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Committee on Environment
and Public Works

Washington, D.C.

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IMPROVING FUTURE MANAGEMENT OF THE SUPERFUND PROGRAM

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The committee met, pursuant to notice, at 10:03 a.m. in room 406, Dirksen Senate Office Building, the Honorable Shelley Moore Capito [chairman of the committee] presiding.

Present: Senators Capito, Whitehouse, Lummis, Boozman, Husted, Merkley, Kelly, Schiff, Blunt Rochester .

STATEMENT OF THE HONORABLE SHELLEY MOORE CAPITO, A UNITED STATES
SENATOR FROM THE STATE OF WEST VIRGINIA

Senator Capito. Thank you all for being patient with us. We are starting this hearing; I note that there are several other committees that have votes going on, one of which is one of my committees, which is Commerce. So I am going to make my opening statement and go over there quickly. Senator Whitehouse has very kindly stepped up to the plate here to move the hearing forward.

So, good morning. And I am going to be in a good mood all day, all day. Hold me to that.

Today we will discuss challenges facing the EPA's Superfund program and solutions to ensure it can live up to its full potential. Since I have become chairman, I have stressed that EPA must refocus the agency's work on the core environmental missions to deliver the cleanups and environmental solutions that most benefit the environment and America's health and welfare.

The Superfund program, as enacted, is one of the best examples of the EPA executing that core mission. Cleaning up our Nation's most contaminated sites directly improves public health and can revitalize struggling communities. I have certainly seen that in my own State.

Congress established Superfund in 1980 in response to

several high profile environmental disasters. The law was designed to promptly clean up heavily contaminated sites and to make polluters responsible for the cleanup. These are important goals, but the EPA's management of the Superfund program has not delivered as intended. Communities now expect the Superfund cleanup to take more than a decade, I have already heard that from our witnesses in our informal conversations. That prolonged timeline sends conflicting messages to communities with a site nearby. You live near one of the most hazardous places in the Country, but EPA will let it sit there for years before they allow it to be fully cleaned up.

Despite the lengthy cleanup timeline, the Superfund program has achieved some critical environmental and public health victories and restored thousands of contaminated sites across the Country. The reason for delays that robbed Superfund of its full potential is that EPA's implementation of the law prioritizes process over results.

The complexity of the law has made it one of the most difficult environmental programs to administer. In practice, the main winners in managing Superfund cleanups are the lawyers who profit from endless litigation while communities wait for promised relief.

To manage a law this complex, the EPA has built an entangled web of bureaucracy, workgroups, task forces and

committees that too often slow progress instead of delivering results. Cleaning up Superfund sites is naturally a costly endeavor.

But the problems with Superfund cannot be blamed on funding alone. To better help communities get the most out of limited taxpayer funding, Congress and the EPA must identify efficiencies to accelerate the cleanups. This is particularly important when considering the overall costs of Superfund cleanups.

Superfund price tag isn't just about the complexity of environmental cleanup. This is what I call the Superfund premium, the concept where the same environmental cleanup becomes more expensive and time consuming under Superfund compared to a State-led or a voluntary cleanup program.

Whether managed under Superfund authority or through a State program, remediation is likely to involve the same core work, removing contaminated soil, treating groundwater, and restoring the land. Yet because of the Superfund premium, we often see costs just balloon and timelines stretch once a site is listed. It is not because the environmental standards are higher, but rather because the program's process has replaced the law's cleanup mission.

The program's complex bureaucracy generates enormous transaction costs that have nothing to do with actual

environmental cleanup. Instead of removing contaminants, limited time and financial resources are squandered on endless meetings, redundant studies, and excessive overhead costs completely unrelated to remediation. There is no shortage of responsible parties that are ready and willing to remediate the site. Even good Samaritans, well-intentioned individuals and organizations, are often deterred from cleaning up sites because of liability risks and financial barriers.

Our laws should encourage, not prevent, volunteer efforts to address legacy pollution. Accelerating the pace of Superfund cleanups does not mean cutting corners or sacrificing health protections. It means defining an end goal with a clear plan that gets it to a safe, productive end state as efficiently as possible.

