Testimony

before the

Subcommittee on Superfund and Environmental Health

of the

U.S. Senate Environment and Public Works Committee

regarding

Oversight Hearing on the

Federal Superfund Program's Activities to Protect Public Health

Submitted by

Rena Steinzor

Professor

University of Maryland School of Law
500 West Baltimore Street
Baltimore, MD 22201
rstein@law.umaryland.edu

and

Member Scholar and Board Member,

Center for Progressive Reform



www.progressivereform.org

October 17, 2007

Madam Chairwoman and members of the Committee, thank you for inviting me to testify today. Superfund badly needs your attention, and I congratulate the Committee for reviving the constitutional check and balance of rigorous oversight.

I have worked on Superfund for 25 years. I was subcommittee counsel for Representative James J. Florio, widely perceived as the "father" of Superfund, when Congress last reauthorized the program. I served as a senior staff person on the National Commission on Superfund, which included the CEOs of all major stakeholders and negotiated a consensus reauthorization of the Superfund statute,[1] only to have its work washed away by the Contract with America. I have represented clients liable at Superfund sites and counseled clients who wanted to avoid that fate. I teach Superfund law to students and have written five scholarly articles on the subject, as well as a report entitled *The Toll of Superfund Neglect*, which is the focus of my testimony today. [2] The report was released by the Center for Progressive Reform[3] and the Center for American Progress[4] and is available at http://www.progressivereform.org/articles/Superfund_061506.pdf. The report analyzes the environmental conditions and demographics of 50 of the worst sites in the nation's ten most populous states.[5] A list of the sites we studied is attached as Appendix A to my testimony. I respectfully request that the report and its attachments be included in the record for this hearing.

Legends

Senior EPA political appointees and industry representatives may or may not understand how Superfund is supposed to work. They should understand how it does work. Unfortunately, they are not sharing either explanation with you. Instead, they have created five Superfund legends that have little relationship to history or reality:

---

[1] Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§9601 et seq.,

[2] I appreciate the assistance of Margaret Clune, CPR policy analyst, in preparing the original report and my research assistants, Michael Wright and Xochitl Strohbehn, students at the University of Maryland Law School, who helped me prepare this testimony.

[3] The Center for Progressive Reform (CPR) is an organization of 45 academics who specialize in the legal, economic, and scientific issues that surround federal regulation to protect public health, natural resources, and worker safety. One component of the Center's mission is to circulate academic papers, studies, and other analyses that promote public policy based on the multiple social values that motivated the enactment of our nation's health, safety and environmental laws. We seek to inform the public about scholarship that envisions government as an arena where members of society choose and preserve their collective values. We reject the idea that government's only function is to increase the economic efficiency of private markets. For more information, please see http://progressivereform.org.

[4] The Center for American Progress is a progressive think-tank dedicated to improving the lives of Americans through ideas and action. It is committed to creating a long-term, progressive vision for America—a vision that policy makers, thought-leaders and activists can use to shape the national debate and pass laws that make a difference. For more information, please see http://www.americanprogress.org.

[5] The report selected the 50 sites on the basis of the severity of contamination, their proximity to people, whether construction has been completed at the facility, and other criteria. See pages 157-162 of *The Toll of Superfund Neglect* for a full description of our selection methodology. In the year since the report was issued, construction has been completed at two sites on the list: the ALCOA (Point Comfort)/Lavaca Bay in Texas and the UGI Columbia Gas Plant in Pennsylvania.

1. Few if any sites endanger public health.
2. Because EPA has only recently gotten down to the worst, most complex sites, cleanup has slowed, with the construction phase of remedial action[6] completed at only 24 sites in 2007, as compared to 87 sites in 2000.[7]
3. EPA has enough money without renewal of the Superfund tax.
4. Superfund taxes are onerous.
5. Companies that created the sites are paying to clean them up.

Truth

The truth is that Superfund's creators intended it to be a three-legged stool:

1. systematic identification and prioritization of abandoned toxic waste sites all over the country that require cleanup;
2. creation of a multi-billion dollar fund supported by industry taxes to both prime the pump for cleanup and pay for so-called "orphan" sites; and
3. strict, joint, and several liability that gives responsible parties that created the sites compelling incentives to clean them up and allows government to recover most of the money spent upfront.

Over the last several years, EPA's political leadership has sawed the first leg in half, removed the second leg, and left the third leg to rot to its core. No wonder the program is in trouble.

The assertion that long-neglected Superfund sites are not harming anybody and can safely be neglected is ludicrous. Indeed, if the people who advance this legend believe it to be true, we would have a more honest debate if we discussed whether we could safely wind down Superfund, ending the program within some fixed timeline. No one wants to go there, and for good reason.

