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SUPERFUND PROGRAM: STATUS OF CLEANUP EFFORTS

HEARING

BEFORE THE

SUBCOMMITTEE ON SUPERFUND,
WASTE CONTROL, AND RISK ASSESSMENT

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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C O N T E N T S

SUPERFUND PROGRAM: STATUS OF CLEANUP EFFORTS

TUESDAY, MARCH 21, 2000

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

The subcommittee met, pursuant to notice, at 2:05 p.m. in room 406, Dirksen Senate Office Building, Hon. Lincoln Chafee (chairman of the subcommittee) presiding.

Present: Senators Chafee, Crapo, Lautenberg, and Smith [ex officio].

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

Senator CHAFEE. Today the subcommittee will hear testimony on the current status of cleanup activities under the Superfund program. This is my first hearing as chairman of the Subcommittee on Superfund, Waste Control, and Risk Assessment. I'm honored to chair this committee, which has jurisdiction over many of the nation's laws that regulate hazardous and solid waste.

A lofty standard has been set by the Senators who have chaired this subcommittee in the past. The distinguished chairman of the full committee, Senator Bob Smith, led this subcommittee for 5 years during a critical period in the program and is a tireless advocate for fairness and efficiency in Superfund.

The current ranking minority member of this subcommittee, Senator Frank Lautenberg, was chairman from 1987 until 1995 and has been a fierce advocate for our laws governing toxic waste.

The Environment and Public Works Committee has achieved significant progress because its members have always worked in a bipartisan manner. Out of this cooperative spirit, Congress enacted the Comprehensive Environmental Response Compensation and Reliability Act of 1980. This landmark statue was enacted only because members of this committee had the foresight to reach across the aisle and forge bipartisan solutions to the startling environmental problems that faced this Nation. They knew that partisanship would be no excuse for ignoring the discovery of toxic waste sites, such as Love Canal in New York and the Valley of Drums in Kentucky.

Indeed, the original Senate Superfund bill was a bipartisan effort from the beginning. The bill was cosponsored by the chairman and ranking minority members of the full committee and the two sub-

committees with jurisdiction, including Senators John Culver of Iowa, Ed Muskie of Maine, Robert Stafford of Vermont, Jennings Randolph of West Virginia, Daniel Patrick Moynihan of New York, and my father, Senator John Chafee of Rhode Island. Four of these original cosponsors chaired the full committee at one point in time.

As the Superfund program began to develop, we discovered that it created incentives for litigation and it was too costly and time-consuming.

Since 1994, this committee has debated proposals to reform the inadequacies of Superfund. During this debate, EPA also undertook a wide variety of administrative reforms within the constraints of the existing statute to make the program more efficient, more fair, and less costly.

The reforms, which I believe EPA Assistant Administrator Tim Fields will discuss in part today, are one reason why the nature of the debate has changed. While the program is far from perfect, it is, frankly, a better program than the one that existed in 1994.

Since becoming chairman of this subcommittee, I have been visiting Rhode Island's 13 National Priority List sites to see firsthand how the Superfund program works on the ground. Rhode Island's NPL sites represent a good cross-section of the types of sites found around the country. Each of Rhode Island's sites include highly emotional issues, such as sites with contaminated groundwater, sites with contaminated river sediments, sites with municipal liability issues, and sites with dioxin-contaminated soil in residential areas.

At each site I visit, I ask local officials, residents, and responsible parties how the Federal Superfund program is working. I must be honest: time after time I hear that EPA is doing an outstanding job—and that is the truth. That's what I'm hearing as I tour Rhode Island sites. I have been told that EPA has been responsive to the concerns of local communities and has worked hard to enhance fairness and the pace of cleanup.

Acknowledging that today's Superfund program is different, I would like to take a fresh look at Superfund to identify the current status of cleanup activities, the accomplishments achieved so far, and what improvements can be made to enhance cleanups. In essence, I would like a snapshot of the current program so we can make informed decisions on the course of action to pursue.

We have two questions before us: where are we today, and where do we go from here?

The Federal Superfund program has made significant progress in cleaning up the Nation's worst hazardous waste sites. According to EPA, more than 90 percent of the cleanup decisions have been made, and more than half of all remedy construction is deemed complete.

Potentially-responsible parties and taxpayers have spent tens of billions of dollars cleaning up sites across our Nation. While Superfund was originally enacted to address the Nation's worst hazardous waste sites, today's situation is different. Companies have made large advances in waste management and remediation technology. State and local governments have developed mature cleanup programs, and the public is more involved in Superfund decisions that affect their communities.

From here, we must focus on the parts of the program that can be agreed on, to a certain extent, so that, in a bipartisan basis, we can assure the worst sites are cleaned up quickly, safely, and fairly.

It has been my experience and the experience of this committee that progress can be made if we reach across the aisle to craft solutions that benefit everyone. I would like to inject that type of cooperation into the Superfund debate. I don't believe we can succeed without it.

I look forward to working with Senator Lautenberg and all members of this subcommittee to find solutions to the remaining problems.

I'd like now to turn to the ranking member of the subcommittee, Senator Lautenberg, for his opening statement.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you, Mr. Chairman. I congratulate you for kicking off this hearing today. This has been a lingering problem, an opportunity for us dealing with Superfund, and I must say that your father was a great leader of this subcommittee and the committee and we worked cooperatively together. I thank you for mentioning my tenure as chairman. I look back longingly at those days.

[Laughter.]

Senator LAUTENBERG. I have since that time, and almost all of my service in the Senate, I have been very involved in many proposals for Superfund legislation, going back to the successful reauthorization of the program in 1986 and the legislation in the 103d Congress which came very close to passing.

I've also been watching the program, itself, and am pleased at the progress it has made, as you noted. Just about half of the Superfund sites still named on the national priorities list are completely cleaned up, and final cleanup plans have been approved for more than 1,000 other sites. Over 90 percent of the sites on the National Priorities List have cleanups underway or completed. Superfund has been particularly effective in moving quickly to eliminate the most dangerous threats to the public. The program has performed about 6,000 emergency removals of hazardous waste sites, each one potential serious health risk.

I daresay there have been advances in getting settlements to have the responsible parties perform the work and reducing litigation.

In this era of the declining Federal expenditures, it has been more important than ever that those responsible for the contamination pay for the cleaning up and stretch Superfund dollars to cover as many abandoned sites as possible.

Since 1992, 70 percent of all cleanups have been performed by responsible parties. Those are really encouraging advances, and I'm looking forward to hearing what today's witnesses will have to say on the progress that has been made cleaning up specific sites in their areas.

Now that Superfund is really hitting its stride, we need to keep that momentum going, and I want to encourage suggestions on how we can accomplish that.

One area that I am very interested in taking action on is brownfields, and I particularly look forward to hearing from our witnesses on their views of brownfields and whether they feel that it is a helpful program or could be energized.

I also want to note that this is a significant occasion, Senator Chafee's first hearing as chairman of this subcommittee. It is quite appropriate, again, considering the history of the Chafee family in the environmental issues, and I look forward to working with him and other members of the subcommittee.

I have been very encouraged by Senator Chafee's interest in working toward legislation which could be enacted into law and hope that this hearing is just the first step in a productive year working together on bipartisan projects.

I'm looking forward to hearing from our distinguished witnesses today and note that they include a mayor from my home State, the mayor of Elizabeth, NJ, Mayor Bollwage. He's in his seventh year as mayor of Elizabeth, the fourth-largest city in New Jersey. It is a city, also, that I frequented as a small child. Mayor Bollwage has been very involved in projects that reuse contaminated land very successfully, including a mega-mall being built on the site of a former municipal landfill.

Mayor Bollwage was also cochair of the Conference of Mayors' Brownfields Task Force last year, and he has worked with other cities to encourage the development of abandoned, contaminated properties across the country, properties that will become a major source of new jobs and new life for our inner cities, thanks to his vision and people like himself.

So I welcome all of you to this hearing. This is probably the last of my tenure as U.S. Senator, and certainly it is important for me to be able to hear from these witnesses, many of whom have become friends because we've worked together over the years, and to know that it is still possible for a lame duck to fly. We want to get something done.

Thank you very much, Mr. Chairman.

Senator CHAFEE. Thank you, Senator Lautenberg.

Senator Michael Crapo.

OPENING STATEMENT OF HON. MICHAEL D. CRAPO, U.S. SENATOR FROM THE STATE OF INDIANA

Senator CRAPO. Thank you, Mr. Chairman. I also appreciate your taking the time and focusing your energy on this and holding this hearing today.

You indicated you wanted to take a fresh look at Superfund, and I think that that would be a very helpful thing for us on the committee.

I have been working on this issue since I first was elected to the House of Representatives about 7½ years ago, and it has been interesting to listen to the dialog on Superfund. At that time, I don't think there was anybody—at least in Congress, maybe not throughout most of America—who disagreed that Superfund was a failed statute and that it was not working. I don't know if I can speak

for everybody, because I haven't talked with Senator Lautenberg about his perspective back there 6, 7, or 8 years ago, but we had pretty significant consensus across the board that we needed comprehensive reform of the Superfund statute at that point in time. Yet we're not able to find, as has been the case with so many other statutes, like the Endangered Species Act and others, that solution that could get bipartisan support and get the signature of the President.

Since that time, I know there have been efforts to focus on Superfund to try to administratively solve some of the problems, but, frankly, as I look at it now, 7½ years later from when it started with me here on Capitol Hill, I still see the significant need for reform in all the major parts of the statute—the remedy, the liability, and, as probably most of those here know from me, the natural resource damages aspect of the Superfund issue.

I appreciate the chance to try to create a snapshot of what is happening under the Superfund statute, but as we create that snapshot I hope that we try to do so as accurately as we can to identify those areas where we think we can find agreement to move forward. Those areas of easily achieved reforms should not replace the more vigorous efforts to reform the statute.

In that context, I'm confident that we can identify the areas of work to be done on Superfund. We've done a lot of work on that. What will remain to be seen is whether we can identify the consensus and create an opportunity to move forward with a comprehensive reform.

Natural resource damages is, as I said, a very important aspect of the entire issue, which I know is one of the most difficult, if not the most difficult, aspect of the issue to find consensus on. But, nevertheless, I remain convinced that if we do not find consensus there we will not be able to craft a bill that will necessarily bring us to the kinds of reforms that are necessary in this area.

So I appreciate once again the chairman's emphasis on this issue and his early attention to it. It is going to take early and strong attention to all of these issues if we are to craft legislation that will move into law.

Thank you.

Senator CHAFEE. Thank you, Senator Crapo.

Our first panel includes representatives from the Federal Government. Testifying today on behalf of the Administration is Mr. Tim Fields, Assistant Administrator of EPA's Office of Solid Waste and Emergency Response; and Ms. Lois Schiffer, Assistant Attorney General for Environment and Natural Resources.

I would ask that each limit their testimony to 5 minutes. Without objection, your entire written statements will be included in the hearing record.

I would like to hold questions until each witness has provided their testimony, after which each committee member will have 5 minutes to question the panel.

Welcome, Mr. Fields. Would you like to kick off?

STATEMENT OF TIM FIELDS, JR., ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

Mr. FIELDS. Thank you, Mr. Chairman.

We are very pleased to be here this afternoon. I'm pleased to be here with Lois Schiffer, the assistant attorney general for the Department of Justice. We hope to communicate to you about the progress in the program and where we would like to work with this committee on target legislative reform.

We are very pleased to hear about the progress of the Superfund program in Rhode Island, and we welcome you, Mr. Chairman, to your role, a very important role in the legislative agenda around Superfund, brownfields, and other legislative arenas surrounding the environment. We look forward to working with you and this subcommittee this year.

I want to thank you for inviting us to talk about the status of the Superfund program, and also for scheduling this hearing in a way that would accommodate our travel schedules.

I'm pleased to say the Superfund program has become in many States a real success story, as you indicated in Rhode Island, and we've seen that success replicated in many other parts of the country. More than three times as many Superfund sites have achieved construction and completion in the past 7 years than in the first 12 years of the program combined. By the end of the 106th Congress, this Congress we are in now, we will have completed construction of more than 60 percent of the non-Federal Superfund sites on the list. More than 92 percent of the sites, therefore, are in construction or have had construction completed. We think that is a major success story, along with the emergency response activities and the removal of many sites from the Superfund inventory over the last 7 years.

Also over the last 7 years we have worked diligently to make administrative reforms to make this program work better. As a result, the cost of cleanup has been reduced by 20 percent, and the time it takes to go through the process has been reduced by 20 percent.

More than 3 years ago, we were doing, on the average, 65 construction completions a year. For the last 3 years, we've done 85 or more construction completions, and that's because of the administrative reforms which allow us to do things faster and more efficiently.

We've also done tremendous work in the enforcement and fairness arena, removing many thousands of small parties through *de minimis* settlements, offering often share funding, and having an aggressive enforcement program, where 70 percent of the cleanups are being done by responsible parties.

Also, I want to mention briefly the brownfields initiative, which was announced about 5 years ago. Through that initiative, we have been involved in the assessment of more than 1,600 sites. We have cleaned up more than 150 properties, and we have redeveloped more than 150 others. That initiative has also resulted in the awarding of more than 300 grants to cities across America, the creation of almost 6,000 jobs, and leveraged redevelopment and clean-

up dollars in excess of $1.8 billion. We think that's a major success story, as well.

I want to close my brief remarks by touching upon an area that we think is particularly important for all of us who have been involved in this debate for more than 7 years. We spent many hours with this committee, with your staff, and members of the Administration working on developing some consensus around Superfund legislation. The Administration strongly believes that the Superfund program has been fundamentally improved through the administrative reforms that we have all talked about. Not only does today's program not need comprehensive reform, but enacting widespread changes to how cleanups are chosen and constructed and implementing widespread changes to how 70 percent of the cleanups are being done by responsible parties through the current liability system would surely result in cleanup delays and generate new waves, we believe, of costly litigation.

I suggest that we work together on issues that have generated broad bipartisan consensus. I believe we share the same goal: to promote the cleanup and economic redevelopment of many thousands of brownfield properties throughout this Nation.

I was encouraged to hear February 23, at our budget hearing, that Chairman Smith has indicated his support for brownfields legislation, as well. The Administration would welcome the opportunity to work with this subcommittee and committee members across the Senate EPW to pass bipartisan brownfields legislation this year. We believe that legislation should include provisions that provide funding for brownfields grants and revolving loans, liability protection for prospective purchases, contiguous property owners and innocent landowners, and support for effective voluntary cleanup programs. However, we believe strongly that the Federal safety net must be preserved to address circumstances which may present an imminent and substantial endangerment.

Some, if not all, of these provisions have been embodied in legislative proposals in the past couple of years, such as Senate bill 20 and House bill 1750. In the first session of this Congress in an effort to get brownfields legislation enacted, we backed a last-minute compromise supported by the National Association of Homebuilders.

Whatever the legislative proposals, we are willing to work with this subcommittee and you, Mr. Chairman, and other interests to develop targeted bipartisan brownfields legislation that meets our mutual goals. We believe the major brownfields legislative proposals being discussed are sufficiently similar to provide the basis for a consensus bill that can be enacted this year.

I thank you, Mr. Chairman, and this subcommittee for providing the opportunity to discuss the current status of the Superfund program and the current status of the Brownfields program. We look forward to working with you on appropriate legislative proposals to further these improvements through joint action of this Congress and the Administration.

Thank you all very much.

Senator CHAFEE. Thank you, Mr. Fields.

Ms. Schiffer, welcome.

STATEMENT OF LOIS J. SCHIFFER, ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF JUSTICE

Ms. SCHIFFER. Thank you, Senator Chafee, Senator Lautenberg, Senator Crapo. Thank you for giving me the opportunity to testify today about the Superfund program. It is an honor to be here for Senator Chafee's first hearing and Senator Lautenberg's last hearing, and I appreciate the bipartisan approach, Senator Chafee, that you are taking to this.

The Superfund program today is vastly improved and is working effectively to clean up sites and, in many cases, return them to productive use, as well as to deter new contamination. Today, I will focus on three points about the program.

First, the administrative reforms put in place over the past 6 years by EPA and the Department of Justice have worked to clean up sites and resolve liability issues in a fairer, faster, more efficient manner.

Second, on the enforcement side, the program has been predominantly a settlement program, and alternative dispute resolution has been a strong tool in our kit to make that happen.

Third, brownfields redevelopment, so important to assure the productive reuse and community renewal in our inner cities, is making dramatic forward strides in this program.

First, administrative reforms—you've heard from Assistant Administrator Fields, with whom I am pleased to share the panel, about a number of these reforms on the program side. In enforcement, where we seek to have liable companies and individuals who contribute to the pollution either clean up or pay for cleanup, we've used administrative reforms, as well, with the goal of encouraging quick resolution and settlements. These include enhanced small contributor settlements, which we call *de micromis* and *de minimis* settlements; use of more Federal money, including so-called "orphan share" money, mixed funding settlements and mixed work settlements to facilitate resolution of cases; municipal waste settlement policy implementation; and vigorously pursuing non-settlers so that settlers are actually rewarded.

What are some examples?

De micromis parties have contributed minuscule amounts of waste to a site. They should not be brought into the Superfund system, and our approach has been to announce that clearly, to take steps to discourage other PRPs from suing *de micromis* contributors, and when they do get sued, to settle with them quickly for no money so they will have protection from other suits.

The plan has worked effectively to discourage companies from using a phone book to decide whom to sue.

An example is the Petrochem/Ekotek site in Utah, where the major PRPs threatened to sue hundreds of *de micromis* parties if they did not accept the majors' settlement terms.

EPA took out radio and newspaper advertisements to discourage *de micromis* PRPs from taking the majors' demands, and the Justice Department sought a hearing before the district court so he could discourage the majors from their course. It worked, and the majors withdrew their demand against the *de micromis* parties.

At the Bypass 601 Superfund site in North Carolina, we gave contribution protection for no money to 2,400 tiny contributors so they would be out of the system.

The mere fact that we will protect *de micromis* parties has deterred most contributors from seeking to sue them.

On the money side, we have used not only EPA's orphan share policy and mixed work and mixed funding policies to achieve a fair allocation of cost at a site, but, where appropriate, our own Department of Justice settlement authority to assure that, under all the facts and circumstances of a case, a party pays a fair allocation of costs. This approach has helped assure that we resolve liability and allocation issues by settlement, at the same time reducing litigation and litigation costs substantially.

Also, when we settle with some parties at a site, we actively pursue the non-settlers, so in the next case down the road PRPs understand they are better off settling than hanging out.

Two examples of companies that paid far more because they did not settle first are Shell at the Fike Artel site in West Virginia and Hercules and Uniroyal Chemical of Canada at the Vertac site in Arkansas.

Second, we are pressing settlements through appropriate use of alternative dispute resolution, predominantly with well-trained and experienced mediators. This is part of a commitment by Attorney General Janet Reno and me and the Department of Justice to use ADR when appropriate to settle instead of litigate, though I always hasten to add that we get settlements because we have the ability, will, and talent to litigate, if necessary.

We have mediated a good resolution at the Landfill and Resource Recovery Superfund site in Rhode Island, with the help of a Federal district court judge as mediator, and just this past month a superb settlement at the Auburn Road Landfill Superfund site in Londonderry, NH.

Third, brownfields—cleaning up and recycling these old industrial and contaminated areas for reuse is a major step to reinvigorating our cities and communities. Our work furthers brownfields redevelopment in a number of ways—and I'll get quickly to the end.

For example, a number of our regular Superfund cleanups are in inner cities. We also obtain brownfields supplemental environmental projects when we enforce the other pollution statutes.

Using our Department of Justice settlement authority, we also work with EPA to enter into prospective purchaser agreements to provide those who purchase all or parts of sites of Federal interest for redevelopment and who had no prior involvement with the contamination, with assurance we will not pursue them for past contamination.

Using this authority, we've had a number of successes at getting former inner city sites recycled.

What about legislation to speed brownfields developments? This is my last point. In February, the U.S. Conference of Mayors issued a report stressing that lack of funds is the No. 1 obstacle to cleanup and reuse of brownfields sites. We urge you to appropriate the money EPA requests for its brownfields program to address that.

We also note that several years ago people complained that lenders were not lending in these areas, and we supported the passage of the lender liability provisions of the Act to remove that problem, and that provision is in place.

If there is further legislation, it should include four key provisions: first, liability relief for qualified prospective purchasers, innocent landowners, and contiguous property owners; second, ensuring that State cleanup programs to which deference is given are well-qualified, with adequate remedy selection and good opportunity for public participation; third, inclusion only of non-NPL-caliber sites; and, fourth, guaranteeing a Federal safety net through assuring Federal authority to respond to imminent and substantial endangerment to public health and the environment.

Thank you for the opportunity to speak today.

Senator CHAFEE. Thank you very much, Ms. Schiffer.

I guess I'll ask the first question.

We've heard much praise for the administrative reforms that EPA has undertaken, and I personally can say that, even from responsible parties, I met with one national entity that has done $500 million worth of Superfund cleanups across the country, some at Thoms River in New Jersey and all over the United States, $500 million, and they had praise for EPA. I asked them, "What do you think of how the process is working?" And yes, they said it was difficult in the beginning with lawsuits and litigation, but now everybody understands their role and is undertaking it, and they do give credit to EPA.

It was interesting. I would tell you if I heard differently.

However, of course, I think Senator Crapo was talking about the more controversial elements that still exist, and I'd like to ask, Mr. Fields, can you make the same administrative reforms in the natural resources damages area of the Superfund that you have in other parts of the legislation that would take out some of the more-controversial elements of the bill?

Mr. FIELDS. I understand Senator Crapo's point, Mr. Chairman, about wanting to address other areas. What I would suggest is that we work in the 106th Congress with the time we have remaining, which is a precious amount of time we do have remaining, and try to reach consensus on those things we can agree on.

I think we can achieve bipartisan agreement on brownfields provisions along the areas that Ms. Schiffer and I just mentioned, around liability relief, brownfields funding, and a State infrastructure that retains a Federal safety net. I think those are elements that we are going to have Republican and Democratic agreement on.

I think that some other issues that people want to engage in dialog about in the legislative arena, like natural resource damages or remedy reform, are things that we will not be able to get bipartisan agreement on and be able to get enacted in the 106th Congress.

So I think that is not going to be a very fruitful—I think that is something that could be taken up in subsequent Congresses, but not this Congress. I think we should try to reach agreement now and move forward on an area that we can reach agreement on, which is the brownfields arena.

I do agree, and we have been trying to work within the Administration to look at what reforms we might make to natural resource damages to make the process work better. We've had an interagency group looking at how we can better coordinate response activities and natural resource damage activities at a site so they are better coordinated. We avoid the perception of two bites at the apple. That effort is going on to look at what reforms we can make, what improvements we can make in terms of how natural resource damages are administered.

So we will be happy to explore that. I don't know, until we have further dialog, whether any reforms are going to be able to adequately address, you know, the concerns that Senator Crapo or others may have about natural resource damages, but I don't think that is an area that we can reach consensus on legislatively in this Congress. We are always willing to explore and consider additional administrative reforms that we can make to help improve the program in that area, as well.

Senator CHAFEE. Thank you, Mr. Fields.

Ms. Schiffer, maybe speak, if you could, to specifics of the administrative reforms you might undertake in the NRD area.

Ms. SCHIFFER. I would be pleased to, Senator Chafee, because actually some administrative reforms have been undertaken in the natural resource damages area.

As I'm sure the committee is aware, the lead agencies in natural resource damages are really the Departments of Interior and NOAA, which is part of the Commerce Department, as well as other land management agencies, like the Department of Agriculture and the Department of Defense that have the resources that may well get damaged.

We've worked closely with those agencies. For example, the Department of the Interior and NOAA have come out with new natural resource damages regulations which are essentially focused on restoration and what it takes to restore the resource, rather than a very complicated economic analysis. That has gone a long way toward helping make damage assessments and approaches on damages an easier thing.

In addition, in a number of cases, particularly ones where natural resource damages aren't the biggest element of the cleanup, we've tried to work with the natural resource damages agencies to see if we can't settle out the natural resource damages issues and amounts at the same time as we settle out the cleanup part of the case. So there have been steps.

In addition, all of these agencies are now working much more cooperatively together, including with EPA, as Mr. Fields indicated, and that's very helpful to coordinating the natural resource damages component and the cleanup component.

I can probably give you one example that is a very good one, and that is a case I actually worked on myself. The Housatonic River that runs through western Massachusetts and Connecticut, was a river that had been heavily contaminated with PCBs, in part because there was a General Electric manufacturing facility at Pittsfield. We recently entered into a very substantial settlement with General Electric which includes both the Superfund part of the cleanup and payments for natural resource damages, which will be

used in a series of projects by the Federal agencies and the State of Massachusetts and the State of Connecticut resource agencies to help address the natural resource damages matters, as well as the cleanup.

So a number of administrative reforms have been undertaken, and, of course, we are pleased to look to see if there are further ones, as well.

Senator CHAFEE. Very good. Thank you again.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

It is good to hear the reports from our witnesses, who are both very knowledgeable, each person very knowledgeable and has worked with Superfund and these programs for a long time.

I would ask Mr. Fields, Senator Crapo mentioned that a view of Superfund some years ago was quite different than that which I expressed today if we go back to 1993, and now the program is fundamentally different.

What would you say was the principal reason for the improvements in the program, whether they be administrative or functional reforms that have taken place?

Mr. FIELDS. I think that when the President came in, as you know, he expressed a view that Superfund was broken, that it needed to be fixed, and——

Senator LAUTENBERG. I heard it.

Mr. FIELDS [continuing]. That was in one of his very first State of the Union Addresses, as you know.

We were all given a mandate to aggressively look at what we could do under current law to fix this program.

The complaints were numerous, as you know: it takes too long, too costly, not fair. And so we looked into all those areas of concern being expressed by various stakeholders in the program, including Members of Congress, and we aggressively began three rounds of reforms in 1993 and two more in 1995 in February, and then October, 1995, and the Superfund redevelopment initiative last year. We are continually trying to find ways we can reform the program.

I think, as the chairman said earlier, even members of industry who were making some of the same complaints are acknowledging that the reforms have had an impact, we have substantially reduced the cost. The updating remedies reform has saved $1.4 billion in the cost of remedies over the last 4 years. We have, through the Remedy Review Board, saved more than $70 million in looking at more than 30 remedies, how we could do it more efficiently and use new science and technology.

So I think there has been an aggressive effort to look at, in the current statute, how we can save dollars, how we can work faster, how we can be more fair to all the parties involved in this program, yet do an effective and aggressive job of cleanup.

That mandate has come from the Administration. It has been, obviously, encouraged by Members of Congress, who have made clear that they wanted the program to be improved, as well as many other stakeholders. I think, working together with Department of Justice and others, we have made some substantial improvements, but I think we were very clearly given marching orders in 1993 that Superfund was a high priority for focus, aggres-

sive change, and I think the Administration has stepped up to the plate and taken that effort seriously.

Senator LAUTENBERG. What part of the improvement do you think came as a result of a clear understanding by the responsible parties, by industry, generally, that this was not simply a "pick on business" program; that this was a program that we encouraged resolution for?

And I would have to say—Ms. Schiffer you were in the middle of so many of these things, and so active in those days. What percentage improvement, if one could gauge—how much money do you think was saved as a result of the fact that we got down to serious settlement discussions? You said 70 percent of the cleanups were paid for by responsible parties. Do you have some estimate as to what it is that got this pace so rapid and so satisfactory that people from industry are saying, "Hey, they're not bad after all"?

Mr. FIELDS. I'll let Ms. Schiffer address the reasons why. I can tell you, overall, that $16 billion in settlements has been achieved, through $13 billion plus in settlements from responsible parties, $2.5 billion in cost recoveries have been achieved. That's $16 billion that the taxpayers are not paying, and that is, obviously, telling us that responsible parties recognize that they are a major player in Superfund and want to be a contributor to the cost of this program. That's a major investment and I think is reflective of the fact that, like you're saying, responsible parties see a need and are willing to aggressively and more effectively participate in cleanups across the country.

Ms. SCHIFFER. I think it was no one silver bullet, Senator Lautenberg. I think it was the commitment that Mr. Fields has underscored to try to make the program actually work in an effective manner, and then a whole series of different steps, each of them really worked on and carried out in an effective way, that gave industry some assurance that they were going to be treated fairly, that there was going to be an effort to settle rather than to chew up their money in litigation costs, and that there would be some consistency in the approaches that we were taking, that we would use the money we had to encourage settlements and to encourage them fairly, and that we really meant it about the fact that the so-called "enforcement first"—that is, getting industry to do the cleanups—was an effective way to do it.

I think there was pretty universal agreement that if industry could do the cleanups they could do them faster and cheaper, and that that was a worthwhile approach.

But I think it was the whole collection of different steps that we took that really helped to move this program along effectively.

Senator LAUTENBERG. Mr. Chairman, if I might, I would ask one more question. There are questions for the record I'd like to submit.

Very briefly, under EPA's current brownfields initiative, there are some almost 1,700 properties that have been assessed, 116 have been cleaned up, 150 of them redeveloped, and almost 600 properties were found not to need additional cleanup.

So this is really good news, and I'd like to see more of this, more of the cleanup and reuse.

What do you think we might do legislatively to help you at these types of sites? Is it more funding? What is it that is needed to really get this program to the place that we'd like to see it?

Mr. FIELDS. I think that the brownfields initiative and the improvements that are being achieved over the last 5 years have been primarily through policy changes, working with the Department of Justice and ourselves on new guidance on prospective purchaser agreements, and comfort status letters. That has provided some clarity and has encouraged people to get involved in brownfields transactions.

But I think that Congress can really help us by passing legislation that provides liability relief for these parties—innocent landowners, contiguous property owners, prospective purchasers—and avoid and make more clear than policies could that those people have liability relief, provide a clear statutory mandate for funding of brownfields assessment grants, for revolving loan funds. Those kind of legislative changes we believe would allow the brownfields program to work even more effectively, and we could do an even more effective job with a clearer congressional mandate than we could with the current situation where we are operating under Government policies.

Senator LAUTENBERG. Thank you.

Thanks, Mr. Chairman.

Senator CHAFEE. Thank you, Senator Lautenberg.

Senator Crapo.

Senator CRAPO. Thank you, Mr. Chairman.

Will we have just one round of questions for this panel?

Senator CHAFEE. I'm willing to have as many as you'd like.

Senator CRAPO. OK. Thank you.

First of all, Mr. Fields, following up on your answer to the questions you've already been asked with regard to finding consensus on whether we can move forward this year, you indicated, if I understood your answer with regard to NRD correctly, basically, you have stated that you do not believe we can find consensus this year and that further dialog may be possible, but that there would be no consensus on NRD reforms this year; is that right?

Mr. FIELDS. I believe that is correct. I believe this is an area that we can have further dialog on. We should talk about it as much as this subcommittee wants to discuss this topic. I don't believe that's an area that we're going to be able to achieve a consensus on and get done in the year 2000.

Senator CRAPO. And you've identified brownfields as one area where perhaps consensus could be found?

Mr. FIELDS. Yes, sir.

Senator CRAPO. Are there any other areas where consensus could be found?

Mr. FIELDS. Well, we think that the—well, another area the Administration has supported is liability relief for small municipal generators and transporters—you know, generators and transporters of trash and garbage. That is an area that we've also said that we believe there could be some bipartisan agreement on and we would support, so that's another area that we would—it's not a brownfields directly, but it does benefit small businesses and others

through that type of liability relief. That is another area that we would throw in there.

Senator CRAPO. Any others that you are aware of?

Mr. FIELDS. Nothing else—well, no, nothing else comes immediately to mind. Obviously, the President has requested for the last 3 years now that we would love to have the Superfund taxes reinstated.

Senator CRAPO. I was going to get to that.

Mr. FIELDS. OK.

Senator CRAPO. So, basically, if I understand your——

Mr. FIELDS. I'm sure Ms. Schiffer has other areas that she——

Senator CRAPO. I'll get there, but let me follow this up for a minute.

Mr. FIELDS. Right.

Senator CRAPO. If I understand your answer correctly, then, the two areas you identified may be something that the Administration would be willing to explore as areas where piecemeal legislation could move this year, but other areas, other than taxes, no?

Mr. FIELDS. Right. I think there are other areas we could discuss, whether it be natural resource damages, remedy, but I don't think those areas are going to achieve a bipartisan consensus.

There are many other areas in Superfund, obviously, that you can have a dialog about, but I'm trying to identify those that I believe a bipartisan consensus could be achieved and we can move forward with getting something that the President could sign this year.

Senator CRAPO. Do you believe that if we were to go ahead with the plan you just proposed, or the approach you just proposed, and pass the couple of reforms that you said we might be able to find consensus on, do you think if you were here before me next year that you would say we could find consensus on NRD?

Mr. FIELDS. I would not—what I would be saying would be—and I would presume that, as Chairman Chafee said, there are areas that a dialog could begin on this year, including NRD or other areas that this subcommittee may choose. I don't know. It depends, Senator Crapo, on what sort of progress was made during that dialog and what particularly you wanted to be modified regarding NRD and whether or not there could be some consensus among a variety of stakeholders on those changes.

I know we cannot achieve consensus this year. Whether we can achieve consensus during the 107th Congress during a 2-year stretch of time where there is some aggressive dialog on a particular topic, that might be possible. But right now I'm just giving you my honest view regarding what we can achieve this year. Obviously, concerning NRD there can be some dialog beginning this year to tee up some issues for the 107th Congress to discuss further.

Senator CRAPO. You've talked about a limited carve-out of liability for certain trash disposal functions and so forth. Would you support any broader carve-outs of liability for any other groups?

Mr. FIELDS. Nothing else comes immediately to mind. Obviously, last year, as you know, Congress enacted recycling legislation. As Ms. Schiffer indicated, a few years back lender liability legislation

was enacted, so obviously piecemeal legislation has been enacted in the past, but——

Senator CRAPO. Well, at what point is the Administration going to say, if you keep carving out or adding piecemeal legislation into the reforms, that we need to get the taxes involved?

Mr. FIELDS. Well, I think that—your last part of the question, I'll come back to that one—but we believe that Congress ought to move forward with the Administration on those things that we can reach agreement on. We recognize there are other issues in Superfund where there is not agreement. I believe we should continue to have dialog about those issues with Members of Congress and see if there could be some bipartisan consensus achieved on those areas, as well. But right now we think we have a golden opportunity where brownfields is an area that we believe that there can be bipartisan consensus with the Congress and the Administration and enact some legislation that could help the cities, the mayors, developers, and many other parties across America.

Senator CRAPO. Well, Mr. Fields, I guess the——

Senator CHAFEE. Senator Crapo, could we have one more round and come back?

Senator CRAPO. Sure. All right. I'll come back.

Senator CHAFEE. Remember your question.

Senator CRAPO. OK.

Senator CHAFEE. OK. From my perspective, having seen that 50 percent of the NPL sites are construction complete, one of the issues I'm sure is that wouldn't it be unfair to change the parameters for those responsible parties this late in the game? Ms. Schiffer talked about Husatonic River and the involvement there of natural resource damages and what has been accomplished on the existing legislation. Would it then be fair to change it?

But I'll yield the rest of my time to Ms. Schiffer to answer some of Senator Crapo's concerns.

Ms. SCHIFFER. Thank you, Senator Chafee.

I do think, Senator Crapo, that the questions that you raise really have to be looked at in the context of where the program is now, and we think that the program is working pretty well. As Senator Chafee said, when he went home and talked to his constituents, they seemed to think the program was working pretty well. So this Administration certainly no longer supports comprehensive reform to this program.

One of the reasons, in addition to the fact that the program is working pretty well, is the reason Senator Chafee gave—there has come to be a set of expectations. Many companies have now stepped up to the plate and undertaken cleanups.

To say, in effect, to those companies, "Well, it wasn't such a smart thing for you to step up to the plate and undertake cleanups, because these people who didn't do so now may be given some liability relief," we don't think is a very effective way to run a program and certainly isn't a very effective way to say to the companies that have done a good job, "You've done a good job."

So we really look at the questions about what other pieces of legislation there should be in the context of the fact that we don't think the program needs comprehensive reform any more.

I think Mr. Fields has accurately stated the areas where the Administration might look at liability relief. They are very narrow and tailored. Really, the municipal policies that he is talking about would be a codification of the municipal solid waste policy that we adopted. That was a policy where we saw that there was a problem in the program, there was concern about municipal solid waste. We worked with those groups that were knowledgeable about it, a series of organizations. We came up with a policy we thought was fair and effective and we put it into place. That was the kind of way that we were trying to undertake administrative reforms.

But, in terms of comprehensive reform at this point, including a lot of additional liability carve-outs, we really think that that would make the program less fair, not more fair.

In terms of the tax, we think the tax is ready for reauthorization now, not that it should be pegged to other changes in the program. Really, what we have is a circumstance where, since the tax lapsed 4 years ago, almost 5 years ago, we have had companies who would have been paying tax under the petrochemical tax and other tax components basically getting a windfall. They aren't paying taxes to fund this program any more. And it really is a hit on the American taxpayer that is more appropriately born by those people who should be paying the tax.

Senator CHAFEE. Senator Lautenberg.

Senator LAUTENBERG. Yes. One of the things that I think Senator Crapo's questions bring us to is the fact—and he has long experience with this, with Superfund, and has a particular perspective on it, and I respect his inquiry and the answers that you've given. In terms of what direction the outcomes might be for passing legislation, etc., I respectfully suggest that those answers have to come from this side of the table, not from that side of the table.

Mr. Field, don't walk too far into that mine field because we are—among us, we will establish some dialog, and so forth.

I know EPA and Justice Department are always ready to answer questions, to participate in the dialog or discussion as to why a program is or isn't working, so I think that the answers that you gave are those responsible.

It is obvious that we want to have something that meets the bipartisan test. It is possible. We want to have something that continues the best parts of the program without getting into a discussion that might degrade what it is that we are about to do.

So I think it has been very positive. The tax question is one that would take a lot of debate. The taxpayers have picked up what the polluters used to pay, or that the potential polluters used to pay. The possibility that that could be removed kept us from coming, very often, to a conclusion with positive programming or reprogramming, as the case may be.

So program A has been successful, B ought to be reviewed to see if there are any improvements that we can make, and C, not lay down any conditions that we can ask EPA or representatives to really make judgments upon unless we discuss them here at hearings and so forth, or even in closed discussions.

So I think, Mr. Chairman, it has been very positive, and I'm pleased that our witnesses were able to be with us today.

Senator CHAFEE. Thank you.

I'll allow Senator Crapo one more round, to be fair.

Senator CRAPO. Thank you, Mr. Chairman.

I can't get through even close to all my questions in one more round, but I'll try to do what I can.

Senator CHAFEE. We have another panel, also.

Senator LAUTENBERG. I thought in your part of the country roundups are quick and easy.

Senator CRAPO. They're tough and dirty.

[Laughter.]

Senator CRAPO. I think, though, that on the question that I was getting at, that Ms. Schiffer gave an answer as to what was my understanding, basically, of the Administration's position; namely, that the Administration, I have understood, did not support comprehensive reform of the Superfund statute and has not for some time, except for some of the targeted reforms that you've described here as narrow and tailored reforms that would be supported.

My point there is that, even though it is correct that we pass the laws here, I learned a long time ago that, as we try to pass laws that are going to get signed into law, it is helpful to work with the Administration and to find out what the Administration is going to recommend the President sign.

I think that it is pretty important for us to understand that process, as it has evolved in the Superfund.

In that context, I just have one other question on this line, and that is, with regard to the issue of taxes, is it the intention of the Administration to push for a reauthorization of the taxes this year?

Mr. FIELDS. Well, the President has expressed his preference for the taxes to be reinstated, both the corporate environmental as well as the taxes on petroleum and chemical feed stocks. However, we recognize that Congress has not approved that request for the last 3 years.

Right now, the current tax fund trust fund balance will expire or it will have $200 million left in it at the end of fiscal year 2001, and so, obviously, that is going to be a major issue in fiscal year 2002.

The current balance will carry us through this year and next year.

Senator CRAPO. So will there be a request this year or a push this year?

Mr. FIELDS. Well, there is a request in the President's budget. The President's budget that came up to Congress in February did request that the taxes be reinstated. Yes, sir.

Senator CRAPO. Would the reinstatement of taxes possibly be attached as a condition to brownfields legislation?

Mr. FIELDS. We have not discussed that internally. That's not something we have been pushing. You know, the President has a request up here outstanding. We have been suggesting, and, obviously, as Senator Lautenberg reminds us, Senators and Members of the House of Representatives will have to decide what the scope of that legislation will be. We will review that, and we, obviously, will respond accordingly. We have not yet decided how we tie tax reinstatement to a possible agreement on brownfields. That's something we would look at in the context of what legislation is introduced.