The ensuing cleanup is driven by that goal, to the benefit of communities and the environment. Right now, the priority is enforcement first, cleanup second, and leaving communities to wait far too long. That needs to change.

I look forward to hearing from today's expert panel on how to improve the Superfund program's efficiency and accountability

I now recognize Senator Whitehouse for his opening statement.

[The prepared statement of Senator Capito follows:]

STATEMENT OF THE HONORABLE SHELDON WHITEHOUSE, A UNITED STATES
SENATOR FROM THE STATE OF RHODE ISLAND

Senator Whitehouse. [Presiding.] Let me start by thanking Chair Capito for this hearing, and our witnesses for appearing. We are here today to talk about improving the EPA's Superfund program, which is one of the best tools for holding polluters accountable for contamination at our Country's most polluted sites.

These sites exist in every State in our Nation. They are complex. Cleanups can be laborious and long to complete. Rhode Island has a long history with this program. Senator John Chaffee, former chairman of this committee, authored the Superfund program in 1980. His son and my predecessor, Lincoln Chaffee, chaired the Superfund subcommittee and championed bipartisan legislation to support the program, including authorization of the Brownfields program.

I am happy here today to continue that support and address bottlenecks to the cleanup process. However, speed must not come at the cost of efficacy. Scientists, engineers and project managers ensure that cleanups are done right. Investigators and lawyers identify responsible parties and hold them accountable. EPA employees in these roles often have specialized experience with specific sites and communities, institutional knowledge and relationships that, once lost, are hard to rebuild.

Budget, staff, and speed are interrelated. As we will hear from Mr. Gomez, when annual appropriations declined from roughly \$2 billion to \$1.1 billion, spending on remediation fell, unsurprisingly, by roughly half.

The average project completion time increased from 2.6 to 4 years. And significant delays affected one-third of long-term projects. When budgets are cut, work often slows down.

At his confirmation hearing before this committee, Administrator Zeldin appeared before us and committed to following the law. But slashing 65 percent of EPA's appropriated budget and pushing out agency staff until there is no one left to execute the law violates those promises that Administrator Zeldin made. And it will do immeasurable damage to American families.

He said he would defer to the professional scientists at EPA, then turned around and plans to remove EPA's independent scientific research office. Without such expertise, how do we make sure our Country's most polluted sites are safe?

For Superfund, this mess will delay cleanups and prolong communities' exposure to harmful pollution. Let's be clear: the winners from slashing EPA's budget and staffing and kneecapping the Superfund program are the planet's biggest polluters. They are behind this.

Administrator Zeldin sat in this room and said climate

change was real and must be addressed with urgency. Now he mockingly refers to the climate change "religion" and applauds himself for "driving a dagger" straight into its heart.

But climate change will compromise the safety of Superfund sites. According to GAO, 60 percent of EPA's Superfund sites are located in areas prone to flooding, storm surge and/or wildfire. EPA has therefore been integrating climate change resilience into its Superfund efforts.

We need to plan for severe storms occurring more frequently, coastal communities flooding more severely, and wildfires scorching areas they haven't before. Superfund staff looked ahead at all that when conducting five-year reviews to see what amelioration or containment efforts need adjusting.

To be good stewards of taxpayer dollars, we must ensure that climate risk remains part of the Superfund site evaluation process. Otherwise, severe weather events will wreak havoc on sites that were previously considered safe.

There are changes that can be made to improve the Superfund program, and I am glad we are here today to discuss them. However, if the Trump-Musk administration slash and burn approach continues, it won't matter what improvements we propose here today.

[The prepared statement of Senator Whitehouse follows:]

Senator Whitehouse. [Presiding.] And with that, let me turn to our witnesses for their opening remarks. Our first witness is Mr. Robert Fox, Senior Partner at the law firm Manko Gold Katcher Fox. He is a national Superfund expert known for litigating high profile cases like Gowanus Canal, and advising on CERCLA compliance liability and brownfields redevelopment.

