to be challenged with the skyrocketing financial obligations associated with remediating contaminated lands.

Good morning Chairman Rounds, Ranking Member Harris and Members of the Subcommittee. My name is Jeffery Steers and I am the Director of Regional Operations for the Virginia Department of Environmental Quality. VADEQ is a member of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), of which I previously served as President. ASTSWMO is an association representing the waste management and remediation programs of the 50 States, five Territories and the District of Columbia (States). Our membership includes State program experts with individual responsibility for the regulation or management of wastes and hazardous substances, including overseeing the cleanup of Superfund sites.

ASTSWMO appreciates the opportunity to provide testimony on oversight of EPA's Superfund cleanup program. While States do not assume primary CERCLA authority, we do play a role in its implementation. The decisions made by Congress and those made by EPA can have a profound impact on State resources. States share a common goal with the federal

government in ensuring that risks to human health and the environment are mitigated and appropriately addressed in a financially responsible manner. Our Association is committed to ensuring that this is done in an efficient, cost-effective manner.

We support any legislation that encourages greater State collaboration with our federal partners while ensuring that our voice and opinions are not diminished. ASTSWMO and its member States enjoy a positive working relationship with EPA and does not wish to discount these collaborative efforts. We do wish to offer the Subcommittee the following comments on opportunities to enhance the Superfund program.

This past week, EPA released the recommendations of a task force on Superfund appointed by Administrator Pruitt. ASTSWMO's member States are encouraged that the administration recognizes the need for improvements to a program whose purpose is to ensure American communities are protected from contaminated land. While States are still reviewing this recently released report, we take note of the fact that the schedule for implementation is aggressive given proposed reductions in the EPA's staffing and budget. State experiences in working with EPA regional offices has historically demonstrated inconsistent application of policy and guidance developed by headquarters. One of the task force recommendations states that "Regions are encouraged to consider greater use of early and/or interim actions including use of removal authority or interim remedies, to address immediate risks, prevent source migration, and to return portions of sites to use pending more detailed evaluations on other parts of sites." Regional offices must be held accountable in ensuring that consistent implementation of this and other recommendations is followed.

One area of difficulty for our members is EPA's process to identify State regulations as potential Applicable or Relevant and Appropriate Requirements (ARARs). Our main areas of concern include inconsistent application of ARARs from site to site, documentation of EPA's decisions in these matters and constraints in allowing States' early interaction in development of ARARs on specific sites. ASTSWMO recently participated in a process improvement team with EPA to identify tools that could streamline the process while providing States with meaningful involvement. While the exercise was successful and agreement on the path forward was gained between the Superfund program and State participants, bureaucratic issues raised by EPA's Office of General Counsel prevented the project from being implemented. This is an example of a lost opportunity to improve Federal-State relations.

Another growing concern is the ongoing escalation of costs incurred by States on Fund lead sites listed on the National Priorities List (NPL). As you may be aware, States are required to cost share 10% of the remedy construction while incurring 100% of the Operation and Maintenance (O&M) cost for the life of the remedy. Prior to transfer to States for O&M, EPA should be given the authority to consider evaluating whether the State has sufficient funds to take on O&M obligations. Even though the State agreed to assume O&M obligations, it could be that projected costs haven't been appropriately updated. If the State does not have sufficient funding to take on the O&M at the time of transfer, the statute should allow for a process that identifies options on how to address (and fund) State shortfalls.

The role that communities and local investors may play in the redevelopment of Superfund sites has historically been diminished. States are encouraged that the task force report recommends EPA identify sites for third party investment and to pilot how accelerating the remedy might be accomplished under these circumstances. While not mentioning State involvement in this recommendation, EPA must involve ASTSWMO members in this process as we have robust brownfield redevelopment programs and other tools that can facilitate expedited reviews, remedy implementation and pragmatic yet protective long term monitoring as may be required. Investors require a level of

certainty not typically found in the Superfund program. The States can assist EPA in facilitating and negotiating agreements with third parties.

With respect to Responsible Party (RP) led cleanups under Superfund, States typically find themselves in a secondary oversight role. It is customary for a State to enter into a Cooperative Agreement which defines our role with EPA while providing a funding mechanism for State oversight. In Virginia, we've recently reached out to four RP's to gage their interest in a pilot program whereby they enter into Cost Oversight Agreements agreeing to pay DEQ's project oversight costs directly, in lieu of funneling the money through EPA that results in administratively-burdensome Cooperative Agreements for both EPA and DEQ. This approach is much more cost effective for the RP, increases DEQ's budget forecasting, positions Virginia to provide better customer service, and helps ensure that we have an opportunity to voice State-specific concerns (cost, etc.) at key decision points.

Another State engagement issue related to RP oversight is where EPA enters into consent decrees or other types of settlement documents with RPs to settle costs of their cleanup. EPA often does not include the State in this settlement process, which can make it difficult for a State to engage the RPs to do additional work that may be needed and recover the State's current and projected oversight costs. This issue can be compounded if the site has the issue of less-stringent or different ARARs than the State would require for the site.

Finally, coordination on locally high profile sites must be a team effort among EPA, the State and local government. Two recent examples in Virginia illustrate this need. In one case, the State had been working closely with the local and State health departments to characterize neighborhood drinking water next to an NPL site that contaminated private wells. The State provided a temporary solution of installing onsite filtration systems while a long term fix was developed. Eventually, all parties agreed that connection to a public water supply would reduce the exposure pathway for neighboring residents. However, there was a delay in getting public water extended to the area despite that being the apparent

intended desire of all parties. This highlights some of the issues that can arise given EPA's long very stepwise process and highlight Superfund's sometimes inherent failure to "keep the end in mind". In another case, the local community worked closely with the State and EPA to address mercury contamination in a river. EPA had originally sought to use CERCLA authority to require remediation of sediments by an RP. Cooperative work with Region 3, DEQ, the RP and the local community resulted in Virginia oversight under RCRA authority to move the project forward faster than through Superfund, resulting in an expedited, efficient and equally protective cleanup.

In conclusion, States have positioned themselves to be effective partners with EPA on Superfund implementation and have developed working relationships with local government and communities that are home to contaminated sites listed on the NPL. We encourage continued federal/State cooperative regulatory oversight as improvements continue to be made to the Superfund program. I would be happy to answer any questions you may have.