Senator CRAPO. Well, let me try to get specific. I'm changing subjects now, but I want to go, with my remaining time, to just one other line of questioning that is more specific to Idaho, and it relates to the issue of how well the administrative reforms have worked, because I have to say that, even though there has been a lot of talk here today about how well the administrative reforms have worked, I don't think that my constituents would agree with that.

The Administration of the Superfund statute in north Idaho has caused, in my opinion, significant trauma to community after community, to the point that people are universally frustrated with the way the act is implemented and the progress that is being made, or lack of progress and then, what seems to be a continuous rehashing of the issues.

One of the issues that we are going through again now is whether, at this point, after years of working under the Superfund statute, there is going to be a new listing and a new designation for the NPL list.

As you know, Administrator Fields, the EPA has agreed to a 6-month hiatus, in which time the State of Idaho has been given an opportunity to try to bring about a settlement.

The question I have is very specific there. It is my understanding that 6 months runs in June, if I am correct, and we are already hearing that, if there is no settlement, that the process will be kicked right back into gear in June, they will be starting to review in April, and if the State does not come up with something by June, then the EPA is going to go right back into its process of potential listing. Is that correct?

Mr. FIELDS. Yes. If you give me 1 minute, I'll quickly respond to your questions.

I do want to point out that, you know, Idaho—there has been substantial progress at many of the sites in Idaho. You've got nine sites on the list in Idaho. Four are construction complete, and the other five constructions are underway. I think that does reflect that there is a lot of good work going on at the Superfund sites in Idaho, and substantial progress has been made at those sites.

Senator CRAPO. I might add there that the cost—you probably are aware of some of the studies that just came out of the cost that has been paid for that progress, and so there is a disagreement about how well it is working, but go ahead.

Mr. FIELDS. All right. And then, regarding the specific site you are mentioning, which is a candidate for the NPL, the sites around the whole area around the Coeur d'Alene basin, we're currently working aggressively. EPA, the Department of Justice, and the State are aggressively trying to reach an agreement in principle with the mining companies and responsible parties around a cleanup agreement in the Coeur d'Alene basin. We have agreed to defer any listing of the contamination on the National Priorities List until the conclusion of that discussion, which is about another 3 months away, 3-plus months away.

We hope that we are successful. We have done many cleanups at sites across the country without invoking NPL listing. We see the NPL as a tool, among other tools, for effectuating cleanup.

We will see how this negotiation proceeds. We hope that an agreement can be struck and that we can proceed in a cooperative fashion with the mining companies to effectuate cleanup, and then we have said that, based on that review, after that negotiation is over, we then will take up the issue of whether or not a proposed NPL listing is necessary to bring the parties together and effectuate cleanup at that site.

The end of June is the deadline.

Senator CRAPO. Thank you, Mr. Chairman, for your indulgence. I would just say I hope that, if the deadline is not met—and, as you know, these are hard deadlines to meet—that the EPA would continue to show some forbearance and allow the people of Idaho to help deal with this problem without having a solution imposed such as the proposed listing would cause.

Ms. SCHIFFER. If I may just add one item on that Coeur d'Alene basin site, we have had success in a settlement there with the Union Pacific Railroad recently, and I think it is worth mentioning, because it really shows that the program can work and have effective settlements. That company was a railroad, so its contamination was all up and down a road. It is sometimes a hard thing to deal with. In fact, the Union Pacific—we worked together, we got a very effective settlement where they are going to be responsible for that contamination, and really make progress.

I think it is worth noting that, even in the midst of the contentiousness of the Coeur d'Alene basin kinds of sites, we can have a settlement like the Union Pacific settlement that we've recently had.

Senator CHAFEE. Thank you, Ms. Schiffer. Thank you, Mr. Fields, very much for your time this afternoon.

Mr. FIELDS. Thank you, Mr. Chairman.

Ms. SCHIFFER. Thank you.

Senator CHAFEE. And, Senator Crapo, I'm sure you know you can submit any further questions in writing.

Senator CRAPO. Thank you.

Senator CHAFEE. At this time I would like to invite the second panel to come to the table. The second panel includes local elected officials: J. Christian Bollwage, mayor of Elizabeth, NJ, who will testify on behalf of the U.S. Conference of Mayors; and East Palo Alto, CA, City Councilman R.B. Jones, who will present testimony on behalf of the National Association of Local Government Environment Professionals.

Your written statements will be included in the hearing record, and we would ask that you will take 5 minutes to summarize your remarks.

Mayor Bollwage.

Senator LAUTENBERG. While Mr. Bollwage is taking his seat, Mr. Chairman, I want to note that he missed a glowing testimonial that I gave to him before he arrived in the room. You know, around here we don't do it twice. He'll have to read the record.

[Laughter.]

Mr. BOLLWAGE. Well, thank you very much, Mr. Senator. I appreciate it.

STATEMENT OF HON. J. CHRISTIAN BOLLWAGE, MAYOR OF ELIZABETH, NJ, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

Mr. BOLLWAGE. Mr. Chairman, my name is Chris Bollwage, the mayor of the city of Elizabeth. Members of the committee, I am pleased today to appear on behalf of the Conference of Mayors, which represents more than a 1,050 cities of population of 30,000 or more. My oral statement on brownfields specifically talks about our recent survey, which you may have a copy of.

First, Mr. Chairman, let me congratulate you on your chairmanship. It is always great to see former mayors sitting on your side of the dias. We do appreciate that.

I'd also like to recognize Senator Frank Lautenberg, who, during his tenure, has done so much for my city in Elizabeth and many others throughout our State.

Senator you have been a leader on brownfield issues in our State, and we appreciate your leadership. On behalf of the Nation's mayors, I would like to thank you for all of your efforts.

Mr. Chairman, none of us anticipated how Superfund's liability would further fuel the phenomenon that we now call ''brownfields.'' Superfund sent a very strong signal that contamination of our land will not be tolerated, but it also thoroughly frightened innocent parties, like developers and others, who would like to reuse, or, as we say, like to ''recycle'' land.

To learn more about the brownfields problem, we have been conducting surveys with the Nation's mayors, and we also wanted to learn what mayors need to reclaim these sites.

Our survey shows that brownfields is a problem of significant proportion. First, our survey shows that there is a consistent view of obstacles to redevelopment. The No. 1 obstacle was the need for cleanup funds. The second, more-common impediment was dealing with the issue of liability. And third is the need for more environmental assessments to determine this type and extent of contamination.

About 178 cities estimated that the reuse of brownfields would generate about $902 million to $2.4 billion in annual tax revenues. We will be creating more jobs—190 cities estimate that they would create 587,000 jobs.

A very interesting finding of the survey was that 118 cities estimated they could support an additional 5.8 million people.

When we think about sprawl, this data suggests that brownfields redevelopment and incentives to encourage in-fill development can help with this issue.

Mr. Chairman, you have our specific recommendations on brownfields, and you also have a copy of the full testimony that I am giving here orally.

I would like to spend just a few minutes talking about what we have accomplished in our city, in Elizabeth, and to underscore to the committee why it is important to take steps to help communities recycle these sites.

In Elizabeth, I have seen what is possible by reusing these sites. In October of last year, we officially celebrated the opening of the Jersey Gardens Mall, the largest outlet mall on the east coast. It is located on a 170-acre former municipal landfill that was closed

in 1972. In excess of 200 stores, providing more than 3,000 current jobs, growing to 5,000 jobs, it totals 1.7-million square feet, and it will generate $6.5 million annually to the revenue to the city of Elizabeth in the redevelopers' agreement.

Additional stores will open this fall. As a result of this project, we see additional private investment flowing to the immediate area. We have announced a major in door sports complex called "Rex-Plex," which will open in June and have soccer fields, indoor/outdoor soccer fields. We've been working with Marriott for an announcement on two Marriott hotels, an office building of about 400,000 square feet, and currently Senator Lautenberg has been working with us on ferry service permits to New York City.

We have also had other successes in our city. We have taken a former plastics factory on three acres of land, with not only city bonding money but green acres funding, have converted into two new state-of-the-art Little League fields.

Next month we open up on another brownfield site two new soccer fields, olympic size, for the numerous soccer population that we have in our city.

We are fortunate that the city of Elizabeth is ideally situated to leverage a substantial economic and population base of northern New Jersey extending to Manhattan.

I'm not suggesting that this is the most characteristic of what cities can accomplish in redeveloping brownfields; however, it does underscore the need for Federal policy to support communities to generate their own successes and, as you now see on a relatively modest scale, across the entire country.

The Nation's mayors believe that the time has come for bipartisan action on brownfields, and, wherever possible, selected Superfund reforms. In moving bipartisan legislation forward, you can count on the support of the Nation's mayors in this regard.

Just on one final note, Mr. Chairman, we are home to Chemical Control, one of the top 25 Superfund sites in the Nation. The Superfund law was responsible for the cleanup of that site. It cost $50 million to clean up that site. Superfund worked in cleaning up the site, but there is nothing on that site today. Brownfields—not only can we clean it up, but we can put something on that site that generates economic development, jobs, tax ratables for our citizens.

So, on behalf of the U.S. Conference of Mayors, we appreciate the opportunity to share the view of the Nation's mayors on these very important issues.

Thank you, Mr. Chairman.

Senator CHAFEE. Thank you, Mayor.

The U.S. Conference of Mayors has been a dynamic force in the advocacy for brownfields legislation. As the spokesperson for the U.S. Conference of Mayors, you have been most eloquent.

Mr. BOLLWAGE. Thank you, Mr. Chairman.

Senator CHAFEE. Councilman.

STATEMENT OF R.B. JONES, CITY COUNCILMAN, EAST PALO ALTO, CA, ON BEHALF OF THE NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS

Mr. JONES. Mr. Chairman and distinguished members of the subcommittee, my name is R.B. Jones, and I am here as an escapee

from the mayor's position back to city council. I had the opportunity to serve for roughly 4 years as mayor, and was mayor when brownfields were first introduced to our city.

I am also extremely proud today to testify on behalf of the National Association of Local Government Environmental Professionals, or NALGEP.

You have before you, as well, a written testimony that provides details on the range of Federal incentives needed to promote brownfields revitalization. Let me just add that words in this short time would not be able to fully express what brownfields has meant to East Palo Alto, in particular.

With a community that consists of roughly 14 different ethnic varieties, so to speak, and many people who come from either foreign countries, nations, or from States in the south, people coming from situations where there was little or no government, people coming from situations where there was little or no respect for government in terms of how government served them, and brownfields has really been one of the keys as to how folks who have not had these great opportunities can actually sit at the table and participate in an environment that speaks to how their future is impacted.

With the immigration laws and the anti-immigration sentiment of California being in place, there is a dire need for folks to feel a part of being at the table. And so, without asking for green cards, without asking for who is from Mississippi or who is from Texas, who is from Mexico, who is from Latin America, and how you got to the table, people actually get a chance to come to the table, unbiased, and sit and discuss what this land, what 132 acres of property in East Palo Alto will look like in the years to come, how all of us will be affected by that.

So we are very, very proud of brownfields in terms of what it can do for our community.

At some other date, as well, we would love to talk to you about the front door concept that brownfields has created in the city of East Palo Alto, and we are very proud of that concept and very interested in talking about it.

But, in my verbal testimony, I plan to focus on the single most valuable thing Congress can do for East Palo Alto and local governments across the country working on brownfields, and that is to provide increased funding for brownfield site assessments and cleanup.

The cost of site assessments and remediation can provide a significant initial barrier to brownfield reuse. It is important that we underscore the word "reuse" there.

The city of East Palo Alto, for example, is a small community of a little over 25,000 people, and we have not enjoyed the economic prosperity of our neighboring communities in Silicon Valley. We have the highest level of unemployment and poverty and the lowest median income in San Mateo County, and San Mateo County being the richest county in the United States.

The city has struggled hard to significantly reduce its crime rate, which was one of the highest in the Nation in the early 1990's.

In addition, East Palo Alto has suffered the effects of toxic contamination, abandoned chemical factories, and other pollution that has turned much of our community into idle brownfields.

In 1992, the city of East Palo Alto was dubbed the "Murder Capital of the USA." There were 46 murders in our community. Last year, there were two murders. And two is too many of our constituents to lose, but we are very proud of the efforts that have been made to turn our city around and to make it a viable place where all of us can live.

Nevertheless, the city is successfully moving forward to revitalize our community and our brownfields. Our focus is on the Ravenswood industrial area that includes 130 acres in an area that historically has had mixed uses, including agricultural, commercial, industrial, and some residential.

The property is affected by a multitude of toxic substances, including arsenic, chromium, pesticides, herbicides, chlorinated solvents, and petroleum contamination. The city partnered with EPA region 9 and the San Francisco Bay Regional Water Quality Control Board to assess its sites and estimate the cleanup to be between $2 million and $5 million.

The city has developed a strategic plan and design to redevelop the Ravenswood area into a mixed use development and employment center, with up to 2-million square feet of commercial and high-technology offices and light manufacturing. New medium-density housing is also planned nearby.

The city expects that the redevelopment of the Ravenswood industrial area would create roughly 4,000 new jobs and generate more than $1 million a year in taxes.

However, revitalizing this area would not be easy. Our biggest challenge will be to obtain the $2 million to $5 million required to clean up the site. It is unlikely that a private developer would take on this project with such significant cleanup costs.

Currently, there are few available sources to fill this gap. Consequently, East Palo Alto's last remaining developable area remains under-utilized.

The Federal Government, particularly the EPA, has played an important role in helping East Palo Alto get started in the brownfields area. Specifically, the Federal Government has provided critical funding and staff, technical assistance, public education, and connections with other Federal, State, and private agencies that can support our revitalization.

To close, there are some specifics that I would just like to suggest Congress could help us, and that is: increasing grants for the site assessment and investigation; provide new grants for cleanup of the brownfields sites; increasing grants to capitalize brownfield cleanup revolving loan funds; and structuring the program to meet local needs, which we think is very important; and increasing funding for our other Federal agencies to support brownfields revitalization.

The most important thing Congress can do to put more brownfield revitalization is to increase and broaden the Federal funding for brownfields.

Thank you.

Senator CHAFEE. Thank you, sir. We'll submit the entire statement for the record.

Mr. JONES. Yes.

Senator CHAFEE. The chairman of the committee is here, Chairman Smith, and I will yield, if you'd like, at this time.

Senator SMITH. Just go ahead, Mr. Chairman.

Senator CHAFEE. No, his time was up.

Senator SMITH. You go ahead, and I'll join the questioning in a moment.

Senator CHAFEE. Thank you, again, Mayor and Councilman.

As you said, the impediment at this time to the cleanups in your community is the money, and in that you agree with the Environmental Protection Agency testimony we heard prior to your testimony and Ms. Schiffer's urging Congress to include the funding for brownfields cleanup—made a very important point on that. So we are now hearing from you, who have to implement these cleanups, that that is an important aspect, as so often it is.

Would you like to ask any questions, Senator Lautenberg?

Senator LAUTENBERG. Yes. Thank you very much, Mr. Chairman.

I, too, welcome our committee chairman here. Senator Smith and I have worked on a lot of things, some we've agreed upon, some we've disagreed upon, but we've always been able to maintain a dialog, and that is a very important characteristic, I think, for good committee chairmanship, and I believe that will continue.

I'm sorry that I won't be able to be here to nag him in the years ahead, but I'll try to leave a permanent impression.

I want to say to Mayor Bollwage, who represents one of America's great older cities, not only in New Jersey but in the country—the home of Singer Sewing Machine. I lived there for a short while as a child and saw what the paradox was.

When Elizabeth was doing well, on a relative basis, it was during the Depression years. It was during the lean years. And once the industrial revolution as we knew it kind of passed by and the trades and the businesses changed in character, it was a very hard adaptation, because with that glorious industrial past was left a string of contaminated sites that were there as a result of our building our country, and the transition was a tough one.

I thought that Mayor Bollwage's testimony was particularly poignant. I have been to the mall that he describes there. To see the people coming and working there and this whole upgrading of attitude has meant so much in the city, and other sites.

Mayor, if you remember, I took the tour of the soccer fields and the other places that were being built, and I think it is fitting that we make this kind of effort to expand the brownfields program and to try and deal with the Superfund sites, because that is a problem that every one of us faces, some States more than others, like New Jersey, but I know that New Hampshire and Rhode Island and Idaho also have signs of the past within their boundaries that bring with them some serious warnings, as well as opportunities.

It is so good to see what happens, and I've seen it in other cities in New Jersey—Hackensack, NJ, had a fallow site along the Passaic River—again, very familiar territory to me because as a child I lived in a lot of places in New Jersey. My father struggled to make a living. The rivers that we swam in as children now you could walk on almost because of the heavy pollution.

But when you see sites converted like the one in Hackensack—a big, positive discount store came in, and people were able to shop

there and work there, and it was a world of change, so we want to try to be of help.

Mayor, what do you think we could do, speaking as a representative of the Conference of Mayors? And I looked at this report, which is an excellent recap of what the problems are, and the interest by so many people, so many cities across the country. What might we do, as you see it, to further expedite the process? It has worked well in your area and surrounding communities. A Union I notice is on there, and other places.

Mr. BOLLWAGE. Senator, the one thing we need is a bipartisan approach to legislation in dealing with brownfields. The city of Elizabeth and other surrounding cities in New Jersey have implemented brownfields legislation in the State. We worked in a bipartisan effort with Governor Whitman, as well as the State Legislature, in creating legislation such as the franchise fee, which generated the revenue for the city of Elizabeth to get money from the mall as the property taxes were pledged to pay back the bonds in the infrastructure.

Brownfields legislation here from the Congress will go a long way in having cities assess the cost of cleanup. What is it exactly needed in order for these cities to take these properties and convert them to use?

Oftentimes, these properties have a negative value, where the cost of the cleanup is more than the property is actually worth.

We are currently working with New Jersey Transit on one such property, a former bus garage that New Jersey Transit has torn down. The property is not worth much because the cleanup comes to about $700,000 to $800,000. We're figuring out a way to bridge that cleanup, as we are doing our environmental test. If we had brownfields legislation and we could access grant money, that site would have been cleaned up already and there would be some type of housing/retail development on that site by now. But, because of the funding issue, that is the primary issue that mayors are concerned with.

Senator LAUTENBERG. Are there lots of private investors around who would be interested in sites? Do you find active pursuit of these sites by those who say, "Give us some help in getting them started," and, "Make sure that we don't walk into a liability situation that we couldn't deal with"?

Mr. BOLLWAGE. Brownfield legislation, Senator, is probably the No. 1 issue to stop suburban sprawl and create the ability for developers to reinvest in municipalities.

Brownfield legislation would be the issue that developers would be looking for to not only recreate urban lands into much more developable property, but developers want to develop in urban areas. After all, the city of Elizabeth—as you know, the demographics are the seaport, the light rail, the rail, the airport. It is all there for a developer to make a big success story.

And it is also sometimes cheaper for a developer to develop on urban lands, if, in fact, they have the ability and the political will of a community to recreate land that has lain fallow for many years to create a tax ratable out of it.

Senator LAUTENBERG. Mr. Jones, you know, when all of us—I'll speak for myself. When I hear about California, I think that every-

thing is just green and beautiful, a little air pollution here and there, but, frankly, because of the newness of the State we don't think in terms of polluted sites and things like that. But, as I read and listen to what you have to say, I hear you calling for help, particularly in the brownfields area, because you think there is opportunity within your city boundaries that could be maximized if we had the right kind of program.

What do you think we ought to do to help you along there?

Mr. JONES. I certainly agree, Mr. Lautenberg, with the whole notion of the money, but included in our proposal, as well, and included in our support for brownfields is the structural changes, much to what Mayor Bollwage talked about, about the freedom to allow local municipalities to participate in the process.

Matching funds to a community like ours is pretty much a hardship that we can't afford. There's no new land being made in California. We have the land and we have the 132 acres there. It is prime for development. Developers are there, they just are chomping at the bits wanting to get in there. We need room for housing, as well. But there's a concern about the cleanup. There's concern about the liability of it. There's a concern as to—72 percent of our budget right now goes to public safety. If we cannot maintain that high standard of public safety, based on what perception of our community, then developers won't come, so we can't afford to go light on one end to make heavy on the other end.

So we need structural changes in brownfields so that we can get those developers in there with a sense of not the heavy liability in cleaning the properties up and make it productive.

Senator LAUTENBERG. Well, we appreciate hearing from you.

Mr. BOLLWAGE. Thank you, Senator.

Senator CHAFEE. As you probably know, brownfields is one section of the entire Superfund legislation, and there is bipartisan support for most of the remedies for brownfields, whether it is the liabilities associated with contiguous ownership or prospective buyers. The question more is: can we separate out this area in which there is broad bipartisan support for improvements? That's how we'll proceed as to whether we can separate brownfields out.

I know Chairman Smith has been a public advocate of doing that this year.

Chairman Smith.

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

Senator SMITH. Thank you very much, Mr. Chairman. I want to thank you, first of all, for holding the hearing, and welcome you as your first subcommittee hearing, I believe, for this year.

I enjoyed an especially close relationship with your Dad, as you know, as we all did on this committee, so we look forward to working with you, as well.

Superfund has not become any easier over the last several years. I've spent 10 years on it in the Senate and still haven't been able to come up with an answer. It seems as if there's a lot of feeling on both sides of this.

Senator Lautenberg and I have spent many an hour together trying to work out things, but didn't seem to come to fruition.

I think essentially the difference right now is that the Administration believes that comprehensive reauthorization is not warranted because of the strides that they have made at the EPA, but there are many in the business community, and I think many on this committee, who would not agree with that. I think we should codify some of these changes, and I think they should be comprehensive codification.

The issue of brownfields is an issue that some of us have some differences on. We're trying to work it out as to whether or not a brownfield would be necessarily a part of Superfund. I, personally, believe that we could, as the chairman said, move brownfields separately, but that has to be something that is worked out with the committee members before we could move forward on that.

My role, of course, has changed since last year, now as the chairman of the full committee, and I am trying to have an open mind on the issue of brownfields, as well as the issue of Superfund, in general.

I know that some of the Superfund program is working well, but I also know that a lot of money has gone to lawyers and administrative costs over the years that didn't go to cleanup, which doesn't really help the issue that we're trying to do, which is to clean up toxic waste.

In New Hampshire, we have a very important removal action right now, as Commissioner Varney knows, who is here somewhere—we'll see you in the next panel, Bob. But there is a removal action there at the Surrette America Battery site in Northfield, which the staff director visited last week. And I do appreciate the cooperation of EPA on that project. They have been very helpful in region one. Last week they allocated an additional $750,000 to this removal action, and this is going to help tremendously. It has the potential, as Commissioner Varney knows, to be a Superfund site.

So there are good things occurring. There's no question about that. But we can do a lot more.

So I am looking at two prongs—first, to continue to explore any legislative solution, but the second is oversight. I think that the story at Surrette is becoming a positive story. That's good. The EPA should be able to withstand good, comprehensive overview to find out just what it is they're doing right, what it is they're doing wrong.

So let me just ask one question, Mr. Chairman, and a couple of quick questions of the panel, and then we can move on.

Mr. Jones—well, actually I could direct the question to both of you because you both mentioned several times in your testimony that further liability clarification is needed to encourage the private sector to step forward and revitalize more sites. We're talking now about brownfields. I would agree with that.

Let me ask you specifically, what type of liability clarification would best encourage the private sector to do it? Have either one of you come to a specific conclusion on that?

Mr. BOLLWAGE. Mr. Chairman, Senator Smith, first of all, I want to recognize your Jersey roots. You were born in Trenton, so you're always welcome to come back and take a look at what we're doing in New Jersey, Senator.

Senator SMITH. I've been to your city a few times.

Mr. BOLLWAGE. I appreciate that, Senator.

Some of the sites will not attract private investment until the site is assessed and cleaned up and it's posted with a sign, basically, that says, "This site is ready to go."

One of the things that we can do is that we can use public money to make that happen. We can make the site assessment, we can say to the private developer, "This site is ready to go. There's no further action."

And it is important to know that development in America today is basically not the same as it used to be. Businesses are operating in much tighter timeframes. And if they see a location and the location is available for development, I believe that, if there were dollars that assessed the damages and it were cleaned up quickly, the developer would then move and develop that property.

Senator SMITH. One thing that you say—I'll just speak to you for a second, mayor, and then I'll come to you, Mayor Jones.

You say the second, more-common impediment issue is dealing with the issue of liability, followed by the need for more environmental assessments to determine the type and the extent of the contamination. Those are interesting phrases, but let's go right down to the core here. What about State finality? Does the State need the finality to be able to make a decision and not have the Federal Government step back in and reopen the case?

Mr. BOLLWAGE. In the mall site that we developed that I talked about, there were 20 major permits that were needed in order for that site to be remediated. The Regional Plan Association of New York, Connecticut, and New Jersey worked with the city and the State in shepherding those 20 permits through the process, and when those 20 permits were filed and completed, the State said it was ready to redevelop that mall site, and so therefore the State moved on the permits, the permits were opened, filed, closed, construction began.

Senator SMITH. So do you support State finality, the State having the last say?

Mr. BOLLWAGE. There needs to be some type of compromise on the State issue, finality issue. There has to be a definition of the word "final." I mean, when is final "final?" As far as I'm concerned, if the State says it is final, then the developer should be able to move on it.

Senator SMITH. OK. So if the State says it is final, but that is not what is happening. As the law is now, the Feds can move back in there. Of course, if there is some huge issue that develops later in the site, then, of course, the Federal Government may have to, EPA may have to. We understand that. But what we're really talking about here now is giving the States a finality that would be able to say to a developer, "Look, you're OK. Go ahead. Move forward. We're set on this. Nothing is going to come back at you."

Without that, I don't think you're going to get to the results that you are talking about here in your statement.

Mr. BOLLWAGE. Senator, I can only talk on what worked for our benefit in Elizabeth, and it was 20 permits that the State said that the permits are in order, you can move toward construction, and it was a landfill. I don't know how much more—it's not a Superfund site, but it was a landfill. It had its problems environ-

mentally. The State signed off on the 20 permits and construction began, and said it was final, and we then built the project with a private developer.

Somebody has to say it is final. Being a mayor, we look to the State DEP for finality, and the State says it is final. We then built the project.

Senator SMITH. Mayor Jones, do you feel the same way?

Mr. JONES. In some of the areas, at least.

Let me just read to you our posture on the liability part of it. In our write-up we say,

> Congress can enhance these liability reforms by further clarifying in legislation that Superfund liability does not apply to non-responsible parties, such as innocent landowners, prospective purchasers, and contiguous property owners.

Let me say to the second part of that, that East Palo Alto is roughly 27 or 30 miles from San Francisco, and right on the borderline in San Mateo County is a small city, Pacifica. They have just found that, even though the State had cleaned up, even though the land had been cleaned up to the State's standards, there is very clear evidence that has been admitted by everyone of high incidents of cancer, blindness, low-birth weight, and the whole bit.

So yes, I believe that the Federal Government should always be there.

Let me say, as well, Senator, that I'm originally from Mississippi, and my first involvement with Government was with the Southern Christian Leadership Conference, and in that environment, coming from Mississippi, thank God the Federal Government was there.

So, whereas I believe that States have a great responsibility and I respect that authority, I personally have an allegiance to the Federal Government being there, if necessary and if needed.

Senator SMITH. Let me just clarify that with one further point here.

When you talk about prospective purchaser agreements—you both have talked about those—innocent landowner protection, and all that, I mean, that's fine, but you have to encourage the seller—and, frankly, the buyer—but the seller, when he offers his or her property, if they fear liability, if they feel somebody is going to come back, then how can they sell it? They are not—you've got other parties that are going to come in. The purchaser is going to come in, the seller. If there is still liability hanging out over their heads, or some responsibility for cleanup, and EPA reserves its right to reopen, you're never going to get finality. That's one of the reasons why these sites are not being totally taken care of as they should be.

That's the issue. Somebody has to make a final decision, and without that final decision you are going to reduce the opportunity for people to come in or to clean it up or have somebody sell the property to clean it up, or whatever the case may be.

Mr. JONES. Some of these sites have been owned by individuals for a long, long time, and the case may be that it is more costly to assess and clean up than what the property is worth. The unfortunate part about that in a city like East Palo Alto is that the folks there would just leave it there, leave it alone and walk away from it, so it just exists in your community.

We are in a housing crunch. We are trying to get rid of our unemployment ratio. So we need the land to be developed, to be user-friendly for that matter. And if there is no money coming in from the buyer because the seller doesn't want to sell because they can't make any money and can't raise the money, even if they have been ordered to sell the property, we need something to say to the buyer, "Buy this land, back the money out of escrow, work out whatever deal."

If the land costs $200,000 and it costs $200,000 to assess it and clean it up, we need a force to say, "You work whatever deal may be where you sell it for $1, the land gets cleaned up to some standards by somebody who is credible—" and that's the EPA, probably—"and we can go on then and deal within the site."

But folks say to us that they are afraid that 10 years from now it would be like a Ron Pallock site that exists in our community where arsenic shows up, and everybody who has cancer sues the city for granting the permits and sues the new buyer for owning the land for 10 years.

Senator SMITH. Thank you.

Thank you, Mayor Bollwage. He's got a 4 o'clock train.

Senator CHAFEE. Apparently he had to leave.

Senator SMITH. Senator Crapo, did you get a shot at him?

You're all alone, Councilman.

Senator CRAPO. No, I didn't have any questions, Mr. Chairman.

Senator CHAFEE. Senator Lautenberg.

Senator LAUTENBERG. If Mayor Bollwage were here, I would ask him if New Jersey didn't have a great environmental Senator, but I can't ask him.

[Laughter.]

Senator LAUTENBERG. He had signaled me that he had a time problem, and he did agree with the staff person that used to work for me that any questions he would be happy to answer, both as mayor and as the representative of the Conference of Mayors.

Senator CHAFEE. We're both train advocates, and he's taking the train back to Elizabeth.

Senator LAUTENBERG. I guess. See, if we had high-speed train he could spend a little more time with us.

[Laughter.]

Senator CHAFEE. Thank you for coming all the way from the west coast, Councilman Jones. We much appreciate your testimony. Good luck in East Palo Alto.

Mr. JONES. Thank you very much.

Senator CHAFEE. I know you're working hard to return that city to its glory.

Mr. JONES. Thank you very much.

Senator CHAFEE. And the third panel, I would invite Mr. Bob Varney, commissioner of the New Hampshire Department of Environmental Services, on behalf of the Environmental Council of States; Mr. Terry Gray, assistant director for Air, Waste, and Compliance for the Rhode Island Department of Environmental Management, who has visited many of the sites in Rhode Island with me over the past number of weeks; and Mr. Eugene Martin-Leff, assistant attorney general of New York, on behalf of the National Association of Attorneys General.

Welcome, gentleman. Please limit your statements to 5 minutes, and if there are any additional statements you'd like to submit to the record, we would accept that.

Commissioner Varney, may we begin with your testimony?

STATEMENT OF BOB VARNEY, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES, ON BEHALF OF THE ENVIRONMENTAL COUNCIL OF STATES

Mr. VARNEY. Thank you, Mr. Chairman and members of the committee. My name is Bob Varney. I am commissioner of the New Hampshire Department of Environmental Services.

I want to say what a pleasure it is to be here with Senator Smith from New Hampshire. I greatly appreciate the efforts that he has made in New Hampshire and across the country to improve the Superfund program.

And I want to thank Senator Chafee for taking on the challenge of this committee. When Senator Smith became chairman of this committee, I frequently at meetings reminded people that this was probably one of the most challenging and difficult assignments in the U.S. Senate, and applaud your willingness to take on the challenge.

I have experienced the Superfund program for almost 11 years as the State environmental commissioner under three different Governors of both political parties. I also have served as president of the Environmental Council of the States having just recently finished my term as president and I currently serve as past-president.

The Environmental Council of the States is the national organization of State environmental agency heads.

As you all know, States are responsible for the vast majority of hazardous waste cleanups across the country. In the small State of New Hampshire, we have approximately 3,000 petroleum sites, and about 600 hazardous waste sites, including 18 NPL sites. I believe we have the dubious distinction of having the most Superfund sites per capita of any State in the country, and just recently Governor Shaheen sent a letter to Carol Browner asking that another site in Nashua be put on the NPL.

We have resolved over half of the hazardous waste sites and petroleum-contaminated sites in our State, and I think that is very important. Early on, when I came before this committee on behalf of the National Governors Association, we were in a much different situation. States were relatively new in taking over the petroleum cleanup program across the country and were delegated that program by EPA. It has worked very, very well.

In terms of hazardous waste sites, States are dealing with and resolving more and more hazardous waste sites through enforcement action, through voluntary cleanups, and through the brownfields programs, and I think we have a lot to be proud of.

I think, as we look to the future in terms of reform, we have to be very mindful of the fact that 97 to 99 percent of the cleanups are handled by the State, and whatever we do at that Federal level could have significant impacts on the State cleanup programs.

In our State we've also seen a shift from arguments about remedy selection and settlements and who is going to pay and how

much each party will pay to having most of our sites in the remedial action phase.

As we look at the administrative improvements that EPA has made—and we commend EPA for the administrative improvements that they've made—I think we also have to recognize the element of time and the fact that when we have parties in the process of trying to settle and the process of trying to argue about remedy selection, which has big dollars attached, there is likely to be a lot of criticism about the program.

But as you move into the remedial action phase, it is interesting how the volume gets turned down significantly in terms of those criticisms.

The program truly has matured, but that's not the case in all of the States. There are some States in the country that still have significant settlement discussions, and a significant number of sites that have not reached their remedial action phase. The issue of Superfund and Superfund reform is likely to be more contentious in those States.

We also want to stress the importance of funding and fully funding the Federal Superfund program. It is very much needed by States that don't have much capacity or limited resources or, in some cases, even very little interest in handling Federal Superfund sites, and there needs to be a presence there.

But even sophisticated, well-funded, and experienced States rely on Superfund to achieve their goals, either through resources or the "gorilla-in-the-closet" kind of concern that exists relating to liability and cost allocation.

The key issue, as we see it, in terms of Superfund is looking at the issue of orphan sites, sites where there is no readily apparent PRP with resources to achieve cleanup.

In a recent GAO report entitled, "Hazardous Waste: Unaddressed Risk at Many Potential Superfund Sites," 232 sites on EPA's inventory of potentially contaminated sites that either States or EPA believe should go on the NPL were identified, again underscoring the need for a fully funded Federal Superfund program, particularly focusing on those orphaned sites that are high risk and need to be addressed and where there are limited resources to address the problem.

Senator CHAFEE. Mr. Varney, thank you.

Mr. VARNEY. Thank you.

Senator CHAFEE. We'll orphan the rest of your testimony on that paragraph.

Mr. VARNEY. Thank you.

Senator CHAFEE. In respect for time.

We'll go in order of who came the furthest. Now from Rhode Island, Terry Gray.

STATEMENT OF TERRENCE GRAY, ASSISTANT DIRECTOR, AIR, WASTE, AND COMPLIANCE, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Mr. GRAY. Good afternoon, Mr. Chairman. Thank you very much for the opportunity to come down and share some of the Rhode Island perspectives with you and other members of the Committee on Superfund, and also with the cleanup of contaminated sites overall.

I am here again to share the Rhode Island perspective, but I am also an active member of the Association of State and Territorial Waste Management Officials. That association has a national perspective on some of the things that they'd like to see improved in the Superfund program, and I would like to respectfully offer their written statement into the record for this hearing.

In Rhode Island, our State efforts on cleanup have evolved from sole reliance on the Federal Superfund and RCRA program in 1991 to a comprehensive cleanup program that we have today. That cleanup program includes voluntary cleanup aspects, enforcement programs, as well as a very aggressive brownfields program.

Over that same time period, Superfund has also changed, as you've heard from a number of witnesses today, from a duplicative, inefficient, and often inflexible program to a more-cooperative, responsible, responsive, and streamlined program. Those improvements have been recognized and applauded by many people in Rhode Island, as you've heard.

One clear point that I'd like to make in my testimony today is there is much more to the cleanup of contaminated sites than just Superfund and the National Priorities List. We have clearly seen, in our experience over the past 10 years, that Superfund, our State program, our voluntary cleanup program, and our brownfields program collectively provide a broad range of tools and flexibility to address the many types of sites that we've seen in Rhode Island.

We are just beginning to see the next generation of sites, as well. There are several new sites that are uncovered as a result of more aggressive work in urban communities, several smart growth initiatives that are occurring throughout the country, and investigations in support of total maximum daily load limits for our State waters.

In developing our State program elements, we have also evaluated what other States have done, and we have seen some true innovations, particularly with respect to licensing site professionals and stimulating the growth of cleanup and getting more sites cleaned up, overall.

We've also seen that the backbone of virtually all cleanup programs, including Rhode Island, is the Superfund liability scheme. Based on our experiences in all these cleanup programs, I'd like to offer some of Rhode Island's recommendations that you may take into account when considering Superfund reauthorization or other statutory reforms.

First, we feel that the statute should recognize and support all these cleanup programs that I've mentioned, including State programs, voluntary cleanup programs, and, obviously, the brownfields program.

Innovation at the State level should also be recognized and supported. When looking at the State role, please try and avoid the establishment of prescriptive Federal standards for what is an acceptable State program, because there are many different models out there that I think work very effectively.

I think the issue of finality of State programs should also be addressed. We really need to avoid the potential double jeopardy that I think is perceived by many developers and performing parties that are out there cleaning up our sites.

I think we should exercise care and caution when changing the liability system. We concur with the concept of liability relief to some parties—clearly, the brownfields parties, such as prospective purchasers and also neighboring property owners and down-gradient receptors. We also think there is room for liability relief for municipalities, as well. But I think a full evaluation of the impacts of these liability changes have to be evaluated, including their potential impacts on State programs.

Finally, I think brownfields projects should be de-coupled from the strict requirements of the national contingency plan. This puts an unrealistic burden on municipalities and some of the developers that are trying to bring these sites back to reuse.

Funding assistance should also be made available to support the remediation of brownfields sites for the future uses for nonprofit or public purposes, such as open space, greenways, bike paths, and perhaps even schools, as we have seen along the Wanaskatucket River in Providence.

Once again, thank you for the opportunity to testify. I would be happy to answer any questions.

Senator CHAFEE. Thank you, Mr. Gray, very much.

Mr. Martin-Leff, welcome, from New York.

STATEMENT OF EUGENE MARTIN-LEFF, ASSISTANT ATTORNEY GENERAL, NEW YORK STATE ATTORNEYS GENERAL OFFICE, ON BEHALF OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Mr. MARTIN-LEFF. Thank you, Mr. Chairman.

I'm appearing today on behalf of Attorney General Eliot Spitzer of New York and on behalf of the National Association of Attorneys General.

I have been working in litigation under CERCLA since 1983 in the courtroom, and during the past year I represented Attorney General Spitzer in Governor Pataki's State Superfund and Brownfields Working Group, where we are addressing some of the same issues that are being raised here today.

The National Association of Attorneys General has been deeply involved in Superfund reauthorization for many years. In 1997, this group of attorneys general from the entire country, both parties, were able to agree on a resolution touching on many of the key issues, and that resolution has been distributed to the subcommittee today.

In the resolution, the association stressed the critical importance of the Superfund program in ensuring protection of public health and the environment.

I would like to comment first today on the importance of clear liability standards. The ability to recover costs under CERCLA is crucial to our cleanup program in New York. About 10 percent of the State registry of inactive disposal sites are National Priority List sites, federally funded.

Even though these sites are typically more expensive than others, Federal money constitutes only about 13 percent of all the cleanup funding in New York. On the other hand, private money through settlement primarily constitutes 66 percent. State funding accounts for about 20 percent.

So the ability to obtain settlements from private parties is what is driving the cleanup program in New York State, and it is the ability to use these CERCLA liability provisions that enables us to achieve this voluntary agreement to settle these cleanup cases.

Potentially responsible parties know where they stand under current liability principles. This connection between enforcement and the generation of cleanup funds is vital.

Congress has done more than make money available in the Superfund program. What it has done is to leverage the Federal money into far-greater matching private dollars by creating and preserving liability for cost recovery.

On the other hand, every change that is made in liability standards carries with it a potential loss of predictability, and there could be significant cleanup funding consequences.

CERCLA enforcement has another crucial role in New York and other States. In our State, there is no right under State statutory law to cleanup cost recovery without first going through an administrative hearing. Our administrative process, with a full evidentiary hearing, is rarely used, so we and other States depend on our express right to sue in Federal court under CERCLA.