Mr. Fox has previously testified before this committee on the Superfund program. Welcome back to the committee, Mr. Fox, and I recognize you for your opening statement. You have five minutes. Your full statement will be made a matter of record.

STATEMENT OF ROBERT D. FOX, ESQUIRE, SENIOR PARTNER, MANKO GOLD
KATCHER FOX, LLP

Mr. Fox. Thank you. Chairman Capito, Ranking Member Whitehouse and members of the Environment and Public Works Committee, thank you for the opportunity to testify.

My name is Robert Fox. After graduating from Harvard Law School, I have practiced environmental law for 40 years. I have taught Superfund as an adjunct professor for 27 years at Penn Carey Law School.

My clients on Superfund matters range across all industry sectors and municipalities, including the City of New York. My testimony identifies common sense approaches to achieve Superfund's primary goals. For the past 45 years, courts and Superfund's legislative history make clear that Superfund has two primary goals. First, incentivizing the prompt, voluntary cleanup of the Nation's most contaminated sites; and second, ensuring that polluters pay for those cleanups.

Undoubtedly, there have been significant accomplishments under Superfund. It is equally clear that the Superfund program has strayed from meeting those goals. However, solutions exist within Superfund's existing statutory language, its existing policies and with minor regulatory adjustments to realign Superfund with its primary goals.

First, let's start with promptness. Superfund cleanups

take too long and that increases costs. I am aware of Superfund sites listed on the National Priorities List in the early 2000s with no remedy selected to date. I am also aware of Superfund sites where private parties submitted remedial investigation reports to EPA and did not receive comments for years and years.

Here is a proposed solution. EPA requires that private parties adhere to strict deadlines for submitting required cleanup reports, with penalties for non-compliance. Yet, EPA has no timeframe for its own report reviews.

Many States administered cleanup programs that for years experienced similar cleanup delays, but then adopted mandatory agency review times. That cleared the backlog. EPA should adopt a policy to do the same.

Second, incentivizing private parties to perform the cleanup and making the polluter pay are two sides of the same coin. To create proper incentives for private parties to perform cleanups, their share of cleanup costs must be fair. Otherwise, you don't get polluter pays, you get polluter overpays.

EPA has relied upon joint and several liability under Superfund to require the same deep pocketed parties at site after site to pay for 100 percent of the cleanup costs, leaving those parties to pursue tens and often hundreds of other responsible parties through costly and time consuming

litigation. That approach is both unfair and inefficient and dissuades private parties from coming forward to perform cleanups.

The solutions to this problem already exist within the Superfund statute and EPA's policies. EPA just has to use them. For example, section 122(b)(1) of Superfund describes what is known as "mixed funding" for cleanups. This takes the form of either EPA pre-authorizing the Superfund to reimburse parties performing the cleanup for a portion of the costs not attributable to those parties, or EPA agreeing to perform a portion of the cleanup itself, with the remainder performed by the private parties.

In either case, EPA pursues other parties to recover EPA's costs. That saves tremendous transaction costs for the parties performing the cleanup.

EPA acknowledges that mixed funding promotes expeditious cleanups rather than protracted litigation. Despite this clear statutory authority, the Superfund program rarely uses mixed funding. That should change.

Similarly, EPA has an "orphan share" policy. Pursuant to this policy, EPA can settle with private parties who desire to perform the cleanup, and compromise a portion of EPA's past and future costs attributable to liable parties who are either insolvent or defunct.

EPA's orphan share policy expressly states that it aims to provide incentives to voluntarily perform cleanups and to keep transaction costs low. Once again, the Superfund program uses this policy too sparingly.

And by the policy's own terms, EPA's compromise is limited to the lesser of 25 percent of the cleanup costs or the total amount of EPA's unreimbursed costs. The statute contains no such limitation on an orphan share or past cost forgiveness.

One final suggestion. When private parties perform a cleanup, EPA charges those parties with EPA's oversight costs, a term not defined in the statute. Oversight costs include costs for EPA's contractors.

But oversight costs also include costs attributable to the time spent by EPA's personnel, with no limitation on how many people work on a matter, or how many hours they spend. In other words, private parties are required to reimburse EPA for work performed by internal EPA employees on that matter.

