



ASTSWMO POSITION PAPER Modernizing the Superfund Cleanup Program

INTRODUCTION

Superfund is a very important program that provides a mechanism for cleaning up properties that pose a threat to human health and the environment. As of October 2019, there are 1,333 sites included on the United States Environmental Protection Agency's (EPA) National Priority List (NPL) across the States, Territories and the District of Columbia. These sites are in various stages of the Superfund process. While 424 sites have been deleted, EPA is under more pressure to accelerate cleanups and close sites. There is an opportunity to leverage both State and federal resources in order to accelerate cleanups at Superfund sites.

Periodic review, reassessment and modernization of our statutory and regulatory authorities is a critical process of government to ensure that we continue to provide the desired protection of human health and the environment in an efficient and effective manner as we learn from the past and plan for the future. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and its member agencies from the 50 States, 5 Territories and the District of Columbia (States), routinely work with our partners at the EPA to identify opportunities for improvements in the Superfund Cleanup Program. ASTSWMO believes there are specific areas of the Superfund Program where States could contribute in a larger, more significant role which would make the process more efficient. The following areas have been identified by ASTSWMO membership as priority areas for improving the Superfund Program.

AREAS FOR MODERNIZING

- **Increase State involvement in the Superfund process** - Since the beginning of the Superfund program, States have participated as both support and lead roles. An advantage to having States take on lead agency status includes distributing workload between EPA Regions and States. States tend to be geographically closer to the sites, which can make them more efficiently and effectively positioned to perform certain types of activities.

ASTSWMO's Position and Recommendation: EPA should continue work started by the Superfund Task Force to enhance opportunities for State participation in the Superfund process and best practices for EPA-State coordination. This should include reinforcing consultation expectations in National Contingency Plan (NCP) to ensure EPA regions discuss State preference regarding lead designation [40 CFR § 300.505]. Congress should consider amending CERCLA to authorize interested States to directly implement Superfund program components in lieu of EPA with appropriate EPA oversight and funding. Additionally, EPA should review the Superfund deferral process to allow for upfront proactive discussion on agency lead as well as reducing duplication of effort and effectively using our limited resources.

- **Applicable or Relevant and Appropriate Requirements (ARARs) determinations** - The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) §121 says that State standards that are identified in a timely manner and are more stringent than federal requirements may be considered applicable or relevant and appropriate.

ASTSWMO's Position and Recommendation: CERCLA should be updated to clarify that State's determine State ARARs for a site and State environmental covenant and land use control laws and regulations are ARARs. For more information about ASTSWMO's Position concerning ARARs please see the [February 2018 ARAR Position Paper](#).

- **Allow States additional top-priority selections** – Pursuant to 42 United States Code (U.S.C.) 9605(a)(8)(B), each State may designate a single site as its top-priority to be placed on the NPL, regardless of Hazardous Ranking System (HRS) score. This one top-priority site designation has commonly been referred to as a State's "Silver Bullet." ASTSWMO membership has indicated that there is interest in having additional opportunities to designate a top-priority site for the NPL without using the HRS. It is important to note that making a change in the number of top-priority designations would require an amendment of the NCP and entail Federal rulemaking and public comment. For more information please see the [August 2017 Mechanisms for Placing Sites on the National Priorities List ASTSWMO Paper](#).

ASTSWMO's Position and Recommendation: Authorize States to designate a facility to the NPL every 10 years.

- **Cost credits for required 10% or 50% State cost match of remedial action expenses** – Credits are site-specific expenditures that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-federal funds for remedial action. These

actions must be consistent with the permanent remedy at the site. The credit cannot be for pre-remedial cost, such as sampling or removal actions and these should be allowed. For more information please see the [April 2016 Superfund State Contracts ASTSWMO Paper](#).

ASTSWMO's Position and Recommendation: Grant States credit for the share of costs with respect to a facility listed on the NPL under the NCP for all amounts expended for all site activities including removal. Authorize credit to be given for pre-remedial costs occurred after NPL listing, are approved by EPA, and documented in an agreement between EPA and the State.

- **Public participation requirements** – Pursuant to 42 U.S.C. 9617(d) public participation publications for Proposed Plans and Records of Decision must be at a minimum published in a major local newspaper of general circulation. This is dated and does not reflect the multiple ways Americans receive their news today. In 2015, [EPA updated the NCP](#) to allow several actions other than proposed plan and RODs to be made public through means other than newspapers.

ASTSWMO's Position and Recommendation: Add electronic access to allowable methods to publish public notice in 42 U.S.C. 9617(d).

- **National Contingency Plan (NCP)** – As a part of any effort to modernize the Superfund Cleanup Program, the National Contingency Plan (NCP) should be updated to reflect important lessons-learned from the last 40 years of environmental cleanup experience by States and EPA. The NCP is the “rulebook” that project managers, supervisors, and legal support refer to on a regular basis for guidance and direction in managing cleanups and decision-making, and the foundation that CERCLA cleanup program guidance is based upon. To truly implement change and modernization the NCP should be reviewed and updated and sent for public review and comment.

ASTSWMO's Position and Recommendation: Update the NCP to reflect important lessons-learned from almost 40 years of environmental cleanup experience. It is recommended that this start by working on the issues addressed previously in this position paper.

CONCLUSION

Through continued communication and collaboration as well as legislative and policy changes, these recommendations can be addressed. Continual process improvement is important and ASTSWMO looks forward to continuing to work with EPA to implement improvements to this important environmental cleanup program.

Approved by the ASTSWMO Board of Directors, October 2019.