Attorney General Spitzer is participating actively in the public debate on brownfields within New York State, and in that context everyone agrees that certain reforms are needed to facilitate brownfields revitalization. Future use of contaminated sites certainly must be considered, and institutional controls must supplement remedies such as excavation. However, the devil, as they say, is in the details. Cleanup levels must not be set simplistically based on the current use of a site or on a developer's projected use. As required currently by EPA, future use must be carefully determined by examining current use, projected use, and not only zoning laws and formal municipal plans, but also the proximity of a site to residential areas, developmental trends in the area, local community views, environmental justice concerns, and other relevant information.

Similarly, institutional controls must not be seen as a panacea. Some of these controls are not as reliable as others. It must be carefully examined whether the particular control is likely to be enforced in the future.

EPA and State environmental agencies should consider the long-term effectiveness of the institutional controls and the cleanup, along with the cost and other relevant factors, and choose the remedy that best meets all the appropriate cleanup criteria.

Senator CHAFEE. Mr. Martin-Leff, thank you very much, sir. The time has expired.

Mr. MARTIN-LEFF. Thank you.

Senator CHAFEE. We have a vote called, and we have a brief time to ask questions before I have to conclude the hearing.

Senator Lautenberg.

Senator LAUTENBERG. Thanks very much, Mr. Chairman. We'll try to move along here.

I would ask for Mr. Gray or Mr. Varney—we welcome you here—wouldn't you agree that even if we decide to constrain EPA's ability to respond to sites where States want to take the lead, that it

would be appropriate to tie this restraint on EPA to the State program, meeting with some basic criteria?

Mr. GRAY. I think the devil is in the details on that issue, Senator, and I think there are certain minimum standards that people would expect in a State program; however, those standards should be set in a manner that clearly does not tie the State's hands or dampen innovations or any type of new approach that a State would want to have.

Senator LAUTENBERG. But suppose—and let's not look at our own States for the moment, but suppose a State has inadequate standard for the safety and well-being of the people in the area. Should EPA be there? Should there be a Federal standard that has to be met that says—by the way, I must say that, to my knowledge—and I stand ready to be corrected—there has never been a reopening or a reentry of the EPA after a site has been dealt with at the State and cleaned up.

So, you know, shouldn't there be that safety net out there?

Mr. GRAY. I think the safety net will always exist with respect to emergency actions. If there is an emergency situation, either the State or EPA would take action on those type of things.

Although I don't have any information about the EPA aggressively over-filing on issues, there is still a perception out there that I have experienced in the regulated community that there is a fear of this duplication of authorities.

EPA region one, in particular, has been very aggressive with comfort letters, and we have also signed a memorandum of understanding on our voluntary cleanup program, but there is still that fear in the regulated community about when is finality truly final.

Senator LAUTENBERG. Because, Mr. Gray, in your testimony you do say, "We believe that the continuing threat of listing a Superfund program, coupled with our own enforcement actions, provide the impetus for cooperation." So being aware of the fact that there is a chance that the question could be raised, an action could be taken, gets the parties, I think, to sit down and negotiate in good faith and understand what the parameters are.

Mr. Chairman, in order to be fair to everybody, I will submit questions.

Senator LAUTENBERG. I have a question that Senator Boxer asked us to submit to Ms. Schiffer from the Department of Justice, and I would ask unanimous consent that we accept that question and ask for a prompt response from Ms. Schiffer, and would reserve the right to submit questions to our friends that are at the table here, and I thank them for their excellent testimony.

Senator CHAFEE. Thank you, Senator Lautenberg.

Mr. Martin-Leff, if I read your testimony accurately, you were sounding a cautionary note on relaxing any liability standards, and in previous testimony we heard from EPA that, on the brownfields legislation, it is generally accepted that some areas of liability could be relaxed, particularly innocent landowners, contiguous property owners, and prospective buyers.

Could you comment on whether I read your testimony accurately? And would you agree with EPA's direction?

Mr. MARTIN-LEFF. You certainly did, Mr. Chairman. The particular modifications that you mentioned, however, are, indeed, modest.

Certainly, prospective purchasers who are not responsible for disposing of waste at the site don't face liability at all under the current rules, so giving them protection is entirely consistent with the thrust of our cautionary note.

Senator CHAFEE. OK. Thank you, gentlemen, very much.

Senator Smith.

Senator SMITH. Thank you, Mr. Chairman.

Let me welcome my friend and colleague from New Hampshire, Bob Varney. We have worked together for about 10 or 12 years, I guess, on these sites, or longer than that, on Superfund sites in New Hampshire.

I am delighted to have you here, and welcome the other witnesses, as well.

We are running low on time here because we have a recorded vote and only a few minutes left.

I would just like to say, Mr. Gray and Mr. Varney, both of you have given pretty strong statements on State finality, and you use the term in your statements. I might just commend you for that, because I don't see how we can move forward without some degree of finality. I mean, you see these cases where you have the—was it the South Dakota or North Dakota? I have it here somewhere. In any case——

Mr. VARNEY. South Dakota.

Senator SMITH. South Dakota. Yes. In any case, you have a situation where EPA is not giving finality. They are still reserving the right to come back in. I think that makes it very difficult for any conclusion to these sites.

So I think you've made your positions pretty clear, and I commend you for that. I might be interested in knowing what NAAG's position is on that, Mr. Martin-Leff, because you are the legal guys, and it would seem to me that if you want to get these things resolved you have to have somebody with some finality here.

We all recognize that there is a Federal Government here in the event that there is an emergency, but to say that the Federal Government can come back in and hold somebody liable where you've made decisions on cleanup, you're going to—maybe that's why the lawyers like it. You're going to stay in court.

But it just seems to me that you've got to—I'd like to see your organization come out in strong support of finality, because I think that is how we get this stuff done.

You are essentially in the same position as a representative of the State as an attorney general.

There's my challenge for you for the day.

Mr. MARTIN-LEFF. The Association of Attorneys General has, indeed, taken a position on this point, and the phrase that we have used is "give appropriate legal finality to qualified State voluntary cleanup programs."

If I may comment on what that finality means, it is not absolute. When we settle lawsuits, obviously defendants are looking for finality in any case, and certainly prospective purchasers are looking for finality in brownfield sites.

We never settle a case without a reopener provision, so finality is never treated as absolute, yet companies have enough security

that they have put their exposure behind them unless something unusual happens.

Although the Association has not specifically——

Senator SMITH. Well, why hold them accountable for the unusual that happens? That's the point. You could expedite this process tremendously. I mean, why would anybody want to go into a situation like that, not knowing 10 years from now, 20 years from now, I could be responsible for millions more.

We're never going to get there. We've got all these sites laying out there—brownfields and Superfund sites, brownfields especially, that could be developed like that or cleaned up, as we have done. Many have done it in spite of this lack of finality, but it has been tough.

We are in a situation where we just literally have to run out of here to go vote, so I don't want to delay. I might have a couple of follow-up questions. And I apologize to the other witnesses for not having a chance to ask a question.

Senator CHAFEE. Yes. Thank you for coming all the way down here to Washington today and helping us as we try to make improvements in this legislation.

Ladies and gentlemen, thank you, also.

[Whereupon, at 4:10 p.m., the subcommittee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF TIMOTHY FIELDS, JR., ASSISTANT ADMINISTRATOR FOR SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

Good afternoon Mr. Chairman, and Members of the Subcommittee. I am pleased to have this opportunity to appear before you to discuss the Agency's record of accomplishments over the past 7 years in fundamentally improving the Superfund program, and Superfund's necessary role in cleaning up our nation's most contaminated properties. Further, I will discuss the important role we play in helping states, local governments, the private sector, and communities address the problem of brownfields.

First, I believe we must recognize Superfund's important mission. Superfund is dedicated to protecting public health and the environment for citizens, no matter where they live in the country, through targeted cleanups of our nation's hazardous waste sites, including those caused by the Federal Government. These sites pose a very real problem. Studies by the Agency for Toxic Substances and Disease Registry (ATSDR) show a variety of health effects that are associated with Superfund sites, including birth defects, reductions in birth weight, changes in pulmonary function, changes in neurobehavorial function, infertility, and changes in blood cells that are associated with chronic lymphocytic leukemia. EPA works closely with ATSDR to evaluate the impacts of contaminated sites on public health. EPA also works with other Federal agencies to assess the significant adverse impacts Superfund sites have had on natural resources and the environment.

Superfund Progress

The Superfund program is making significant progress in cleaning up hazardous waste sites on the National Priorities List (NPL). The Agency has increased Superfund productivity—from cleaning up 65 sites per year to cleaning up at least 85 sites per year in each of the past 3 years. As of September 30, 1999, 92 percent of the sites on the NPL are either undergoing cleanup construction (remedial or removal) or are completed:

- 680 Superfund sites have reached construction completion
- 442 Superfund sites have cleanup construction underway
- More than 1000 NPL sites have final cleanup plans approved
- An additional 204 sites have had or are undergoing a removal cleanup action.

By the end of the 106th Congress, EPA will have completed cleanup construction at approximately 60 percent of all non-Federal sites currently on the NPL.

In addition, more than 6,000 removal actions have been taken at hazardous waste sites to stabilize dangerous situations and immediately reduce the threat to public health and the environment. Close to 32,000 sites have been removed from the Superfund inventory of potentially hazardous waste sites (CERCLIS) to help promote the economic redevelopment of these properties.

Through three rounds of Administrative Reforms, EPA has made Superfund a fairer, more effective, and more efficient program. EPA has implemented reforms in seven major program categories: cleanup, enforcement, risk assessment, public participation and environmental justice, economic redevelopment, innovative technology, and State and Tribal empowerment. EPA is fully committed to continuing to implement these reforms and integrate them into base program operations.

Increasing the Pace of Site Cleanups

The Superfund program is making significant progress in accelerating the pace of cleanup, while ensuring protection of public health and the environment. The accelerated pace of completing cleanups is demonstrable. More than three times as many Superfund sites have had construction completed in the past 7 years than in all of the prior 12 years of the program combined. In the past 3 years, FY 1997–FY 1999, EPA completed construction at 260 sites—far more than during the first 12 years of the program (155 sites). EPA is on track to achieve the President's goal of completing cleanup construction at 970 Superfund sites by the end of fiscal year 2002.

Private Party Funding of Cleanups

EPA's "Enforcement First" strategy has resulted in responsible parties performing or paying for more than 70 percent of long-term cleanups since 1991, thereby conserving the Superfund Trust Fund for sites for which there are no viable or liable responsible parties. This approach has saved taxpayers more than $16 billion to date—more than $13 billion in response settlements, and nearly $2.5 billion in cost recovery settlements.

Protecting Human Health and the Environment

The Superfund program's accomplishments are significant in reducing both human health and ecological risks posed by dangerous chemicals in the air, soil, and water. The Superfund program has cleaned over 232 million cubic yards of hazardous soil, solid waste, and sediment and over 349 billion gallons of hazardous liquid-based waste, groundwater, and surface water. In addition, the program has supplied over 431,000 people at NPL and non-NPL sites with alternative water supplies in order to protect them from contaminated groundwater and surface water. Over 22,900 people at NPL and non-NPL sites have been relocated in instances where contamination posed the most severe immediate threats.

ADMINISTRATIVE REFORMS

Stakeholders inform us that EPA's Superfund Reforms have already addressed the primary areas of the program that they believe needed improvement. EPA remains committed to fully implementing the Administrative Reforms and refining or improving them where necessary. Below are Superfund performance highlights through fiscal year 1999.

Remedy Review Board

EPA's National Remedy Review Board (the Board) is continuing its targeted review of complex and high-cost cleanup plans, prior to final remedy selection, without delaying the overall pace of cleanup. Since the Board's inception in October 1995, it has reviewed a total of 43 site cleanup decisions, resulting in estimated cost savings of approximately $70 million.

Updating Remedy Decisions

In addition to the work of the Board, EPA has achieved great success in updating cleanup decisions made in the early years of the Superfund program to accommodate changing science and technology. In fact, the Updating Remedy Decisions reform is one of EPA's most successful reforms, based on its frequent use and the amount of money saved. After 4 years of activity, more than $1.4 billion in future cost reductions are estimated as a result of the Agency's review and update of 300 remedies. It is important to stress that the future cost reductions described above can be achieved without sacrificing the protection of public health and the current pace of the program.

Remedy Selection

Under the current statutory framework, providing for a preference for treatment of waste and permanent solutions to the maximum extent practicable, the Superfund program is focusing on treatment of toxic hot spots and requiring treatment in fewer instances when selecting remedies. Costs of cleanups are decreasing dramatically because of a number of factors, including: the use of presumptive remedies; the use of reasonably anticipated future land use determinations, which allow cleanups to be tailored to specific sites; and the use of a phased approach to defining objectives and methods for ground water cleanups. As a result of these factors, EPA has reduced the cost of cleanup by approximately 20 percent.

Promoting Fairness Through Settlements

EPA has addressed concerns of stakeholders regarding the fairness of the liability system by discouraging private party lawsuits against small volume waste contributors that have limited responsibility for pollution at a site. EPA has protected over 21,000 small volume contributors (about two-thirds of these in the last 4 years) from expensive private contribution suits through the negotiation of more than 430 *de minimis* settlements. EPA continues to prevent the big polluters from dragging untold numbers of the smallest "*de micromis*" contributors of waste into contribution litigation by publicly offering to any *de micromis* party $0 (i.e., no-cost) settlements that would provide protection from lawsuits by other potentially responsible parties (PRPs).

Orphan Share Compensation and Special Accounts

Since fiscal year 1996, EPA has offered orphan share compensation for past costs and future oversight costs or approximately $175 million at 98 sites to responsible parties willing to negotiate long-term cleanup settlements. EPA will continue the process at every eligible site. Through 1999, EPA has collected and placed $486 million in 133 interest bearing special accounts for site specific future work. In addition, over $85 million in interest has accrued in these accounts. This reform ensures that monies recovered in certain settlements are directed to work at a particular site. At a number of sites, this money can make a great difference in making settlements work. In fiscal year 1998, EPA set aside and then spent more than $40 million of Superfund response money in new settlements for mixed work or mixed funding.

OTHER SUPERFUND PROGRAM ACCOMPLISHMENTS

States

EPA continues to work with States and Indian tribes as key partners in the cleanup of Superfund hazardous waste sites. During the last 2 years, fiscal year 1998 and fiscal year 1999. EPA provided close to $225 million to States sharing in the management of response activities at sites. EPA is increasing the number of sites where States and Tribes are taking a lead role in assessment and cleanup, using the appropriate mechanisms under the current law. With the May 1998 release of the "Plan to Enhance the Role of States and Tribes in the Superfund Program," the Superfund program is expanding opportunities for increased State and Tribal involvement in the program. Seventeen pilot projects with States and Tribes have been initiated through this plan.

In addition, over the last 5 to 6 years, States, Tribes, and EPA have developed ways under existing statutory authorities of dividing contaminated site work in a manner that fits the needs of the sites and the interests and abilities of each regulatory agency—reducing overlap and duplication in favor of more complementary, mutually supportive arrangements. The Administration believes that this partnership is working to achieve a dramatic number of cleanups across the country. Today's State, Federal and Tribal programs comprehensively address the scope of the hazardous waste contamination problem.

Community Involvement

The Superfund program is committed to an open decisionmaking process that fully involves citizens in site cleanup by providing the community with timely information and by improving the community's understanding of the potential health risks at a site. Superfund accomplishes this involvement through outreach efforts, such as public meetings and site-specific fact sheets. EPA has enhanced community involvement through the successful implementation of reforms such as: the EPA Regional Ombudsmen, who continue to serve as a direct point of contact for stakeholders to address their concerns at Superfund sites; the Internet pages, which continue to provide information to our varied stakeholders on issues related to both cleanup and enforcement; and the Technical Assistance Grants (TAGs), Community Advisory

Groups (CAGs), Restoration Advisory Boards (RABs) and Site-specific Advisory Boards (SSABs).

The TAG program provides eligible community groups with financial assistance to procure technical consultants to assist them in understanding the contamination problems and their potential solutions. This understanding helps them participate in decisions made at sites. EPA has awarded 220 TAGs (valued at over $16 million) to various groups since the program's inception in 1988. The Agency plans to publish revisions to the TAG regulation by the summer of 2000 to simplify the TAG program further.

The CAG program enables representatives of diverse community interests to present and discuss their needs and concerns related to a Superfund site with Federal, State, Tribal and local government officials. The number of sites with CAGs increased by over 50 percent before the CAG program was officially taken out of the pilot stage. CAGs have been created at 51 non-Federal facility sites.

Community Involvement at Federal Facilities

The Superfund Federal facilities response program also recognizes that various stakeholder groups need the capacity to participate effectively in the cleanup process. The program has entered into partnerships and awarded cooperative agreement grants to State, Tribal, and local associations, and to community-based organizations. The grants focus on training for affected communities, participation of citizens on advisory boards, access to information, and implementation of the Federal Facility Environmental Restoration Dialogue Committee (FFERDC) principles. These grants offer the opportunity to leverage valuable resources, build trust, and reach a wider audience.

The Superfund Federal facilities response program is a strong proponent of involving communities in the restoration decisionmaking process and recognizes that input from Restoration Advisory Boards (RAB) and Site-Specific Advisory Boards (SSAB) has been essential to making response decisions and, in some cases, reducing costs. Increasing community involvement, Restoration Advisory Board/Site-Specific Advisory Board support (RAB/SSAB), and partnering with States, Tribes and other stakeholders are high priority activities for EPA. There are over 300 RABs and 12 SSABs throughout the country.

REVITALIZING AMERICA'S LAND

Brownfields

Through its brownfields program, EPA helps communities clean up and develop less contaminated brownfields sites. Brownfields are abandoned, idled, or underused industrial and commercial properties where expansion or redevelopment is complicated by real or perceived contamination. The Brownfields Initiative plays a key role in the Administration's goal of building strong and healthy communities for the 21st century. The Initiative represents a comprehensive approach to empowering States, local governments, communities, and other stakeholders interested in environmental cleanup and economic redevelopment to work together to prevent, assess, safely clean up, and reuse brownfields. The Administration believes strongly that environmental protection and economic progress are inextricably linked. Rather than separate the challenges facing our communities, the Brownfields Initiative seeks to bring all parties to the table—and to provide a framework that enables them to seek common ground on the range of challenges: environmental, economic, legal and financial. The EPA brownfields pilot programs form the basis for new and more effective partnerships. In many cases, local government environmental specialists are sitting down together with the city's economic development experts for the first time. Others are joining in—businesses, local residents, and community activists.

The Brownfields Assessment Pilots have formed a major component of the Brownfields Initiative since its announcement a little more than 5 years ago. The Agency has awarded 307 Brownfields Site Assessment Demonstration Pilots, funded at up to $200,000 each, to States, Tribes, and communities. In fiscal year 2000, the Agency will fund as many as 50 additional assessment pilots of at up to $200,000 each and 50 existing Brownfields Site Assessment Demonstration Pilots for up to $150,000 each, in order to enable continuation and expansion of their brownfields efforts. For fiscal year 2001, the Administration has requested $8 million to provide funding and technical support for 40 assessment pilots at up to $200,000 each. Selected through a competitive process, these pilots help communities to demonstrate the economic and environmental benefits of reclaiming brownfields properties, to explore ways of leveraging financial resources, and to model strategies for the organization of public and private sector support. Small towns and large cities both have

been recipients of the grants. Combined with the Agency's property assessment efforts, these pilots have resulted in the assessment of 1687 brownfield properties, cleanup of 116 properties, redevelopment of 151 properties, and a determination that 590 properties did not need additional cleanup. To date, over 5,800 jobs have been generated as a result of the program. Pilot communities have reported a leveraged economic impact of over $1.8 billion.

As EPA works to implement a comprehensive brownfields strategy, the Agency has developed a "second-stage" type of brownfields pilot program. Those pilots, known as the Brownfields Cleanup Revolving Loan Fund (BCRLF) Pilots are designed to enable eligible States, Tribes, and political subdivisions to capitalize revolving loan funds for use in the cleanup and sustainable reuse of brownfields. EPA's goal for these pilots is to develop revolving loan fund models that can be used by communities to promote coordinated public and private partnerships for the cleanup and reuse of brownfields. Eligible applicants for BCRLF pilots are entities previously awarded brownfield assessment pilots. In addition, coalitions formed among these entities and political subdivisions with jurisdiction over sites that have been the subject of a targeted brownfield pilot are eligible for BCRLF awards.

To date, 68 BCRLF pilots have been awarded. These pilots represent 88 communities, and include pilot awards to individual eligible entities and to coalitions. Three BCRLF loans have been made. The Stamford, CT, pilot has issued two loans. The first loan, for $250,000, will be used to clean up property that is part of a larger waterfront redevelopment project. This loan is expected to leverage $50 million of private redevelopment funds and generate 200 construction jobs and 12 full-time permanent jobs. The Las Vegas, NV, BCRLF pilot has made a $50,000 loan to clean up the property of a former National Guard armory site. This cleanup has already been completed. EPA is in the process of reviewing fiscal year 2000 BCRLF pilot applications representing more than 60 communities. Among other requirements, pilot applicants are being asked to demonstrate an ability to manage a revolving loan fund and environmental cleanups. The Agency anticipates announcements in May of new pilot awards of up to $500,000 each and has requested funding to support BCRLFs in fiscal year 2001 as well.

The Brownfields National Partnership continues to support brownfields reuse through work with a variety of stakeholders. It represents a multi-faceted partnership among Federal agencies to demonstrate the benefits of coordinated and collaborative activity on brownfields. To date, the partners estimate spending more than $385 million for brownfields work, with another $141 million in loan guarantees. The centerpiece of the National Partnership was designation of 16 Brownfields Showcase Communities in 1998. These Showcase Communities are distributed across the country and vary in size, resources, and community type. The Federal partners plan to designate 10 new Showcase Communities in fiscal year 2001.

To help local citizens take advantage of the new jobs created by assessment and cleanup of brownfields, EPA began its Brownfields Job Training and Development Demonstration Pilot program in 1998. To date, EPA has awarded 21 pilots to applicants located within or near brownfield communities. Colleges, universities, nonprofit training centers, and community job training organizations, as well as States, Tribes, and communities, were eligible to apply for these pilots. In both fiscal year 2000 and fiscal year 2001, EPA plans to fund 10 additional job training pilots at up to $200,000 each. In addition, EPA will continue to provide $3 million to the National Institute for Environmental Health Sciences to support worker training at brownfields sites.

Superfund Redevelopment Initiative

The Brownfields Initiative foreshadowed an increased interest in the reuse of Superfund sites. Now that the Agency has analyzed and documented reuse that already is occurring at certain Superfund sites, the Superfund Redevelopment Initiative (SRI) has been formed to document these successes and to explore additional opportunities at other sites engaged in the selection of Superfund remedies and designs. Through a program of pilots, policies, and promotion, EPA and its partners are working to "recycle" sites into productive use that once were thought to be unusable, without sacrificing Superfund cleanup principles. EPA has selected 10 pilot sites already and, by the end of fiscal year 2000, plans to complete a competitive process to choose 40 additional pilot sites. Eligible local governments receive direct financial assistance of up to $100,000 to undertake reuse assessments and undertake public outreach. EPA will offer facilitation service to communities to support reuse efforts and has established a peer matching program to enable local governments to share their experiences about successful Superfund reuse projects.

Successful Superfund site reuse is being demonstrated at the Industriplex site, in Woburn, Massachusetts. Through a private/public partnership, this site will become

a regional transportation center with over 200,000 square feet of retail space and potentially over 750,000 square feet of hotel and office space. An open land and wetlands preserve will also be created as a part of the "recycling" of this site. Another example of reuse at Superfund sites is the Anaconda Smelter NPL site, in Anaconda, Montana, which has become a world-class Jack Nicklaus golf course. At other Superfund sites, major national corporations, including Netscape, Target stores, Home Depot stores, and McDonalds, have established businesses. Sites have been redeveloped into residences, libraries, athletic fields, community parks, wetlands, and habitat preserves. Over 150 sites are in actual or planned reuse. At these sites, more than 13,000 acres are now in ecological or recreational reuse. Approximately 11,000 jobs, representing $225 million in annual income, are located onsites that have been recycled for commercial use.

Removing Barriers to Reuse

At some sites, the potential threat of CERCLA liability may in some circumstances be a barrier to the reuse of the property. EPA is continuing its efforts to negotiate prospective purchaser agreements and issue comfort/status letters in order to clarify CERCLA liability at sites and facilitate reuse of contaminated properties. EPA has entered into more than 120 Prospective Purchaser Agreements (PPAs) to facilitate beneficial reuse and has also issued over 500 comfort/status letters in order to clarify Federal Superfund interest in sites.

In the summer and fall of 1998, EPA undertook a survey effort to gather information on the impacts of the PPA process. Survey data (for PPAs completed through June 1998) indicate that redevelopment projects cover over 1500 acres, or 80 percent of the property secured through PPAs. EPA regional personnel estimate that nearly 1700 short-term jobs (e.g., construction) and over 1700 permanent jobs have resulted from redevelopment projects associated with PPAs. An estimated $2.6 million in local tax revenue for communities nationwide have resulted from these projects. In addition, EPA regional staff estimate that PPAs have spurred redevelopment of hundreds of thousands of acres of property.

Federal Facility Redevelopment

Through EPA's Base Realignment and Closure (BRAC) program, over 850 base closure documents have been reviewed at 108 major closing military bases. These BRAC documents articulate the environmental suitability of the property for lease or transfer.

Wurtsmith Air Force Base, located on more than 5,000 acres in northeast Michigan, stood ready for more than 70 years to support strategic bombing operations worldwide. When the decision was made in 1993 to close Wurtsmith Air Force Base, a Base Closure Team (BCT) consisting of representatives from EPA, the Air Force, and the Michigan Department of Environmental Quality, was formed to clean up environmental contamination at the site. The BCT used an innovative cleanup technology to cut the cost of cleanup by a third and reduce the planned cleanup time by 40 percent. To enhance economic redevelopment, the BCT worked with the Northeast Michigan Community Service Agency to use base structures for approximately 150 low-income families as a replacement for substandard housing in six counties. The BCT earned national recognition for this unique reuse plan. As a result of EPA's involvement in the BRAC program, cost savings in excess of $275 million have been documented.

SUPERFUND REAUTHORIZATION

As the result of the progress made in cleaning up Superfund sites in recent years, and the program improvements resulting from EPA's Administrative Reforms, there is not a need for comprehensive legislation. Comprehensive legislative proposals seriously could undermine the current progress of the program and weaken current law by creating barriers to cleanup, carving out overbroad liability exemptions, and undermining the Federal safety net. Comprehensive legislation could actually delay cleanups by creating uncertainty and litigation.

The Administration would support targeted liability relief for qualified parties that builds upon the current success of the Superfund program. We believe that targeted legislation to clarify liability provisions in the statute enjoys broad bipartisan support and would be useful in speeding the cleanup of brownfields, including;

- prospective purchasers of contaminated property;
- innocent landowners; and
- contiguous property owners.

This legislation should also provide funding for brownfield assessment and cleanup through grants and loans. Further, the legislation should provide support for effective State Voluntary Cleanup Programs, however, the Federal safety net must be

preserved to address circumstances which may present an imminent and substantial endangerment. The Administration also supports targeted legislation that addresses the liability of small municipal waste generators and transporters.

In addition, legislation to support the President's Budget is also needed to reinstate the Superfund taxes, and to provide EPA with access to mandatory spending. The Superfund tax authority expired December 31, 1995. The President's fiscal year (FY) 2001 Budget requests reinstatement of all Superfund taxes (including excise taxes on petroleum and chemicals, and a corporate environmental tax). The Trust Fund balance (unappropriated balance) was roughly $1.5 billion at the end of fiscal year 1999. The Trust Fund balance will be approximately $200 million at the end of fiscal year 2001.

In the absence of the taxes, we estimate a windfall of approximately $4 million per day for those parties that would normally pay the tax. To date, the Trust Fund has lost approximately $5 billion as a result of the failure of Congress to reinstate the taxes. This $5 billion windfall has been passed on to those that would normally be funding cleanups, and the need for appropriations from general revenue in order to fund cleanups mean that the burden of these costs is shifted to the tax-paying public.

FUTURE SITE CLEANUP CHALLENGES

EPA has made a great deal of progress, but the job is not done. Environmental contamination continues to be a concern at a large number of properties across the United States. Brownfields, which are abandoned and contaminated properties once used for industrial and commercial purposes, generally pose a low risk to human health and the environment and best are addressed through local, State, or Tribal authorities. EPA's job at brownfields sites principally is to provide technical and financial assistance to these authorities in order to build the capacity of their brownfields programs. A much smaller number of higher-risk sites, however, pose a more serious threat to public health and the environment and would qualify under EPA's Hazard Ranking System (HRS) for placement on the NPL for cleanup. A mix of approaches will need to be employed in the future to address these problems, including tools that were not available 20 years ago when Congress enacted CERCLA. Although alternatives involving Federal, State, and other authorities exist for managing the cleanup of these sites, in some cases the best alternative will be listing these sites on the NPL.

EPA, State, and local authorities must work together with private parties and community interests to ensure that the most appropriate approach is taken in each case to address any property with real or suspected environmental contamination. EPA long has recognized that the assessment and cleanup of properties with potential or actual environmental contamination is a shared responsibility. What matters most is that these sites are addressed as efficiently and as effectively as possible.

EPA will face three central challenges in the future as it continues its work to address our nation's site contamination problems. A primary focus of the Superfund program is to continue the cleanup of NPL sites, as well as to continue to address contamination problems through removal actions at sites across the country. Second, through grants and technical assistance, EPA will continue to serve as a catalyst to promote brownfields cleanup and redevelopment. Third, new sites posing serious threats to human health and the environment will be identified, and EPA has a shared responsibility with the States and other authorities to work with potentially responsible parties (PRPs) and the community through a variety of means to get these sites cleaned up.

Current Sites on the NPL

Superfund's immediate priority is the cleanup of sites on the current NPL. The Agency will continue to emphasize the completion of construction at NPL sites, and, as in the last several years, EPA will maintain its current construction completion goal of 85 sites for fiscal year 2000. The program is on target to achieve the President's goal of 900 construction completions by the end of fiscal year 2002. At the same time, we will continue to employ the Superfund Administrative Reforms to ensure fairness, effectiveness, and efficiency in the way cleanups are conducted. We will work closely with PRPs to leverage resources whenever possible to get the job done. By working with communities to ensure the selection of appropriate remedies at sites, EPA will strive to foster productive reuse of Superfund properties that are cleaned up.

In addition to the high priority EPA places on construction completion at NPL sites, the Agency will continue its efforts to ensure that remedies in place remain protective over the long term. It is important to understand that the job of cleanup does not end when a site achieves construction completion, and that Federal over-

sight is necessary to ensure the cleanup's long-term protectiveness. In the case of groundwater contamination, for example, treatment technologies in place may require 10 years or more to achieve cleanup goals, and groundwater must be monitored thereafter. CERCLA requires that EPA conduct a 5-year review at each Superfund site where wastes remain in place to make sure that the remedy remains effective and that the community is protected. This statutory requirement and other responsibilities associated with the Agency's role in ensuring the protectiveness of cleanups over the long term, such as oversight of operation and maintenance activities, underscore the need for continuing Agency resources for these purposes.

Brownfields

A second EPA priority is to continue to promote brownfield assessments and cleanups. Brownfields, found in almost every community, represent by far the largest number of properties affected by concerns related to environmental contamination. In 1995, the General Accounting Office (GAO) estimated that approximately 450,000 brownfields exist in this country. These sites typically do not pose the type of risk addressed by Superfund NPL cleanups.

Through pilots, and in partnership with a wide range of stakeholders, EPA continues to provide technical assistance and seed money to local, State, and Tribal entities engaged in the revitalization of brownfields properties in order to build the capacity of brownfields programs. EPA's role is to empower these government authorities, community groups, and others to achieve the assessment, safe cleanup, and successful reuse of brownfields. To date, EPA has entered into Memoranda of Agreement (MOAs) with 14 States to facilitate the cleanup of contaminated sites that generally pose lower risks than sites EPA would consider listing on the NPL. In fiscal year 2000, EPA is providing States and Tribes with $10 million to support the development and enhancement of effective State Voluntary Cleanup Programs (VCPs).

Sites Brought to the Attention of Superfund

Third, EPA will ensure that sites not presently being addressed and that present serious threats to human health and the environment are cleaned up. Through identification by States, private citizens, and others, EPA has catalogued almost 43,000 sites nationally in its CERCLIS data base. EPA has performed preliminary assessments at 41,000 of these CERCLIS sites and more detailed investigations at 20,000. The Agency has archived close to 32,000 of the 43,000 sites for which no further action under Superfund is necessary. EPA either is in the process of investigating the remaining sites or considering their listing on the NPL. In 1998, the GAO estimated that, 232 sites were likely candidates to be placed on the NPL in the future out of a universe of nearly 1,800 CERCLIS sites awaiting a listing decision. It is important to be aware that these figures do not include the approximately 500 new sites added to the CERCLIS inventory each year, most of which have been prescreened. Since the GAO analysis, we know that only about a quarter of the sites EPA has proposed for listing were among the 232 sites identified in the GAO report in 1998. Others include more recently identified sites or sites for which Governors have specifically requested a proposed NPL listing. The Agency has averaged 28 listings per year for the past 7 years.

The decision how to address the cleanup of sites brought to EPA's attention through CERCLIS depends on a range of technical, policy and resource considerations, as well as other site-specific factors. Many of these sites can be addressed under State VCPs and State Superfund programs. In other cases, PRPs may clean up sites of potential Federal interest either before or after proposal to the NPL, and EPA will continue to use its enforcement authorities to oversee the cleanup. In still other cases, EPA may determine that NPL listing is the most appropriate way to clean up a site, such as sites which present complicated intergovernmental or stakeholder issues or sites where a State requests a listing. The Agency continues to support a cooperative approach with the States on NPL listing and will continue to request a Governor's concurrence prior to any proposed or final NPL listing decision. Listing on the NPL would be necessary for more sites were it not for the availability of these alternative approaches to site cleanup.

Conclusion

With the success of EPA's Administrative Reforms, the Superfund program now is fairer, faster, and more efficient. The significant progress achieved during the Clinton administration in cleaning up hazardous waste sites has made comprehensive Superfund reform unnecessary. However, the Administration believes that an agreement can be reached with Congress on bipartisan targeted brownfields legislation this year. We look forward to building upon the success of our Administrative reforms and in partnership with State and local governments, communities, and the

private sector, to ensure the protection of human health and the environment through the cleanup of our Nation's hazardous waste sites.

RESPONSES BY TIMOTHY FIELDS, JR., TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

REMEDIATION SCHEDULE

Question 1. There appears to be no incentive for the Navy to meet its timeliness for the Hunters Point Shipyard cleanup, since every new Federal Facilities Agreement (FFA) schedule shows the same CERCLA milestones occurring farther out in time. What options are available to EPA under CERCLA to enforce these schedules? Specifically, what steps will EPA take to ensure that the Navy completes remediation of the Shipyard in timely manner?

Response. EPA is committed to ensuring that the Navy maintains the project schedules as outlined in the FFA in order to complete remediation and transfer of the Hunters Point Shipyard in a timely manner. EPA has diligently enforced provisions in the FFA to ensure that any extension requests submitted by the Navy are necessary and justifiable under the FFA. Per the FFA, schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. If the Navy fails to provide good cause for the extension, then EPA may deny the request and the Navy may invoke the dispute resolution procedures of the FFA. Further, EPA may assess a stipulated penalty against the Navy if it fails to comply with any terms of the FFA.

REMEDIATION TO THE REDEVELOPMENT REUSE PLAN

Question 2. What is the EPA's policy regarding remediation of closed military bases to the approved local Reuse Plan? Where else in the country has the EPA supported such efforts? Will EPA support a cleanup at Hunters Point Shipyard that allows for the full implementation of the Reuse Plan?

Response. EPA works closely with its state and military service counterparts to expedite cleanup and promote reuse of closed and closing military bases. As a member of the Base Closure Team (BCT), EPA provides technical assistance on human health and environmental issues related to cleanup and reuse plans. This assistance is provided to the Navy and state counterparts, as well as the Restoration Advisory Board, local government, the Local Reuse Authority and the community at large. Since the military services are the lead cleanup agencies, it is ultimately their responsibility to come to agreement with local reuse authorities on reuse plans. Federal legislation has established a process to reach these decisions. There are many examples throughout the country of EPA's support of, and cooperation on, reuse plans. Three site-specific examples are mentioned below. These examples illustrate both EPA's and the services' commitment to meeting reuse needs of the community.

- At Fort Devens, MA, the Base Closure Team (BCT) was successful in integrating many of the investigations of the site, eliminating an estimated 4 years of environmental study and saving approximately $5 million. The BCT also worked closely with the Local Reuse Authority and surrounding communities during the investigation and cleanup to address local concerns and ensure that cleanup was consistent with future uses of the property. By the time Fort Devens closed in 1996, the former Army installation had begun its transformation into a site for public and private use.
- Bergstrom Air Force Base, TX, was placed on a fast-track cleanup schedule so it could house the Austin-Bergstrom International Airport by 1999, less than 5 years after cleanup and construction activities began. A team of city and state agencies, EPA and the Air Force Base Conversion Agency expedited site investigation and cleanup plans to meet the airport opening's deadline. In particular, the BCT agreed to reduce review times for documents, incorporated flexibility into the cleanup process and kept lines of communication open to ensure that the cleanup met community needs. Relocating Austin's airport to Bergstrom saved the city an estimated $200 million it would have spent to build a new airport, and eased noise problems at the old site.
- The Base Closure Team at Naval Air Station Cecil Field, FL, cut 5 years from the cleanup schedule and avoided more than $17 million in costs. The BCT streamlined the assessment of more than 270 sites by targeting sampling and selected the most cost-effective cleanup techniques that met environmental requirements. The team also developed an approach for reviewing data as they were collected in the field and collaboratively choosing their next step. As a result, work plans were approved in hours, instead of days, and field crews could move quickly to the next

phase of investigation. The BCT's cooperation and pursuit of innovative solutions resulted in tremendous time and cost savings, and expedited the creation of new jobs, transportation and recreation opportunities for the Jacksonville community.

EPA supports cleanup at Hunters Point Shipyard that allows for the full implementation of the local reuse plan. Decisions for remediation at Hunters Point Shipyard should be based on the most reasonably anticipated reuse for specific parcels of the Shipyard, as specified in the approved City of San Francisco reuse plan and in accordance with the process described in the National Contingency Plan (40 CFR 300). EPA will continue to support a CERCLA cleanup at Hunters Point Shipyard that is compatible with the reuse scenarios currently outlined in the reuse plan.

IMPOSITION OF LAND USE CONTROLS

Question 3. When making the decision whether to accept such restrictions at the Shipyard, how is Community Acceptance, the ninth criteria in the National Contingency Plan (NCP), taken into consideration?

Response. Community acceptance is one of the nine criteria considered during the evaluation of feasibility study (FS) alternatives, as specified in the National Contingency Plan. Community acceptance is considered a modifying criteria. That is, it is assessed primarily following public comment on the remedial investigation (RI) and FS report and the Proposed Plan, because information on community acceptance may be limited prior to the public comment period.

It is EPA's position that the Bayview Hunters Point community should be continually informed about and involved in the cleanup process at Hunters Point Shipyard. To achieve this, representatives of the Bayview Hunters Point Community and the City of San Francisco have been invited to participate in project meetings and to review project documents throughout the RI/FS process. Further, EPA has funded a Technical Assistance Grant (TAG) for the Hunters Point Shipyard Superfund site. The TAG enabled a Bayview Hunters Point community group to hire an independent technical advisor to help the local community members understand and comment onsite-related information, and thus better participate in cleanup decisions. The TAG technical advisor reviews and comments on Hunters Point Shipyard project documents and regularly participates in project team meetings.

In addition, the Navy has established a Restoration Advisory Board (RAB) for the site. The RAB is an advisory group that the Navy consults for input on the investigation and cleanup of Hunters Point Shipyard. The RAB is composed of representatives of residents, businesses and community groups of the Bayview Hunters Point neighborhood which surrounds the shipyard. Representative of the City of San Francisco are also members of the RAB. RAB meetings are held monthly in the Bayview Hunters Point neighborhood. At the RAB meetings, the Navy provides updates on the status of the cleanup and responds to requests for information from RAB members. EPA attends and actively participates in the monthly RAB meetings, to ensure that community concerns are adequately understood and addressed.