Then, on top of these direct costs, EPA also pursues reimbursement of an "indirect cost" premium for its overhead expenses throughout a regional office, including rent, utilities, computers, et cetera. This indirect cost premium can sometimes exceed 100 percent. Personnel costs and a premium for overhead are not appropriately reimbursable, foster inefficiency and create a disincentive for parties to perform a cleanup.

In conclusion, the Superfund program has proven accomplishments. But going forward, the program needs these common sense solutions to ensure that the program returns to meeting its primary goals.

[The prepared statement of Mr. Fox follows:]

Senator Whitehouse. Our next witness is Steven Radel, President of Industrial Development Advantage. Mr. Radel has extensive experience in managing successful hazardous waste cleanups, including Superfund sites. His company specializes in acquiring contaminated properties and remediating them so they can be safely redeveloped.

I will now recognize Mr. Radel for his opening statement.

STATEMENT OF STEVEN B. RADEL, PRESIDENT, INDUSTRIAL DEVELOPMENT
ADVANTAGE, LLC

Mr. Radel. Chairman Capito, Ranking Member Whitehouse and members of the Environment and Public Works Committee, thank you for the opportunity to testify today.

My name is Steve Radel. By way of background, I graduated from Allegheny College with a degree in Environmental Studies, and while working earned a master's in business administration from the University of Pittsburgh and a law degree from Duquesne University.

I have worked for over 40 years in the environmental industry as an environmental consultant, a corporate environmental manager, and a founder and principal in Industrial Development Advantage, an environmental liability assumption company. Industrial Development Advantage acquires contaminated sites and assumes the underlying environmental liabilities, which we then resolve through remediation and redevelopment.

Our transactions typically involve environmental insurance that includes pollution legal liability insurance and excess of indemnity coverage that can often be obtained by IDA for the benefit of the seller. By way of example, IDA acquired the East Chicago, Indiana Superfund site in 2022. IDA negotiated a liability assumption agreement with the participating PRPs and a prospective purchaser agreement with the EPA to finish the

operable unit soil remediation.

Our focus at this site is on remediation, repositioning the site and integrating development design with remediation to ensure the work is performed in a manner that is protective of human health and the environment and also promotes productive reuse of the site.

East Chicago is a prime example of parties motivated to complete a transaction to accelerate the cleanup process, including the participating PRPs, EPA Region 5, and the State and local governments. I will note that the EPA Region 5 folks worked very hard to help make this happen.

There are a couple of takeaways from this example that reinforce my hope and belief that it is absolutely possible to redevelop a Superfund site quickly, efficiently and protectively if the right motivations are in place.

First, without question, the default Superfund process is cumbersome and prioritizes form and process over the ultimate goal of remediating and returning a contaminated site to productive reuse. When we approach a site we use the general approach, what is the last chapter of this story, and we work back from that.

IDA and our consultants can look at any contaminated site and figure out what the likely remediation approach should be and we look at it in the context of the end use or best

development option for that property, the last chapter. There may be some data gaps to complete a conceptual site model of the environmental conditions at the site, but for the most part we can cost effectively figure out the best remedial approach once we identify that last chapter or reuse of the site.

This can be done without the need to complete a number of reports and plans that are typically required by the CERCLA process. In short, we can take a site from a streamlined but still comprehensive remedial investigation straight to remedial action without the unnecessary time and expense of feasibility studies or alternatives evaluations that are irrelevant to the final chapter.

Our focus is on completing a risk-based cleanup based on the planned development by identifying potential exposure pathways and making sure they are eliminated as part of the remediation while also integrating development considerations into the overall remedial design. This significantly reduces the timeline to redevelopment.

Second, the basic tools needed to make the CERCLA process more efficient are already being widely used in other parts of the environmental industry, for example, voluntary cleanup programs that encourage the cleanup and reuse of sites with prospective purchaser agreements, covenants not to sue and appropriate institutional controls are already in place.

