ASTSWMO POSITION PAPER
RECOMMENDATIONS FOR SUPERFUND CLEANUP PROGRAM IMPROVEMENTS

INTRODUCTION

Superfund is a critical federal program that provides a mechanism for cleaning up properties that pose a threat to human health and the environment. As of January 2025, there are 1,341 sites included on the United States Environmental Protection Agency's (EPA) National Priorities List (NPL) across the States, Territories and the District of Columbia. These sites are in various stages of the Superfund process. While 458 sites have been deleted from the NPL, EPA is under continued pressure to accelerate cleanups and remove sites from the NPL. Leveraging both State and federal resources is an opportunity to achieve this objective at these Superfund sites.

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. Periodic review, reassessment and modernization of our statutory and regulatory authorities is a critical governmental process that ensures continued protection of human health and the environment in an efficient and effective manner, as we learn from the past and plan for the future. By utilizing this type of evaluation, ASTSWMO believes there are aspects of the Superfund Program where States could contribute in a larger, more significant manner that would increase efficiency. The following areas have been identified by ASTSWMO membership as priority topics for improving the Superfund Program.

AREAS FOR RECOMMENDED IMPROVEMENTS

- **Increase State involvement in the Superfund process** - Since the beginning of the Superfund Program, States have participated in 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.

EPA should continue work started by the ASTSWMO CERCLA and Brownfields Subcommittee (CaBS) to enhance opportunities for State participation in the Superfund process and best practices for EPA-State coordination. This should include reinforcing consultation expectations in the National Contingency Plan (NCP) to ensure EPA Regions discuss State preference regarding lead designation [40 CFR § 300.505]. Congress should consider amending the Comprehensive Environmental Response, Compensation, and Liability Act (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** - 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.

  CERCLA should be updated to clarify that States 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 2024 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. This could be accomplished by authorizing States to designate a facility to the NPL every 10 years in addition to their "Silver Bullet" site. It would provide increased funding and resources, opportunities to clean up sites that do not score above 28.5 on the HRS, and faster response time for site cleanup. 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.

- **Cost credits for required 10% or 50% State cost match of remedial action expenses** – States should be granted credit for their share of all costs associated with actions at a facility listed on the NPL under the NCP. Currently credits are only provided for site-specific expenditures that EPA determines to be reasonable, documented, direct, and out-of-pocket, using non-federal funds, for remedial actions consistent with the selected remedy. The credit is not provided for pre-remedial costs such as sampling or removal actions. Those pre-remedial costs expended after NPL listing should be approved by EPA

as eligible for credits and documented in an agreement between EPA and the State. For more information please see the April 2016 Superfund State Contracts ASTSWMO Paper.

- **Public participation requirements** – Pursuant to 42 U.S.C. 9617(d), public participation publications for Proposed Plans and Records of Decisions (RODs) 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 Plans and RODs to be made public through means other than newspapers. EPA should add electronic access as an allowable method for all types of public participation notices.

- **National Contingency Plan (NCP)** –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 improvement, the NCP should be reviewed and updated and sent for public review and comment.

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, April 17, 2025