Question 4. In EPA's analysis of such restrictions, does it consider whether the up-front cost savings to the Navy of such restrictions outweighs the long-term cost to the City of maintaining them in perpetuity? Furthermore, does EPA consider what effect such controls would have on the City's ability to implement its Reuse Plan?

Response. During the feasibility study (FS) phase of the project, cleanup alternatives will be developed to address contamination at Hunters Point Shipyard. These FS alternatives are subjected to a nine criteria analysis, as required by the Superfund statute. These nine criteria include an evaluation of overall protection of human health and the environment, reduction of toxicity, mobility and volume, long term effectiveness, short term effectiveness, cost and community acceptance. The nine criteria analysis is conducted to ensure that the FS alternatives are protective, cost effective and that they address the concerns of the community, including those of the City of San Francisco.

Although it is still early in the RI/FS process for Parcels C, D, E and F at Hunters Point Shipyard, EPA intends to ensure that the Navy considers both capital and operation and maintenance costs of FS alternatives that both include and do not include institutional controls so that a comparative analysis of the impact of institutional controls on protectiveness, cost and other criteria can be evaluated, particularly in light of the reasonably anticipated future reuse. In addition, EPA supports response actions that will facilitate implementation of the Reuse Plan for the site.

CONSIDERATION OF ENVIRONMENTAL JUSTICE

Question 5. Does EPA believe that the Shipyard cleanup has met the goals of Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations) in terms of both the selected cleanup remedies as well as prioritization for Federal cleanup funds?

Response. If the Navy agrees to select and implement cleanup remedies for Hunters Point Shipyard in accordance with the City of San Francisco's Reuse Plan, which was developed with input from the Bayview Hunters Point community, EPA believes the overall goals of Executive Order 12898 largely will be addressed.

STATEMENT OF LOIS J. SCHIFFER, ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCE DIVISION, DEPARTMENT OF JUSTICE

INTRODUCTION

Good afternoon Mr. Chairman, and Members of the Subcommittee. I am pleased to have this opportunity to talk to you this afternoon about the current status of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or more commonly known as Superfund. As the Assistant Attorney General for the Environment and Natural Resources Division, I am responsible, together with EPA, for Federal enforcement of this country's environmental laws, including Superfund.

You have just heard from Tim Fields about our great progress in making the Superfund program fairer, faster and more efficient. I would like to focus on the enforcement side of the program. The "enforcement" side of the Superfund program refers to EPA's and the Department of Justice's actions to assure that the parties responsible for creating Superfund sites (know as potentially responsible parties, or "PRPs"), clean up these sites. During the 20-year history of Superfund, the enforcement program has evolved from one that focused on litigation to a program in which most PRPs enter into settlements or voluntarily comply with administrative orders, rather than litigating with the government. In order to understand the current status of enforcement efforts under the program it is useful to understand this evolution. The Superfund program you will hear about today is not the program that existed throughout the 1980's and even in the early 1990's.

The Superfund program was enacted in 1980 in response to a public outcry over environmental contamination and human health hazards discovered at such notorious hazardous waste disposal sites as Love Canal and Valley of the Drums. Decades of careless dumping and improper disposal led to a proliferation of dangerous hazardous waste sites across the country. These sites were contaminating soil and groundwater, fouling our drinking water sources, and threatening the health of our communities.

CERCLA was enacted to provide the Federal Government with the authority and funding to clean these sites up. Congress also decided that the parties that created these environmental hazards should pay for the cleanup. This "polluter pays" principle is implemented through the liability and enforcement provisions of the statute.

In the early years after CERCLA's enactment in 1980, the Federal Government sought to enforce the liability provisions of the statute through lawsuits brought in Federal court seeking injunctive relief under section 106 of the statute. As with any new statute, many legal issues had to be resolved, and litigation proceeded slowly. Moreover, courts were called upon to resolve complicated technical issues regarding what would be an appropriate remedy. Given their inexperience in this area and the lack of precedent, the courts were understandably slow in resolving these issues. Thus, the 1980's were marked by extensive litigation and a relatively slow pace of cleanups.

In 1989, in a desire to accelerate the pace of cleanups, EPA and the Department reviewed their approach to enforcing Superfund liability and decided that litigating liability issues first was not the fastest way to get many sites addressed. As a consequence EPA and the Department developed the "Enforcement First" policy under which we operate today. Under this revised approach, the Federal Government first looks to responsible parties—either under a settlement agreement, or, where settlement cannot be reached, through the issuance of an administrative order—to clean up a site, rather than undertaking the cleanup itself and then suing the responsible parties to recover the costs. This approach allows Federal dollars to be focused more quickly and efficiently onsites where there are not viable responsible parties, and more effectively combines public and private resources to get cleanups started.

In addition to this "Enforcement First" policy, EPA and the Department have adopted and implemented a series of administrative reforms over the past 6 years that address stakeholder concerns about the fairness of the liability system. We have recognized the need to address some of the past concerns raised about Superfund and have taken significant steps to reduce litigation, to promote earlier

settlements, and to optimize fairness concerns in the application of Superfund's liability scheme. By streamlining the process by which we resolve our claims at Superfund sites, we are accelerating the cleanups themselves and increasing the pace at which contaminated properties can be moved back into viable economic use—the critical first step toward many brownfields development projects.

De Minimis and *De Micromis* Settlements

One of the most important of these reforms involves the Administration's efforts to identify and resolve the liability of small volume contributors, leading to what we call *de minimis* and *de micromis* settlements. EPA guidance defines these terms, but basically, a *de micromis* party is one whose contribution of waste at a site is truly small, and whose costs in hiring a lawyer, and negotiating a settlement, would dwarf any amount the party could reasonably be expected to contribute to cleanup costs. By contrast, a *de minimis* party is one whose contribution of waste, while more significant than a *de micromis* party's, is relatively minor, considering both volume and toxicity of the waste, in comparison to that of a "major" party at the site, and from whom we would seek a cash settlement, rather than performance of work. Some of our *de minimis* settlements, at sites with a large number of parties, have yielded over $1 million in proceeds. These proceeds inure to the benefit of the major contributors doing the cleanup work.

I am particularly pleased to tell you about the successes we have realized as a result of our *de micromis* policy. If a party is a truly tiny contributor, our policy is to deter other parties from suing *de micromis* parties and, if they do, then settling with those parties for little or no payment.

For example, at the Petrochem/Ekotek Site in Utah, we knew that the parties we had sued had threatened to sue hundreds of *de micromis* parties if they did not accept their settlement. To prevent this, EPA took out advertisements in Salt Lake City area newspapers and on the radio urging *de micromis* parties to refuse that offer. The United States also sought, and received, a hearing before the District Court Judge, and argued that the settlement demand was inappropriate. As a result, the defendants agreed to withdraw their demand against the *de micromis* parties.

In addition, we have taken steps to discourage the joinder of *de micromis* parties in the first instance. For example, a settlement involving the Bypass 601 Superfund Site, a former battery recycling facility in North Carolina, gave contribution protection to some 2400 parties who contributed less than 319 pounds of lead-bearing materials, but imposed no payment obligation upon them. Rather, the decree requires that the major contributors, who are the owner/operator defendants and 450 large-volume generator defendants, pay EPA's past costs of $4 million, implement a remedy estimated to cost between $40.5 and $100 million, and agree not to assert any claims at all against persons meeting *de micromis* criteria, whether or not those persons are parties to the decree.

We think that our policy protecting *de micromis* parties is being taken seriously by the regulated community, and that has deterred efforts to add *de micromis* parties at Superfund sites. Moreover, just this past summer in the *Keystone* case in Pennsylvania, over the objection of several of the main owner/operator and generator defendants, Federal District Court Chief Judge Sylvia Rambo approved 200 proposed *de micromis* settlements, finding that they were fair, reasonable and in accordance with CERCLA's objective.

With respect to *de minimis* parties, we have placed a priority on achieving quick, efficient resolutions of the liability of these small volume contributors to protect these contributors from burdensome contribution litigation. Through model settlement decrees and guidances, we have been successful at getting these contributors out of the system quickly. As of a year ago, we and EPA had achieved over 430 settlements with over 21,000 small-volume contributors, protecting these parties from expensive private party litigation. Nearly two-thirds of these *de minimis* settlements were reached in the last 4 years.

Orphan Share Policy

The Department often exercises its enforcement discretion to compromise claims in order to achieve comprehensive settlements with responsible parties, taking into account numerous equitable considerations. Through this enforcement discretion we have moved Federal dollars into promoting cleanups. We also cooperate with EPA in implementing the orphan share policy, another reform that has increased the fairness of Superfund settlements. At many Superfund sites, parties that individually or collectively were responsible for a share of the waste disposed at a site may no longer exist or are bankrupt. In order to promote fairness and achieve settlements, EPA and the Department of Justice developed the "orphan share" policy,

under which the United States can compensate settling parties for a portion of the "orphan share." This share will be recognized primarily through a compromise of past costs or a reduction of future oversight costs. EPA issued its Interim Guidance on Orphan Share Compensation in June 1996 and since then the Department has moved aggressively to put this concept into practice. Over the last 4 years, the United States has offered orphan share compensation of more than $175 million at 98 sites to responsible parties willing to negotiate long-term cleanup settlements.

Municipal Settlement Policy

The municipal settlement policy reflects the fact that municipal waste typically is not as toxic as industrial waste, and that it is the presence of hazardous industrial wastes disposed in municipal landfills that generally drives costly remedies. It also addresses the unique position of municipal owners and operators of co-disposal landfills. The municipal policy provides a fair and efficient basis for settling with municipalities and other generators and transporters of municipal solid waste (MSW) that are potentially liable under Superfund. The policy establishes a formula for calculating a municipality's share of response costs at a site based on the typical costs for cleaning up the waste found in a municipal solid waste landfill (as compared to hazardous wastes). It also provides a presumptive settlement percentage of 20 percent for municipal owners and operators of co-disposal sites where there are other viable PRPs to share the cost of cleanup. This new policy streamlines the settlement process and protects municipalities, and generators and transporters of municipal solid waste, from expensive transactional costs. Our use of the policy methodology as a basis for settlement was recently endorsed by the U.S. District Court for the Southern District of Ohio as being reasonable, fair, and consistent with CERCLA in approving a consent decree relating to the Fultz Landfill near Byesville, Ohio. The United States is in the process of finalizing several other settlements on the basis of the municipal settlement policy. Moreover, we have learned that the policy has been successful in promoting several private party settlements by providing a fair methodology by which to determine the share of municipal solid waste parties.

Other Administrative Reforms

Other administrative reforms that have also led to faster, fairer, and more efficient settlements include the use of mixed work/mixed funding agreements, settlements that take into consideration a party's "ability-to-pay," and the use of interest-bearing special accounts. Under the last of these, the United States will agree to hold monies recovered in settlement in special accounts for later Superfund cleanup at the same sites where the settlement occurred. Through 1999, the United States has collected over $486 million and placed it in 133 special accounts, which have generated over $85 million in interest. These accounts ensure greater fairness in the settlement process by taking monies recovered from parties that simply "cash out" their liability and setting them aside for later use by parties that are performing the cleanup work. This reform makes more monies available for actual cleanup, which can be an important factor in reaching a successful settlement.

EPA and the Department of Justice are also doing a much better job of making sure that all non-*de minimis* responsible parties involved at a site are identified and pursued by the government. Complaints were made in the early days of the Superfund program that EPA chose to pursue only a handful of "deep pockets" at a site, leaving these parties with the responsibility to find and pursue in contribution actions other parties responsible at a site. It is the government's policy to undertake a thorough PRP search at every site and to make sure that as many of those parties as possible participate in settlement at the site so as to spread the burden of site cleanup among all parties.

Another important way the Department ensures fairness in the enforcement process—and which reinforces the importance of settlement—is by actively pursuing those parties that choose not to settle. Indeed, in a recent decision, *U.S.* v. *Occidental Chem. Corp.*, 200 F.2d 143 (3rd Cir. 1999), the Third Circuit upheld the Federal Government's authority to enforce administrative orders issued to non-settling parties that direct them to participate in site work being done by other parties. This decision has strengthened our ability to ensure greater fairness at Superfund sites. For example, at the Lipari Superfund site in Gloucester County, New Jersey, Owens-Illinois, Inc. chose not to join a settlement the United States reached with numerous parties and instead pursued years of litigation. When it finally choose to settle in 1998, Owens was required to pay $13.8 million in settlement for cleanup costs. By refusing to cooperate, Owens-Illinois incurred substantially higher costs than it would have had it initially agreed to take responsibility for its actions.

Alternative Dispute Resolution

Another way that the Department has sought to make the Superfund enforcement process less time-consuming and costly is through the use of alternative dispute resolution, or ADR. The Department of Justice is committed to the use of ADR to assist in appropriate and efficient resolution of cases and issues. ADR can be a useful tool in focusing efforts on protecting public health and the environment, rather than on protracted litigation. We have found ADR to be particularly helpful in complex multi-party CERCLA cost-recovery actions, which require enormous time and resources and demand immediate steps to address environmental contamination.

ADR has led to many success stories in CERCLA cases, including cases which involved much more than simple cost recovery issues. An example is the *Landfill & Resource Recovery Superfund Site* in Rhode Island. The parties at the site were many and varied the United States, the State of Rhode Island, four owner/operators of the Site, 12 generators and transporters of hazardous substances disposed of at the Site, and two "ability to pay" parties. And the issues were complex, involving claims under section 107 of CERCLA for reimbursement of past and future response costs, implementation of response actions, and civil penalties for failure to comply with a Unilateral Administrative Order ("UAO") issued under section 106 of the Act. Mediation enabled us to negotiate a settlement among these parties that resolved all outstanding issues much more quickly than might otherwise have occurred, saved the parties from costly transaction expenses, and reimbursed the government for nearly all expected Site costs.

The parties began negotiations under the First Circuit's Court of Appeals Mediation Program (CAMP) and ultimately reached a settlement through the assistance of U.S. District Court Judge Mazzone. The consent decree resolved the United States' complaint, a State court action related to the Site, and an appeal in the First Circuit challenging an earlier *de minimis* settlement. This settlement determined a reasonable settlement payment for the "ability to pay" parties, and obligated the remaining settling parties to perform operation and maintenance of the remedial action and to pay past and future oversight costs, as well as a civil penalty of $400,000 for noncompliance with the UAO. It also resolved natural resource damage claims of the Department of the Interior and provided $525,000 to purchase wetlands or related property within the Blackstone River Valley National Heritage Corridor. When combined with previous settlement recoveries for this Site, and the performance of the remedial action by the settlors, this mediated settlement will result in a recovery of 97 percent of expected Site costs.

Just this month we achieved a superb settlement involving the Auburn Road Landfill Superfund Site in Londonderry, NH, through a voluntary mediation. *United States and the State of New Hampshire* v. *Exxon Corporation, et al.* (D.N.H.). On March 10, 2000, a consent decree was entered that resolves the government's claims against four defendants and twenty-seven third-party defendants. Under the proposed decree, the settlors have agreed to perform the remedy and to reimburse the United States for its past ($5.84 million) and future oversight costs. The remedy involved operation and maintenance of the landfill cap, monitoring of ground water, surface water and sediments, and the performance of any active remediation that EPA may select in the future.

In addition to resolving the United States' claims, the settling defendants have agree to reimburse the State for a portion of its past response costs and to reimburse the Town of Londonderry over $1.7 million in partial reimbursement of the Town's response costs for constructing the landfill cap. Also, the owner of the Site has agreed to convey to the Town of Londonderry over 100 acres of property at and around the Site for beneficial reuse. Finally, the defendants will collectively pay $125,000 in penalties. These great results were achieved more quickly and at lower costs to the parties through the mediation process than would have been possible through litigation.

U.S. v. *Allied Signal et al.* (D.N.J.) and its companion contribution action *Rollins Environmental* v. *United States* (D.N.J.) provides another good example of the use of ADR in complex, multi-party Superfund litigation to resolve cost recovery and contribution litigation. The Site in question, the BROS Superfund Site in Logan Township, New Jersey, long considered one of the most technically challenging sites under the Superfund program, was used as a waste oil collection facility and chemical waste storage site for three decades. When it closed in the late 1970's, millions of gallons of waste oil and other dangerous pollutants were left at the Site, much of it in a thirteen-acre lagoon—a "toxic soup" of waste material. Spills and leaks from the facility had also contaminated the Site's groundwater and adjacent wetlands. Mediation resulted in settlement among 80 private parties and several State and Federal agencies.

That settlement, conservatively valued at $221.5 million and one of the largest ever under CERCLA, covers about 70 percent of the cleanup costs and requires the private companies to complete the remaining cleanup of the Site's groundwater and wetlands. The settlement is the result of more than 2 years of complex negotiations between the Federal Government, the State, and settling parties. It reflects Superfund reform policies that allow EPA to share in the cleanup costs when some of the responsible private parties are defunct or financially insolvent. Our commitment to ADR led to settlement in record time for a case of this magnitude.

As demonstrated by these examples, ADR enables parties to create an environment to explore solutions that may not be obtainable through the judicial process. The potential for creativity and concomitant flexibility is invaluable in resolving the difficult problems sometimes posed in CERCLA cases.

Federal Facilities

In addition to enforcing Superfund, the Department is also responsible for representing other Federal departments and agencies at Superfund sites. Federal facilities are also making significant progress in cleaning up contaminated Federal property under CERCLA. Federal property must satisfy the same cleanup process and standards as private property under CERCLA, including the application of State laws as applicable or relevant and appropriate requirements, participation by EPA, states, and the public in the cleanup process, and the ability of states and citizens to judicially enforce inter-agency agreements under section 120.

Results of Administrative Reforms

What has been the result of all of these administrative reforms? They allow us to reach settlement more quickly on terms that are considered more fair to responsible parties. This in turn allows us to proceed more quickly to cleaning up sites—the fundamental purpose of the Superfund—so as to ensure protection of human health and the environment. And faster cleanups mean that these contaminated properties are available for economic development sooner.

Over 91 percent of sites on the National Priorities List either have been cleaned up or have cleanup construction under way. Moreover, the pace of cleanups has accelerated sharply in the last decade. Whereas only 61 sites were cleaned up during the first 10 years of the program, some 680 sites now have cleanup construction complete. And we are getting sites cleaned up faster. In the last 4 years, we've finished cleaning up more sites than in the previous fourteen. Through enforcing the Superfund law, the Justice Department has played a critical role in obtaining these cleanups. The "Enforcement First" policy has led to a dramatic shift in the performance of Superfund cleanups by private responsible parties. Today 70 percent of all NPL site cleanups are being conducted by private parties. By contrast, 67 percent were conducted by the Federal Government in the early years of the program. In 1999, we obtained a record $387.3 million in reimbursed Federal response costs. These numbers demonstrate that the Superfund program is working in a cost-effective manner to clean up sites. The Department remains committed to implementing fully the administrative reforms that have made these results possible and to refining and improving these reforms, where necessary.

SUPERFUND AND BROWNFIELDS ECONOMIC REDEVELOPMENT

In addition to promoting cleanups through enforcement activities and associated negotiations, the Department also plays a significant role in assisting EPA in promoting brownfields redevelopment. The Department does this in a number of ways. It does this first and foremost by ensuring cleanup of Superfund sites, many of which are redeveloped following cleanup and returned to productive use. The Department also promotes brownfields redevelopment through its enforcement of other environmental statutes and its use of creative settlement mechanisms, such as supplemental environmental projects, to transform blighted properties. A good example of the effective use of supplemental projects in enforcement is *United States* v. *City of Chicago, IL* (ND Ill, 1999), in which the Department of Justice negotiated a consent decree resolving EPA's Clean Air Act claims against the city of Chicago from its operation of a now-closed municipal incinerator. The decree requires the City to pay a $200,000 civil penalty and complete four projects at a cost of $700,000. The first two projects require the City to spend $450,000 to remove and dispose of contaminated soils at two abandoned industrial sites near the incinerator, thus facilitating the future redevelopment of the two sites. The third project requires the City to spend $100,000 to construct a lead-safe house. The lead-safe house will serve as a temporary residence for low-income Chicagoans while lead-abatement work is being undertaken in their homes. The fourth project requires the City to spend $150,000 on a lead-abatement project in northwest Chicago.

Prospective Purchaser Agreements ("PPAs")

The Department further supports brownfields redevelopment by entering into administrative settlements termed "Prospective Purchaser Agreements," or "PPAs." PPAs can provide prospective purchasers with certainty regarding Superfund liability that might be assumed in buying property. At sites where there is already Federal involvement, a PPA can provide a buyer with protection from Superfund liability for existing contamination caused by previous property owners. PPAs, of course, do not provide protection for prospective purchasers if they create new contamination or make existing site conditions worse. Further, in return for the government's promise not to sue them, prospective purchasers usually pay for—or perform—some of the response actions at a site. In deciding whether to enter into a PPA, we take into account benefits that the community might receive through redevelopment and job creation. By providing reassurance to buyers of contaminated lands regarding their liability, PPAs have significantly contributed to redevelopment.

It is the responsibility of the Department, exercising the Attorney General's authority to compromise claims in litigation, to enter into PPAs and, as the Assistant Attorney General for the Environment and Natural Resources Division, I am the person who ultimately signs PPAs on behalf of the Department.

To ensure consistency and to streamline the process of issuing PPAs, we have worked with EPA to develop a model PPA setting forth standard language and provisions to be included in such agreements. This model was issued with EPA's revised guidance on PPAs in July 1995 (60 Fed. Reg. 34,792). Since 1989, when we issued the first PPA, the Department has approved 152 PPAs. More than 125 of these have been approved in the last 5 years alone, and even more are in progress. When EPA conducted a survey last year, the Agency found that redevelopment projects related to PPAs cover over 1200 acres, have resulted in over 1500 short-term jobs, and have created over 1700 permanent jobs. And those figures do not reflect the redevelopment that is occurring on adjacent properties around the country.

One PPA success story that happened just this summer was in the foothills of the Blue Ridge Mountains in Virginia, about sixty miles west of Washington, D.C. As part of a consent decree to resolve a case that had been litigated for years, FMC Corporation agreed to take over cleanup of the rest of the 440-acre Avtex Fibers Superfund site (including removing aboveground and underground storage tanks, hazardous substances, and demolition debris) consistent with redevelopment plans by the Town of Front Royal and Warren County. One of the new uses of the site will be as soccer fields, which will be the first project sponsored by the U.S. Soccer Foundation on a Superfund site. The PPA that helped to make this consent decree possible will also help to put dollars into a cleanup in the community, rather than into litigation of a case in a courtroom. *U.S.* v. *FMC Corp., No. 5:99–CV–0054 (W.D. VA)*

Another recent successful PPA involved the Murray Smelter Site in Murray, Utah. The site is located right across the street from City Hall and was the location of one of the nation's largest lead and arsenic smelters. After the smelter closed in the 1940's, the Site was taken over by light industry and warehouses. Parts of the facility served as a dumping ground for cement slabs. Under our settlement, ASARCO, the company that owned and operated the smelters, will perform all the remedial action work. In the consent decree for this settlement, we also entered into a PPA with a developer that provides an option to purchase the property. The development will include a hospital, a large movie theater complex, and associated retail establishments. This type of redevelopment is likely to help revitalize the City by increasing employment and the city's tax base.

There are numerous other great examples of how PPAs have turned around brownfields sites. For example, at the Publicker Superfund site located on the Delaware River in Philadelphia, the United States entered into a PPA with Holt Cargo Systems, Inc. and several related entities interested in purchasing and redeveloping this site without incurring Superfund liability for past disposal activities. The original owner/operators used this site to manufacture dry ice, whiskey, industrial alcohol, and other chemicals for many years. After Publicker ceased manufacturing operations, the site fell into decay and was used for storage of hazardous chemicals. EPA listed the site on the NPL and completed the necessary cleanup at a cost of $20 million. Under the PPA with Holt and others, Holt paid $2.07 million to the United States and $230,000 to the Commonwealth of Pennsylvania in partial reimbursement of the cleanup costs. In determining the amount of this payment, the United States took into consideration the amount it could expect to recover from liens on the property. The property was particularly desirable for the expansion of Holt's shipping business, because it is located on the riverfront in Philadelphia, with ready access to train and truck transportation. As a direct result of the PPA, this

urban wasteland has become an economically productive port facility used for transportation and distribution of produce and freight.

PPAs have also been entered into for smaller properties. At the Middlefield-Ellis-Whisman ("MEW") Superfund site, located in Mountain View, California, the United States has entered into separate PPAs with several different entities for different parcels of this prior manufacturing site. The existing Superfund site is being cleaned up pursuant to administrative orders issued to the site owners and operators. In two recent PPAs related to this site, one covering a 10-acre parcel of the site, and one covering 1.17 acres, the United States agreed to release purchasers of these parcels from Superfund liability for past contamination. In exchange, the purchasers will each pay $75,000, and have committed to make land available for the soil and groundwater treatment remedy (in the first agreement), and committed to provide access to ensure that existing cleanup activities are undertaken (in the second agreement). The $75,000 payments will compensate EPA for administrative costs and provide monies to a regional cleanup effort. These PPAs will allow the purchasers to build office buildings on these parcels that will return blighted properties to productive use and create more than 100 jobs for the local community.

The Administration has also taken a number of steps administratively to work with states regarding the treatment of sites they are handling under their programs. For example, an EPA guidance specifies that when certain sites are being cleaned up under State authority, the Agency will defer listing them on the National Priorities List. (*Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions* (May 3, 1995).) Further, EPA has signed memoranda of understanding with 12 states (and is negotiating with eight more states) governing voluntary cleanups done under those states' laws. EPA has stated that generally it will not anticipate doing removal or remedial actions at the typically low-risk sites covered by those MOUs. Under these policies, EPA enforcement is preserved in the event of an imminent and substantial endangerment to human health and the environment. My understanding is that states with MOUs have been quite satisfied about the level of assurance regarding anticipated EPA action. These MOUs have also served the valuable function of keeping State and Federal officials better informed regarding each other's site cleanup plans.

LEGISLATION

Legislation to reauthorize the Federal Superfund program has been proposed in Congress for several years, but has not been enacted. In the meantime, through administrative reforms, we have successfully moved the program forward and gotten sites cleaned up. The administrative reforms EPA and DOJ have implemented have addressed many of the concerns about the program and have led to overall improvement in the program. Given the present State of the program, comprehensive reform legislation on Superfund is no longer needed, and in fact is highly likely to return the program to litigation, to delay further cleanup, and to undermine the progress we have achieved.

There remains a public perception that legislative change could facilitate and expedite brownfields redevelopment. Brownfields are parcels of land, most often located in urban areas, that contain abandoned or under-used contaminated commercial or industrial facilities, the expansion or redevelopment of which is complicated by the presence of hazardous substances. Cleaning up these parcels and returning them to productive use provides numerous benefits to the community: it improves the health of surrounding communities, as well as the appearance and economic well-being of these communities, because such projects bring new vitality and jobs to the areas developed. Brownfields development also protects undeveloped property and green space from the pressures of development.

Because of its importance to the environmental and economic well-being of cities, we have taken a number of steps to encourage brownfields redevelopment. Targeted Federal legislation may encourage such redevelopment even further. To that end, we urge Congress to continue funding the Administration's successful brownfields program so that more grants and loans can be made available to local communities all across the country. We also support legislation that has all of the following targeted and specific elements. These are:

- Liability relief for qualified prospective purchasers of contaminated property, innocent landowners, and contiguous property owners.
- Ensuring that State cleanup programs are well qualified—the program must provide notice and adequate opportunity for public involvement in cleanup decisions, must contain standards that protect human health and the environment and ensure completion of the cleanups, and must have adequate resources to implement and enforce its program.

• Guaranteeing that Federal authority to respond to circumstances that may present an imminent and substantial endangerment to human health or the environment is preserved.

Thank you for the opportunity to speak to this committee.

RESPONSES OF LOIS J. SCHIFFER TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Questions 1a and 1b. Several years ago, EPA proposed and then withdrew a Voluntary Cleanup Guidance effort for the states. The issue that caused the negotiation of this guidance to break down was how to address finality for state decisions. Does the Agency plan any further efforts to revive such a guidance? If so, how does the Agency intend to address the issue of state finality?

Response. EPA reports that on November 26, 1997, it withdrew its draft voluntary cleanup guidance and has been relying on its November 14, 1996 memorandum as the framework for negotiating Memoranda of Agreement (MOA's) with States regarding their voluntary cleanup programs. This memorandum, "Interim Approaches for Regional Relations With State Voluntary Cleanup Programs," identifies criteria that the state program must meet for EPA to enter into the MOA. The purpose of the MOA is to clarify the division of labor at sites, as between EPA and the States, and to avoid unnecessary duplication of efforts. In the MOA, EPA states that it generally does not anticipate taking removal or remedial action at sites involved in an approved state cleanup program, unless it determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment. EPA has included similar language in the 14 MOAs it has negotiated to date with states, which I understand are working well. We are unaware that EPA has any plans to issue any new or revised guidance.

Questions 2a and 2b. As part of the omnibus appropriations bill signed into law late last year, an effort was made by the National Association of Home Builders (NAHB) and EPA to include a Superfund liability exemption for developers of contaminated properties and certified state brownfields programs. This bill was never introduced, hastily drafted, full of errors, and circumvented the usual congressional process. Explain the benefit to society of a piece of legislation that serves the purposes of a narrow industry group and was negotiated outside of the committee framework. Do you still support the language that you negotiated with the NAHB?

Response. I was not involved in the negotiations with NAHB. The Administration is interested in achieving responsible brownfields legislation to help communities clean up and revitalize their neighborhoods. We support communities, not special interest groups. Promoting the cleanup of contaminated brownfields sites will enable these properties to be redeveloped into useful, productive parcels that improve the appearance of the sites, the health of surrounding communities, and the economic well-being of the community. The Administration remains committed to achieving responsible brownfields legislation. It supports targeted reform legislation to advance brownfields redevelopment such as the approaches taken in S. 18 (introduced by Senator Lautenberg and others during the 105th Congress), and in H.R. 1750 (introduced by Congressmen Dingell, Towns and others during the 106th Congress), and the draft legislation that has been called the NAHB bill (and that is limited to non-NPL caliber sites.)

Question 2c. Environmentalists have criticized the Administration for brokering deals without extensive public comment and discussion. In the instance of the NAHB/EPA brownfields deal, minority and low-income areas would have been particularly affected. Does the Administration support making a deal at the costs of cutting out public participation?

Response. Public participation is important and should be provided for both in the development of responsible brownfields legislation and in the implementation of any state brownfields program.

Question 3. Under EPA Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions and the 12 Memorandum of Understandings signed with States (eight more are being negotiated) governing voluntary cleanups done under those states' laws, does EPA take into consideration the actions performed by state voluntary cleanup programs prior to using enforcement authority in the event of an imminent and substantial endangerment?

Response. Based on our experience, the situations where EPA may be required to take action at a site cleaned up under a well qualified state cleanup program under an MOA will be rare. Nonetheless, preserving the ability of the Federal Government to respond in those cases is essential to enable us to protect public health and the environment. As a practical matter, we would take into consideration the

actions performed under state voluntary cleanup programs prior to using enforcement authority in the event of the threat of an imminent and substantial endangerment. Legislative changes are not needed to do this, and we have concerns that any new written standard could lead to increased litigation over the meaning of the standard.

RESPONSES OF LOIS J. SCHIFFER TO ADDITIONAL QUESTIONS FROM SENATOR LAUTENBERG

Question 1. Ms. Schiffer, I understand that the Federal Government has not stepped in at cases where State cleanup programs have handled cleanup of Brownfield sites. Is this correct? If they don't step in anyway, why is it important to maintain the ability for the Federal Government to do so?

Response. Your understanding is for the most part correct. Generally the Federal Government has not stepped in at brownfields sites being addressed under state cleanup programs. We support brownfields cleanups under qualified state programs, since the Federal Government alone does not have the resources to address every contaminated site across the country. Experience shows that the Federal Government is particularly well suited to address sites that pose the most egregious health threats or the likelihood of protracted litigation with numerous parties. However, we encourage states to address other sites, so that together we can get as many sites cleaned up as possible. And if a site is properly cleaned up under a state program to a standard that meets uses the surrounding community supports, we are not going to intervene and require a party to do more than the state required.

Although the number of times we have "stepped in" has been rare, for the following reasons it is important for the Federal Government to preserve its ability to do so to protect the public and the environment from situations that present an imminent and substantial endangerment.

Maintaining Federal liability and enforcement is important to encouraging state cleanups, including brownfields cleanups done under state programs. It is widely recognized that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund) creates a major incentive for cleanups. CERCLA imposes clear legal responsibility for those that create or contribute to a contamination problem to clean it up. And the threat of CERCLA responsibility can encourage private parties to clean up their waste voluntarily, even under a voluntary state program. Indeed, in a December 1998 GAO report, state officials stated that a strong Federal program imposing rigorous cleanup requirements and liability standards was critical to the success of the *state* programs. (HAZARDOUS WASTE SITES: State Cleanup Practices 5 (GAO/ACED 99–39, Dec. 1998).)

In addition, the imminent and substantial endangerment standard, which is the same in Superfund and many other environmental laws, has been interpreted by the courts. Changes to it may well lead to litigation over the meaning of any new standard, bringing lawyers back into a system that has been relatively successful at getting them out, and potentially delaying cleanups while litigation occurs. Indeed, we are already seeing that changes made to Superfund by the recycling amendments passed in November 1999 are leading to increased litigation at a number of sites.

Although experience demonstrates that the United States should rarely need to exercise its authority to respond at state cleanup sites, maintaining adequate Federal authority is critical to protect health and environment at sites where it becomes necessary. One example where this became necessary is the Grand Street Site in Hoboken, New Jersey.

From about 1910 to 1988, several companies engaged in manufacturing at this Hoboken warehouse, including the manufacture of mercury vapor lamps and other lighting materials. A subsequent owner filed an application for cessation of operation under New Jersey's Environmental Cleanup and Responsibility Act (ECRA) and, based on the information in the application, New Jersey approved a "negative declaration," which indicated that the property was sufficiently clean for redevelopment. The property was then sold and redeveloped into residential lofts. During renovations the new owners found large quantities of liquid mercury, a highly toxic material, within the walls of the building. The Agency for Toxic Substances and Disease Registry (ATSDR) was asked to evaluate the health impacts of the property and determined, after urine testing, that elevated mercury in residents, some of them children, constituted an imminent health hazard. Thereafter, the Hoboken Health Department declared the premises unfit for habitation and evacuated the residents. New Jersey rescinded its original approval under ECRA and in January 1996 asked EPA to step in. The site was listed on the National Priority List (NPL) in September, 1997.

EPA conducted an initial removal action to temporarily relocate residents and to further investigate the extent of mercury contamination in the buildings and surrounding soils. In 1997, EPA issued a remedy decision for the site that calls for permanent relocation of the residents, demolition of the buildings, excavation and offsite disposal of contaminated soils, and long-term groundwater monitoring. All property interests in the site were acquired by the Federal Government to facilitate permanent relocation of the residents. Pursuant to a unilateral administrative order, PRPs will undertake demolition and site remediation efforts. By its efforts EPA has protected building residents and the surrounding community from the health hazards associated with mercury contamination.

This example demonstrates that even in states with mature programs, something can go wrong or slip through the cracks. EPA's authority to respond in these instances should not be dependent upon a state's request for intervention. The reason for the Federal safety net is to ensure that public health and the environment are protected.

Question 2. I understand that the EPA and DOJ have been working with redevelopers on "Prospective Purchaser Agreements" at Brownfieldsites. Can you tell us how many of these agreements the EPA and DOJ have reached, and how they help facilitate cleanup and reuse of these sites? Would codification of a bona fide prospective purchaser ("BFPP") exemption further promote cleanup and reuse? To what extent would a BFPP exemption, if passed, address the issue of "finality"?

Response. To date we have completed 152 Prospective Purchaser Agreements (PPAs), and there are more in the works. By entering into these agreements, we provide prospective purchasers at sites of Federal interest with explicit relief from liability for pre-existing conditions on the site for which they had no responsibility. Buyers tell us that PPAs encourage them to purchase contaminated brownfields sites and redevelop them into useful, productive parcels that improve the appearance of the areas, the health of surrounding communities, and the economic well-being of the community.

An excellent example is the PPA we entered into for the Mechanic Street Realty Corp. (MSRC) Superfund Site in New Jersey. This site is a vacant four-acre former industrial complex located in a mixed residential, commercial and industrial area in Perth Amboy. Nearly 300 drums and various sized containers and several tanks were found at the site. Many of them contained hazardous substances and showed evidence of past spills and releases. EPA also found signs of trespass at the site. The parties responsible parties for the pollution are now defunct.

The City of Perth Amboy decided to acquire the property for redevelopment. Once DOJ approved their PPA, under the terms of the Agreement, the City has agreed to complete the removal activities at the Site and demolish the buildings at an estimated cost of $400,000. Thereafter, the City plans to transfer the property to the County for $1 as the proposed location for the new vocational school. If those plans don't work, the City will seek to sell to a private developer at market value and provide the United States with 50 percent of the sale or lease proceeds. As a result of this PPA, the site will be cleaned up and returned to productive community use.

The Administration has supported a bona fide prospective purchaser ("BFPP") exemption to further promote cleanup and reuse. Some have argued that prospective purchasers are afraid to purchase brownfield properties due to a fear of assuming liability for pre-existing conditions for which the purchaser had no responsibility. While I do not agree that there is a valid basis for such fear, an exemption for qualifying parties would eliminate this excuse for those that can undertake brownfields redevelopment.

Question 3. Ms. Schiffer, I have heard some argue in favor of limiting Federal authority and liability at Brownfields sites. Yet, my bill and others have included provisions which would protect innocent parties—prospective purchasers of contaminated sites, innocent purchasers who bought property but had no reason to know it was contaminated, and owners of property contiguous to the contamination. This would seem to cover the innocent parties pretty well—can you explain what other parties would have their liability eliminated if the Federal law did not apply?

Response. The three categories you have identified—prospective purchasers of contaminated sites, innocent purchasers who bought property but had no reason to know it was contaminated, and owners of property contiguous to the contamination—cover the range of parties at a Superfund site that the Administration has supported exempting from Superfund liability through legislation. Of course, any such liability relief must also ensure that the government can recoup the value it gives to property through its cleanup action and should preserve incentives for voluntary cleanup.

Parties that must remain liable under Superfund are those that are responsible for the contamination at a given site—this is the "polluter pays" principle. These include the past and present owners and operators of the site, parties who arranged for the disposal of hazardous substances, and transporters who delivered such substances to a site.

Question 4. You testified that there were certain criteria that would be essential for Brownfields legislation. Can you please elaborate.

Response. Responsible Federal brownfields legislation should contain at least the following elements:

(1) Legislation must make clear that any deference to state program cleanups does not apply to NPL listed, proposed to be listed, or NPL-caliber sites, all of which remain of Federal interest. State brownfields programs are intended to address only sites at which there is not a Federal interest.

(2) Legislation should contain appropriate liability relief for qualified prospective purchasers of contaminated property, innocent landowners, and contiguous property owners.

(3) Legislation must require that any state program to which deference is given must be well-qualified. A well-qualified state program must meet at least the following requirements: it must provide notice and adequate opportunity for public involvement in the process, including determinations of future land use as a basis for cleanup decisions, decisions of cleanup remedies, and determinations of cleanup completion; standards that protect human health and the environment; and adequate resources to implement and enforce the state program and ensure completion of the cleanups.

(4) Legislation must preserve the Federal Government's authority to respond to circumstances that may present an imminent and substantial endangerment to human health or the environment, and must require that PRPs pay the costs of such remedies.

(5) Studies consistently show that the biggest obstacle to brownfields cleanups is lack of funding. Legislation must provide adequate funding for grants and loans to local communities across the country to address brownfields.

Question 5. I have heard that parties complain that fear of Federal liability deters them from purchasing, cleaning up, and redeveloping brownfields, though I must note that in my home state of New Jersey, I have seen tremendous brownfields projects take place, even with the current potential for Federal liability. In any event, do you think liability relief is the solution, and if so, under what circumstances? Is this the only solution?

Response. I have repeatedly said that the so-called "fear" of Federal liability that some believe stymies redevelopment is misplaced, since there have been very few situations in which the Federal Government has stepped in at a brownfields site property cleaned up under a state program—and those rare examples that do exist are precisely the situations where a Federal role is necessary. Nevertheless, the Administration continues to support changes that would take away any excuses and would facilitate and expedite brownfields redevelopment. Cleaning up brownfields parcels and returning them to productive use improves the public health and the economic well-being of surrounding communities. Brownfields development also protects undeveloped property and green space from the pressures of development. Because of its importance to the environmental and economic well-being of cities, we have taken a number of steps to encourage brownfields redevelopment. Targeted Federal legislation may encourage such redevelopment even further.