Third, private parties like IDA can be incentivized to bid on and acquire contaminated sites for the expected costs of remediation with assurances like the tools mentioned a moment ago to ensure that we do not inadvertently become PRPs, while at the same time holding us to our commitment to complete the remediation on schedule and on budget. These deals also include environmental insurance, which is a motivation for PRPs as well, or can be.

Fourth, implementing our approach to more timely and efficient cleanups can be facilitated and accelerated by empowering more State-led CERCLA cleanups that place incentives on more of a voluntary program risk-based approach that gets to the final chapter efficiently, and by encouraging EPA to provide comfort letters and "ready for use" determinations on the front end of cleanups subject to approved remedy implementation.

We note that States already have authority to lead Superfund cleanups through cooperative agreements but in our view or experience, few States have done so because they lack clear direction from EPA.

Fifth, Superfund liens present difficult challenges for Superfund cleanups, especially for environmental liability transfer deals. These liens basically discourage innocent parties from stepping in to facilitate cleanup. EPA already has the tools to address this challenge by negotiating the release

or settlement of liens in exchange for completion of an agreed-upon cleanup plan. Lien waivers do not affect EPA's ability to go after responsible parties separately, but do help clear up title for remediation and redevelopment. That is an excellent tool that can be used.

Finally, making the de-listing process more efficient can help achieve the last chapter more quickly and efficiently. A prolonged delisting can delay investment and development. Presently there are only two times a year when parties can request a delisting, and the process is extremely burdensome. We view this as an opportunity for reform.

In summary, in my opinion, the CERCLA program can be improved to incentivize the cleanup and redevelopment of sites avoiding unnecessary transaction costs and costly remediation approaches. This will allow Superfund dollars to be used on more sites and it will significantly reduce the time frame to clean up a site and make it available again for development, shortening the timeline by years.

Communities with these black hole sites are significantly and negatively impacted by the prolonged lack of progress, which often has a negative ripple effect throughout the larger community. This is a real negative opportunity cost in these communities.

A clear path to success requires a "last chapter" focused,

risk-based cleanup design to address the underlying contamination and restore sites to their post-remediation condition and use. This will speed up the time to get these sites back into productive use and reduce the transactional costs associated with the traditional Superfund process.

Thank you.

[The prepared statement of Mr. Radel follows:]

Senator Whitehouse. Thank you, Mr. Radel.

And our final witness this morning is J. Alfredo Gomez, Director in the Natural Resources and Environment Team at the U.S. Government Accountability Office, GAO. Mr. Gomez leads the GAO's work on environmental protection, including hazardous waste cleanups, toxic chemicals and agency management.

Welcome. I will now recognize Mr. Gomez for his opening statement.

STATEMENT OF J. ALFREDO GOMEZ, DIRECTOR, NATURAL RESOURCES AND
ENVIRONMENT TEAM, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. Gomez. Chairman Capito, Ranking Member Whitehouse, and members of the committee, good morning. Thank you for the opportunity to discuss GAO's past work on the Superfund program.

The Environmental Protection Agency administers the Superfund program to clean up sites contaminated by hazardous substances. Some of the Nation's most seriously contaminated sites are listed on the National Priorities List. Superfund sites can include mining sites, landfills, and former manufacturing sites. As has been noted already, cleanups of these sites are often expensive and lengthy.

My statement today is based on several issued reports as well as on updated appropriations data. Specifically, my statement discusses trends in Superfund program appropriations, numbers of NPL sites and reasons for changes, and factors identified as affecting the timeliness of NLP site cleanups.

Appropriations for the Superfund program have generally declined since Fiscal Year 1999. In 1999, the program received about \$2.6 billion. In Fiscal Year 2024, it received \$537 million. Since the Infrastructure Investment and Jobs Act and the Inflation Reduction Act recently reinstated some Superfund taxes, an additional \$1.44 billion was also made available to the program in Fiscal Year 2024.

The Superfund program also receives supplemental appropriations in some years. For example, in 2009, the Recovery Act provided \$600 million, and the IIJA provided an additional \$3.5 billion in Fiscal Year 2022.

