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U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON SUPERFUND, TOXICS,
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COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

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Chairman Lautenberg and members of the Subcommittee, I am Mathy Stanislaus, Assistant Administrator for EPA's Office of Solid Waste and Emergency Response (OSWER). Thank you for the opportunity to appear today to discuss the Superfund program, including the progress that has been made, actions taken to address program challenges, and EPA's response to GAO's recently released Superfund report.

THE SUPERFUND PROGRAM

The Superfund program was established under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), which Congress passed in December 1980 to respond to the risks posed by Love Canal and other toxic waste sites. The Superfund program has a variety of tools to help protect human health and the environment. These include shorter term removal actions to mitigate immediate threats to human health and the environment and remedial actions, which address more complex and long-term clean up of hazardous waste sites

Each year, more than 20,000 emergencies involving the release (or threatened release) of oil and hazardous substances are reported in the United States, with emergencies ranging from

small scale spills to large events requiring prompt action and evacuation of nearby populations. EPA coordinates and implements a wide range of activities to ensure that adequate and timely response measures are taken in communities affected by hazardous substances and oil releases, where state and local first responder capabilities have been exceeded, or where additional support is needed. EPA conducts time-critical and non-time-critical removal actions when necessary to protect human health and the environment by either funding response actions directly or overseeing and enforcing actions conducted by potentially responsible parties.

Through shorter term actions, the Superfund program controls exposure to hazardous substances so human health is protected while long-term clean up is underway. For example, where EPA determines that existing water supplies are unsafe due to releases from contaminated sites, we provide alternative sources of drinking water. To date, EPA has provided more than 2.1 million people near or on Superfund National Priorities List (NPL) sites with alternative sources of drinking water.

The Superfund removal and emergency response programs conducted 214 emergency response and removal cleanup actions and provided oversight for 154 responsible party emergency response and removal actions for at total of 368 actions in FY 2009. To date, more than 10,000 removals at both NPL and non-NPL hazardous waste sites have been completed to reduce the immediate threat to human health and the environment.

The Superfund Remedial program continues to protect human health and the environment by addressing high priority, more complex, often multimedia, longer term cleanups. To date, 1,620 sites have been listed on the NPL. Through FY 2009, EPA and its state and tribal partners

completed final assessment at 40,558 contaminated sites. Through FY 2009, cleanup construction had been completed at 1,080 NPL sites, which represents approximately 67% of the sites listed on the NPL, and all appropriate response actions under CERCLA have been completed for 338 sites (21% of the sites listed on the NPL), thereby removing them from the NPL. In addition, the Superfund program continued its focus on controlling potential human exposure at NPL sites. In FY 2009, EPA exceeded its target (10) by adding another 11 sites where human exposure was brought under control. EPA also exceeded its target (15) in FY 2009 by adding another 16 sites where ground water migration was brought under control.

Further, EPA has been very successful in leveraging federal enforcement dollars to secure private party cleanups. In FY 2009, EPA secured commitments from Potentially Responsible Parties (PRPs) to perform cleanups and reimburse EPA for past costs worth nearly $2.4 billion. The cumulative value of private party cleanup commitments and cost recovery settlements is $30.8 billion. EPA's enforcement efforts have allowed the program to focus EPA's appropriated funds on sites where PRPs cannot be identified or are unable to pay for or perform the cleanup.

As the Superfund program has continued to mature and evolve, EPA has looked for additional ways to assess remedial program progress beyond the number of sites that have reached construction completion and help keep the public informed about site cleanup milestones. To better measure long-term progress, in 2007 the program adopted a Site Wide Ready for Anticipated Use (SRWAU) measure. This measure tracks the number of NPL sites where the remedy is constructed (construction complete) and all of the engineering and

institutional controls are in place to ensure that the land is protective for reasonably anticipated uses over the long term. Those anticipated uses and needed controls are outlined in the site Record of Decision (ROD). EPA expects to designate at least 65 sites ready for anticipated use in 2010. Through FY 2009, EPA had determined 409 sites to be SWRAU.