Legislation is not the only way to encourage redevelopment, however. As we heard at the hearing on March 21, many local communities believe the primary impediment to redevelopment is the lack of adequate resources for site assessments and remediation. Indeed, in the United States Conference of Mayors' recent National Report on Brownfields Redevelopment (February 2000), the mayors stated that "For the third year, the 'lack of funds to cleanup these sites' was the most frequently identified impediment, cited by 90 percent of the respondents."[1] We therefore strongly encourage Congress to provide adequate funding to support brownfields redevelopment in communities around the country. The Administration has also been successful in encouraging brownfields redevelopment through administrative and enforcement efforts, such as EPA's issuance of comfort letters and the Department of Justice's approval of PPAs.

Finally, I understand that over the last several years, insurance for brownfields development has become much more readily available. Such policies enable parties

[1] See Recycling America's Land: A National Report on Brownfield Redevelopment—Volume III (February 2000), Executive Summary, p. 9.

to a brownfields transaction to ensure against unknown remediation risks associated with the site, thereby providing sufficient security and "finality" to the parties involved to proceed comfortably with redevelopment. As one recent publication stated, "[T]hese policies can and often do bring the transactional peace of mind needed to close a deal." Environmental Insurance: Benefits, Types of Policies Available and Purchasing Issues. I would also draw your attention to Current Insurance Products for Insuring Against Environmental Risks, ALI-ABA Course of Study, Anne M. Waeger, October 14, 1999 ("In recent years, the market for coverage of environmental risks has drastically increased, particularly as a result of Brownfields initiatives being enacted in many states.")

Question 6. Ms. Schiffer, we have already passed several pieces of Superfund amendments into law, such as the recycling liability provisions passed last year as part of the Omnibus budget bill. Is it too early to learn any lessons from the recent passage of the recycling amendments?

Response. The Superfund Recycling Equity Act was passed on November 19 and signed into law by the President on November 29, 1999. We hope that these recycling amendments will have the desired effect of encouraging the legitimate recycling of materials in the United States. One thing the new amendments are reminding us, however, is that any changes to the provisions of Superfund, even when supported by a broad consensus, leads to more litigation and reintroduces lawyers into the process. We are already involved in several cases in which the courts are being asked to determine the scope of the recycling amendments and their application to the facts of individual cases. In some cases, these questions have upset ongoing settlement discussions, and could potentially slow the pace at which cleanups proceed. We should keep this in mind as we consider any further changes to the statute.

RESPONSES OF LOIS J. SCHIFFER TO ADDITIONAL QUESTIONS FROM SENATOR BOXER

Questions 1 and 2. The Port of Redwood City, located on the southern end of San Francisco Bay, is engaged in cleaning up a hazardous waste site at which numerous Federal and private entities contributed hazardous wastes. Nearly all of the private entities have paid their share of the clean-up costs. Although the record is clear that 20 Federal agencies contributed waste to the site, the Department of Justice has apparently refused to settle the Federal Government's cleanup liability with the Port.

I first became involved in this matter last year. At that time, I asked that the Department expedite its treatment of this issue. I now understand from the Port, however, that the Department continues to delay paying the Federal Government's share of clean-up costs.

Please provide the following information concerning this claim: Status of the claim. Does the Department have a legal justification for avoiding liability in this case; if so, what is that justification or theory?

Response. While the Department of Justice's policy on pending matters and the confidentiality of the settlement negotiations prevents me from commenting in detail on the Port of Redwood City cleanup case or the settlement negotiations, I can provide the following public information on the status of this case.

This case concerns cost allocation for the cleanup of hazardous substances at the Liquid Bulk Terminal Site, also known as the Former Pilot Petroleum/Gibson Environmental Facility, in Redwood City, California. The Port of Redwood City is the current and past owner of the Site. From 1989 to 1995, the Port leased the Site to Gibson Environmental, Inc. In 1995, Gibson abandoned its leasehold and commenced bankruptcy proceedings. Later in 1995, the California Department of Toxic Substances Control notified the Port that, as property owner of the Site, the Port was required to assume responsibility for the Gibson Facility under state law, and to prepare and submit a closure plan.

Subsequent investigation revealed toxic pollutants and contamination at the Site, apparently resulting from the operations at the Gibson Facility. The Port has commenced cleanup of the Site and filed a lawsuit in Federal court seeking reimbursement of costs from a number of parties including the United States. With respect to the litigation, on March 7, 2000, the court issued a written order dismissing 7 of the 13 counts against the United States, including the count seeking joint and several liability under CERCLA. The Port stipulated to dismissing the CERCLA § 107 claim along with some of the state tort claims. Litigation and discovery on the remaining counts is ongoing.

Although the Department of Justice on behalf of the Federal defendants has been in settlement negotiations with the Port since 1997 (prior to the filing of the complaint), we have not as yet been able to reach a fair settlement. Since the Depart-

ment's last correspondence with you on this matter in 1998, the Federal defendants have exchanged information with the Port, both formally through discovery and informally, to assess the potential liability of the United States. Using this information, we have engaged the Port in negotiations in an attempt to settle this case. We have adopted a position that is fair, comparable to the position taken by other similarly situated parties who have already settled with the Port, and consistent with the position we have taken in other similar cases. Although our negotiations have not been successful, we remain open to further settlement discussions with the Port as we continue to litigate this matter.

Questions 3 and 4. How much time (hours) has been spent by Department attorneys on this case? Please estimate how much time and money the Department will spend if this case goes to court?

Response. Our records indicate that to date 726 attorney hours have been spent on the Port of Redwood City case since its inception in 1997. A significant number of hours were spent responding to over 2,000 discovery requests by the Port last year. Although we continue to believe settlement appropriate in this case, all parties will incur additional expenses if this litigation continues.

Question 5. Is it standard Department policy to defend rather than settle claims against the Federal Government for Superfund liability? Has the Department estimated the legal costs associated with any such policy?

Response. The Department continues to believe that the most appropriate resolution of valid claims against the Federal Government is fair and reasonable settlements. At the same time, a "give-away" settlement does not protect the American taxpayers. We remain open to further settlement discussions with the Port of Redwood City as we continue to litigate this matter.

STATEMENT OF J. CHRISTIAN BOLLWAGE, MAYOR, ELIZABETH, NJ, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

I am J. Christian Bollwage, Mayor of Elizabeth, New Jersey. I am pleased to appear today on behalf The United States Conference of Mayors, a national organization that represents more than 1,050 U.S. cities with a population of 30,000 or more.

Within the Conference of Mayors, I now serve as a Member of the organization's Advisory Board, and I am a co-chair of the Brownfields Task Force.

The Conference has been involved extensively in the legislative debate on brownfields redevelopment and related efforts to enact much needed reforms to the "Superfund" law.

Mr. Chairman, the Conference's statement today addresses a number of issues before this Subcommittee today. Specifically, I would like to focus my remarks on what is needed to support city efforts to redevelop brownfields, recognizing the interplay between the Superfund law and these less contaminated, non-NPL sites.

SUPERFUND REFORM

For some time, the Conference of Mayors has been engaged in the debate on the nation's Superfund law. And, when mayors talk about the need for reform of this law, we have sometimes failed to register our strong support for the statute and how it has stopped the reckless and thoughtless disposal of harmful chemicals to the environment. When enacted, Superfund also meant that the time had come to take responsibility for past actions by forcing responsible parties to clean up contaminated properties.

When cities try to offer a consistent view of the workings of Superfund as it pertains to the cleanup of Superfund sites, it poses challenges for our members. Consider the numbers. In this hearing, we are talking about a Superfund that is involved directly with cleaning up sites at a rate now of about 85 per year. According to the Census, we have more than 20,000 municipalities throughout the country, with sites located in larger cities, in smaller ones, in incorporated areas of counties and in unincorporated areas. Sites are located in highly urbanized areas, developing and ex-urban areas, in ex-urban small towns and in remote rural locations. The facts of each situation differ, the environmental threats, cleanup considerations, and so on.

Experience with these sites and others has generated a substantial record, prompting the U.S. Environmental Protection Agency to pursue a number of administrative reforms to the program. And, the Conference has been supportive of these efforts and related policies, urging that these reforms be codified to give the agency specific support and legislative backing for these program changes.

Our support for this Committee's legislative efforts and those in the House reflect our support for efforts to update the statute and provide more certainty to the Agency in administering the statute, reflecting the nearly 20 years of experience in the field. And, mayors believe that brownfields, specifically, is one significant area which needs legislative attention, and I speak to some of these issues later in my statement.

Mr. Chairman, I would note that the life cycle of a Superfund site, from listing to construction completion, exceeds the tenure of most mayors. As a result, we have focused our efforts on particular areas where numbers of our members are affected and there is some common experience. For example, we know there are a number of Superfund sites where a city or the county owns the site, most commonly a municipal landfill, or where municipal waste has been co-disposed at the site. Mr. Chairman and Senator Lautenberg, I know you are very familiar these circumstances and the challenges these sites present to affected communities.

Shortly after Superfund fund was enacted, a number of cities felt the immediate effects of the Act's new standards, given their ownership of landfills or in actions related to the disposal of municipal and other wastes. When Superfund was first moving through Congress, there were many here in Congress and in Executive agencies who believed that the new liability provisions would, in fact, enjoin cities and others at the local and State level to contribute their so-called "deep pockets" to augment Superfund resources. In this way, Federal resources would be reserved for the most contaminated properties where responsible parties were long gone and/or otherwise unreachable.

This Committee's record is replete with discussions and testimony on the municipal solid waste issues. And, we are familiar with, and appreciative of, this Committee's efforts to deal with these sites in your reform efforts.

Last year when then Macon Mayor Jim Marshall testified before you, he made a very important point about the effects of the law and its assignment of cleanup costs at these sites to local taxpayers. He said that the law effectively asks a new group of local taxpayers to pay the costs for earlier actions by an old set of taxpayers. Absorbing these costs, he argues and mayors agree, is very problematic and unfair to today's taxpayers.

And, of course, there is the broader reality of these sites, which are owned and operated by localities in performing a traditional local government functions, the disposal of solid waste. Superfund effectively makes these communities responsibility for past practices and uses of materials and substances, all of which are largely outside of the control of the level of government now responsible for the clean up of these sites. The flow of commerce, and particularly the chemical constituents of commerce, have been and continue to be outside the purview of local authorities, both constitutionally and often practically.

Here we have pressed for municipal liability caps to help communities contribute to these costs, urging that Superfund dollars be used to cleanup these sites. In the case of MSW sites, Superfund's core principle—"you own it, you are responsible"—is unfair and should be reformed. Cities that have taken title to brownfield properties, for a variety of reasons, also feel this standard is unfair and should be reformed.

BROWNFIELDS

Subsequent to Superfund's passage, local officials and others never fully understood how these liability strictures would later fuel the phenomenon we now called brownfields. So that while, on one hand, Superfund was sending the strongest signal possible that contamination of land, buildings and the like will not be tolerated, we were also signaling to those parties trying to recycle our nation's land to proceed at their own risk.

Our survey work at the Conference shows that brownfields throughout the Nation is a problem of significant proportion. And, we believe that our collective efforts among Federal, state, regional and local governments and their agencies are far too modest given the scale of this national problem. Let me talk about the problem, as the Conference recently set forth last month in its Third National Report on Brownfields Redevelopment. I have also provided you with my written testimony copies of this Report, along with a four-page summary on its release.

First, let me summarize some of the key findings

- 232 cities responded to our survey, with 210 cities estimating that they had more than 21,000 brownfield sites; these sites consumed more than 81,000 acres of land.
- Brownfields are also not just a "big" city problem with more than six out of ten respondents from cities with less than 100,000 people.

We found the obstacles to redevelopment are the same for the third consecutive year

- The No. 1 obstacle was the need for cleanup funds to bring these properties back into productive use, with 90 percent of the respondents indicating that cleanup funds were needed.
- The second more common impediment issue was dealing with the issue of liability, followed by the need for more environmental assessments to determine the type and extent of the contamination.

And, we also quantified the benefits of redeveloping these sites, underscoring why mayors have been so vocal in advocating support for new Federal policies to assist communities

- Let's talk money first. Three-fourths of the survey respondents (about 178) estimated that if their brownfields were redeveloped, they would realize between $902 million to $2.4 billion in annual tax revenues.
- The second most frequently identified benefit was creating more jobs, with 190 cities estimated that over 587,000 jobs could be created if their brownfield sites were redeveloped.

We have also been working to make the case that renewed attention to brownfields is one of the most viable options in the short term in addressing issues related to sprawl, including loss of farmland and open space. It is obvious that the redevelopment of these sites can make a real contribution to this growing national problem, by recycling existing urban land before developing pristine land resources as our first choice.

Related to this issue, we asked the survey respondents to quantify how many people their communities could absorb without adding appreciably to their existing infrastructure.

- 118 estimated they could support an additional 5.8 million people, a capacity that is nearly equivalent to the population of Los Angeles and Chicago.

To put this number in context, we took some of the analysis from the American Farmland Trust——

- AFT estimates that 15 percent (about 15 million acres) of all the land that was developed in the U.S. was developed between 1992 and 1997; during the same period, the nation's population grew by 12.6 million.
- These 5.8 million people, which our survey says could be absorbed by these 118 cities, is nearly one-half (46 percent) of the nation's population growth during the same 5-year period (1992 to 1997).

We need to ask ourselves what portion of the 15 million acres that were developed could have been saved if we had national policies in place that would recycle brownfields back into productive use, and other policies to help encourage more people to choose to live in existing communities.

POLICIES ON BROWNFIELDS SPECIFICALLY

Mr. Chairman, as a former mayor, I know that you are very familiar with the challenges of brownfields in communities all across the country. We encourage you to take steps in this Committee to work with others to craft bipartisan policies to advance our efforts, by acting on brownfield and selected Superfund reforms.

We also want to acknowledge the many efforts by the Administration, particularly U.S. EPA Administrator Carol Browner, who has supported many policy reforms and initiatives on brownfields, given constraints of existing law.

EPA's programs and policies have certainly helped, and again let us underscore that we are very appreciative of these efforts. But as a nation, the mayors believe that we are not making progress at a rate that is quick enough or substantial enough given other considerations.

Let me talk specifically about some of the issues related to brownfields redevelopment that would be most helpful.

First, cities need additional resources to accelerate the pace of assessment and clean-up of these sites. Our survey clearly substantiates this need.

As the Committee looks for ways to assist communities, we would ask that you consider some of the following key recommendations.

ON FUNDING

- Provide communities with the option to apply for both grants and loan capitalization funds and make these resources directly available to communities to assist their efforts to accelerate site remediation.
- Provide an authorization of "such sums as necessary" to allow future Congress' the flexibility to increase commitments to local cleanup efforts. Superfund, as you know, is not a statute that is routinely reauthorized.

• Provide grant funds to help communities undertake assessment of these sites, investments which will accelerate information on the extent of contamination at these sites and provide the basis for subsequent clean up efforts.
• Provide an option for those communities that have previously received brownfields loan capitalization funds, which were funded from Superfund Trust Fund revenues, to use these funds under any new rules prescribed for grant and loans fund provided under new legislation.

Finally, the mayors believe that these resources to support local brownfield assessment and cleanups should be provided from both general revenues and Trust Fund revenues. We would also note, however, that the excise taxes, which the Conference supports renewing, do apply to chemicals that are often present at many of the sites we call brownfields.

LIABILITY REFORMS

• Provide prospective purchaser liability protections, extending these protections to private and public parties.
• Provide targeted liability protection to municipalities and other innocent private parties, who have acquired these properties under certain circumstances and conditions. A number of cities, for example, have acquired brownfields in a number of ways, usually in performing local government functions and in complying with State and local laws.

FUTURE LAND USES/INSTITUTIONAL CONTROLS

• Provide policy support that allows State and local efforts to clean up sites, using standards that reflect future uses of the site.
• Provide support for local and State efforts to put institutional controls in place to ensure future use of these sites conform to the cleanup standards used at the site.

STATE VOLUNTARY CLEANUP PROGRAMS

• Provide additional funding support to strengthen State voluntary cleanup programs, using these funds to ensure that these State programs continue to build capacity to address brownfields sites, not just emphasizing the more contaminated NPL-caliber properties.
• Provide for a pilot project whereby localities that so chose, can be delegated authority under Federal law to undertake their own voluntary clean up programs, subject to subsequent State delegation of this authority.
• Provide mechanisms that will assure that parties who participate in State cleanup programs for the clean up of contaminated properties can fully anticipate the level of State authority to make final remediation and other decisions at the site.

Mr. Chairman, these are some elements that would help communities and their State partners to accelerate the cleanup and redevelopment of these sites.

I would like to make a few points regarding some of the issues that I have just set forth. First, some in Congress continue to express concerns about providing additional resources to communities for brownfield assessment and cleanup. We know that many communities simply don't have the resources to tackle the magnitude of the problem they face.

But, there is also another point that we often make about these properties. When these sites were active and producing economic activity (i.e. jobs, tax receipts, etc.), all levels of government shared in this output. In fact, at the local level, communities on average realized between 10 and 20 cents on every public dollar that was generated. More than 80 cents of every dollar was shipped to State capitols and the U.S. Treasury in the form of income taxes and so on. It is hard for local areas, which realized the smallest share of the public dollars generated by these private activities, particularly those communities with relatively weak tax bases, to absorb all of the public costs associated with restoring these properties to productive reuse.

Another key point is the level of effort we have committed, collectively, to this effort is far less than what we should be doing as a society. Even with the very committed support and leadership at U.S. EPA, it remains a very daunting task to accomplish reforms administratively.

In preparing for this hearing, we reviewed the record of EPA's efforts to issue comfort letters and Prospective Purchaser Agreements. Through Fiscal Year 1998, the agency had entered in to 85 Prospective Purchaser Agreements and had issued over 250 comfort/status letters. This represents a very small fraction of sites in America. Specific legislation deals with some of the issues I have discussed would produce the same outcome as thousands of these letters and PPAs.

I would also urge the Committee to consider language in any legislative reforms which takes a broader view of the brownfields issue, allowing communities some flexibility to address vacant buildings along with land. A new study, which was recently reported in USA Today, underscores the need for additional attention to the issue of abandoned buildings.

ELIZABETH'S SUCCESS WITH BROWNFIELDS

In my own City, I have seen what is possible by reusing these sites. In October, we officially celebrated the opening of the Jersey Gardens Mall, located on the site of a 170-acre municipal landfill that had been closed since 1972.

At this site, we have opened the largest outlet mall on the East Coast, with more than 200 stores, providing more than 3,000 jobs. This site alone will generate about $6.5 million annually in revenue for the City. With additional stores opening this Fall, we expect to see employment at the site exceed 4,000 jobs.

As a result of this project, we see additional private investment flowing to the immediate area, including a major indoor sports complex, hotels, office buildings and ferry service to New York City. And, we have had other successes in our City, although not on the scale of what the Jersey Gardens Mall has yielded.

We are fortunate that the city of Elizabeth is ideally situated to leverage the substantial economic and population base of Northern New Jersey, extending in to Manhattan. And, I am not suggesting that this is most characteristic of what cities can accomplish in redeveloping brownfields. However, it does underscore the need for Federal policy support to help communities generate their own successes, as you now see on a relatively modest scale all across the country.

CLOSING COMMENTS

The nation's mayors believe that the time has come for bipartisan action on brownfields and, where possible, selected Superfund reforms. In moving bipartisan legislation forward, you can count on the support of the nation's mayors in this regard.

On behalf of The U.S. Conference of Mayors, we appreciate this opportunity to share the view of the nation's mayors on these important issues.

RESPONSES OF J. CHRISTIAN BOLLWAGE TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1a. Your testimony states that 15 million acres could have potentially been saved from development if we had national policies in place that would recycle brownfields back into productive use. From the local government perspective, based on your experience, why are companies choosing to locate their new factories on "greenfields," perpetuating the current problem of sprawl and loss of downtown areas, instead of buying "brownfields?"

Response. There are many factors why companies choose to relocate their new factories on greenfields instead of brownfields and in understanding these factors you must examine the atmosphere that business operates. The first factor in any business decision is the bottom line; it is usually cheaper to relocate and/or build a new factory on greenfields verses brownfields. And, we know that public investment and subsidies are often skewed toward new facilities over the rehabilitation and upgrading of existing public facilities. Second, business is conducted in the here and now; companies may not have the luxury of time to wait for the cleanup and for the appropriate government process of review—bureaucracies take time. Third, farmland has become increasingly available. Fourth, it can be more complicated to do business in existing cities and communities, which are relatively more complicated environments for new development. Finally, if time, money and availability isn't a factor the potential of a long-term liability may drive the business to greenfields.

Therefore, financial incentives must be put into place to attract business to brownfields, long-term liability issues must be addressed adequately to lower the risk, and the advantages of relocating to a brownfield must be made known (i.e. labor surplus area, proximity to transportation and market access).

Question 1b. Is it because they are afraid of getting caught up in the Superfund liability web?

Response. Yes, Superfund liability is definitely a factor but it is not the whole picture. There are many factors that a businessperson looks at before making a decision of this magnitude; unfortunately, liability concerns at the outset gives a developer real cause to look elsewhere.

Question 2a. Based on the United States Conference of Mayors (USCM) February 2000 report, Third National Report on Brownfields Redevelopment, the second most common obstacle cited by cities responding to your survey were issues of liability. If states were to have finality in decisions regarding cleanups under voluntary programs, would the issue of liability be addressed?

Response. In most of our work with mayors, liability concerns turn on two issues. First, for innocent parties, there needs to be specific liability relief provided in the statute to make sure these parties know where they stand in acquiring sites for redevelopment. More broadly, all parties, particularly those who have caused contamination at sites, need to know that if they conduct a cleanup under a State voluntary program that they have satisfied their liability at the site. Otherwise, why would some parties who caused any contamination come forward and seek to clean up these properties? The New Jersey Brownfield Act of 1998 is an excellent model for the covenant not to sue. The language of the legislation should be flexible enough to allow a site by site determination regarding the type of contamination and therefore determining the condition of no further action.

Question 2b. Thirty-four percent of the survey respondents said that the question of how active their State was in working with them on issues of brownfields was inapplicable. Does this mean that the states where those survey respondents are located have no voluntary cleanup programs?

Response. Although the survey does not provide respondents with the opportunity to describe why they marked "inapplicable" on the questionnaire, the Conference of Mayors staff has advised me that, based on discussions with many of these cities, there are two likely explanations. First, some cities indicated that the State did not have a program specifically in place for addressing brownfields. Second, some of the cities did not have any direct experience in working with the state's voluntary cleanup program and could not make an assessment of the program.

Question 3a. In your 1997 testimony to the Senate Committee on Environment and Public Works, you set forth the position of the Conference of Mayors on the issue of finality. Namely, "that many States have well developed voluntary cleanup programs that lead to No Further Remediation letters. The USCM believes that if a site has successfully gone through a qualified State program, then there should be no additional Federal liability attached to that site for contaminants of concern. There may be a reopener clause, but it should be limited to cases where (1) there is an imminent threat to human health or environment." Does the Conference of Mayors continue to support this provision?

Response. Yes.

Question 3b. What does the Conference of Mayors consider to be a "qualified" State program?

Response. As a threshold issue, the Conference believes that the State rules and regulations regarding procedures on the performance of environmental investigation, which meet or exceed Federal regulations on environmental investigation should be deemed a "qualified" State program. The Conference has not adopted a position calling for a Federal definition or Federal standards for "qualified" State programs. In fact, mayors have resisted such an approach in that it might result in a new and lengthy Federal process of EPA approval of State voluntary programs, slowing forward progress in getting brownfield sites cleaned up and redeveloped.

Question 3c. How and by whom would the determination be made that a State response was "not adequate" such that the reopener clause would apply?

Response. The U.S. EPA should reserve the right to go back to review a case if there is a significant change in magnitude. Magnitude meaning a change in environmental health or safety standards that would or could directly effect health and safety.

Question 4. What would be the result of providing State finality in decisions on cleanup of brownfield properties?

Response. It would be an added incentive for developers to build or companies to relocate on brownfields.

RESPONSES OF J. CHRISTIAN BOLLWAGE TO ADDITIONAL QUESTIONS FROM SENATOR LAUTENBERG

Question 1. Mayor Bollwage, you have been a real leader in the issue of Brownfields and reuse of properties, on behalf of The U.S. Conference of Mayors. I understand that in addition to the successful commercial mall in your city, you

have also used former brownfields sites for non-commercial uses, including a little league field and a soccer field.

Are there any unique problems associated with these kinds of reuses?

Response. Elizabeth has been very fortunate in the redevelopment of brownfields for recreational and open space uses. The sites that were redeveloped for these purposes were at the time unwanted and/or abandoned properties. The challenge for the city of Elizabeth, and for many others urban areas, is the limited land resources that are available for redevelopment as parks and open spaces. There are also additional costs, beyond those for simply redevelopment of the site as park/open space, for the continuing maintenance and operations at the site.

Therefore, the most prominent problem for cities is available funding to cover the costs of preliminary assessments, site investigation, remediation and continued maintenance. Brownfields, in certain instances, provide opportunities for cities to increase park and open spaces, if funding is available.

Question 2. Do you have specific suggestions as to how could we encourage the reuse of brownfield properties as open space or recreational areas?

Response. Because the redevelopment of recreational and open space is not developer driven, the responsibility falls largely upon the municipality, with some support from other public bodies. For the city to redevelop and maintain a recreational facility and preserve open space, as I have explained above, can be a very expensive option.

Therefore, the best encouragement for cities to redevelop brownfields is to hear how other cities procured the funds to acquire sites, clean up and redevelop these lands for open space and recreational purposes. Also, having a clear source of funding not fragmented funding through various agencies would greatly reduce the resistance to redevelopment of brownfields.

Nationally, the mayors have been very supportive of pending legislation, like the Conservation and Reinvestment Act (CARA), which will increase the availability of Federal funds for the acquisition of lands for open space/park/recreational uses, including funding for the development and rehabilitation of these public assets.

STATEMENT OF R.B. JONES, CITY COUNCILMAN, NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS (NALGEP)

INTRODUCTION

Mr. Chairman and distinguished members of the Subcommittee, my name is R.B. Jones, and I am a City Council Member representing the city of East Palo Alto, California. I also served as the Mayor of my City for the previous 4 years. I am pleased to be here today to testify on behalf of the National Association of Local Government Environmental Professionals, or "NALGEP." NALGEP appreciates the opportunity to present this testimony on the views of local government officials from across the Nation on the need for additional Federal incentives to promote the cleanup, redevelopment and productive reuse of brownfields sites in local communities.

NALGEP represents local government officials responsible for ensuring environmental compliance, and developing and implementing environmental policies and programs. NALGEP's membership consists of more than 130 local government entities located throughout the United States. Our members include many of the leading brownfields communities in the country such as Providence, Trenton, Portland, Chicago, Los Angeles, Salt Lake City, Dallas, and Cuyahoga County (Ohio), to name a few.

In 1995, NALGEP initiated a brownfields project to determine local government views on national brownfields initiatives such as the EPA Brownfields Action Agenda. The NALGEP Brownfields Project culminated in a report, entitled Building a Brownfields Partnership from the Ground Up: Local Government Views on the Value and Promise of National Brownfields Initiatives, which was issued in February, 1997.

During the past few years, NALGEP has continued its work on brownfields through coordinating work groups of local officials to address the following issues: (1) Brownfields Cleanup Revolving Loan Funds; (2) use of HUD Community Development Block Grants for Brownfields; (3) building partnerships between business and local government officials to reduce sprawl and promote smart growth; and (4) implementing the Administration's Brownfields Showcase Community initiative. As a result of these efforts, NALGEP is well qualified to provide the Committee with a representative view of how local governments, and their environmental and devel-

opment professionals, believe the Nation must move ahead to create long-term success in the revitalization of brownfields properties.

NALGEP's testimony today will focus on the following areas: (1) the urgent need for increased Federal funding to support the cleanup and redevelopment of brownfields sites across the country; (2) the need for further liability clarification to encourage the private sector to step forward and revitalize more sites; (3) the need to facilitate the participation of other Federal agencies (e.g., Army Corps of Engineers, Department of Transportation, HUD) in supporting local brownfields initiatives; and (4) the urgent need to provide Superfund liability relief for local governments that owned municipal landfills or sent non-toxic municipal solid waste or sewage sludge to landfills.

The cleanup and revitalization of brownfields represents one of the most exciting, and most challenging, environmental and economic initiatives in the nation. Brownfields are abandoned, idled, or under-used industrial and commercial properties where expansion or redevelopment is hindered by real or perceived contamination. The brownfields challenge faces virtually every community; experts estimate that there may be as many as 500,000 brownfields sites throughout the country.

The brownfields issue illustrates the connection among environmental, economic and community goals that can be simultaneously fostered through a combination of national leadership, State incentives, and the innovation of local and private sector leaders. Cleaning up and redeveloping brownfields provides many environmental, economic and community benefits including:

- expediting the cleanup of thousands of contaminated sites;
- renewing local economies by stimulating redevelopment, creating jobs, expanding the local tax base, and enhancing the vitality of communities; and
- limiting sprawl and its associated environmental problems such as air pollution, traffic and the development of rapidly disappearing open spaces.

EAST PALO ALTO'S BROWNFIELDS INITIATIVES

The city of East Palo Alto is a small community of 25,000 people that has never enjoyed the economic prosperity of its neighboring communities in Silicon Valley. The City has the highest levels of unemployment and poverty and lowest median income in San Mateo County. In addition, the City has struggled to significantly reduce its crime rate, which was one of the highest in the Nation in the early 1990's.

However, the City is successfully moving forward to revitalize our community. East Palo Alto was selected by the Administration as one of 16 Brownfields Showcase Communities nationwide, announced by Vice President Gore in spring 1998. As part of the Showcase initiative, we are working with Federal and State agencies to promote sustainable environmental cleanup and economic development.

Our focus is the Ravenswood Industrial Area ("RIA") and the adjacent Four Corners redevelopment area. The Ravenswood Industrial Area, a large, contiguous region of approximately 130 developable acres in a historically mixed agricultural, commercial, industrial and residential area, was designated as a U.S. EPA Brownfields Assessment Pilot in 1996. The property is affected by a multitude of toxic substances, including arsenic, chromium and other heavy metals, pesticides and herbicides, chlorinated solvents and petroleum contamination. The City partnered with U.S. EPA Region 9 and the San Francisco Bay Regional Water Quality Control Board to assess the site and estimates remediation costs at $2–5 million.

The City has developed a strategic plan and design to redevelop this area into a mixed-use development and employment center, with up to 2 million square feet of commercial and high-technology offices and light manufacturing. New, medium-density housing is also planned nearby. The City will seek to promote the location of environmentally sensitive businesses, the use of green building practices, and development that enhances and protects the beauty of adjacent resources such as San Francisco Bay, wetlands, and open space areas. The Four Corners portion is slated for the establishment of a new town center including government buildings, civic space and commercial establishments. The overall design will enhance the community and its livability. The City expects that redevelopment of the entire Ravenswood Industrial Area will create 4,000 new jobs and generate more than $1 million per year in new tax revenues.

The redevelopment of Ravenswood will also benefit the broader region. Silicon Valley is enjoying the hottest market in 14 years, but is rapidly running out of office space and developable land. This leaves the Ravenswood Industrial Area poised to take advantage of a tight real estate market and finally enjoy the prosperity of the booming regional economy.

However, revitalizing this area will not be easy. Our biggest challenge will be to obtain the $2–5 million required to clean up the site. It is unlikely that a private

developer would take on this project with such significant cleanup costs. Currently, there are few available sources to fill this gap. Consequently, East Palo Alto's last remaining developable area remains underutilized.

In addition, we will need to secure funds to upgrade the infrastructure in the area including expanding and improving the major entrance road to Ravenswood, enhancing our flood control and prevention, and upgrading our utilities. East Palo Alto's challenges clearly demonstrate the need for innovative partnerships and increased Federal funding if we are to fully reap the many benefits from redeveloping brownfields like the Ravenswood area.

The Federal Government, particularly the U.S. EPA, has played an important role in helping East Palo Alto develop and advance our brownfields redevelopment efforts. Specifically it has:

- Provided critical funding and a staff person to enable us to institutionalize a local program and to help investigate and clean up specific sites;
- Provided technical assistance and other resources that have helped us learn from other communities and take on the many challenging obstacles to brownfields revitalization;
- Connected us with other Federal agencies that have resources and technical expertise; and
- Most importantly, provided the critical leadership needed to educate the many stakeholders and the general public that redeveloping brownfields can be done and that it can provide significant economic and environmental benefits for communities across the nation.

BROWNFIELDS LEGISLATIVE NEEDS

I. Ensuring Adequate Resources for Brownfields Revitalization

As East Palo Alto's efforts to redevelop the Ravenswood area clearly demonstrate, local governments need additional Federal funding for site assessment, remediation and economic redevelopment to ensure long-term success in revitalizing our brownfields. The costs of site assessment and remediation can create a significant barrier to the redevelopment of brownfields sites. In particular, the costs of site assessment can pose an initial obstacle that drives development away from brownfields sites. With this initial obstacle removed, localities are much better able to put sites into a development track. In addition, the allocation of public resources for site assessment can provide a signal to the development community that the public sector is serious about resolving liability issues at a site and putting it back into productive reuse. Likewise, resources for cleanup are the missing link for many brownfield sites a link that keeps brownfields from being redeveloped into productive areas in many communities like East Palo Alto.

The use of public funds for the assessment and cleanup of brownfields sites is a smart investment. Public funding can be leveraged into substantial private sector resources. Investments in brownfields yield the economic fruit of increased jobs, expanded tax bases for cities, and urban revitalization. And the investment of public resources in brownfields areas will help defer the environmental and economic costs that can result from unwise, sprawling development outside of our urban centers.

The following types of Federal funding would go a long way toward helping local communities continue to make progress in revitalizing our brownfields sites:

- *Grants for Site Assessments and Investigation.*—EPA's Brownfields Assessment Pilot grants have been extremely effective in helping localities to establish local brownfields programs, inventory sites in their communities, investigate the potential contamination at specific sites, and educate key stakeholders and the general public about overcoming the obstacles to brownfields redevelopment. Additional funding for site assessments and investigation is needed to help more communities establish local brownfields programs and begin the process of revitalizing these sites in their communities.
- *Grants for Cleanup of Brownfields Sites.*—There is a strong need for Federal grants to support the cleanup of brownfields sites across the country. The U.S. Conference of Mayors' recent report on the status of brownfields sites in 223 cities nationwide indicates that the lack of cleanup funds is the major obstacle to reusing these properties. For many brownfields sites, a modest grant targeted for cleanup can make the critical difference in determining whether a site is redeveloped, creating new jobs and tax revenues, or whether the site remains polluted, dangerous and abandoned.
- *Grants to Capitalize Brownfields Cleanup Revolving Loan Funds.*—In addition to grants, Federal funding to help localities and states to establish revolving loan funds (RLFs) for brownfields cleanup is another effective mechanism to leverage public and private resources for redevelopment. EPA deserves credit for champion-

ing brownfields RLFs as a mechanism for helping communities fill a critical gap in cleanup funding.

Unfortunately, the effectiveness of the EPA's current brownfields cleanup RLF program is severely undermined by the lack of new Federal brownfields legislation. Under current law, localities are required to jump through and over numerous National Contingency Plan (NCP) bureaucratic hoops and hurdles to establish their local RLFs. Moreover, the NCP prevents the use of RLF funds on petroleum contaminated sites and on buildings contaminated with asbestos or lead common elements of brownfield sites. East Palo Alto has received $500,000 from EPA to capitalize a local RLF. However , the current NCP requirements will make it difficult and costly for the City to effectively use these funds. These NCP requirements were originally established for Superfund NPL sites, not for brownfields sites. Congress can easily fix this problem by making it clear that local brownfields RLFs are not required to meet the NCP requirements established for Superfund sites.

II. Liability Clarification at Brownfields Sites

On the issue of Federal Superfund liability associated with brownfields sites, NALGEP has found that the Environmental Protection Agency's overall leadership and its package of liability clarification policies have helped establish a climate conducive to brownfields renewal, and have contributed to the cleanup of specific sites throughout the nation. Congress can enhance these liability reforms by further clarifying in legislation that Superfund liability does not apply to certain "non-responsible" parties such as innocent landowners, prospective purchasers and contiguous property owners.

It is clear that these EPA policies, and brownfields redevelopment in general, are most effective in states with effective voluntary cleanup programs. NALGEP has also found that states are playing a critical lead role in promoting the revitalization of brownfields. More than forty states have established voluntary or independent cleanup programs that have been a primary factor in successful brownfields cleanup. The Federal Government should further encourage states to take the lead at brownfields sites. States are more familiar with the circumstances and needs at individual sites. Moreover, it is clear that U.S. EPA lacks the resources or ability to provide the assistance necessary to remediate and redevelop the hundreds of thousands of brownfields sites in our communities.

The effectiveness of State leadership in brownfields is demonstrated by those states that have taken primary responsibility for brownfields liability clarification pursuant to Superfund "Memoranda of Agreement" (MOAs) with U.S. EPA. These MOAs defer liability clarification authority to those states. In order to further facilitate brownfields cleanups across the country, NALGEP finds that the Federal Government should create clear standards under which States that meet minimum criteria can assume the primary role for resolving liability and issuing no further action decisions for brownfield sites.

Authority for qualified states to play the primary role in liability clarification is critical to the effective redevelopment of local brownfields sites. A State lead will increase local flexibility and provide confidence to developers, lenders, prospective purchasers and other parties that brownfields sites can be revitalized without the specter of Superfund liability or the involvement of Federal enforcement personnel. Parties developing brownfields want to know that the State can provide the last word on liability, and that there will be only one "policeman," barring exceptional circumstances (i.e., where there is an imminent and substantial threat to public health or the environment).

At the same time, local officials are also concerned about delegating too much cleanup authority too fast to states that have not clearly demonstrated the ability to play a primary role. States vary widely in the technical expertise, resources, staffing, statutory authority and commitment necessary to ensure that brownfields cleanups are adequately protective of public health and the environment. If brownfields sites are improperly assessed, remediated or put into reuse, it is most likely that the local government will bear the largest impact from any public health emergency or contamination of the environment. NALGEP believes that the U.S. EPA has a role to play in ensuring that liability authority over brownfields sites should only be delegated to states that demonstrate an ability and commitment to ensure protection of public health and the environment in the brownfields redevelopment process. Moreover, EPA should be able to assert its Superfund authority at particular sites in exceptional circumstances (i.e., where there is an imminent and substantial threat to public health or the environment) where the State response is inadequate; or where the State requests EPA assistance.

III. Facilitating the Participation of Other Federal Agencies in Brownfields Revitalization

The cleanup and redevelopment of a brownfields site is often a challenging task that requires coordinated efforts among different government agencies at the local, State and national levels, public-private partnerships, the leveraging of financial resources from diverse sources, and the participation of many different stakeholders. Many different Federal agencies can play a valuable role in providing funding, technical expertise, regulatory flexibility, and incentives to facilitate brownfields revitalization. For example, HUD, the Economic Development Administration, the Department of Transportation, and the Army Corps of Engineers have all contributed important resources to expedite local brownfields projects. The U.S. EPA and the Administration have provided strong leadership through the Brownfields Showcase Community initiative that is demonstrating how the Federal Government can coordinate and leverage resources from many different Federal agencies to help localities solve their brownfields problems.

Congress can help strengthen the national brownfields partnership by further clarifying that the various Federal partners play a critical role in redeveloping brownfields and by encouraging the agencies to work cooperatively to meet local needs. For example, Congress should be commended for legislation passed in 1998 to clarify that HUD Community Development Block Grant funds can be used for all aspects of brownfields projects including site assessments, cleanup and redevelopment. This simple step has cleared the way for communities across the country to use these funds in a flexible fashion to meet their specific local needs. In addition, Congress has provided $25 million in each of the past 2 years for HUD's Brownfields Economic Development Initiative.

Similarly, Congress should consider clarifying that it is appropriate and desirable for the Army Corps of Engineers to use its resources and substantial technical expertise for local brownfields projects. East Palo Alto needs the Corps of Engineers' help to succeed in its Ravenswood revitalization initiative. The Ravenswood area has experienced severe flooding from the adjacent San Francisco Bay, making flood damage prevention a top priority. In addition, East Palo Alto needs assistance in the construction of drainage, sewage and other environmental infrastructure. Moreover, the Corps could assist East Palo Alto to protect and restore the ecosystem of the area, which includes wetlands and other significant natural areas, as well as the challenges of brownfields contamination. East Palo Alto has worked closely with the Corps to assess environmental contamination and waterfront development issues, and we seek to continue this close cooperation.