Thousands of uncontrolled federal and state Superfund sites plague communities across the nation. Our report offers a snapshot of these conditions. Most of the 50 sites we studied are located in heavily populated urban or suburban neighborhoods. Many have languished on the Superfund National Priorities List for two decades. Often no more than holes in the ground, they leak toxic soups comprised of hundreds of chemicals into the air, soil, or water, including PCBs, creosote, lead, polycyclic aromatic hydrocarbons, chromium, copper, zinc, cadmium, arsenic, mercury, and trichloroethylene. The sites sit atop aquifers used for drinking water, leak toxic chemicals into rivers and streams used for swimming and recreation, contaminate soil where

[6] As the Subcommittee is aware, completing construction does not mean that a site is finished, and does not pose a risk to the public. Especially where remedies are temporary, long-term monitoring, operation and maintenance are essential to ensure that risks remain contained.

[7] An EPA chart submitted to the subcommittee shows 47 "construction complete" sites in 2001, 42 in 2002, 40 annually in 2003-2005, and 24 in 2007. These numbers are substantially less than annual figures for the preceding six years which were 68 (1993), 61 (1994), 68 (1995), 64 (1996), 88 (1997), 87 (1998), 85 (1999), and 87 (2000).

children play with hazardous wastes, and in one particularly tragic and egregious case, provide the foundation for an apartment building that is still occupied.[8]

Millions of people live in the census tracts[9] where the sites are located, including hundreds of thousands of children. Many of these communities are low income and comprised of people of color. Of the 50 sites we studied, 60 percent were located in neighborhoods where households reported median incomes in the range of $40,000 and some 26 percent were in the midst of populations comprised of 40 percent or more racial or ethnic minorities.

The second legend, contending that cleanup has slowed because EPA did the easy sites first, is half true. It is difficult to complete cleanup at the biggest, most contaminated sites, such as (1) the Operating Industries site, a 190-acre municipal landfill in the Los Angeles suburbs where millions of gallons of liquid hazardous waste was poured over densely packed household garbage, producing leachate that contains vinyl chloride, benzene tetrachoroethylene, and heavy metals[10] or (2) the 160-acre Lawrence Aviation Industries site in Suffolk County, New York, where the owner poured unknown quantities of TCE and acid sludges onto the ground and into two unlined lagoons.[11]

But up until a few years ago, our government rolled up its sleeves and deployed the complicated technology and significant resources that are required to get difficult jobs done. Agencies in charge of such efforts did not come to Congress demanding fewer resources as these challenges became more daunting, as EPA now does.

This bizarre development brings us to the third legend: EPA has all the money it needs to complete cleanup. The broad-based industry taxes that support the program expired in 1995. President Clinton asked Congress to extend them every year he was in office, and every year, the Congress refused the request. The Bush Administration opposes extension of the tax and has made up chronic shortfalls by drawing on general taxpayer revenues and steadily lowering annual appropriations. In FY 2003, EPA ran through all the money left over from the years when the program was supported by industry taxes and the program has been exclusively supported by general revenues ever since.

Not only are the wrong people paying to support a program that is starved for resources, crucial tasks are increasingly left undone. In constant dollars, revenues appropriated for the

---

[8] See page 71 of *The Toll of Superfund Neglect* for a description of the Normandy Park Apartments site in Hillsborough County, Florida.

[9] Census tracks are small geographic areas averaging 4,000 people. See https://ask.census.gov.

[10] See page 38 of *The Toll of Superfund Neglect* for a description of the Operating Industries site.

[11] See page 60 of *The Toll of Superfund Neglect* for a description of the Lawrence Aviation site.

Superfund program now stand at levels 40 percent lower than the amounts Congress specified when it last reauthorized the program in 1986.[12]

As any businessperson knows, it takes money to make money. Not only are there hundreds of sites at the federal level that need investigation so cleanup plans can be made, thousands of additional sites have ended up in the states' laps. Even if they wanted to, EPA and the states cannot go to court to demand responsible party cleanups without first completing these investigations and writing cleanup plans and, without more money, they have little hope of cleaning up orphan sites where no responsible party is available. Yet EPA has precipitously cut the funding for states to do the technical analysis necessary to determine what should be done about these hazards.[13] The result is that the sites are swept out of sight, getting worse and worse as their public health and environmental implications are buried in a sea of mind-numbing, "don't-worry-be-happy" EPA statistics.