Finally, EPA is continuing its efforts to efficiently utilize every dollar and resource available to clean up contaminated sites and to protect human health. In FY 2009, EPA's Superfund program obligated more than $1.1 billion to conduct cleanup construction and post-construction work at Superfund sites. Of that amount, $563 million were American Recovery and Reinvestment Act (ARRA) funds while $402 million came from appropriated funds, state cost-share contributions and responsible party settlement resources. EPA used $247 million of the total obligated amount to fund 26 new construction projects at 26 NPL sites.

EPA has been particularly successful in leveraging its appropriated funding through the use of responsible party settlements to establish site-specific special accounts. Through the end of FY 2009, EPA has collected more than $2.9 billion (including earned interest) in more than 900 site-specific special accounts. Of this amount, EPA has obligated $1.6 billion for site-specific response actions, and developed multi-year plans for using more than 95% of the $1.3 billion that remains available to help fund response actions.

In addition, EPA continues its work to make sure ARRA funding is used effectively and efficiently. Of the $600 million in ARRA funding that the Superfund program received,, $582 million was used to start and accelerate cleanup at NPL sites and support job creation and retention while protecting human health and the environment, and the remaining $18 million was

set aside for management and oversight of Superfund activities. As of the end of May 2010, EPA obligated $575 million in ARRA funding for remedial action and design projects at 51 NPL sites and 46 of those sites had started on-site construction. EPA expects the remaining 5 sites to start construction with in the next two months.

INTEGRATED CLEANUP INITATIVE

While Superfund continues to make progress cleaning up hazardous waste sites, we still face numerous challenges. One such challenge involves ensuring that our cleanup activities are conducted in an accountable and transparent fashion so that communities have the information they need to be active and engaged participants in the cleanup process. This challenge has become especially critical as returning Superfund properties to productive use has become an integral part of the cleanup process. Another challenge is the need to more effectively leverage cleanup resources to compensate for the largest and most complex sites that have come to demand an increasing proportion of EPA's Superfund resources. Over the past decade, this has meant some new construction projects could not be immediately funded.

In general, communities affected by Superfund sites are often actively engaged in the Superfund cleanup process. They have become active participants in future land use determinations at Superfund sites as site redevelopment has become a standard facet of the Superfund process. This participation has built on communities' overall interest to better understand and engage with EPA on cleanup decisions. Communities are also seeking greater accountability in the cleanups that affect their lives. They often want more meaningful ways to assess cleanup progress than the long-term milestones the program currently uses to evaluate site

progress—milestones that can take years to materialize. Communities' interests also encompass more than just Superfund cleanups; they are concerned about a range of contaminated sites, regardless of the cleanup authorities being used to accomplish the cleanup. Understandably, communities' number one concern is that a site be cleaned up; whether under CERCLA authority or some other federal, state or tribal environmental statute.

The Superfund program continues to clean up a mix of NPL sites with varying degrees of complexity and challenges, however, those sites that have not achieved construction completion, when compared with those that have achieved construction complete, are generally larger, costly, and more complex than the sites EPA has completed in the past. This means that the cleanup work we are doing today overall is more difficult, is more technically demanding, and consumes considerable resources at fewer sites than in the past.

Regarding the resource issues that these sites impose on the program, statistics from FY 2008 are illustrative of the problem. In FY 2008, nearly 57 percent of Superfund obligations for construction and post-construction activities went to only 17 sites. In that same year, EPA was unable to fund 10 out of 26 new construction projects ready for funding due to the resource needs for ongoing construction work. In FY 2009, we were able to fund all of our new construction starts due to the more than $563 million in ARRA funding; in the absence of such funding, we would not have been able to do so.

To address these and other challenges, EPA recently started a new effort called the Integrated Cleanup Initiative (ICI). The goal of ICI is to improve transparency, accountability

and efficiency in the Superfund program and other cleanup programs throughout the cleanup process. Under this initiative we have begun to examine and identify programmatic improvements across all stages of the cleanup process - from assessment through cleanup completion - for all of our land cleanup programs. By looking across all of our land cleanup programs, Superfund, Brownfields, Federal Facilities, Resource Conservation and Recovery Act, and Underground Storage Tanks, we seek to integrate and leverage the Agency's land cleanup authorities to accelerate cleanups, address a greater number of contaminated sites, and put these sites back into productive use while protecting human health and the environment. In addition, the ICI will also examine opportunities to improve our cleanup enforcement activities as a means to address the funding challenges that our program faces. By obtaining responsible party participation in conducting and/or financing cleanups, we preserve Superfund monies to address sites where there are no viable responsible parties.