I understand that the Corps of Engineers intends to propose new authorities in the Water Resources Development Act (WRDA) 2000 legislation for brownfields cleanup and environmental infrastructure, in order to protect the water quality and promote the revitalization of communities across the nation. I want you to know that East Palo Alto believes this is an excellent proposal that will make a big difference for our city and many other communities.

Congress also should work with EPA and the Administration to determine how other agencies can help facilitate more brownfields revitalization. By taking these steps, Congress can give communities additional tools, resources, and flexibility to overcome the many obstacles to brownfields redevelopment.

IV. Providing Superfund Liability Relief for Local Governments

Local governments have a very serious problem. We have been saddled with years of delay, and millions of dollars of liability and legal costs under the Superfund law simply because we owned or operated municipal landfills or sent municipal solid waste or sewage sludge to landfills that also received industrial and hazardous wastes. Local governments have faced costly and unwarranted contribution suits from industrial Superfund polluters seeking to impose an unfair share of costs on parties that contributed no toxic wastes to these so-called "co-disposal landfill" sites. We estimate that as many as 750 local governments at 250 sites nationwide are affected by the co-disposal landfill issue. The costs that our citizens bear as a result are unfair and unnecessary.

Local governments are in a unique situation at these co-disposal sites. First, municipal solid waste and sewage sludge collection and disposal is a governmental duty. It is a public responsibility to our communities that we cannot ignore, and we make no profit from it. Second, the toxicity of municipal solid waste and sewage sludge has been shown to be significantly lower than conventional hazardous wastes and, as such, represents only a small portion of the cleanup costs at co-disposal landfills. Yet industrial Superfund polluters continue to attempt to make localities pay millions of dollars in liability costs unfair—costs that place an unreasonable burden on local taxpayers across the country.

In February 1998, the EPA finalized an administrative settlement policy to limit liability under Superfund for generators and transporters of municipal solid waste and sewage sludge, and for municipal owners and operators of co-disposal landfills. However, as fair and appropriate as the administrative policy is, it appears that legislative action to resolve the municipal Superfund liability issue is necessary and justified. First, the EPA policy is only a policy, non-binding on the Agency and subject to change or challenge. Second, this policy has already been the subject of litigation, and the real threat of further litigation involving local governments remains. A change in the Superfund law to address this issue is necessary to reduce the costly litigation and delay that municipalities continue to face at co-disposal sites. Third, we believe that legislative enactment of municipal Superfund liability provisions will give localities the certainty and confidence to make use of this settlement mechanism much as the codification of lender liability Superfund provisions has provided certainty for the banking industry.

CONCLUSION

In conclusion, local governments are excited to work with the Federal Government to promote the revitalization of brownfields, through a combination of increased Federal investment in community revitalization, further liability clarification, and other mechanisms to strengthen the national partnership to cleanup and redevelop our communities. NALGEP thanks the Subcommittee for this opportunity to testify, and we would be pleased to provide further input as the process moves forward.

STATEMENT OF ROBERT W. VARNEY, COMMISSIONER, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES, ON BEHALF OF THE ENVIRONMENTAL COUNCIL OF STATES

Good morning, Mr. Chairman and Members of the Committee; I am Robert W. Varney, Commissioner of the New Hampshire Department of Environmental Services. I am here today to represent views of the Environmental Council of States (ECOS) as a current member and past president.

ECOS, which formed in December 1993, is a non-partisan, non-profit organization comprised of environmental agency commissioners and directors responsible for the states and territories. The ECOS mission is to improve the environment of the United States by providing for the exchange of ideas, views and experiences among the states; fostering cooperation and coordination in environmental management; and articulating states' positions to Congress and EPA on environmental issues.

As you know, states are responsible for the vast majority of hazardous waste cleanups across the United States. In New Hampshire, for example, we are dealing with about 600 hazardous waste sites and 3,000 petroleum sites. Of the 600 hazardous waste sites, 18 are Federal NPL sites, one of which is the former Pease Air Force Base with multiple contaminated sites. Thus, the State is solely responsible for the investigation and/or cleanup of 97 percent of the hazardous waste sites within New Hampshire's borders. Other states have a similar, if not higher, percentage. This is an important point when considering reform of the Federal Superfund Program.

In addition, a high percentage of the NPL sites across the Nation have entered the cleanup phase of the Superfund program. For example, of the 18 NPL sites in New Hampshire, 15 sites or 83 percent are in the remedial action phase. New Hampshire is assuming the major oversight lead for these sites through the State groundwater management permit process. Through this process, a groundwater management zone encompassing the contaminant plume is developed as an institutional control, prohibiting groundwater use. The groundwater and surface waters within the zone are then monitored over a period of years to ensure that the remedy is effective and that cleanup goals have been achieved. There are many states across the country which are fully capable of managing all hazardous waste cleanup programs within their borders. EPA and Congress should take steps to delegate Superfund to any states which have these capabilities and are willing to assume responsibilities for the program. However, we are not saying that there is no need for a Federal Superfund program. Some states do not have the capacity, resources, or interest in handling Federal Superfund sites. Even sophisticated, well-funded, and experienced states rely on the Federal Superfund program to achieve their goals. If the Federal program is not funded to address the upcoming orphaned high risk sites that will appear on the NPL, then these sites are going to languish, threatening our citizens and the environment and stymieing reuse. It would be a mistake to think that these high risk sites will be cleaned up without a fully funded Federal program.

States simply do not have the financial resources to complete cleanups at high risk, orphaned NPL sites.

In the past 11 years as the environmental commissioner for New Hampshire, I have seen a prescriptive Superfund program, which created duplication of effort between the Federal and State governments, evolve into a more rational, cost-effective Superfund program, which fosters mutually supportive roles for the Federal and State governments. Although ECOS commends EPA for making a number of administrative improvements which have helped to streamline the implementation of the Superfund program, some states feel there is considerable overlap and duplication of effort. Duplication of effort is an inefficient use of government resources and may lead to confusion about roles, responsibility and accountability.

For example, 4 years ago in New Hampshire, State project managers were working with site owners and their consultants to investigate the same contaminated properties where EPA and its contractor were conducting site investigations at the same time. Through EPA's administrative improvements in the pre-remedial program and a Federal voluntary cleanup program grant to New Hampshire to strengthen the State site cleanup program, this duplication of effort has been eliminated. New Hampshire and EPA New England have agreed that New Hampshire can now use Federal pre-remedial money to investigate abandoned/dormant sites and contaminated water supplies to identify potentially responsible parties (PRPs). Once PRPs are identified, New Hampshire can then work with them to remediate the site; without having to list the site on the NPL, if possible. Out of New Hampshire's approximately 275 unresolved hazardous waste sites, the approximately 40 sites that are abandoned/dormant or involve contaminated water supplies and that were not being addressed because of a lack of State funding, are now being addressed. EPA should be encouraged to extend this initiative to all states who want to participate in this program.

This initiative illustrates the important point that the NPL is no longer reserved for just the nation's "worst of the worst" sites. NPL listing has become the final resort for those high risk sites that are truly orphaned and are in need of Federal funding for remediation. According to a recent General Accounting Office (GAO) report entitled, "Hazardous Waste: Unaddressed Risks at Many Potential Superfund Sites", there are 232 sites on EPA's inventory of potentially contaminated sites that either states or EPA believe should go on the NPL. This underscores the need for a continuing, fully funded Federal Superfund program.

Many states have expressed the need for a waiver of CERCLA liability when the State has cleaned up a site under an approved State plan. As a case in point, South Dakota has taken over the Brohm gold mine in the Black Hills. Even though the State has communicated and coordinated with EPA throughout the entire process, EPA cannot guarantee that the State will not incur CERCLA liability. The mining industry offered to assist the State of South Dakota on this project, but after researching the CERCLA law, they decided to stay away or risk exposure to CERLCA liability. Superfund reform is needed so that states and others who are not the parties responsible for creating the problem can work together to get things fixed. This would accelerate the rate of site cleanups while reducing Federal expenditures.

ECOS strongly supports the voluntary cleanup program. The Superfund program and State hazardous waste cleanup programs have focused onsites posing the greatest threat to human health and the environment. However, there remain many low and medium risk sites. For them, the majority of states have initiated voluntary cleanup programs in which the owner or developer works cooperatively with the state, as opposed to adversarial enforcement-driven program. Site cleanups can take less time, and many states offer such additional benefits as technical assistance, financial support, and importantly, liability assurances. Federal Superfund liability should also be waived at non-NPL sites that have been cleaned up in compliance with a State plan. ECOS believes voluntary cleanup programs should be encouraged and expanded.

ECOS also strongly supports the brownfields program. The need to encourage "smart growth" through the redevelopment of brownfields sites has never been greater. As reported in the March 3, 2000 issue of the *Environment Reporter*, published by the Bureau of National Affairs, "Redeveloping contaminated urban properties known as brownfields could add 550,000 jobs and $2.4 billion in new tax revenues, according to a survey report released by the U.S. Conference of Mayors". Successful initiation of these projects is heavily dependent on adequate funding, the liability language in prospective purchaser agreements, and innocent landowner and contiguous property owner provisions.

Over the last several years, EPA and the states have launched several successful efforts spurring redevelopment of brownfields sites. The work done to date has resulted in the investigation, cleanup and redevelopment of many sites across our na-

tion, resulting in the elimination of health and safety threats to our citizens, creation of new jobs, and the revitalization of our communities. ECOS supports increasing and continuing grant funding to states and municipalities (urban and rural) for these initiatives. In spite of these noteworthy accomplishments, financing site cleanup remains a significant barrier to brownfields redevelopment. Conventional lending institutions continue to be wary of lending for actual site cleanup, thereby making it extremely difficult for developers to obtain financing for this work.

In 1997, EPA began providing grant funding to cities and states across the Nation to establish Brownfields Cleanup Revolving Loan Funds. This funding is to be used to establish revolving loan funds to provide financing for cleanup activities at brownfields sites. The New Hampshire Department of Environmental Services received a $1.45 million loan fund grant and is currently working to develop its loan program. New Hampshire is very pleased to be the beneficiary of EPA's efforts to provide financing for cleanup of brownfields sites, but I am also very concerned about the future success of our loan fund and those across the nation. Since 1997, over 60 Brownfields Cleanup Revolving Loan Fund pilots have been granted nationwide. To date, only two loans have been made nationwide, totaling only $250,000.

We believe that the central reason for this apparent failure of the Revolving Loan Fund initiative is the onerous set of requirements placed upon both the fund administrator and participating borrowers. The loan fund pilot grant funding is provided under the authority of CERCLA Section 104. All projects receiving funding under the program will be subject to compliance with CERCLA and the NCP. These requirements are hindering the success of the initiative for two reasons. First, grant recipients are required to expend considerable time and resources to establish their lending programs, with requirements that far exceed those in more traditional revolving loan fund programs. Many grant recipients are city governments whose personnel resources are already stretched thin, and are ill prepared to take on the additional administrative burden associated with the loan fund program. These grantees would benefit significantly from a simpler, more streamlined grant program.

Second, and more important, the requirements imposed upon borrowers in which the relationship that must be established between the grant recipient and borrowers are too restricted. Borrowers are allowed to use cleanup loan funds only for activities deemed eligible under CERCLA and the NCP. While the borrower is not necessarily required to make this determination, the "brownfields site manager," and government employee designated by the grant recipient, is required to oversee the cleanup operations in order to ensure that all work is eligible and compliant. This creates a rather unattractive scenario from the borrower's perspective since all actions of his cleanup contractor are scrutinized by a regulatory authority to determine if they will be eligible for financing. In our experience in New Hampshire, the developers who have the willingness and the capability to tackle difficult and potentially risky brownfields redevelopment projects are not receptive to this kind of oversight. It leaves too many questions unanswered with regard to total project costs and the availability of financing.

We are very supportive of EPA's efforts to provide Brownfields Cleanup Revolving Loan Fund grants, but the program needs to be simpler, and more accessible and attractive to developers of brownfields properties.

Congress and EPA should be very careful when considering changes in Federal liability provisions, especially with respect to sites that are not on the NPL. These sites, comprising a universe far greater than the NPL, represent the bulk of our workload in the states and the success of many State programs in addressing these sites has been reliant on the present Federal liability structure. It should be noted that the states do not have a consensus approach to liability. While many states rely on strict liability to clean up sites, some believe a causation standard of liability is fairer and would encourage the redevelopment of brownfields.

Maintaining adequate Federal funding is critical to the success of the Superfund program. Since the majority of PRPs are national corporations and since not all states have equal abilities to generate the needed funding for site remediation, the amount of Federal funding is crucial to the success of State cleanup programs nationally. It provides a level playing field for all the states and ensures that PRPs are treated in a fair and consistent manner.

CERCLA should also be changed so that the response trust fund can be used to support operation and maintenance activities for the entire period of remedial action and monitoring. ECOS recommends that these expenditures be subject to the same 10 percent State match requirement as cleanup actions. States have currently been held responsible for 100 percent of the operation and maintenance costs. The dichotomy between the State cost shares for remedial action and those for operation and maintenance has, in some instances, led to conflicting interests between EPA and the states in making remedy decisions. In some cases, operation and maintenance

at NPL sites may cost more in the long run than the remedial action itself. We urge you to correct this by ensuring that the State cost share for both the remedial action and operation and maintenance are the same.

As I have experienced in New Hampshire, and most of the other states would agree, EPA's Superfund Removals program plays a critical role in the Superfund program. Great risk reduction to both public health and the environment has been accomplished through this program. EPA, on average, conducts $2 to $3 million worth of emergency removals each year in New Hampshire alone. The success of the Superfund Removals program needs to be fully recognized and the program should be strengthened. The strengthening should include increased funding to more quickly address time-critical (imminent threat to public health or the environment) actions that shouldn't have to wait in a funding priority queue. Technically capable states should be allowed to conduct federally funded state-lead time-critical removal actions.

In October 1996, EPA and ASTSWMO committed to conduct two federally funded state-lead time-critical pilots, one in New Hampshire and one in Texas. The final report on the pilots was released in January 2000. The ASTSWMO Removal Action Focus Group believes that state-lead removals initiate early risk reduction and lead to complete and final remedies. The pilots demonstrated that State action at sites ended with complete remediation, eliminating what is often a two step process involving a Federal removal action being taken, followed by State or Federal remediation. This provides for shorter cleanup time lines. Furthermore, the states were able to effectively coordinate and leverage additional governmental resources to address local public health, public information and redevelopment issues in addition to ensuring a timely cleanup.

ECOS commends EPA's efforts for considering land use in the development of soil cleanup standards, and in moving toward a resource based and pragmatic approach for groundwater remediation decisions. We believe it represents a significant improvement for the Superfund program. However, extreme care must be used when determining the use and value of groundwater. In states, such as New Hampshire, where groundwater is a primary source of drinking water, low cost remedy components such as natural attenuation and point-of-use treatment, may be short-sighted. A benefit/cost analysis should be evaluated over the life-cycle of the remedy, so that the most cost-effective groundwater remedy is chosen.

Since the hazardous waste sites in each State being remediated under the Federal program are a small subset of the total sites being addressed by each state, preserving the state's role and authority in a consistent manner at all sites in a State is essential. The preemption of State authority would damage the integrity of both the Federal and State programs. For example, if an NPL site is contaminating an aquifer and is not subject to the same standards as non-NPL sites, the work being performed at surrounding non-NPL sites to cleanup the aquifer will be regarded as useless since the lowest common denominator would apply (i.e., the standard at the NPL site). Any new legislation should ensure that the states are an equal partner in the process, since it is the State and local governments that are actually the trustees of the state's resources. Most site remediation problems really are local rather than national, and thus, states and local government should have a strong role.

ECOS believes that the best option is a comprehensive bill addressing a full range of issues, including the following:

- Reinstate the Superfund tax to provide sufficient funds to achieve program goals;
- Provide greater authority and funding to the states through support grants for remedial program development, site assessment and remediation enforcement, and oversight;
- Provide greater authority and funding to states to execute the Superfund Removal program if they are capable and wish to do so;
- Provide greater support for State Voluntary Cleanup Programs in the form of a legal release to those who voluntarily clean sites;
- Provide liability protection to non-culpable parties in State "brownfields" programs to encourage potentially responsible parties and prospective purchasers to reuse and redevelop these contaminated properties;
- Provide that the 10 percent State share be applied to operation and maintenance costs as well as remedial action costs;
- Improve the natural resource damage claims program through changes such as allowing for funding natural resource damage assessments from Superfund;
- Ensure a strong State role in the cleanup of Federal facilities, with no preemption of State standards; and,

• Provide Governors the statutory right to concur with the listing of any new NPL sites in their states.

If comprehensive reauthorization isn't possible within the next year, then Congress and EPA should focus on the following items for further administrative and legislative changes:

• Reinstate the Superfund taxes to provide more money/resources;
• Address liability issues associated with prospective purchasers of contaminated properties, innocent landowners, contiguous property owners, and the liability of small parties;
• Authorization with Federal funding for the removals program; and,
• Federal funding to states for "Superfund Prevention" through voluntary cleanups, brownfields redevelopment, and State enforcement actions.

In closing, ECOS appreciates the opportunity to continue working with you in a spirit of cooperation.

Any reforms to the Federal Superfund Program must acknowledge the maturity of the Superfund program, the maturity and capability of State programs, and enhance the complimentary and mutually supportive State and EPA roles that have developed. The Superfund program must be built on a common ground resolution that is both protective of public health and the environment, and cognizant of economic opportunity and the revitalization of blighted areas.

RESPONSES OF BOB VARNEY TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. The states have spoken about the need to absolve liability of parties at Superfund sites where voluntary cleanups are being undertaken. Through the years, numerous provisions have been put forth to provide States with finality. From a State perspective, what is the best way to protect the environment while allowing State finality in decisions regarding voluntary cleanup?

Response. The Environmental Council of the States (ECOS) offers the same position as the National Governor's Association (NGA). There needs to be a liability provision within the CERCLA statute that ensures that at non-NPL sites, a release of liability under State cleanup laws protective of human health and the environment constitutes, by operation of law, a release from Federal liability. (NGA Policy on Superfund, NR–4. Superfund, Sec. 4.4 Liability)

Question 2a. In your testimony, you make the point that the NPL is no longer reserved for just the nation's "worst of the worst" sites. In fact, the NPL has become the final resort for those high-risk sites that are truly orphaned and are in need of Federal funding for remediation. In your view, is it necessary to continue level funding for the Superfund program recognizing that the net reduction in the number of NPL sites in that few sites are being place on the NPL while there is an increase in the number of sites being taken off?

Response. Yes. ECOS offers the same position as NGA. States are concerned about proposals to legislatively cap or limit the NPL because of differences in capacities among states, the complexity and cost of some cleanups, the availability of responsible parties, enforcement considerations, and uncertainty as to the actual number of NPL caliber sites which will require Federal assistance. There must be a continuing Federal commitment to clean up sites under such circumstances. (NGA Policy on Superfund, NR–4. Superfund, Sec. 4.11 National Priorities List).

Question 2b. Since the NPL is a final resort for high-risk sites, many sites are being cleaned up by the states. What can we do to remove barriers that seem to exist in cleaning up these sites and encourage voluntary cleanup programs?

Response. ECOS offers the same position as the NGA. CERCLA should be amended to give credit, in the form of a legal release, to volunteers who have cleaned a site to protection standards in accordance with a State voluntary cleanup law protective of human health and the environment. These changes will encourage voluntary cleanup and thus increase the number of cleanups completed. In addition, CERCLA should encourage and provide clear incentives, such as tax exemptions and liability protections for non-culpable parties, for Brownfields programs at the State level to encourage potentially responsible parties, and for prospective purchasers to reuse and redevelop these contaminated properties. (NGA Policy on Superfund, NR–4. Superfund, Sec. 4.10 Voluntary Cleanup).

Question 3a. As a practical matter, what is the working relationship between EPA and New Hampshire at non-NPL sites?

Response. In the last 3–4 years New Hampshire and EPA have dramatically improved their working relationship on non-NPL sites (i.e., State hazardous waste sites). The agencies have cooperatively worked to focus State and Federal resources

on the high risk and abandoned sites and to eliminate duplication between the programs. There are approximately 600 non-NPL hazardous waste sites and 18 NPL sites in New Hampshire. Approximately 60 percent (+360) of the non-NPL sites are either closed or clean-up is proceeding under a permit issued by New Hampshire. Of the 40 percent (±240) of "unresolved" non-NPL sites, the majority are progressing with private parties performing work under New Hampshire's supervision. Approximately 40–100 of the "unresolved" sites are Brownfield sites, abandoned, or have uncooperative responsible parties. New Hampshire, which has a mature, integrated, and risk-based remediation program, has worked cooperatively with EPA to focus the Federal Pre-Remedial, Brownfield and Voluntary Clean-up programs on the "unresolved" non-NPL sites that have the greatest need while continuing to encourage private parties to perform voluntary clean-ups whenever possible.

Question 3b. Are New Hampshire's needs being met with regard to the Surrette Battery Site in Northfield?

Response. In meetings with the Town of Northfield and the State, EPA has publicly committed to complete the clean-up work at the Surrette Battery Site in Northfield. New Hampshire is encouraged that EPA has given the site a high priority and has obtained a portion of the additional funds needed to complete the work. EPA anticipates that the remainder of the necessary additional funds will be secured. While New Hampshire is pleased with the positive steps taken to date, New Hampshire and the Town will be working with EPA over the next couple months to finalize the site clean-up plan and secure all the necessary funding.

Question 3c. How many "Surrette Battery" sites do you think are out there? These sites are not listed on the NPL and pop up demanding a need for both Federal and State resources.

Response. New Hampshire estimates there are 20–50 abandoned or unused former industrial or manufacturing properties scattered throughout New Hampshire. As the state's economy has strengthened, some of these properties have been redeveloped by private parties and/or municipalities. Other sites are in the process of being cleaned-up and redeveloped using many of the tools that are available for Brownfield sites. Surrette Battery is a former industrial site, which although still privately owned, is an economic and environment blight on the community. Local property taxes are not paid and the owner is not addressing environmental concerns. The recent fire at Surrette Battery created immediate health and environmental risks which are being addressed by the EPA Superfund Time-Critical Removal Program. In addition, the Town of Northfield received Brownfield assistance from New Hampshire to evaluate potential redevelopment of the site. New Hampshire anticipates other abandoned industrial sites will benefit from a similar integration of Federal, state, and local efforts. New Hampshire believes that a small portion of these sites will need the Federal Superfund Program resources to address immediate risks and, as a last resort, to conduct site clean-up.

RESPONSE OF BOB VARNEY TO ADDITIONAL QUESTION FROM SENATOR LAUTENBERG

Question 1. Can you please share with us some of the successes of the Brownfields program in New Hampshire? Can you tell us roughly how many sites have been assessed and/or cleaned up, and what types of reuses your Brownfields program has focused on?

Response. New Hampshire's Brownfields initiatives include those funded at the Federal level by U.S. EPA and State sponsored initiatives. Taken together, these initiatives form our integrated approach to Brownfields redevelopment, which is to utilize all resources available at the local, state, and Federal levels of government, and in the private sector to leverage private investment in Brownfields revitalization. This approach is implemented against a backdrop of sound Brownfields clean-up policy and the desire to make judicious use of public funds.

At the Federal level, New Hampshire has received four EPA Brownfields Assessment Demonstration Pilot grants over the last 3 years to perform site investigation, remedial action planning, and generally promote Brownfields redevelopment in the state. New Hampshire grant recipients include the Department of Environmental Services (DES), the Office of State Planning Coastal Program, the city of Concord, and the city of Nashua. In addition, six municipalities have received Brownfields Targeted Assessment Grants for site investigations at individual sites.

Under these federally funded initiatives, approximately 100 sites have had Level I assessments performed. An additional eleven (11) sites have had Level II Site Investigations performed. Plans call for at least 10 additional sites to be investigated under these existing pilots. Of this universe of sites, approximately ten (10) sites have begun or completed cleanup and redevelopment. We expect that at least an ad-

ditional ten (10) sites will be undergoing cleanup and redevelopment within the next 12 months.

At the State level, New Hampshire's Brownfields Covenant program, as established under RSA 147–F, is designed to provide incentives for both environmental cleanup and redevelopment of Brownfields sites by persons who did not cause the contamination. The Brownfields Covenant program provides a process by which eligible persons can undertake site investigation and cleanup in accordance with DES requirements, and in return receive liability protections in the form of a "Covenant Not to Sue" from the N.H. Department of Justice (DOJ). This program is an integral component of our Brownfields redevelopment initiatives. To date, seventeen (17) sites have participated in our Covenant Program, with five sites having completed cleanup and received a covenant. Three additional sites are expected to receive a covenant within the next few months.

Taken together, sites that have received assistance under New Hampshire's Brownfields initiatives have benefited from approximately $30,000,000 worth of redevelopment investments. In the most notable case, a 19-acre site located near downtown Concord, our capitol city, has been cleaned up and is currently being developed. This site was abandoned and vacant for over 10 years due to concerns about environmental contamination. The site will be built out within 12 months, with construction of a hotel/conference center, three office buildings, and a restaurant.

DES has not focused on specific reuses for brownfields properties. This is in keeping with our philosophy that site reuse should be governed by the needs and desires of local communities in which the sites are located, and by the marketplace. Accordingly, redevelopment of New Hampshire's brownfields sites has included a wide variety of uses, including industrial, commercial, residential and reuse as greenspace.

SUMMARY STATISTICS

Level I Assessments Completed: 100
Level II Assessments Completed: 11
Sites with cleanup/redevelopment started or completed: 10
Sites with cleanup/redevelopment to start within 12 mos: 10
Sites in NH Brownfields Covenant Program: 17
Sites with Covenant Issued: 5
Total approximate redevelopment investment leveraged: $30,000,000

STATEMENT OF TERRENCE GRAY, ASSISTANT DIRECTOR, AIR, WASTE AND COMPLIANCE, RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Good afternoon Mr. Chairman and members of the committee. My name is Terrence Gray and I am the Assistant Director for Air, Waste and Compliance with the Rhode Island Department of Environmental Management. My testimony today represents the Rhode Island perspective on the Superfund program and our views on the future of contaminated site cleanup programs.

Although Rhode Island is a very small place geographically, we have many contaminated properties. This contamination is the legacy of the industrial revolution, which began along the Blackstone River. We have 13 National Priorities List Superfund sites, including the newest NPL site-Centredale Manor, as well as 538 other investigation and cleanup projects currently active in our State program. As you can see from this accounting, the State is responsible for insuring the investigation and proper cleanup and control of the vast majority of the contaminated properties we have discovered.

Historically, Rhode Island relied on the Superfund program to address the worst cases of chemical contamination. Our first site, the Picillo Farm, was a contemporary of Love Canal and was listed on the National Priorities List in 1981, 3 years after the site exploded. Seven other chemical disposal sites in Rhode Island were listed on the National Priorities List prior to the Superfund amendments in 1986. After those amendments, we pursued the listing of two Federal facilities and two other municipal landfills. In addition to the sites that eventually were listed on the national priorities list, Rhode Island also nominated over 300 sites as potential Superfund sites that were included on CERCLIS.

Prior to 1991, Rhode Island had relied exclusively on the Superfund program and our RCRA hazardous waste management program to address sites contaminated with chemicals and petroleum. Unfortunately, we were discovering sites at a rate faster than those programs could address them. After evaluating the pace of discovery of new sites and the backlog of sites that existed at that time, we decided to follow the lead of several other States and establish our own State program.

Through a collaborative stakeholder effort, Rhode Island promulgated its site remediation regulations in 1993 and the pace of cleanup throughout the State quickly accelerated. Those regulations lay out a process for notification, investigation, and remediation of contaminated properties. It is a flexible process designed to be adapted to the many types of contaminated sites that we have encountered. While these new regulations and the alternative regulatory framework that they provide to responsible parties clearly increased the amount of clean up in the State, we believe that it is the continuing threat of listing in the Superfund program, coupled with our own enforcement actions, that provide the impetus for cooperation.

In 1995, Governor Lincoln Almond proposed the Industrial Property Remediation and Reuse Act, or the Rhode Island Brownfields bill, to build on the early successes of our State program and provide more tools to facilitate the clean up of contaminated sites and support their return to beneficial use in the community. This bill was passed into law with overwhelming support by the legislature and provides DEM with the ability to enter into Settlement Agreements, which include Covenants Not to Sue, with performing parties. While the law provides specific relief from liability to bona fide perspective purchasers and secured creditors, it also allows other performing parties, including cooperative responsible parties, to enter Settlement Agreements. These new tools prompted the clean up and redevelopment of 48 sites, restoring 532 acres of contaminated property and creating or retaining 1010 jobs and $76.9 million in property and income tax annually. The key aspect of this program improvement was the certainty and finality that the law and the Settlement Agreements provided to performing parties.

Further program improvements came in 1997 with the amendment of the site remediation regulations to include a series of clean up standards proportionate to the future use of properties. These amendments added three options for a performing party to use to determine the end goal of their clean up. The first option, or tier, involves a series of tables for performing parties to use to look up the appropriate clean up goals corresponding to the groundwater classification and future use of the site. The second tier provides an accepted model where performing parties could input unique, site specific information to come up with a site-specific goal Finally, the third tier preserved the traditional risk assessment option. The selection of the method is left to the performing party.

The end result of these efforts is our existing program, which provides us with all the regulatory tools needed to respond to proposed projects, compel the investigation and remediation of sites, and support redevelopment efforts involving Brownfields. These regulations, however, strictly address the Department's reaction to issues presented to us through either notification of contamination or other proposed projects.

The need to support economic redevelopment in Rhode Island's urban, and historically industrial, communities and initiate clean up activities in these areas prompted Rhode Island's effort to seek a Brownfields Demonstration Pilot grant from EPA in 1996. The pilot was focused on a proactive approach, undertaken with many municipal and economic development partners, to identify Brownfields sites, assess their condition, estimate the costs of clean up, and support the marketing of the sites for reuse. The project was an ecosystem based approach to identifying vacant or underutilized sites along the Blackstone and Woonasquatucket Rivers. Rhode Island was awarded a $200,000 grant in 1997, which the State matched with an additional $210,000. To date 54 baseline site assessments and 8 Remedial Evaluation Reports (which include cost estimates for clean up) have been completed at Brownfields sites in the pilot area, but perhaps more importantly, a healthy dialog and productive working relationship has been established between the economic development agencies, the Department of Environmental Management and the municipalities.

In 1998, our proactive Brownfields efforts were supplemented by the designation of Providence as a Brownfields Showcase Community. This designation provided a higher level of involvement by EPA and several other Federal agencies, most notably Housing and Urban Development, in supporting the reuse of contaminated sites in Providence.

Recent efforts under the Brownfields Pilot and Showcase Community projects have primarily been focused on supporting the investigation and clean up of properties along the proposed route of the Woonasquatucket River Greenway and bike path. The investigation and remedial design activities have largely been completed but securing funding for the remediation has proved to be a major problem. The funding problem mainly is due to the fact that the properties of concern, the former Lincoln Lace and Braid and the former Riverside Mills properties, are designated for use as open space, bike path areas, and other recreational fields and do not have a future income stream to support a loan to fund remediation costs. The fact that

projects designated for future use for non-profit public purposes have no current funding support for clean up costs has slowed progress on this very important project.

We have leveraged our success and relationships developed under the pilot and Showcase Community to approach other municipalities and support their Brownfields redevelopment efforts across the State. Recently, we have applied for funding to establish a statewide revolving loan program to assist in the funding of remediation costs.

The evolution of our State program is in many ways similar to the process other States have followed. Each State has adjusted their approach somewhat to meet the needs and desires of their constituencies and to strive for the most efficient and effective models based on their individual circumstances. This has led to many innovative approaches supporting the clean up of thousands of sites of all shapes and sizes nationally.

Overall, we feel strongly that the Superfund program has evolved from a strict, authoritarian and inflexible approach to clean up to a more responsive and streamlined program. The emphasis on strictly dealing with the "worst of the worst" sites has evolved into a program focused on serious sites that have a multitude of logistical challenges standing in the way of clean up. The program has also evolved away from the duplication of effort and heavy handed Federal supervision into a more cooperative joint approach between EPA and the States that typically features complementary roles for each agency working together toward a mutually determined clean up goal.

In summary, Superfund, the State Cleanup Programs, Brownfields programs and Voluntary Cleanup programs all provide valuable tools to achieve the flexibility needed to efficiently facilitate the clean up of many types of contaminated properties. Flexibility will be critical in responding to the next generation of sites that we are now just beginning to see through new investigations and innovations supporting Smart Growth, exploring the challenges and issues unique to our urban environments, and broadening our perspective to look at issues in the context of watershed planning and the assessments and decisionmaking related to the Total Maximum Daily Load limits of pollutants that can flow to our water bodies.

Program innovation has been occurring at the State level and should not be dampened or discouraged.

The backbone of virtually all clean up programs is the Superfund liability system and any adjustments to that core framework should be very carefully evaluated to see the full effects of change, including the changes on State programs that rely on that Federal framework. Nonetheless, some parties merit relief including *de minimus/de micromus* parties, prospective purchasers, municipalities, and downgradient receptors. Furthermore, recognizing the finality of State decisions and decoupling Federal involvement in Brownfields cases from the strict requirements of the NCP should strengthen the Brownfields and VCP programs.

In considering the options for Superfund reauthorization and statutory improvements, please consider the following points:

- The backbone of virtually all clean up programs is the Superfund liability system and any adjustments to that core framework should be very carefully evaluated to see the full effects of change, including the impacts on State programs that rely on that Federal framework.
- Superfund, the State Cleanup Programs, Brownfields programs and Voluntary Cleanup programs all provide valuable tools to achieve the flexibility needed to efficiently facilitate the clean up of many types of contaminated properties
- Program innovation has been occurring at the State level and should not be dampened or discouraged through the establishment of Federal standards for "acceptable" State programs.
- Some parties merit liability relief including *de minimus/de micromus* parties, prospective purchasers, municipalities, and downgradient receptors.
- The finality of State clean up decisions should be recognized.
- Brownfields cases should be decoupled from the strict requirements of the NCP, which we believe will strengthen the Brownfields and VCP programs.
- Projects designated for future use for non-profit public purposes should be provided with funding support for clean up costs.

In closing, thank you for the opportunity to testify on the Superfund program and the opportunity to provide the Rhode Island perspective on the program.

RESPONSE OF TERRENCE GRAY TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Questions 1a and b. Mr. Gray, your testimony echoed the sentiments of Mr. Jones and Mr. Varney in the need for relief for small volume contributors, prospective purchasers, and municipalities as well as the need to recognize the finality of State decisions and the decoupling of Federal involvement in Brownfields cases from the strict requirements of the NCP. There have been various levels of Administrative reform within EPA to address many of these issues. Do you think the Administrative reforms are sufficient to address your concerns with the Superfund program or is there a need for legislation as well? How about the issue of finality in State decisions?

Response. I believe that EPA should be recognized and complimented for the administrative reforms that it has implemented. These reforms have made the program much more responsive and streamlined. As I stated in my written testimony, I believe the emphasis on strictly dealing with the "worst of the worst" sites has evolved into a more focused approach to address serious sites that have a multitude of logistical challenges standing in the way of clean up. The program has also evolved away from the duplication of effort and heavy handed Federal supervision into a more cooperative joint approach between EPA and the States that typically features complementary roles for each agency working together toward a mutually determined clean up goal. However, I do not feel that these administrative reforms cure all the issues with the Superfund program.

With respect to the remediation and redevelopment of Brownfields sites, administrative reforms have greatly improved the communication and coordination between the Rhode Island Department of Environmental Management and EPA but, primarily due to the limitations in the existing statute, have not been able to address all of the concerns of some of the developers and stakeholders we regularly interact with. The finality of State decisions is an issue that is still raised by developers and prospective purchasers. EPA and DEM have attempted to provide assurances to developers considering projects on contaminated sites by entering into a Memorandum of Agreement related to our State Voluntary Cleanup Program. EPA has also provided "comfort letters" to developers for reassurance. However, neither of these documents provides the ultimate certainty, or finality, that some developers and their financial backers require. I believe that statutory recognition of the finality of State cleanup decisions, with appropriate safeguards that are not overly prescriptive or dampen State innovations, will definitively address these concerns.

EPA's establishment of Brownfields demonstration pilot grants, targeted site assessments and the Brownfields revolving loan program have all been tremendously helpful in promoting, and supporting, the investigation, cleanup and reuse of contaminated properties. However, the potential application of the requirements of the National Contingency Plan to Brownfields sites receiving Federal assistance for either investigation or cleanup has been an issue for us.

Two particular concerns have been significant. First, the fact that investigations and cleanup decisions must meet the requirements of the National Contingency Plan when revolving loan funds are used has unnecessarily complicated the startup of the Rhode Island loan program. This requirement has led to a more direct involvement from our agency, based on our familiarity with the NCP, and will lead to a more comprehensive review of the remedial decisionmaking process to ensure consistency with the Federal model. We do not believe that this increased level of review is necessary on most Brownfields sites. Second, the concept of cost recovery of Federal funds used in the redevelopment of Brownfields sites is of concern to us. We believe that the use of these funds to support Brownfields redevelopment should be looked at as an investment in the restoration of these properties for the public good and should not be seen as strictly cost-recoverable. Although neither EPA nor the Department of Justice have sought recovery of funds used to support Brownfields redevelopment in Rhode Island to date, we are concerned about this potential in the future, particularly in potential instances of default in the revolving loan program. We believe the statute should provide clear criteria on when costs should be recovered and when Federal funding should be considered an investment for the public benefit.

RESPONSE OF TERRENCE GRAY TO ADDITIONAL QUESTION FROM SENATOR LAUTENBERG

Question 1. I understand that you have a number of Brownfields sites in the State of Rhode Island. How many Brownfields sites have been identified in Rhode Island? Of these, how many assessments and cleanups have been conducted, and when? Can you describe the types of redevelopment and reuses at these sites?

Response. The investigation, remediation and reuse of Brownfields sites has been a critical focus area for the State of Rhode Island since the establishment of our program in 1993. We approach Brownfields sites in two ways. The first approach is reactive in nature and supports projects brought to our attention by prospective purchasers or developers. Since the initiation of our program, a total of 48 sites have been assessed, cleaned up and redeveloped, restoring 532 acres of contaminated property and creating or retaining 1010 jobs and $76.9 million in property and income tax annually.

The second approach is proactive in nature and involves the identification, evaluation and redevelopment of Brownfield properties by the Department of Environmental Management and our partners, which include municipal governments, nonprofit organizations and economic development agencies. This approach, which is actively supported by the Environmental Protection Agency through a Brownfields Demonstration Pilot grant and Showcase Community designation, has resulted in the completion of 54 baseline site assessments and 8 Remedial Evaluation Reports (which include cost estimates for clean up).

Brownfields properties have been brought back to a wide range of beneficial uses through our program. One of our first sites, on the waterfront in historic Newport, Rhode Island, was redeveloped as luxury time-share condominiums. Another site on the Newport waterfront was redeveloped by the non-profit International Yacht Restoration School as their main campus. Several other sites have been brought back to use for manufacturing purposes, including companies that make display cases, metal fasteners, and fixtures. Finally, many sites have been brought back to use as commercial facilities, including a campus for an insurance company, supermarkets, banking support facilities, and convenience stores. Ongoing priority projects include the restoration of an abandoned chemical distribution facility property for construction of a new inter-modal train station and the restoration of a former steel mill on the waterfront in an urban neighborhood for use as light manufacturing.

An ongoing challenge facing our agency is supporting the reuse of Brownfields sites for non-profit public uses, such as schools, athletic and recreational fields and urban bikeways and greenways. Without a future income stream, the cleanup costs on these properties are very difficult to address. This continues to be a focus in our pilot project and Showcase Community efforts.

STATEMENT OF EUGENE MARTIN-LEFF, ASSISTANT ATTORNEY GENERAL, NEW YORK STATE ATTORNEYS GENERAL OFFICE, ON BEHALF OF THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

My name is Eugene Martin-Leff, and I am a Section Chief in the Environmental Protection Bureau in the office of New York Attorney General Eliot Spitzer. I am appearing today on behalf of Attorney General Spitzer and on behalf of the National Association of Attorneys General (NAAG). I have supervised and litigated cost-recovery actions on behalf of the State under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) at both National Priorities List (NPL) and non-NPL sites in New York since 1983. I was the lead counsel for the State of New York in litigation relating to Love Canal. Last year, I represented Attorney General Spitzer in Governor Pataki's State Superfund and Brownfields Working Group.