Let me give you another example. I teach at the University of Maryland School of Law in Baltimore. This past spring, Dr. Joshua Sharfstein, the City's Public Health Commissioner, closed a popular baseball field called Swann Park after old documents came to light revealing that in the late 1970's, arsenic from a nearby Allied Signal pesticide plant had blown onto the park, insinuating itself into the soil at toxic levels. The Maryland Department of the Environment managed to overcome the funding gap that has paralyzed its state Superfund efforts, and ordered that the park be remediated. Undoubtedly, the saga of Swann Park is but the dusting of snow on top of the iceberg, as we will learn over the next decades unless we resuscitate both the federal and state Superfund programs.

The fourth legend is that Superfund taxes are too onerous and corporate responsible parties are already paying their fair share through cleanups ordered by past consent decrees. Glossing over the implications of these missing resources, EPA and industry representatives argue that the Superfund tax would amount to double dipping against these responsible parties.

The truth is that before they expired in 1995, Superfund taxes raised revenues of approximately $1.5 billion annually, or $4 million daily, from taxes on crude oil and chemical feedstocks and through a broad-based corporate tax. As the following chart shows, annual Superfund tax revenues amount to 1.79 percent of the 2006 profits of just six of the nation's largest oil and petrochemical companies. The CEO salaries of these six companies alone would cover almost six weeks of missing revenues.

---

[12] See page 3 of the testimony of Katherine N. Probst, Senior Fellow and Director, Risk, Resource, and Environmental Management, Resources for the Future, before this Committee at a Superfund oversight hearing held on June 15, 2006, available at http://epw.senate.gov/public/heating_statements.cfm?id=257181.

[13] For information on state funding shortfalls, see EPA, Office of the Inspector General, Evaluation Report No. 2004-P-00027, *Some States Cannot Address Assessment Needs and Face Limitations in Meeting Future Superfund Cleanup Requirements* (September 1, 2004), available at http://www.epa.gov/oig/reports/2004/20040901-2004-P-00027.pdf.

Company Name	2007 Fortune 500 Rank	Money in Millions	% Change from 2005	CEO Name	2006 CEO Compensation ($ in Millions)
Exxon Mobil	2	39,500,000,000	9.30%	Rex Tillerson	4,120,000*^
Chevron	4	17,138,000,000	21.60%	David O'Reilly	8,800,000
ConocoPhillips	5	15,550,000,000	14.90%	James Mulva	31,340,000
Valero Energy	16	5,463,000,000	52.20%	William Klesse	10,910,000*
Marathon Oil	30	5,234,000,000	72.60%	Clarence Cazalot	37,480,000
Sunoco	60	979,000,000	0.50%	John Drosdick	46,190,000
TOTAL		83,864,000,000			163,740,000
Tax Rate Needed To Produce 1.5 Billion		1.79%			

*New CEO (Some Compensation May Relfect Another Executive) Per Forbes.com (visited 10/12/07).
http://www.forbes.com/lists/2006/12/Rank_6.html

^ Prior Year Data
http://www.forbes.com/lists/2006/12/Rank_6.html (visited 10/12/07)

As for the assertion that responsible parties are shouldering the large majority of the burden for cleaning up Superfund sites, we confront yet another half-truth. At sites where cleanup orders were issued well before today's enforcement doldrums, responsible parties are moving cleanup along, often at a clip faster than government-funded cleanups. But at countless other sites, some of the nation's most prominent corporations have backed off their obligations, apparently waiting for federal and state enforcement officials to come compel them to address their responsibilities.

An analysis by the Center for Public Integrity completed in 2007 relied on confidential EPA enforcement material to compile a list of the 100 large companies that have the most Superfund sites, breaking down this data to show the numbers of sites on the list that remain unaddressed years and even decades after listing.[14]

For example, the 75-acre Universal Oil Products site in East Rutherford, New Jersey was first listed in 1983 and is heavily contaminated with 4.5 million gallons of waste solvents and solid chemical wastes. Honeywell, the only responsible party at the site, is leading cleanup efforts, which have crawled along for a quarter century. According to the most recent EPA site

[14] See Center for Public Integrity, *Wasting Away, Superfund's Toxic Legacy* (2007), a series of reports, all of which are available at http://www.publicintegrity.org/Superfund/.

description posted on the web this past February, an investigation into contamination of onsite wetlands and creek areas did not begin until 2005 and still are not completed.[15]

Conclusion

More than any other environmental program, Superfund is a victim of compassion fatigue and political doublespeak. The federal government and responsible parties have dragged their feet on cleanup for so long that it has been impossible for the public at large to maintain the level of outrage that propelled the birth of the program in 1980 and Congress' decision to increase Superfund resources six-fold in 1986. In many locations, cosmetic changes have been made – rusting barrels have been removed from the surface and vegetation has reemerged on what were moonscapes 20 years ago. Beneath the surface, though, little has really changed. The toxic stews continue to circulate, moldering and spreading, adding chemicals to aquifers, rising to the surface of the soil as the land freezes and thaws, and releasing methane and other volatile gases.