As one of the first steps in the ICI, starting in FY 2011, EPA will begin reporting on a new Superfund NPL site cleanup performance measure called "remedial action project completions." These projects represent discrete actions and by more closely tracking project completion, EPA will be able to better monitor incremental progress toward the complete construction of long-term remedies at NPL sites. They are defined to address specific problems, such as a given media (e.g., ground water contamination), areas of a site (e.g., discrete areas of contamination, building demolition, etc.) or particular technologies (e.g., soil vapor extraction). By highlighting this more focused aspect of the cleanup process as a performance measure, EPA can provide communities with greater opportunity to evaluate and hold EPA accountable for

specific work conducted in the field in addition to overall progress toward risk reduction and reuse at Superfund sites.

Further, under ICI we are working closely with clean up programs in other federal agencies, notably the Department of Defense and the military services which account for approximately 140 out of 170 federal facilities on the NPL. Many of these are large and complex sites with strong community interest. EPA and DoD are working to harmonize the performance measures at NPL sites to improve consistency in reporting, improve transparency in setting goals for important clean up milestones, and reduce potential site level disputes (and potential delays) arising from different accountability systems between EPA and DoD and the military services.

COMMUNITY ENGAGEMENT INITIATIVE

As part of EPA's commitment to increase transparency, participation and collaboration in government, and pursue Administrator Lisa Jackson's priorities of cleaning up our communities and expanding the conversation on environmentalism, OSWER has launched its Community Engagement Initiative. The Initiative is designed to help communities effectively participate in EPA decision-making processes and provide them with better information and opportunities to understand and have input on environmental cleanups. Transparency, access and public involvement are essential to meaningful and deliberate decision-making at EPA. Getting a diverse group of citizens involved – all with their own unique experiences and expertise – will better inform our decisions and actions to protect Americans where they live, work, play and learn.

In December 2009 EPA announced the Community Engagement Initiative and released draft principles, goals, and objectives for public feedback. We received many good comments and ideas from community stakeholders, local governments, states - and our own EPA programs and regions. Based on this input, we developed an OSWER Implementation Plan that lays out specific actions that EPA will undertake to achieve the goals and objectives of the Community Engagement Initiative. An Implementation Plan was released in May, 2010 and we will continue to seek public input and ideas on the plan and Initiative as we evaluate and publicly report on the results of our community engagement activities.

GAO REPORT ON SUPERFUND PROGRAM FUNDING

Let me turn now to GAO's findings in its report "EPA's Estimated Costs to Remediate Existing Sites Exceed Current Funding Levels, and More Sites Are Expected to be Added to the National Priorities List." In the draft report reviewed by EPA, GAO issued several findings regarding EPA's past, current, and future funding levels and included one recommendation. One finding is that EPA's future costs to conduct remedial construction at fund-lead NPL sites will likely exceed recent funding levels. GAO also concluded that there will be more sites added to the NPL on average within the next five years than over the previous five years, and as a result, GAO recommended that EPA determine the extent to which EPA will consider vapor intrusion as part of the NPL listing process and how this will affect the number of sites listed on the NPL in the future. Finally, GAO determined that, based on data generated by a survey of regional and state Superfund program personnel, more than half of the non-federal sites designated as

"Human Exposure Not Under Control" and "Human Exposure Insufficient Data" require all or most of the work remaining to be completed in order to achieve construction completion.

With respect to the report's recommendation, EPA agrees that assessing the extent to which vapor intrusion will play a role in listing NPL sites and the effect it will have on the number of future listings is important. EPA does currently consider vapor intrusion impacts in both the remedial and removal cleanup programs but this potential exposure route may not be sufficiently accounted for in the Hazard Ranking System. Another component of the ICI includes an evaluation as to whether the Hazard Ranking System should be modified to capture these types of developments in environmental assessments, as well as lessons learned and recommendations for improvements based upon years of user feedback. The application of the System to include evaluation of vapor intrusion is one of the key focus areas. In addition to the ICI's focus on vapor intrusion, my office is developing a number of vapor intrusion resources including finalizing OSWER's Draft 2002 vapor intrusion guidance, a topic-specific website and technical papers to improve our ability to address this issue.