We very much appreciate the opportunity to appear before this Subcommittee on cleanup activities under the Superfund program. The State Attorneys General have a major interest in the future of the Superfund program. As chief legal officers of the respective states, the Attorneys General enforce State and Federal laws in their states. They help protect the public health and the environment and natural resources in their respective states. Because many steps in the Superfund cleanup process necessarily involve legal issues, the Attorneys General and their staffs often are called upon to advise State agencies—both response agencies and natural resource trustee agencies—on how the law should be interpreted and implemented to achieve the desired cleanup or restoration goals. We often are also responsible for negotiating cleanup and natural resource damages settlements, and when a settlement cannot be reached, it is our responsibility to commence and litigate an enforcement action. We also defend State agencies and authorities when Superfund claims are made by the United States or private parties against them.

NAAG also has been deeply involved in the Superfund reauthorization process for many years. At its Summer meeting on June 22–26, 1997, the sole resolution adopted by the State Attorneys General addressed Superfund Reauthorization; a copy of this bipartisan Resolution is attached. The NAAG Resolution arose from the recognition on the part of the State Attorneys General of the critical importance of the

Superfund program in assuring protection of public health and the environment from releases of hazardous substances at thousands of sites across the country. The Attorneys General want to make the tasks of cleanup and protecting the public less complicated and more efficient, and to reduce the amount of litigation and the attendant costs that result.

In New York, our office has been litigating Superfund cases since 1981. A major impetus for the passage of CERCLA was the discovery of the infamous Love Canal and other Hooker Chemical Company sites in Niagara Falls, New York. CERCLA has provided both the Federal and State governments essential tools to address the dangers posed by those and thousands of other sites in New York and throughout the country.

IMPORTANCE OF COST-RECOVERY LIABILITY

The ability to recover costs through CERCLA's liability provisions is crucial to our cleanup program in New York. About 10 percent of the sites on the New York State Registry of inactive hazardous waste disposal sites are NPL-listed, federally funded sites. Even though these sites are typically more expensive to clean up than the average contaminated site, Federal money constitutes a relatively small part (about 13 percent) of all cleanup funding in New York, compared to private cleanup funding (about 66 percent) and State funding (about 20 percent). Most states have had similar results. On the Federal level, private cleanup funding has resulted in the saving of some $10 billion of public money, because 70 percent of all remedial actions at Federal Superfund sites are being performed by responsible parties.

For this reason, the ability to recover costs through CERCLA's liability provisions is even more important in our opinion than direct cleanup funding under CERCLA. Potentially responsible parties (PRPs) now know where they stand under CERCLA, and most see the wisdom of settling their liability with the government. This connection between enforcement and the generation of cleanup funds is vital to the overall hazardous waste cleanup program in this country.

The prospect of NPL listing and Federal funding, as well as State funding of cleanup costs, is essential to setting the cost-recovery mechanism into motion. But Congress has done far more than make money available for cleanups. It has leveraged its money into far greater matching private dollars by creating and preserving liability for cost recovery.

Clear potential cost-recovery liability is the chief reason for private cleanup funding. Strict liability eliminates litigable issues and encourages voluntary cleanups. Case law established over nearly 20 years has added to the predictability of the outcome in litigation. In contrast, every change in the law carries with it a loss of predictability, with potential cleanup funding consequences. If CERCLA enforcement is undercut by amendment, the entire picture could radically change, with dire consequences for the 66 percent of cleanup costs in New York that is funded by private parties.

CERCLA enforcement has another crucial role in New York and other states. In our State there is no right under State statutory law to cleanup-cost recovery without first going through an administrative hearing. Our administrative process, which requires a full evidentiary hearing before liability can be established, is rarely used. We and the other states depend on our express right to sue in Federal court under CERCLA. Natural resources damages enforcement in NYS is also based primarily on CERCLA.

It is also worth mentioning that CERCLA liability standards are right now being used as the model for proposed legislation in New York State. There is wide agreement among stakeholders in New York on the fairness of the existing defenses under CERCLA, *i.e.*, the third-party defense, the innocent landowner defense, the lender exemption, and the *de minimis* settlement policy. It would be ironic indeed if New York and other states adopted CERCLA liability rules this year and then Congress made wholesale changes in CERCLA.

Nevertheless, there is a need for some liability reforms in CERCLA. NAAG's Resolution regarding CERCLA reauthorization called for clarification of the waiver of sovereign immunity and for the transfer of the regulatory authority of the Environmental Protection Agency (EPA) at Federal facilities to the states. On July 26, 1999, forty-one Attorneys General reiterated the need for this clarification in a letter to the Senate Armed Services Committee, a copy of which is attached. NAAG strongly urges the adoption of language that is contained in the last session's DeGette/Norwood bill, as it represents the compromise reached between states and Federal agencies in 1994, and would clarify the waiver without disrupting the status quo with regard to the issue of dual regulation at NPL sites.

NAAG also supports changes to the long-standing "Innocent Governmental Entities" exception to liability. The statute should be broad enough to address current abuses where, for example, states are subject to counterclaims based on sovereign ownership interests in groundwater, stream and river beds and other natural resources.

NAAG also supports reasonable limitations on liability for disposal of municipal solid waste. In addition, municipalities should not be unfairly burdened with cleanup costs resulting from their ownership or operation of landfills.

IMPORTANCE OF THOROUGH CLEANUPS

On the State level, Attorney General Spitzer is participating in the active public debate on Brownfields. Reforms to facilitate brownfield revitalization are clearly desirable—on that everyone agrees. Future use of contaminated sites must certainly be considered, and institutional controls must supplement excavation remedies. But, as usual, the devil is in the details.

Cleanup levels must not be set simplistically based on the current use of the site, or a developer's projected use. As required currently by EPA, future use must be carefully determined by examining current use, projected immediate use and much more; not only existing zoning laws and formal municipal plans should be consulted, but also the proximity of the site to residential areas, development trends in the area, local community views, environmental justice concerns and other relevant information. Indeed, in New York, we believe that where the site is adjacent to residences, there should be a presumption of an eventual residential use and consequently a residential level cleanup, and a developer should have the burden to convince the appropriate environmental agency why a less thorough cleanup is most appropriate under the remedy selection criteria.

Similarly, institutional controls must not be seen as panaceas. Some institutional controls that are necessary when industrial level cleanups are done are less reliable than others. For example, a deed notice that soil beneath a building is contaminated and that the building should not be removed is inherently suspect over the long term, because a building has a far shorter life than that of most hazardous substances. The building will eventually deteriorate and even collapse, exposing the underlying contamination. EPA and State environmental agencies should consider the long-term effectiveness of any brownfields cleanup, including the reliability of institutional controls, along with cost and other relevant factors and choose the remedy that best meets all the appropriate criteria.

Where government must perform the cleanup and sue for cost recovery, it is important that litigation over the amount of costs recoverable be streamlined. As you know, CERCLA presently limits the judicial review of EPA remedies to the administrative record compiled by the agency. The remedies selected by states should likewise be reviewed on the administrative record compiled by the State counterpart of EPA, rather than through a costly, time-consuming trial.

Another necessary amendment to treat State and Federal environmental agencies the same would authorize the Federal Superfund to pay State natural resource trustees' assessment costs.

CONCLUSION

The State Attorneys General strongly support a fair and effective cleanup program. The public expects government at all levels to protect the public health and the environment from facilities that are releasing hazardous substances, and they expect the parties responsible for those threats to pay their fair share. Whatever refinements are made in the current liability and cleanup rules must be true to these overarching objectives.

RESPONSES OF EUGENE MARTIN-LEFF TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1a. In the testimony submitted, NAAG stated that refinements made in the current liability scheme and cleanup rules of Superfund must be protective of the public health and environment as well as ensure that parties be responsible for paying their fair share. The testimony also indicates that stakeholders in New York agree that the existing defenses available in Superfund are fair. Are these two sentiments inconsistent?

Response. NAAG believes the two points are consistent because "the core provisions of the current CERCLA liability system . . . are essential to assure the effectiveness of the cleanup program" (NAAG Resolution on Superfund Reauthorization

of June 22–26, 1997, previously distributed to the Committee, at 3), but relatively minor refinements would improve the liability scheme. Among these are "reasonable limitations on liability for disposal of municipal solid waste" and "an exemption from liability for '*de minimis*' parties that sent truly minuscule quantities of waste to a site." (*Id.*) However, we consider the existing defenses available in Superfund, including the third-party defense, the innocent purchaser defense, and the lender liability exemption, to be fair. We also would note that a liability scheme that placed a heavy burden on the government instead of responsible parties would not be fair to taxpayers.

Question 1b. If the liability scheme were fair and the existing defenses sufficient, why has the Environmental Protection Agency instituted numerous Administrative reforms to provide additional protections for small volume contributors, a municipal solid waste policy, prospective purchaser agreements and orphan share funding?

Response. Administrative reforms that improve the operation of EPA programs, such as Superfund, should always be welcome. These reforms, in our opinion, do not suggest a need for substantial legislative action with respect to liability. First, it is noteworthy that all of the listed administrative reforms were lawfully adopted pursuant to the current statute, which suggests that major revision is not necessary to serve the objectives of those reforms. Second, none of them is inconsistent with the core liability and defense provisions. For example, the small volume contributor reform was authorized by the Superfund Amendments and Reauthorization Act of 1986 (specifically, CERCLA §122(g)). Third, prospective purchasers are, of course, not potentially responsible parties until they consummate the purchase of a facility; it was entirely consistent with CERCLA as written to offer inducements to genuine innocent parties to provide cleanup funds or other public benefits in exchange for a release from future potential liability under CERCLA. Finally, the EPA orphan share policy was reasonably designed primarily as an inducement to settle litigation and encourage potentially responsible parties to perform cleanups. (See U.S.E.P.A., Interim Guidance on Orphan Share Compensation for Settlors of Remedial Design/ Remedial Action and Non-Time-Critical Removals dated June 4, 1996)

Question 1c. Do you think that the responsible parties who are subject to joint and several liability would agree that this is a fair system?

Response. Naturally, many parties subjected to large monetary liability can be expected to question the fairness of the liability system. However, based upon views expressed by the Senators attending the hearing on March 21, 2000, it appears that the opinions of responsible parties vary on this point. In practice, jointly and severally liable parties are able to substantially reduce their ultimate financial burdens by obtaining contribution from other liable parties, often by settlement. Also, *de minimis* and *de micromis* parties are generally relieved entirely of its effects.

Finally, Justice Breyer recently observed in *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 536 (1998) (dissenting but writing for a majority of the Court on a non-CERCLA Takings Clause issue), that CERCLA was a statute that "imposed liability . . . to prevent degradation of a natural resource, upon those who have used and benefited from it." Similarly, it was stated in *United States* v. *Northeastern Pharmaceutical & Chemical Co., Inc.*, 810 F.2d 726, 734 (8th Cir. 1986) (holding that retroactive application of CERCLA does not violate due process), that ". . . Congress acted in a rational manner in imposing liability [under CERCLA] for the cost of cleaning up such sites upon those parties who created and profited from the sites and upon the chemical industry as a whole. . . ." A choice must be made between a liability scheme that places the burdens relating to the shares of non-parties on such liable defendants or on governmental plaintiffs (and ultimately the taxpayers). The common law, like CERCLA, concluded long ago that the fairer outcome was to place it on liable parties rather than plaintiffs.

Question 2a. NAAG has outlined the importance of the ability to recover costs through CERCLA's liability provisions for the State of New York. NAAG has gone so far as to state, "if CERCLA enforcement is undercut by amendment, the entire picture could radically change, with dire consequences for 66 percent of cleanup costs in New York that is funded by private parties." Is it NAAG's position that the ability to obtain settlements which provide adequate funding for cleanups is more important than fairness in liability allocation?

Response. We believe that both adequate funding for cleanups and fairness in liability allocation are important and achievable. However, if adequate funding is not achieved largely through settlement, an increase in taxes would probably be necessary to make up for any shortfall.

Question 2b. Shouldn't fairness be of paramount concern?

Response. The courts have consistently recognized that the "essential purpose" of CERCLA is to make those responsible for problems caused by the disposal of chemicals bear the costs and responsibility for remedying the harmful conditions they created. See, e.g., United States v. Occidental Chemical Corp., 200 F.3d 143, 147 (3d Cir. 1999). However, it is unnecessary, in our opinion, to choose which concern is "paramount" over the other. Also, as discussed above, a system that shifts costs from responsible parties to taxpayers or leaves communities with sites that have not been cleaned up would be unfair to taxpayers and those communities.

Question 3a. NAAG has been involved in the Superfund reauthorization process for years. At a June 22–26, 1997 meeting, a resolution was adopted by the State Attorneys General that addressed Superfund Reauthorization. That resolution clearly indicates that State cleanup programs are working and yet State resources are not being used effectively. The resolution supports strengthening "State voluntary cleanup and brownfield programs by providing technical and financial assistance to those programs, and by giving appropriate legal finality to clean up decisions of qualified State voluntary cleanup programs and brownfield redevelopment programs." Does NAAG continue to support these provisions?

Response. Yes, as was stated on March 21, 2000, NAAG believes that finality that is appropriate and not absolute, e.g., subject to limited reopeners, is important to encourage volunteers to develop brownfields. For example, in New York Governor George Pataki has submitted a brownfields bill that would authorize the reopening of brownfields releases for any of six grounds, including, inter alia, the receipt of information which indicates that the remediation performed is not protective of public health or the environment for the anticipated use of the site. Other states obviously may take different approaches, but in New York it is widely believed that such reopeners will not prevent developers from stepping forward to enter into brownfields agreements.

NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

ADOPTED

SUMMER MEETING

JUNE 22–26, 1997 JACKSON HOLE, WYOMING

RESOLUTION

SUPERFUND REAUTHORIZATION

Whereas, the Attorney General of the States have significant responsibilities in the implementation and enforcement of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and analogous State laws, including advising client agencies on implementation of the cleanup and natural resource damage programs, commencing enforcement actions when necessary to compel those responsible for environmental contamination to take cleanup actions and to reimburse the states for publicly funded cleanup, and advising and defending client agencies that are potentially liable under CERCLA;

Whereas, the Superfund programs implemented under CERCLA and analogous State laws are of critical importance to assure protection of public health and the environment from uncontrolled releases of hazardous substances at thousands of sites throughout the country;

Whereas, Congress is currently considering legislation to amend and reauthorize CERCLA;

Whereas, to avoid unnecessary litigation and transaction costs over the interpretation of new terms and new provisions, amendments to CERCLA should be simple, straightforward, and concise;

Whereas, the National Association of Attorneys General has adopted resolutions in March 1987, July 1993, and March 1994 on the amendment of CERCLA;

STATE ROLE

Whereas, many State cleanup programs have proven effective in achieving cleanup, yet the CERCLA program fails to use State resources effectively;

Whereas, State programs to encourage the cleanup and redevelopment of underutilized "brownfields" are making important strides in improving the health, environment, and economic prospects of communities by providing streamlined cleanup and resolution of liability issues for new owners, developers, and lenders;

FEDERAL FACILITIES

Whereas, Federal agencies should be subject to the same liability and cleanup standards as private parties, yet Federal agencies often fail to comply with State and Federal law;

LIABILITY

Whereas, the core liability provisions of CERCLA, and analogous liability laws which have been enacted by the majority of the states, are an essential part of a successful cleanup program, by providing incentives for early cleanup settlements, and promoting pollution prevention, improved management of hazardous wastes, and voluntary cleanups incident to property transfer and redevelopment;

Whereas, the current CERCLA liability scheme has in some instances produced expensive litigation, excessive transaction costs, and unfair imposition of liability;

REMEDY SELECTION

Whereas, constructive amendments to CERCLA are appropriate to streamline the process of selecting remedial actions and to reduce litigation over remedy decisions;

NATURAL RESOURCE DAMAGES

Whereas, constructive amendments to CERCLA are appropriate to make it less complicated for natural resource trustees to assess damages and to restore injured natural resources, and to reduce the amount of litigation that may result in implementing the natural resource damage program.

Now, Therefore, be it Resolved, That the National Association of Attorneys General urges Congress to enact CERCLA reauthorization legislation that:

A. State Role

1. Provides for delegation of the CERCLA program to qualified states, and for EPA authorization of qualified State programs, with maximum flexibility;

2. Reaffirms that CERCLA does not preempt State law;

3. Ensures that states are not assigned a burdensome proportion of the cost of operation and maintenance of remedial actions and in no event to exceed 10 percent;

4. Clarifies that in any legal action under CERCLA, response actions selected by a State shall be reviewed on the administrative record and shall be upheld unless found to be arbitrary and capricious or otherwise not in accordance with law;

B. Federal Facilities

5. Provides for State oversight of response actions at Federal facilities, including removal actions.

6. Provides a clear and unambiguous waiver of Federal sovereign immunity from actions under State or Federal law;

C. Liability

7. Provides a liability system that: (a) includes the core provisions of the current CERCLA liability system that are essential to assure the effectiveness of he cleanup program; (b) provides incentives for prompt and efficient cleanups, early cleanup settlements, pollution prevention, and responsible waste management; (c) addresses the need to encourage more settlements discourage excessive litigation, reduce transaction costs, and apply cleanup liability more fairly and equitably, especially where small contributors and municipal waste landfills are involved; and (d) assures adequate funding for cleanup and avoids unfunded State mandates;

8. Provides reasonable limitations on liability for disposal of municipal solid waste;

9. Provides an exemption from liability for "*de micromis*" parties that sent truly minuscule quantities of waste to a site;

10. Encourages early settlements with *de minimis* parties that sent minimal quantities of waste to a site;

D. Remedy Selection

11. Provides for the consideration of future land use in selecting remedial actions, provided that future land use is not the controlling factor, and provided that remedial actions based on future land use are conditioned on appropriate, enforceable institutional controls;

12. Retains the requirement that remedial actions attain, at a minimum, applicable State and Federal standards;

13. Retains the prohibition on pre-enforcement review of remedy decisions;

14. Provides that cost-effectiveness should be considered, among other factors, in remedy selection;

15. Allows EPA or the State agency to determine whether to reopen final records of decision for remedial actions, as under current law;

E. Natural Resource Damages

16. Clarifies that in any legal action, restoration decisions of a natural resource trustee shall be reviewed on the administrative record and shall be upheld unless found to be arbitrary and capricious or otherwise not in accordance with law, without precluding record review on other issues;

17. Provides that claims for damages for injuries to natural resources must be brought within 3 years of that completion of a damage assessment;

18. Allows Superfundmonies to be used for assessments of damages resulting from injures to natural resources and for efforts to restore injured natural resources,

19. Retains the ability of trustees to recover damages based on any reliable assessment methodology;

20. Does not revise the cap on liability for natural resource damages so as to reduce potential damage recoveries;

21. Clarifies that trustees are entitled to recover legal, enforcement, and oversight costs;

F. Brownfields

22. Strengthens State voluntary cleanup and brownfields redevelopment programs by providing technical and financial assistance to those programs, and by giving appropriate legal finality to cleanup decisions of qualified State voluntary cleanup programs and brownfield redevelopment programs;

G. Miscellaneous

23. Allows EPA to continue to list new sites on the National Priorities List based upon threats to health and the environment, with the concurrence of the State in which the site is located.

Be it Further Resolved, That the CERCLA Work Group, in consultation with and with approval of the Environmental Legislative Subcommittee of the Environment Committee, and in consultation with NAAG'S officers is authorized to develop specific positions related to the reauthorization of CERCLA consistent with this resolution; and the Environmental Legislative Subcommittee, or their designees, with the assistance of the NAAG staff and the CERCLA Work Group, are further authorized to represent NAAG's position before Congress and to Federal agencies involved in reauthorization decisions consistent with this resolution and to provide responses to requests from Federal agencies and congressional members and staff for information, technical assistance, and comments deriving from the experience of the State attorneys general with environmental cleanup programs in their states.

Be it Further Resolved, That NAAG directs its Executive Director and General Counsel to send this resolution to the appropriate Congressional Committees and Subcommittees and to the appropriate Federal agencies.

NATIONAL ASSOCIATION OF ATTORNEYS,
Washington, DC, July 26, 1999.

Hon. JOHN WARNER, *Chairman,*
Senate Armed Services Committee,
U.S. Senate,
Washington, DC.

Hon. CARL LEVIN, *Ranking Member,*
Senate Armed Services Committee,
U.S. Senate,
Washington, DC.

RE: Response to Department of Defense and Department of Energy Report on Clarification of CERCLA Waiver of Sovereign Immunity

DEAR CHAIRMAN WARNER AND SENATOR LEVIN: Enclosed, please find a copy of the response of the National Association of Attorneys General (HAAG) to the February 1999 report of the Departments of Defense (DOD) and Energy (DOE) regarding the potential impacts of a proposed amendment to the waiver of Federal sovereign immunity under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

As you know, the States have long supported a waiver of Federal sovereign immunity under CERCLA, and were instrumental in achieving a waiver of Federal sovereign immunity under the Resource Conservation and Recovery Act in 1992, and more recently under the Safe Drinking Water Act Amendments of 1996. During the previous Congress, your committee, in response to a bi-partisan amendment to S. 8, the "Superfund Cleanup Acceleration Act," waiving Federal sovereign immunity under CERCLA, directed DOD and DOE to submit a report addressing "(1) any additional costs that might be incurred . . . as a result of the proposed amendment; and (2) any impact that the amendment may have on the cleanup of Department of Defense and . . . Energy sites."

In February 1999, DOD and DOE submitted their Report to your Committee. The Report predicts negative impacts from passage of the amendment and further finds that the current waiver in CERCLA is working and therefore does not need to be clarified. As the attached response indicates, we disagree with these conclusions, which we believe are not based on a sound understanding of the current law and practice of Federal agencies, the well-established record of sensible regulation by states, or reasonable, supportable predictions of potential impacts.

We thank you for considering our views on this subject, and look forward to working with Congress in the future on this matter of critical importance to the States.

Sincerely,

Ken Salazar, Attorney General of Colorado; Bruce M. Botelho, Attorney General of Alaska; Richard Blumenthal, Attorney General of Connecticut; M. Jane Brady, Attorney General of Delaware; Robert Rigsby, District of Columbia Corporation Counsel; Thurbert Baker, Attorney General of Georgia; John F. Tarantino, Attorney General of Guam; Alan G. Lance, Attorney General of Idaho; Jim Ryan, Attorney General of Illinois; Andrew Ketterer, Attorney General of Maine; J. Joseph Curran, Jr., Attorney General of Maryland; Tom Reilly, Attorney General of Massachusetts; Jennifer Granholm, Attorney General of Michigan; Mike Moore, Attorney General of Mississippi; Jeremiah W. Nixon, Attorney General of Missouri; Joseph P. Mazurek, Attorney General of Montana; Don Stenberg, Attorney General of Nebraska; Frankie Sue Del Papa, Attorney General of Nevada; Philip T. McLaughlin, Attorney General of New Hampshire; John F. Farmer, Jr., Attorney General of New Jersey; Eliot Spitzer, Attorney General of New York; Michael F. Easley, Attorney General of North Carolina; Maya B. Kara, Attorney General of Northern Mariana Islands; Betty D. Montgomery, Attorney General of Ohio; Drew Edmondson, Attorney General of Oklahoma; Hardy Myers, Attorney General of Oregon; Sheldon Whitehouse, Attorney General of Rhode Island; Mark Barnett, Attorney General of South Dakota; Paul Summers, Attorney General of Tennessee; John Cornyn, Attorney General of Texas; Jan Graham, Attorney General of Utah; William H. Sorrell, Attorney General of Vermont; Christine O. Gregoire, Attorney General of Washington; Gay Woohhouse, Attorney General of Wyoming; Earl I. Arzai, Attorney General of Hawaii; Bill Lockyer, Attorney General of California; Patricia A. Madrid, Attorney General of New Mexico; Heidi Heitkamp, Attorney General of North Dakota; Robert A. Butterworth, Attorney General of Florida; Janet Napolitano, Attorney General of Arizona; James E. Doyle, Attorney General of Wisconsin.

STATEMENT OF SHERRI W. GOODMAN, DEPUTY UNDER SECRETARY OF DEFENSE (ENVIRONMENTAL SECURITY)

INTRODUCTION

The Department of Defense requests that this statement be entered into the record for the March 21, 2000 Superfund Hearing before the Subcommittee on Superfund, Waste Control and Risk Assessment of the Committee on Environment and Public Works. The Department of Defense would like to describe its progress under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in cleaning up contamination at its installations and other properties. In the last 10 years we have worked with Congress and our stakeholders, including the Environmental Protection Agency, Department of Justice, states and citizens, to clean up sites using a process which establishes and involves the public in the decisionmaking process. The Department of Defense supports the Administration's posi-

tion that comprehensive legislative proposals could seriously undermine the current progress of the program and could delay cleanups by creating uncertainty and litigation.

DOD PROGRESS

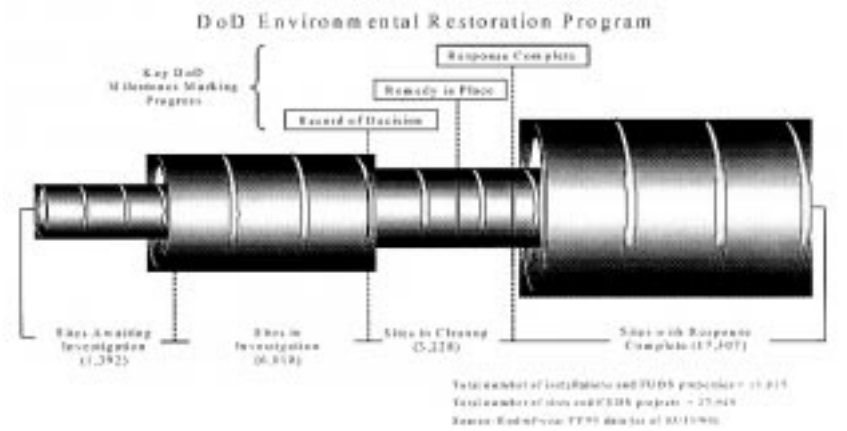
DoD is making steady progress cleaning up its sites under the environmental restoration program. We have invested nearly $20.5 billion since 1984 in 27,945 sites at 1,733 active and Base Realignment and Closure (BRAC) installations and Formerly Used Defense Sites (FUDS). One hundred and fifty of those installations are on the Environmental Protection Agencies National Priorities List. At the end of Fiscal Year 1999, 95 per cent of the Department of Defense's 27,945 sites are actively being addressed as indicated below:

PROGRESS UNDERWAY

- Investigations: 22 percent
- Cleanup: 8 percent
- Response complete: 62 percent
- Post-Response Complete Monitoring: 3 percent

Each year, the Department of Defense measures the number of sites in the investigation, cleanup, and response complete categories. By looking at the number of sites in these categories, the Department of Defense can determine its progress toward cleaning up sites. The installations categorize all sites undergoing investigation and cleanup as "sites in progress." Within the "sites in progress category," an important milestone is reaching the "remedy in place" (RIP). At sites categorized as RIP, construction of the remedy is complete and we are ready to begin operation. When all intended studies and cleanup activities at a site are complete and the site meets its remedial objective, the site is in "Response Complete." When the regulator at either State or Federal level agrees that all action is complete, the site is placed in the site closeout category.

The pipeline diagram below illustrates the Department's progress at the end of 1999.



Of the 17,307 sites in the response complete category, 11,739 of these sites were placed in this category after the investigation phase. This is significant because it demonstrates the importance of a thorough investigation and removal action, if required. A total of 2,948 sites reached response complete by finishing the remedial design/remedial action phases.

One of the Department's goals is to have remedies in place or response complete for all sites on our active installations by 2014. With Congress's continued support and stable funding, we believe we can reach this goal.

In 1999 the number of sites in response complete totaled 17,307, this is of key significance because it represents an almost 100 per cent increase in response complete from the 8,637 sites reported in 1992. This indicates that Department of Defense is effectively addressing sites through the restoration program. Overall, 62 percent of the sites in the environmental restoration program have reached Response Complete, a 4 percent increase since Fiscal Year 1998, indicating Department of Defense's continued progress toward site cleanup goals. In each of the last

2 years, the Department of Defense moved approximately 1,000 sites into the response complete category.

As mentioned earlier, the Department of Defense's ultimate objective is to finish all restoration activities and closeout all sites at all of our installations. For this reason, the Department of Defense also measures its progress in reaching remedy in place and response complete at the installation level. It is not enough to close out sites; we want to say that entire installations are clean. Installations receive the remedy in place designation when all sites at the installation reach the remedy in place milestone. Similarly, when all sites at an installation achieve response complete status, the entire installation reaches response complete. At the end of fiscal year 1999, the Department of Defense had remedies in place or response complete at almost 60 percent of active installations and formerly used defense sites properties and over 40 percent of base realignment and closure installations.

FUNDING DOD'S RESTORATION WORK

In the 1984, Congress established a separate account to fund the Department of Defense's restoration work. The process of obtaining this funding spans several years and requires careful long-range planning. The Department must plan its budget needs well in advance to ensure that sufficient funding for site restoration is available in a given fiscal year. Many factors influence cleanup funding, including changing priorities in the cleanup process, identification of new sites, policy initiatives, and in some cases, changes in national security policy and priorities. The Department of Defense forecasts specific restoration activities several years in advance to prepare each budget the President submits to Congress.

The Military Services and Agencies are responsible for allocating funds to subordinate units for program execution. The Office of the Secretary of Defense oversees the program, including expenditures of funds by the Military Services and Agencies. The Department of Defense relies on stable funding from Congress to plan effectively its restoration activities, and then to carry out its plans.

Currently the Department is spending about $2 billion a year on the active and base realignment and closure installations in the environmental restoration program. Approximately 63 per cent of environmental restoration funding is spent on cleanup, 24 per cent on investigation and 12 per cent on program management support.

DEPARTMENT OF DEFENSE AUTHORITIES

The Department's environmental cleanup mission focuses on cleaning up contamination at operational installations, closed installations, and formerly used defense sites. The Department of Defense's formal environmental cleanup efforts began in 1975, under the Army's Installation Restoration Program. Over time, environmental laws and regulations required more systematic and far-ranging environmental cleanup efforts. In 1980, Congress passed the Comprehensive Environmental Response, Compensation and Liability Act, the primary driver for our cleanup program.

The Comprehensive Environmental Response, Compensation and Liability Act, commonly referred to as Superfund, authorized Federal agencies to respond to the release or substantial threat of release, into the environment of hazardous substances, or to pollutants or contaminants which may present an imminent and substantial danger to public health or welfare. The Comprehensive Environmental Response, Compensation and Liability Act authorized the creation of a trust fund for the Environmental Protection Agency's use in cleaning up emergency and long-term waste problems. However, the trust fund is not generally available for remedial actions at federally owned facilities.

In 1986, the Superfund Amendments and Reauthorization Act (SARA), Public Law 99–499) reauthorized the trust fund and significantly amended the authorities and requirements of the Comprehensive Environmental Response, Compensation and Liability Act. The Superfund Amendments and Reauthorization Act created the Comprehensive Environmental Response, Compensation and Liability Act Section 120, which is of particular interest, because it specifically addressed the requirements for response actions at Federal facilities. Superfund Amendments and Reauthorization Act Section 211 established the Defense Environmental Restoration Program (DERP) and its funding mechanism—the Defense Environmental Restoration Account (DERA), which has subsequently been expanded to create separate environmental restoration (ER) accounts for each of the Military Departments, formerly used defense sites and the Office of the Secretary of Defense.

In addition to the specific authorities and responsibilities provided to the Department of Defense by Superfund Amendments and Reauthorization Act, two Executive

Orders (E.O.) provide Federal agencies with the responsibility of cleaning up their facilities. Executive Order 12088 (13 October 1978) requires Federal agencies to ensure compliance with applicable pollution control standards. Executive Order 12580 (23 January 1987) delegated the President's authority under the Comprehensive Environmental Response, Compensation and Liability Act and the Superfund Amendments and Reauthorization Act to various Federal agencies, including the Department of Defense, for releases from facilities or vessels under the jurisdiction, custody, or control of the agency.

The Defense Environmental Restoration Program requires the Secretary of Defense to "carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary." The Department of Defense's Defense Environmental Restoration Program activities are subject to and must be consistent with section 120 of the Comprehensive Environmental Response Compensation and Liability Act. Moreover, the Defense Environmental Restoration Program requires that ALL response actions be in accordance with the Comprehensive Environmental Response, Compensation and Liability Act. In other words, Department of Defense sites are subject to Comprehensive Environmental Response, Compensation and Liability Act authorities whether or not they are included on the National Priorities list (NPL). (The Environmental Protection Agency scores hazardous waste sites by their potential to affect human health, welfare, and the environment. Information from investigations is used to score sites. Sites with the scores over 28.5 or greater may be proposed for the National Priorities List.)

The Comprehensive Environmental Response, Compensation and Liability Act Section 120(a)(4) provides that State laws concerning removal, remedial action, and enforcement also apply to removal and remedial actions at Federal facilities not included on the National Priorities List. State laws that are not inconsistent with the Comprehensive Environmental Response, Compensation and Liability Act are applied to Federal facilities not on the NPL.

A key difference between the Defense Environmental Restoration Program and the application of the Comprehensive Environmental Response, Compensation and Liability Act to private parties is that the Defense Environmental Restoration Program requires the Department of Defense to identify EVERY contaminated site and clean it up under the procedures of the Comprehensive Environmental Response, Compensation and Liability Act and the National Contingency Plan (NCP) 40 CFR 300. Private sites not on the National Priorities List are not automatically required to clean up to the National Contingency Plan standards. The National Contingency Plan is the basic regulation that implements the statutory requirements of the Comprehensive Environmental Response, Compensation and Liability Act and Section 311 of the Clean Water Act. This regulation has the full force of law and Department of Defense complies with its requirements.

The Comprehensive Environmental Response, Compensation and Liability Act establishes a comprehensive process for implementing cleanup and ensuring that substantive standards under other laws are met. The method used to integrate State requirements into the Comprehensive Environmental Response, Compensation and Liability Act/National Contingency Plan process is through the determination of Applicable and Relevant or Appropriate Requirements (ARARs).

The Department of Defense believes that the preferred method of dealing with the delicate balance of authority with the states is to negotiate approaches for investigation and cleanup. We believe that negotiated agreements and remedies provide the best approach for achieving the underlying purpose of protection of human health and the environment.

States and the Department of Defense can enter into agreements for the clean up of non-National Priorities List sites. We seek input from states through our Restoration Advisory Boards (RABs), Management Action Plans, Defense State Memorandum of Agreement (DSMOA), and through negotiation of State multi-site cleanup agreements that allow us to integrate the Comprehensive Environmental Response, Compensation and Liability Act obligations with State procedural requirements. The use of all of these mechanisms can significantly improve and streamline cleanup when State and local regulators are meaningfully involved during all phases of the environmental restoration program. To ensure a smooth and efficient process, Department of Defense personnel and regulators should agree in advance on the cleanup regulatory vehicle, cleanup activities, review times and schedules. Installations and regulators must listen to each other, respond to one another's needs, and understand that there may be limitations on what the other group can achieve. The Wright-Patterson Air Force Base case study below illustrates the value of reaching consensus.

Wright-Patterson Air Force Base, Dayton, Ohio (Consensus Documents).—Wright-Patterson Air Force Base uses consensus documents to expedite the cleanup process

and eliminate many of obstacles that impede cleanup. (Consensus documents represent the collective opinion of the installation and regulators.) Even more important than the documents themselves is the decisionmaking process that participants go through to reach agreement on the cleanup activities. This process is not formal, but exemplifies the installation's successful partnering and atmosphere of teamwork. Installation personnel and regulators are up-front about their expectations and requirements for each cleanup activity because the consensus agreements create an accountability mechanism for the cleanup team.

Once a consensus document is created, it serves as a strategy or road map for the cleanup process. For example, Wright-Patterson's risk assessment assumption documents explain the approved process for risk assessments at the installation. The installation also revisits each consensus document if the cleanup process strays from the agreed path.

Along with their other benefits, consensus documents serve as useful transitioning tools for new employees. In this capacity, they are often used to familiarize new employees or cleanup team members with past issues and the decisions made on them. Consensus documents have saved time and money at Wright Patterson.

ROLES AND RESPONSIBILITIES

As discussed earlier, the most important change made to the Comprehensive Environmental Response, Compensation and Liability Act by the Superfund Amendments and Reauthorization Act was the centralization of responsibility for Defense Environmental Restoration Program within the Office of the Secretary of Defense. Following passage of Superfund Amendments and Reauthorization Act/Defense Environmental Restoration Program the President issued Executive Order 12580, which delegated his authority under the Comprehensive Environmental Response, Compensation and Liability Act and Superfund Amendments and Reauthorization Act/Defense Environmental Restoration Program to various Federal agencies including the Department of Defense. The broad Department of Defense responsibilities mandated by the Superfund Amendments and Reauthorization Act/Defense Environmental Restoration Program and delegated by Executive Order 12580 are as follows:

- Carry out all response actions with respect to releases of hazardous substances on properties owned, leased to or otherwise possessed by the United States and under the jurisdiction of the Secretary.
- Close interaction with the Environmental Protection Agency, state, and local regulatory agencies in implementing the National Contingency Plan.
- Special notification to the Department of Health and Human Services and the Environmental Protection Agency of hazardous wastes that are specific to the Department of Defense installations.
- Integration of public review and comment in numerous activities associated with implementing the National Contingency Plan.
- Annual reports to Congress explaining Defense Environmental Restoration Program activities under Superfund Amendments and Reauthorization Act Section 211.

The Secretary of Defense delegated his responsibilities and authorities to execute the Defense Environmental Restoration Program and Base Realignment and Closure) environmental restoration programs to the Secretaries of the Military Departments and Directors of the Defense Agencies with land management responsibilities. The Base Realignment and Closure account funds environmental restoration activities at installations designated for closure or realignment by the Base Realignment and Closure process. The Army, as executive agent for the Department of Defense, implements the Defense Environmental Restoration Program at formerly used defense sites (FUDS) through the US Army Corps of Engineers (USACE). The Office of the Secretary of Defense formulates policy and provides oversight for the environmental restoration program at operational and Base Realignment And Closure installations and formerly used defense sites. The Army, Navy including the Marine Corps, Air Force, Defense Logistics Agency (DLA) and Defense Threat Reduction Agency (DTRA) execute the programs, consistent with guidance, at their installations.

As required by Department of Defense management guidance, all installations have a Management Action Plan (MAP) or equivalent, a key document for managing an installation's environmental restoration program. The Management Action Plan outlines a vision of the total multi-year, integrates and coordinates an approach to achieving an installation's environmental restoration goals, and provides for cleaning up the installation. The installation should use the Management Action Plan to identify and monitor requirements, schedules, and project funding requirements. It is the basis for input into program planning, budget development, execution decisions, and most importantly for discussion with regulatory agencies. The Manage-

ment Action Plan is intended to be a living document, and installations and stakeholders keep it current and available for public review. The story of Fort Campbell demonstrates the value of Management Action Plans.

Fort Campbell, Fort Campbell, Kentucky (Installation Action Plan Workshops).—The Department of Defense policy calls for each installation or property to update its management action plan each fiscal year. The Management Action Plan or its equivalent is a key document in the management of an installation's environmental restoration program. It should outline the entire multiyear, integrated, coordinated approach that the installation or property will use to achieve its environmental restoration goals. The installation or property should use the Management Action Plan to identify and monitor requirements, schedules, and project funding requirements. The Management Action Plan is also the basis for program planning, budget development and project execution decisions, and for discussion with all stakeholders on the installation's or property's planned restoration activities.

At Fort Campbell, an annual workshop is held to update its installation action plan (as the management action plan is called in the Army). Workshop attendance has evolved to include many of the stakeholders involved in the installation's cleanup program: installation personnel, EPA Region 4, State of Tennessee, Commonwealth of Kentucky, Army Environmental Center, FORSCOM, Contracting Office representatives, Restoration Advisory Board members, and contractors.

At each workshop, participants review the Installation Action Plan site by site. They examine the status of each site (i.e., what phase of cleanup it is in) and update the Installation Action Plan as needed. Participants also review the proposed cleanup activities for each site for the upcoming fiscal year. They then scrutinize the proposed activities in relation to funding for the fiscal year and prioritize the proposed activities if not all can be completed as planned. The Installation Action Plan undergoes revision to reflect any changes in the cleanup schedule.