For the sake of those living in the census tracts containing the 50 sites detailed in this report, as well as the untold other people living near hazardous waste sites across the country, CPR urges this Committee to support the reinstatement of Superfund taxes and continue its rigorous oversight of the implementation of this vital program.

Thank you again for inviting me.

[15] Universal Oil Products, New Jersey, EPA ID# NJD002005106, available at http://www.epa.gov/region02/superfund/npl/0200101c.pdf.

APPENDIX A – 50 PROFILED SITES

STATE	SITE NAME	HRS SCORE	DATE ADDED TO THE NPL
California	• Aerojet General Corp.	54.63	Sept. 8, 1983
	• Iron Mountain Mine	56.16	Sept. 8, 1983
	• McCormick & Baxter Creosoting	74.86	Oct. 14, 1992
	• Operating Industries Landfill	57.22	June 10, 1986
	• Stringfellow	61.4	Sept. 8, 1983
Texas	• ALCOA (Point Comfort)/Lavaca Bay	50	Feb. 23, 1994
	• Gulfco Marine Maintenance	50	April 30, 2003
	• Jasper Creosoting Company Inc.	50	July 28, 1998
	• R&H Oil/Tropicana	50	Proposed on June 14, 2001
	• Star Lake Canal	50	July 27, 2000
New York	• Computer Circuits	50	May 10, 1999
	• Consolidated Iron & Metal	50	June 14, 2001
	• Lawrence Aviation Industries, Inc.	50	Feb. 4, 2000
	• Liberty Industrial Finishing	50.65	June 10, 1986
	• Old Roosevelt Field Contaminated GW Area	50	May 11, 2000
Florida	• American Creosote Works (Pensacola Pit)	58.41	Sept. 8, 1983
	• Escambia Wood – Pensacola	50	Dec. 16, 1994
	• Normandy Park Apartments	49.98	Proposed on Feb. 13, 1995
	• Reeves Southeast Galvanizing Corp.	58.75	Sept. 8, 1983
	• Stauffer Chemical Corp. (Tarpon Springs)	50	May 31, 1994
Illinois	• Circle Smelting Corp.	70.71	Proposed on June 17, 1996
	• DePue/New Jersey Zinc/Mobil Chem Corp.	70.71	May 10, 1999
	• Indian Refinery – Texaco Lawrenceville	56.67	Dec. 1, 2000
	• Parsons Casket Hardware Co.	55.58	July 22, 1987
	• Sauget Area 1	61.85	Proposed on Sept. 13, 2001
Pennsylvania	• East Tenth Street	67.68	Proposed on Jan. 18, 1994
	• Lower Darby Creek Area	50	June 14, 2001
	• Sharon Steel (Farrell Works Disp. Area)	50	July 28, 1998
	• UGI Columbia Gas Plant	50.78	May 31, 1994
	• Watson Johnson Landfill	71	Sept. 13, 2001
Ohio	• Armco, Inc., Hamilton Plant	69.34	Proposed on April 30, 2003
	• Diamond Shamrock Corp. (Painesville Wks)	50	Proposed on May 10, 1993
	• Dover Chemical Corp.	50	Proposed on May 10, 1993
	• Nease Chemical	47.19	Sept. 8, 1983
	• North Sanitary Landfill	50	May 31, 1994
Michigan	• Barrels, Inc.	42.24	Oct. 4, 1989
	• Bay City Middlegrounds	50	Proposed on Feb. 13, 1995
	• Bofors Nobel, Inc.	53.42	March 31, 1989
	• Rockwell International Corp.	52.15	July 22, 1987
	• State Disposal Landfill, Inc.	42.24	Feb. 21, 1990
New Jersey	• Cornell Dubilier Electronics, Inc.	50.27	July 28, 1998
	• CPS/Madison Industries	69.73	Sept. 8, 1983
	• Universal Oil Products (Chemical Division)	54.63	Sept. 8, 1983
	• Ventron/Velsicol	51.38	Sept. 21, 1984
	• Vineland Chemical Co., Inc.	59.16	Sept. 21, 1984
Georgia	• Brunswick Wood Preserving	54.49	April 1, 1997
	• Camilla Wood Preserving Company	50	July 28, 1998
	• LCP Chemicals Georgia	60.14	June 17, 1996
	• Terry Creek Drdge Spoil Areas/Herc. Outfall	50.18	Proposed on April 1, 1997
	• Woolfolk Chemical Works, Inc.	42.24	Aug. 30, 1990