Regarding the report's conclusions tied to the overall funding situation, EPA recognizes that the Superfund remedial program—like many programs across the federal government—has the capacity to use additional resources if and when they become available, as is evident in the utilization of the $600 million provided through the Recovery Act. Nonetheless, EPA, like Congress, has to allocate scarce resources by achieving the best balance across many priorities. Given currently available resources, EPA will continue to use its Superfund resources efficiently and effectively to complete work at sites as expeditiously as possible. Toward that goal, the ICI,

as I've already described, contains a specific focus on improving efficiencies and accelerating progress where possible.

In addition to the ICI, the President's FY2010 and FY2011 budgets both proposed reinstatement of the Superfund tax, which expired at the close of calendar year 1995. EPA has transmitted to Congress proposed legislative language. This draft legislation would ensure that parties who benefit from the manufacture or sale of substances commonly found in contaminated sites contribute to the cost of cleanup and would provide a stable, dedicated source of revenue to be placed in the Superfund Trust Fund where the revenues would be available for appropriation by Congress to support the cleanup of the Nation's most contaminated sites. In addition, EPA's Special Accounts Senior Management Committee is overseeing the implementation of management improvements and increasing coordination and transparency related to special accounts among EPA's Headquarters and Region offices. We are also reporting special account financial and planning information in EPA's annual Congressional Justification to increase transparency regarding our use of special accounts funds.

With respect to the findings related to environmental indicators, the report includes conclusions about the indicators, "Human Exposure Not Under Control" and "Human Exposure Insufficient Data." EPA assigns sites to the "not under control" category when: 1) contamination has been detected at a site at an unsafe level, and 2) a reasonable expectation exists that people may be exposed to the contamination. Sites EPA assigns to the "insufficient data" category are those at which the Agency does not yet have sufficient information to determine whether there are any current, unacceptable human exposure pathways at the site. Therefore, no immediate determination is possible. EPA typically assigns sites to this category when response actions

have not yet been initiated or when response actions have been initiated but have not yet generated sufficient, reliable information to make a human exposure determination.

I would like to identify several issues associated with the human exposure measure that require more clarification. It is important to note that the designation of a site as "human exposure not under control" should not be construed to mean that people are at risk of imminent harm. When EPA identifies imminent threats, we take immediate action to address them using our emergency removal authorities.

In addition, EPA has made significant progress not only in responding to "not under control" sites, but also reducing the number of "not under control" sites. Since this measure's inception in 2002, EPA has reduced the "not under control" sites from 120 to 84, even though almost 90 sites were added to the reporting universe during that time. Further, EPA expects to make significant progress in further reductions under current funding levels. At the end of Fiscal Year 2009, the EPA Regional Superfund Programs estimated that within 5 years, by the end of Fiscal Year 2015, 50% (42 sites) of the sites currently categorized as "not under control" will move into the Under Control Category.

Further, GAO focused on cleanup progress necessary to achieve construction completion at the "not under control" and "insufficient data" sites. Based upon its survey of regional and state Superfund personnel, GAO determined that more than half of the non-federal sites with either of these two designations at the time the survey was conducted require all or most of the work remaining to be completed before these sites reach the construction completion milestone.

Such a characterization of progress can be misleading in that it suggests that it can be years before a site achieves "human exposure under control" (HEUC) status when, in fact, this can be accomplished long before the site reaches construction completion. Of the 536 NPL sites that are not yet construction complete, 299 (or 56%) have already achieved HEUC.

CONCLUSION

In conclusion, the Superfund program continues to make progress in the face of several challenges and will continue protecting human health and the environment through the cleanup of hazardous waste sites. EPA believes the new ICI initiative will be important in helping address critical aspects of Superfund program challenges particularly in terms of increasing transparency, accountability and efficiency. Let me also note that we appreciated the constructive working relationship and dialogue with GAO as they developed their report; and we commend GAO for undertaking this important study with respect to budget issues in the Superfund remedial program. Thank you for the opportunity to discuss these important issues with you today; I am happy to answer any questions you may have.