Because the workshop participants review the IAP site by site against the current fiscal year budget, each stakeholder is aware of the cleanup plan.

DESCRIPTION OF A DOD INSTALLATION

Military installations can be very large, consisting of thousands of acres and many types of environments, ranging from undeveloped expanses of forests to populated areas which resemble small cities with both industrial and residential areas. Along with the various environments, installations often contain many types of environmental restorationsites each requiring evaluation and potentially remediation. A typical Department of Defense installation may contain many discrete sites with varying types and amounts of contamination. Sites pose differing risks to human health and the environment and are treated differently depending on the contamination and threat to human health and the environment. An installation may have anywhere from zero to hundreds of sites. Department of Defense installations typically include hundreds to thousands of undeveloped and undisturbed acres.

Typically, the contamination found on the installation is related to the type of operation and past disposal practices. For example, in areas where industrial metal working occurred, the contamination expected would be metals and solvents both where the metal working took place and where the wastes were disposed.

Most of the contaminants at Department of Defense sites are similar to contaminants found at commercial industrial properties, airfields, and cities—

- Gasoline, diesel, and jet fuel
- Heavy metals, such as lead and mercury
- Cleaners, degreasers, dyes, paints, and strippers
- Motor oil and hazardous household products

The Site Types-Counts table shows how many sites the Department of Defense has in each site type. Attached are definitions for each of the site types.

Site Type Category	Site Type	Army		Navy		Air Force		DLA		FUDS	
		Total Sites	Sites in Progress	Total Sites	Sites in Progress	Total Sites	Sites in Progress	Total Sites	Sites in Progress	Total Sites	Sites in Progress
Base Operations/Engineered Structures	Building Demolition/Debris Removal	29	7	24	16	33	29	0.0	0	345	1
	Contaminated Buildings	729	140	60	33	54	12	61.0	6	31	.....
	Dip Tank	43	3	5	5	5	4	5.0	2	0	.....
	Incinerator	88	30	19	8	7	3	5.0	0	7	.....
	Maintenance Yard	132	45	54	45	33	19	1.0	0	2	.....
	Oil/Water Separator	418	17	44	19	105	35	2.0	0	1	.....
	Storage Area	2,784	234	575	260	223	91	115.0	60	57	.....
	Washrack	187	28	11	6	24	15	2.0	1	0	.....
	Total	4,410	504	792	392	484	208	191.0	69	443	1
Storage Tanks	Above Ground Storage Tank	332	36	85	58	94	42	13.0	5	97	.....
	POL (Petroleum/Oil/Lubricants) Lines	29	16	76	49	123	83	10.0	2	24	.....
	Underground Storage Tanks	1,322	96	755	306	1,063	400	65.0	16	688	2
	Underground Tank Farm	95	19	90	48	23	14	1.0	0	26	.....
	Total	1,778	167	1,006	461	1,303	539	89.0	23	835	2
Industrial Operations	Optical Shop	2	1	0	0	0	0	0.0	0	0	0
	Pesticide Shop	52	23	17	10	11	4	6.0	0	1	.....
	Plating Shop	8	3	15	11	3	2	1.0	0	1	.....
	Sewage Treatment Plant	65	15	12	6	36	18	1.0	0	5	.....
	Waste Lines	146	36	70	46	36	26	3.0	1	4	.....
	Waste Treatment Plant	239	55	37	17	54	27	0.0	0	2	.....
	Total	512	133	151	90	140	77	11.0	1	13	.....
Training Areas	Burn Area	230	123	69	46	27	12	19.0	6	17	.....
	Explosive Ordnance Disposal Area	159	65	49	34	36	16	0.0	0	75	.....
	Fire/Crash Training Area	91	43	127	78	333	185	3.0	2	10	.....
	Firing Range	54	17	17	7	15	10	0.0	0	96	.....
	Pistol Range	19	7	9	2	4	2	4.0	2	2	.....
	Small Arms Range	69	17	4	1	16	12	0.0	0	36	.....

Site Type Category	Site Type	Army		Navy		Air Force		DLA		FUDS	
		Total Sites	Sites in Progress	Total Sites	Sites in Progress	Total Sites	Sites in Progress	Total Sites	Sites in Progress	Total Sites	Sites in Progress
	Unexploded Munitions & Ordnance Area	192	61	47	28	34	22	0.0	0	648	4
	Total	814	333	322	196	465	259	26.0	10	884	5
Radioactive Areas	Mixed Waste Area	27	3	39	23	12	10	2.0	0	8	.....
	Radioactive Waste Area	43	10	9	2	84	28	0.0	0	7	.....
	Total	70	13	48	25	96	38	2.0	0	15	.....
Surface Discharge Areas	Drainage Ditch	38	24	23	12	35	17	4.0	4	1	.....
	Industrial Discharge	115	82	20	13	17	11	0.0	0	2	.....
	Sewage Effluent Settling Ponds	16	5	3	1	7	3	0.0	0	3	.....
	Spill Site Area	751	214	426	205	1,554	875	42.0	18	13	.....
	Storm Drain	24	9	13	12	94	73	6.0	2	2	.....
	Surface Disposal Area	581	153	698	283	387	200	6.0	1	38	.....
	Surface Impoundment/Lagoon	288	129	100	55	42	26	9.0	4	27	.....
	Surface Runoff	49	9	12	8	12	6	0.0	0	4	.....
	Total	1,862	625	1,295	589	2,148	.....	67.0	29	90	.....
Subsurface Disposal Area	Chemical Disposal	60	37	5	5	39	24	0.0	0	14	.....
	Disposal Pit and Dry Well	354	119	145	73	549	265	49.0	27	17	.....
	Landfill	904	434	425	272	819	440	17.0	10	97	.....
	Leach Field	58	25	9	6	16	9	1.0	1	1	.....
	Total	1,376	615	584	356	1,423	738	67.0	38	129	.....
Contaminated Media	Contaminated Fill	57	29	26	11	13	7	79.0	3	101	.....
	Contaminated Groundwater	198	150	108	76	50	40	18.0	17	193	1
	Contaminated Sediments	152	67	122	67	32	14	15.0	1	54	.....
	Contaminated Soil Piles	46	20	15	9	8	3	20.0	2	21	.....
	Soil Contamination After Tank Removal	66	22	9	7	13	7	31.0	7	107	.....

	Total	519	288	280	170	116	71	163.0	30	476	2
Other	Other	875	31	58	34	0	0	33.0	13	1,539	8
	Total	875	31	58	34	0	0	33.0	13	1,539	8
	Grand Total		2,709	4,536	2,313	6,175		649.0	213	4,424	2,3

BASE REALIGNMENT AND CLOSURE

The Base Realignment and Closure (BRAC) environmental restoration process is applicable at closing and realigning installations affected by Public Law 102–844, Section 330, as amended by Public Law 103–160, section 1002. Environmental activities at Base Realignment And Closure installations are analogous to those at active installations. The Department of Defense's Base Realignment And Closure environmental restoration goal is to quickly and effectively clean up closing installations so that the property is available for transfer. Before the Department can transfer property, it must meet the requirements of the Comprehensive Environmental Response, Compensation and Liability Act and the National Environmental Policy Act (NEPA). The Department of Defense is striving to meet its goal to have property suitable for transfer under the Comprehensive Environmental Response, Compensation and Liability Act by the end of by fiscal year 2005.

In 1996, through an amendment to the Comprehensive Environmental Response, Compensation and Liability Act, Congress created a valuable tool for empowering communities dealing with cleanup issues. The amendment, known as Early Transfer Authority, allows full ownership of property before the completion of all cleanup activities. Early transfer authority gives communities the opportunity to play a more active role in realignment and closure decisions by allowing them to gain ownership and consequently control of the property at an earlier stage of the transfer process. The Department of Defense has completed five early transfers to date. An example of an early transfer is the Fleet Industrial Supply Center (FISC) Oakland as described below.

Navy (Community Partnership Accelerates Redevelopment At Fleet Industrial Supply Center Oakland, California).—In 1999, the Navy transferred its Fleet Industrial Supply Center (FISC) Oakland to the Port of Oakland 3 years ahead of schedule. The basis for this transfer is a landmark agreement between the Navy and the Port, which allows the Port to lease portions of Fleet Industrial Supply Center Oakland for immediate reuse while the Navy continues its restoration activities. The rapid transfer was largely a result of strong cooperation among local, state, and military stakeholders.

The early transfer of the Fleet Industrial Supply Center Oakland is a major achievement for the Base Realignment And Closure program. Early transfer of these 530 acres has allowed the Port to meet its Vision 2000 Redevelopment Plan objectives, and will secure the Port of Oakland's position as the nation's fifth busiest port. In addition, by tailoring its cleanup efforts to a known property reuse, the Navy saved more than $27.5 million in remedial design, construction, and monitoring costs.

Not only do the Navy and the Port benefit from this early transfer, the city of Oakland will see an economic benefit as well. The Port redevelopment is expected to create more than 10,000 new jobs and increase revenue for the entire region.

NEW PROGRAM STRATEGY FOR 1990'S

Through the years, the environmental restoration program has undergone considerable evolution. The Department of Defense has rigorously examined its processes and policies to streamline the cleanup process and maximize effectiveness. Several key policy initiatives from the 1990's stand out: applying new program goals, and applying the relative risk site evaluation methodology, building formal relationships with regulators through partnering, and increasing community participation through the Restoration Advisory Boards.

Relative Risk and DERP Goals

As the Defense Department's Environmental Restoration Program progressed in the early 1990's, the Department recognized two major problems associated with the pace of the cleanup. First, we had too many high priority sites that we tried to address at the same time. Second, we were not cleaning up the worst sites first.

In 1994, the Department of Defense implemented a framework for evaluating sites based on their potential risk to human health and the environment. Through this framework, the Department of Defense uses evaluation of contaminants present, environmental migration pathways, and receptors to categorize sites as high, medium and low risk and sequences them for cleanup. Components must use the framework to evaluate the relative risk posed by each site for future installation restoration funding requirements at operating installation, closing/aligning bases and formerly used defense sites. Installations offer opportunities for regulators and other stakeholders to participate in the process.

Partnering

Throughout the life of the Defense environmental restoration program, we have found partnering to be one of the most effective tools in streamlining and completing cleanup projects. Partnering enhances relationships, increases communication, and maximizes the effectiveness of each participant's resources by pooling assets and eliminating redundancy. Installations develop and improve successful relationships through partnering. Cleanups are most successful when installations and stakeholders work together throughout the environmental restoration process. Working together establishes mutual trust, enables better coordination, and encourages agreement on actions that need taken. Trust and coordination lead to effective integration of stakeholder needs and priorities into the cleanup.

The Department of Defense teams up with a variety of groups, including organizations, communities, industry, other Federal agencies, and State and local governments. In addition to partnering with Federal and State regulators, the Department of Defense is forging alliances with Native Americans and Alaska Native tribes to restore tribal lands affected by past Department of Defense activities.

Through the Defense State Memorandum of Agreement (DSMOAs) program, the Department of Defense reimburses states and territories for reviewing its investigation and cleanup activities at all Department of Defense installations and properties. Authorized by the 1986 Superfund Amendments and Reauthorization Act, the Defense State Memorandum Of Agreement program supports all active and closing installations, and also covers formerly used defense sites. At present, 46 of the 56 possible United States, states, territories and the District of Columbia have entered into cooperative agreements for funding with the Department of Defense, and 51 have signed Defense State Memoranda Of Agreement.

These partnering agreements have helped states and the Department of Defense coordinate and streamline the environmental restoration efforts. The Department of Defense provided states with $24.8 million in fiscal year 1999 for their support under the Defense State Memorandum Of Agreement program.

Restoration Advisory Boards And Community Participation

The Department of Defense's public involvement program is based on the understanding that the decisions and actions that military installations undertake to cleanup and reuse property inevitably affect the surrounding communities. To that end, the Department of Defense established Technical Review Committees (TRCs) in the mid–1980's, which served the purpose of providing forums for technical document review and input into the environmental cleanup process. The February 1993, Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) included recommendations for improving public participation in the environmental restoration process. The Department of Defense expanded the Technical Review Committee concept by forming Restoration Advisory Boards (RABs) based on the concepts recommended in the Interim Report. More than half of the Technical Review Committees converted to Restoration Advisory Boards to increase community involvement opportunities.

A Restoration Advisory Board is a group co-chaired by a Department of Defense representative and a community member that serves as a forum for exchange of information between government officials and members of the local community on installation cleanup issues. Restoration Advisory Boards meet regularly to discuss environmental cleanup issues at Department of Defense installations. They may also review and comment on cleanup plans and reports. Primarily, Restoration Advisory Boards are responsible for keeping the community informed on installation activities and for relaying the community's views and concerns to the Department of Defense.

The Restoration Advisory Board program entered its fifth full year of operation in fiscal year 1999. In 1999 there were a total of 284 Department of Defense Restoration Advisory Boards.

The intent of Restoration Advisory Boards is to bring together people who represent the community as a whole and also those who have diverse interests, concerns, and values. A balanced, but diverse membership is especially important because every community has different needs and one group can not speak for the interests of everyone. Since the inception of the program, installations have worked to ensure that the Restoration Advisory Boards reflect the diversity in the communities they represent. Those efforts have worked in fiscal year 1999 Restoration Advisory Board membership was more diverse than ever with increased participation of low income and minority groups.

Installations report that Restoration Advisory Boards helped to improve the cleanup process. In fact, at more than half of the reporting installations, Restoration Advisory Boards provided significant advice that positively affected the scope or schedule of environmental study or cleanup. In some cases, Restoration Advisory Board

members have technical knowledge that helped their installation develop cost-saving remedies. Restoration Advisory Boards became more proficient in their advisory roles and in presenting technical cleanup information to the community while bringing community concerns to the installations.

CONCLUSION

The Department of Defense continues to make steady progress under the current process established by Congress for our cleanups. The Department is proud of its Environmental Restoration Program and its accomplishments especially the fact that 62 percent of restorationsites have reached the RIP/RC goal demonstrating that the Department is well on the path to completing cleanups. With continued Congressional support and stable funding, we believe we will continue to make progress on our environmental restoration cleanups.

The framework in place provides an effective mechanism for managing a national program. The Comprehensive Environmental Response, Compensation and Liability Act and the National Contingency Plan provide flexibility while requiring the involvement of State regulators. The resulting delicate balance between states and the Department encourages both parties to work together to accomplish goals. Our relative risk sequencing provides us with a tool to prioritize sites and sequence cleanup. We are also continuing our efforts to increase opportunities for stakeholders to participate in the process.

The Department of Defense intends to continue the following actions, which contribute to a successful environmental restoration program:

- Encourage installation personnel and regulators work from the same plan and agree on how work will be done.
- Maintain open channels of communication.
- Involve regulators early and continuously throughout the process.
- Involve stakeholders throughout the process and proactively with them.
- Lead the partnering process and the cleanup team at installations.

Defense Environmental Restoration Program.—Site Type Definitions

Site Category	Site Type	Site Description[1]	Primary Contaminants
Base Operations/Engineered Structures.	Building Demolition/Debris Removal.	Building Demolition/Debris Removal sites consist of buildings and/or debris that are unsafe and/or must be removed.	• Asbestos • Construction debris • Lead paint
	Contaminated Building ...	Contaminated Building sites result from releases within, or on the outside of, a structure of a substance that has been contained within the building.	• POLs • Plating waste • Metals • POL sludge • Solvents • Asbestos • PCBs • Propellants • Pesticides • Acids • Solvents • Acids
	Dip Tank	Dip Tanks typically are metal or concrete units located in coating shops. They range in size from 50 to more than 500 gallons. The tanks are used to clean parts before treatment or to coat parts with various materials, including metals and plastics.	• POLs • Chlorinated solvents • Metals • Acids
	Incinerator	Incinerators typically consist of a furnace and stack unit used for a variety of disposal activities, including the incineration of medical waste or of an installation's dunnage. These units vary in size and may be either freestanding or part of other operations, such as hospitals.	• Ash • Metals • Ordnance compounds

Defense Environmental Restoration Program.—Site Type Definitions—Continued

Site Category	Site Type	Site Description[1]	Primary Contaminants
	Maintenance Yard	Maintenance Yards consist of paved or unpaved areas where vehicles and other maintenance equipment are stored and often serviced. Typically, maintenance supplies are stored at these units.	• POLs • Solvents • Metals
	Oil/Water Separator	Oil/Water Separators typically are small units that skim oil from stormwater runoff. The Oil Water Separator site consists of the unit and any associated piping.	• POLs • PCBs • Solvents • Industrial wastewater
	Storage Area	Storage Area sites are areas where spills and leaks from stored containers or equipment have occurred.	• POLs • Metals • Solvents • Acids • POL sludge • PCBs
	Washrack	Washrack sites typically consist of a building designed for washing vehicles, such as tanks, aircraft, and other military vehicles. This unit also may consist of a paved area where washing of vehicles occurs.	• POLs
Storage Tanks	Aboveground Storage Tanks.	Aboveground Storage Tank sites result from release of substances to surrounding areas from aboveground tanks, containers, and associated piping.	• POLs (for example, heating oil, jet fuel, gasoline, and POL sludge)
	POL Lines	Petroleum, oil, lubricant distribution lines are used to transport POL products from storage to dispensing facilities.	• POLs (for example, heating oil, gasoline, jet fuel, diesel fuel, and other fuels) • POL sludge
	Underground Storage Tanks.	Underground Storage Tank sites result from the release of substances from underground storage tanks and any associated piping.	• POLs • Metals • POL sludge • Solvents
	Underground Storage Tank Farm.	Underground Storage Tank Farm sites result from the release of substances from the multiple, generally large, underground storage tanks and associated piping that make up a tank farm complex.	• POLs • POL sludge • Solvents • Metals
Industrial Operations	Optical Shop	Optical Shops typically consist of laboratory units located within a building. Activities include grinding lenses used in eye glasses or other optical instruments.	• Solvents
	Pesticide Shop	Pesticide Shops typically are used to store and prepare large volumes of pesticides and solvents for maintenance activities. The units may be located in a freestanding building or may be attached to another building. Areas near the unit may have been used for the disposal of off-specification pesticides.	• Pesticides • Metals • POLs
	Plating Shop	Plating Shops typically consist of a building, or a room within a building, used for coating metal parts. The unit contains several tanks of solvents that are used in the plating process.	• Metals • Solvents • Acids • Industrial wastewater

Defense Environmental Restoration Program.—Site Type Definitions—Continued

Site Category	Site Type	Site Description[1]	Primary Contaminants
	Sewage Treatment Plant	Sewage Treatment Plants typically consist of a complex of tanks, piping, and sludge management areas used to treat sanitary sewage generated at an installation. The unit may use chemical or biological treatment methods. Lagoons associated with the biological treatment of sewage may be considered to be separate units.	• Metals • Industrial wastewater • Solvents • POLs
	Waste Lines	Waste Lines are underground piping used to carry industrial wastes from shop facilities to a wastewater treatment plant.	• Solvents • Metals • Plating sludge • Pesticides • Explosive chemicals
	Waste Treatment Plant	Waste Treatment Plant sites result from releases of substances at plants that were used to treat and dispose of domestic and/or industrial wastewater.	• POLs • Industrial wastewater • Solvents • Explosive chemicals • Plating sludge
Training Areas	Burn Area	Burn Area sites consist of pits or surface areas that were used for open-air incineration of waste.	• POLs (for example, spent motor oil and jet fuel) • Explosives • Propellants • Solvents (for example, spent paint thinners and degreasing agents) • Ordnance
	Explosive Ordnance Disposal Area.	Explosive Ordnance Disposal Areas consist of open-air areas that were used for detonation, demilitarization, burial, or disposal of explosives.	• UXO • Ordnance compounds • Explosives • Metals
	Fire/Crash Training Area	Fire/Crash Rescue Training Areas consist of trenches and/or pits where flammable materials were ignited periodically for demonstrations and training exercises.	• POLs • POL sludges • Solvents • Metals
	Firing Range	Firing Ranges consist of large areas of land used for practice firing of large artillery or mortars or as a practice bombing range for aircraft. These areas typically are contaminated with unexploded ordnance, which may be found both on and below the ground surface.	• Metals • Ordnance compounds • Explosives • UXO • Radionuclides
	Pistol Range	Pistol Ranges may be located indoors or outdoors and are used for target practice. Outdoor units include a soil or sandbag berm located behind the targets to prevent bullets from traveling outside the range area.	• Metals
	Small Arms Range	Small Arms Ranges typically are located outdoors and are used for target practice with small arms, usually 50 caliber or less. The unit may include a soil or sandbag berm or a hill located behind the targets to prevent bullets from traveling outside the range area.	• Metals • Ordnance compounds

Defense Environmental Restoration Program.—Site Type Definitions—Continued

Site Category	Site Type	Site Description[1]	Primary Contaminants
	Unexploded Munitions/ Ordnance Area.	Unexploded Munitions/Ordnance Areas are areas that have been used for munition and ordnance training.	• UXO • Explosive chemicals • Metals • Ordnance compounds
Radioactive Areas	Mixed Waste Area	Mixed Waste Areas are areas used to store or dispose of hazardous wastes that have been mixed with or contaminated by radioisotopes.	• Solvents • Mixed waste
	Radioactive Waste Area ..	Radioactive Waste Areas are areas used to store or dispose of low-level radioactive materials of various types (for example, radium paint and radioactive instruments and propellants).	• Low-level radioactive waste
Surface Discharge Areas	Drainage Ditch	Drainage Ditch units typically consist of a natural or man-made ditch used as a runoff control structure for rainfall. The unit also may be used for runoff from other sources, such as process operations. Man-made units may be concrete lined.	• POLs • Metals • Solvents • Explosive chemicals • PCBs
	Industrial Discharge	Industrial Discharge units consist of a pipe system used to discharge industrial effluent to the environment. The unit may discharge to a natural or man-made water body or to a dry creek bed or some other natural feature.	• Metals • Industrial wastewater
	Sewage Effluent Settling Ponds.	Sewage Effluent Settling Ponds consist of a lagoon, or lagoons, used for the settling of solids and/or for biological treatment of sewage. The units also may be used as infiltration galleries.	• Metals • Ordnance compounds • Solvents
	Spill Site Areas	Spill Site Areas are small areas where spills from drums, tanks, or other waste storage units have taken place.	• POLs • Solvents • Paint • Pesticides • Metals • Acids • PCBs
	Storm Drain	Storm Drains typically consist of a natural or man-made drain used as a runoff control structure for rainfall. The unit also may be used for runoff from other sources, such as process operations. Man-made units may be concrete lined.	• POLs • Pesticides • Metals • Industrial wastewater • POL sludge • Solvents
	Surface Disposal Area	Surface Disposal Area sites consist of small areas formerly used for disposal of solid wastes with little or no free liquids. Typical materials include rags, filters, paint cans, small capacitors, and batteries.	• POLs • Solvents • Metals • Explosive chemicals
	Surface Impoundment/ Lagoon.	Surface Impoundments/Lagoons are unlined depressions, excavations, or diked areas that were used to accumulate liquid waste, waste containing free liquid, or industrial wastewater.	• POLs • Explosive chemicals • Solvents • Metals • POL sludge • POL sludge

Defense Environmental Restoration Program.—Site Type Definitions—Continued

Site Category	Site Type	Site Description[1]	Primary Contaminants
	Surface Runoff	Surface Runoff sites are areas that typically experience sheet runoff from rain. The runoff may contain contaminants, particularly adjacent to industrial areas and airfield aprons.	• POLs • Metals • Solvents • POL sludge • PCBs
Subsurface Disposal Area	Chemical Disposal	Chemical Disposal units are areas that have been used for the disposal of chemicals, typically of an unknown type. The unit may be a burial area where bottles or packages of chemicals were placed or an area where liquids were disposed of on the soil.	
	Disposal Pit/Dry Well	Disposal Pit/Dry Well sites consist of small unlined excavations and structures that were used over a period of time for disposing of small quantities of liquid wastes.	• POLs (for example, motor oil) • Metals • Explosive chemicals • Acids (for example, battery acid) • Ordnance compounds • Solvents
	Landfill	Landfill sites typically are areas formerly used for disposing of both domestic and industrial hazardous waste.	• POLs • Pesticides • Solvents • Metals • Paint • Ordnance Compounds
	Leach Field	Leach Fields typically consist of a subsurface area generally associated with septic tanks. The unit serves the purpose of biologically treating sanitary sewage; however, in cases where these units were used at industrial facilities, there is also contamination from nonbiodegradable industrial contaminants.	• Metals • Solvents
Contaminated Media	Contaminated Fill	Contaminated Fill areas consist of resulting from excavations for construction, tanks, and other purposes.	• POLs • Explosive chemicals • Metals • Paint waste • Ordnance compounds
	Contaminated Groundwater.	Contaminated Groundwater results from various types of releases of known or unknown origin, such as migration of leachate from disposal areas and migration of substances from contaminated surface and subsurface soil.	• POLs • Metals • Chlorinated solvents • Explosive chemicals • Nonchlorinated solvents
	Contaminated Sediments	Contaminated Sediments include sediments of bodies of water that have been contaminated by surface runoff, subsurface migration, or direct discharge of contaminants.	• POLs • Metals • PCBs • Solvents • Pesticides • Explosive chemicals
	Contaminated Soil Piles	Contaminated Soil Piles consist of soil that has been staged after an excavation activity.	• POLs • Solvents • Sludge • PCBs • Metals • Ordnance compounds

Defense Environmental Restoration Program.—Site Type Definitions—Continued

Site Category	Site Type	Site Description[1]	Primary Contaminants
	Soil Contaminated After Tank Removal.	Soil Contaminated After Tank Removal consists of soil that has been removed during a tank removal operation and staged before treatment.	• POLs • POL sludge

STATEMENT OF THE ASSOCIATION OF STATE AND TERRITORIAL SOLID WASTE MANAGEMENT OFFICIALS (ASTSWMO)

The purpose of this statement for the record is to reflect the views of the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) regarding the reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act (commonly referred to as Superfund) during the 105th Congress. Specifically, we understand that the Senate Superfund, Waste Control and Risk Management Subcommittee will hold an oversight hearing on March 21, 2000 in order to review the current status of cleanup activities conducted under the Superfund program. We respectfully request that this statement be included as a part of the record for that hearing.

ASTSWMO is a non-profit association which represents the collective interests of waste program directors of the nation's States and Territories. Besides the State cleanup and remedial program managers, ASTSWMO's membership also includes the State regulatory program managers for solid waste, hazardous waste, underground storage tanks, and waste minimization and recycling programs. Our membership is drawn exclusively from State employees who deal daily with the many management and resource implications of the State waste management programs they direct. As the day-to-day implementors of the State and Federal cleanup programs, we believe we can offer a unique perspective to this dialog. Since we share in Congress' and the public's desire to achieve effective and timely cleanup of our nation's contaminated sites and the restoration of injured resources associated with these sites, ASTSWMO has marshaled the comprehensive experience of our membership to provide our unique perspective to Congressional discussions and debates surrounding Superfund, and has participated in the debate to reauthorize and/or revise the Superfund law through the last four Congresses.

STATE ACCOMPLISHMENTS

Our statement will be better understood in the context of the substantial accomplishments that State programs currently achieve in remediating contaminated sites. As with the Federal Superfund program, most State programs have had the benefit of 19 years to grow and mature in infrastructure capacity and cleanup sophistication. We believe it is very important that there is a common understanding of the actual status of State programs. With that in mind, ASTSWMO has conducted two studies of the accomplishments of State cleanup programs. We are providing complete copies of both studies to the Subcommittee staff for their use as reference documents. The most recent study collected detailed State reports on all short-term removal actions and long-term remedial actions conducted between January 1, 1993 and September 30, 1997 for each site in the State system where hazardous waste cleanup efforts were performed by States directly, under State enforcement authority, and under State voluntary cleanup and property transfer/Brownfields programs. Sites listed on the National Priorities List, Resource Conservation Recovery Act corrective actions and underground and above ground storage tank and other petroleum spills were not included in this study.

The Association received information on 27,235 sites from thirty-three responding States. The primary ground rule for the study was that information had to be reported site-specifically and had to be accompanied by background data. Estimates were not accepted or counted as part of either the individual State or national totals for work accomplished.

While this study does not capture the complete site universe either on a national level or individual State level, it is the view of ASTSWMO that enough information was obtained to confirm that a trend has developed whereby on a national level States are not only addressing more sites at any given time, but are also completing ("construction completes") more sites through streamlined State programs. State programs have matured and increased in their infrastructure capacity. Key results of the ASTSWMO study included:

• States have completed seven times as many sites per year these last four and three-quarter years than they did during the first 12 years of the program. During the first 12 years of the program, States completed 202 sites per year on average. Over the last four and three-quarter years, States have averaged 1,475 completions per year for a total of 6,768 completions. State managers believe the large increase in completions can be attributed to the growth of State programs, the advent of State Voluntary Cleanup programs and the development of State cleanup standards (i.e., clearly defined endpoints).

• States have completed almost twice as many removals per year during the last four and three-quarter years of the program than they did during the previous 12 years of the program. On a national basis, States completed approximately 485 removals per year as compared to 293 per year during the first 12 years of the program. This doubling of the pace of removals indicates a substantial increase in risk reduction in the field.

• Three times as many confirmed contaminated sites have been identified and are working their way through the State system than during the first 12 years of the program. During the first 12 years of the program, States had approximately 1,850 sites working their way through their systems at any given time. Today, States are addressing an average of approximately 4,700 sites at any given time. (Note: the word "address" could refer to site remediation, no further action designations, or site prioritizations.) These findings clearly show that States' programs have matured and State infrastructures have increased in their capacity to identify and address more sites.

• Only 8.9 percent (2,426) of the total sites identified by States (27,235) were classified as inactive. As the data indicate, State capacity to address large numbers of sites has increased dramatically. Most sites are being actively worked on by States either through traditional State Superfund programs or through voluntary cleanup programs and it is the professional judgment of the ASTSWMO membership that the majority of sites classified as inactive are probably of lower relative risk and not destined for the NPL due to the triage system employed by most States.

ISSUES NEEDING EARLY ATTENTION

Within that context of State success in cleanups, we believe we have gained some insight into several key aspects of the Federal implementation of the Superfund program as it interacts with State cleanup programs which need to be addressed if we are to improve the ways in which we can move both Federal and State cleanup regimes forward in parallel. The following discussion is not inclusive, and there are many other topics with strong State interest, such as program delegation, natural resource damages, enhanced waiver of sovereign immunity, and State funding. The absence of discussion here regarding such other CERCLA elements should not be interpreted as a lack of interest on the part of our members. We selected several key features for their apparent relevance to today's oversight hearing.

NPL LISTING

The first key issue is how a site is listed, or not listed, on the National Priority Listing (NPL). ASTSWMO supports the National Governors' Association position that Governors should be given the statutory right to concur with any new NPL listing in their State. We believe the facts support that position. States today employ a triage system whereby the worst sites are addressed first. For example, only 8.9 percent (2,426) of the total sites (27,235) identified by the recent ASTSWMO survey were classified as inactive. It is, therefore, the strong belief of the ASTSWMO membership that most sites that have been identified within a State that could qualify for listing on the NPL are already being worked on by the State.

We believe the views of our membership were validated by the General Accounting Office (GAO) Report entitled, "Hazardous Waste: Unaddressed Risks at Many Potential Superfund Sites" (GAO/RCED–99–8, November 1998). In this report the GAO reviewed the status of 3,036 sites which had pre-scored above 28.5 but for a variety of reasons had not been placed on the NPL. Out of a total of 3,036 sites, only 7.6 percent (232) were estimated by both EPA and State officials to potentially warrant listing on the NPL. This confirms that the EPA regional staff had utilized good judgment in not placing the vast majority of these sites on the NPL; it also confirms that the hazard ranking system could be improved.

This leads logically to the question of the appropriate role of the Federal Superfund program in the future. While there may be 40-plus States with State Superfund programs and Voluntary Cleanup programs, there will always be States who choose not to develop a complete program, and Federal Government assistance may be warranted. There will also be sites which, due to either technical or legal

complexity or cost, a State either cannot or may prefer to have the Federal Government address. The point is that we think the choice as to whether a site is addressed by the Federal Government or State government should be determined by the State, given the advanced status of State cleanup programs. A Governor should be able to make the determination whether a site will be listed on the NPL. While it is EPA policy to routinely seek concurrence from the Governor before a site is listed on the NPL, it is not mandatory that the concurrence be received. If a dispute should arise between EPA and a Governor, the process within EPA is to have the Assistant Administrator for OSWER make the final determination. Frankly, we do not consider that a satisfactory policy.

Fortunately, there are very few sites where the States and EPA disagree. However, when a dispute does occur the site quickly becomes high profile and both the State and Federal Government can lose credibility. As indicated by the ASTSWMO survey and GAO survey, the States have clearly become the primary regulators for overseeing site remediation. The NPL should be reserved for those sites which both the State and Federal Governments believe warrant expenditure of Federal resources. The NPL is no longer reserved for the "worst of the worst" sites, rather the NPL has shifted to a venue for remediating sites which require the use of Federal resources. The criteria for listing sites on the NPL may quickly shift from one of risk based determinations to one based primarily on resource needs.

FINALITY OF CLEANUP

States are responsible for remediating the vast majority of sites in this country. While it is crucial to clarify the issue of who actually will determine in the future whether a site is listed on the NPL, it is equally as important to clarify which governmental entity will be given the responsibility for determining when a site is fully remediated. In other words, the concept of finality needs to be addressed. The Federal Superfund statute technically applies to any site where a release occurs. However, the reality today is that States are responsible for ensuring the remediation of all sites which do not score above 28.5 using EPA's Hazard Ranking System (HRS)—the cutoff for Federal listing on the NPL. The EPA removal program is able to address some sites which are not listed on the NPL, but the removal program is designed to stabilize a site, not to ensure the full remediation of the site. EPA cannot expend fund money for remediating a site not listed on the NPL. Consequently, the State is often still responsible for completing the remediation of a site even after an EPA removal action has been performed at a site.

It is our belief that Congress needs to determine definitively whether EPA should retain a role in the remediation of non-NPL sites. While in practicality EPA has little or no role at these sites and as our survey indicated, the States are addressing the large universe of non-NPL sites, the statute still maintains a role for EPA in theory. Although the majority of these sites (typically brownfields sites) will never be placed on the NPL, they are still subject to CERCLA liability even after the site has been cleaned up to State standards. It is our belief that we can no longer afford to foster the illusion that State authorized cleanups may somehow not be adequate to satisfy Federal requirements. The potential for EPA overfilings and for third party lawsuits under CERCLA is causing too many owners of potential Brownfields sites to simply "mothball" the properties. We believe it is imperative that Congress seek to clarify the State-Federal roles and potential liability consequences under the Federal Superfund program. States should be able to release sites from liability once a site has been cleaned up to State standards. In situations which are deemed emergencies and where the State requests assistance, we believe the Federal Government should be able to address the site and if necessary hold the responsible party liable consistent with liability assigned under State cleanup law. Emergency actions should be the only exceptions to such releases from Federal liability.

This is a contentious issue and we understand that others have raised objections to provisions of this nature, but we think there are several reasons why such a change in favor of State finality decisions must eventually follow. First, EPA does not have the ability to compel parties to take remedial actions at sites not listed on the NPL, except for removal actions. Second, the majority of these sites will never be listed on the NPL, therefore, EPA lacks the regulatory authority to spend fund money at these sites to perform the necessary remedial actions. Third, if a State should release a site from State liability, and a situation should develop which warrants Federal attention, the State will act responsibly and contact EPA. All States have standard "reopener" provisions contained in their liability releases which allow activation if, for example, the remedy should fail, and we see little likelihood of a need for Federal intervention in most situations. While it is clear in some emergency situations that EPA should have the ability to enter a site, we believe

the second prong of the condition must also be met, i.e., with State concurrence similar to our recommendation for listing sites on the NPL. We wish to avoid duplication as much as possible and therefore believe that, if a State is capable of addressing the emergency, there is no need to utilize EPA's resources. The States have proven they act responsibly in these situations and it is to the State's advantage to notify EPA when either the State's financial or technical resources are not sufficient to adequately address the problem.

We believe the universe of sites to be addressed by State Cleanup (State Superfund and State Voluntary Cleanup) programs and the sites eligible for releases from Federal liability is the non-NPL universe of sites. It seems only practical to officially exclude proposed and listed NPL sites simply for the fact that much work has already ensued in order to place these sites on the NPL. However, some suggest that the non-NPL universe can be divided into two categories, NPL-caliber and low risk sites. We are the primary regulators for non-NPL sites and we can tell you that there is no clear line that differentiates these sites. Many would suggest the bright line should be 28.5 (as determined by the HRS), but there are two problems with using this arbitrary cutoff. First, 28.5 is the quantitative scoring factor used to determine if a site qualifies for placement on the NPL. However, this figure is based on an arcane hazard ranking system which many EPA and State managers acknowledge is flawed, so much so, that EPA and State managers in the recent GAO study identified only 7.9 percent of the 3036 pre-scored universe of sites for potential listing on the NPL. Second, in order to use the quantitative NPL-caliber designation, States would have to HRS score every site prior to admitting those sites into a voluntary cleanup program; a very wasteful use of valuable resources. Clearly, the pre-scoring of a site as a condition for entering a State Voluntary Cleanup program would be a huge disincentive for marketing a State Voluntary Cleanup program and would not serve to move this large universe of sites to cleanup, nor to facilitate economic redevelopment of brownfields.

While the program has operated for years on a "you know it when you see it" basis in identifying NPL-caliber sites, we consider that bad public policy. Such an intuitive approach should not be acceptable for differentiating State and EPA roles and for providing certainty to the process. If a site is not to be listed or proposed for listing on the NPL, than the State should be free to address the site without EPA interference and the site should be eligible for the same benefits as any other site, such as liability releases.

COST SHARING AT NPL SITES

The current cost share system shifting the future burden of Operation and Maintenance (O&M) costs to States has served only to exacerbate the tension which exists between State Waste Agencies and EPA. Under the status quo the financial incentives for EPA and the States are diametrically opposed when considering final remedies for a site (States desiring more capital intensive remedies and EPA seeking remedies with lower capital costs and higher O&M costs). State Waste Officials believe the State cost share match needs to be set at 10 percent (including in-kind options) at all fund-lead remediation sites.

LIABILITY ISSUES

As State Waste Managers, our principle concern is ensuring the timely and effective cleanup of contaminated sites. We are not legal experts and will simply note that we need an adequate and stable source of funding in order to complete our work. We understand that reforms are needed and that Congress will address issues of fairness and responsibility in weighing this matter. We believe that elected officials have the mandate to make those kinds of decisions, and respectfully refer the Subcommittee to the standing policies of the National Governors Association regarding the balances required in addressing statutory liability change.

BROWNFIELDS

There has been considerable discussion of the advisability of addressing some issues, such as Brownfields cleanups, separately from comprehensive CERCLA reauthorization, especially as that process has proven so difficult to conclude. We have always preferred a comprehensive approach because interactive elements of the Superfund program can be revised to work together and implementation efforts can be consolidated in a timely fashion. However, we recognize that some progress is preferable to none, but only if there is real progress. Frankly, several versions of suggested Brownfields legislation do not resolve problems we consider serious and inhibiting (e.g., the absence of State ability to establish finality of a site), and some contain suggestions we think will actually impede the continued success of our State

cleanup programs. An example of the latter is the view that where Federal grant funds are provided for Brownfields remediation, the State cleanup program must be approved or authorized by the EPA administrator under extensive Federal criteria. No one questions the need for financial accountability of Federal funds provided any recipient, but that is established by reporting and audits. However, the State cleanup programs are empirically successful, and draw their strength from being customized to meet State procedural needs and standards. They achieve fast paced, safe, and effective cleanups and that is how they should be measured. They were never designed to operate alike, and any attempt to force them to fit a one-size-fits-all Federal mold will tie their hands and reduce their effectiveness. We urge the Subcommittee to continue to seek solutions which build on the successes of State cleanup programs, and to avoid statutory restrictions which will impede their future success, should there be movement toward separate Brownfields legislation.

CONCLUSION

In conclusion, ASTSWMO's members are proud of their accomplishments in reducing the number of unaddressed contaminated sites, and hopeful that Congress will find ways to provide them a broader range of statutory tools to use in enhancing their cleanup programs. Our Associations stands ready to assist the Subcommittee as it works through the many complex issues flowing from almost 20 years of Superfund implementation. Thank you for the opportunity to provide this input to your welcome review process.