Regarding full-time equivalents, the Superfund program had 2,585 employees in 2023, a decrease of 274 positions over the prior 10 years.

Regarding the number of NPL sites, as of March of this year, there were 1,340 active sites, 459 sites that had been deleted from the list. When we last reviewed the NPL site cleanups, we found that the number of non-Federal sites added to and deleted from the NPL generally declined from 1999 through 2013.

According to EPA, there are several reasons for the decline in the number of non-Federal sites added to the NPL. For example, some States may have been managing the cleanup of sites with their own State programs, especially if a potentially responsible party was identified to pay for the cleanup.

The decline in the number of non-Federal sites deleted from the NPL was because of the decline in annual appropriations and the fact that sites remaining on the NPL were more complex and took more time and money to clean up.

From our prior work, we have identified many factors that can affect EPA's ability to clean up NPL sites in a timely

manner. One is that some sites are more technically complex to clean up, because of site characteristics. For example, complicating factors at sediment sites include their large size, the location, tidal influences, multiple sources of contamination, and difficulties related to sampling and modeling at the site.

Another is challenges with stakeholder involvement, which can take EPA time and resources to address. For example, stakeholders such as surrounding communities, local government, and industry may have different opinions and competing interests. Their levels of knowledge of the Superfund program may vary.

A third is decreases in agency resources can cause cleanup delays. For example, shortages in EPA regional staffing levels and a decline in State environmental agency personnel can cause delays throughout the Superfund program from site assessments to completion of remedial action projects.

In summary, EPA's Superfund program has generally faced declining annual appropriations with influxes of supplemental appropriations in some years. In addition, the Superfund taxes are now providing additional funding.

Our previous work shows that the numbers of new sites added to and removed from the NPL have generally declined from Fiscal Year 1999 through Fiscal Year 2013. There are several factors

that can affect the timeliness of NPL site cleanups.

GAO has ongoing work for the House Majority that is reviewing funding and expenditures of the program, as well as planned work to examine NPL site cleanup status.

Chairman Capito, Ranking Member Whitehouse, this completes my statement. I would be pleased to respond to questions.

[The prepared statement of Mr. Gomez follows:]

Senator Whitehouse. Thanks very much.

I guess I will begin, until the Chair can return. Let me start with you, Mr. Gomez. Is there any doubt in your mind that flooding of a Superfund site, whether from storm surge or riparian flooding, or a wildfire burning through a Superfund site, can create contamination issues and if not properly managed, can interfere with the remediation process?

Mr. Gomez. Certainly, there is no doubt. In our past work where we looked at this question, of the Superfund sites, and then the potential effects from flooding, wildfires, storm surge, there are many sites across the Country that are located in places where these things are happening.

In fact, we traveled to several sites. We visited a site in Houston, Texas, the San Jacinto River site, where because of unprecedented rainfall from Hurricane Harvey, it actually dispersed the contamination on the river. So it is happening at sites across the Country. I think the purpose of our work was to show how many sites are located in places where these things are happening. And it is important, then, for EPA to ensure that the remedy that is in place is going to be protective.

Senator Whitehouse. I would argue that recent experience that you described in Texas, also in Florida, shows that this isn't a potential, it is actually happening, and we have to be prepared. I would add my own editorial comment that the

flagrant errors in FEMA flood mapping create an additional burden for people managing Superfund sites, because they have to figure out what the real flooding risk is, not what FEMA's phony baloney flooding risk is based on incompetent or inaccurate mapping.

I have a specific question, because we have a Bradford Dye and Finishing site on the Pawcatuck River in Rhode Island. It is an American wild and scenic river. And there is significant risk of flooding and release of contamination there.

While we are going through the process of remediation, there is significant danger of contamination out of lagoons that have been prepared as sort of a catchment area.

What are the interim measures during the period of a remediation that EPA could require for a site like this, while the listing package is being prepared?

Mr. Gomez. In this case, EPA can explore other options. It sounds like this is contaminated sediment, which really complicates in terms of what the agency can do, just because of the various things that are happening in place. In other places, perhaps you could do a removal, where you could do a removal, perhaps of the contaminations that are present, as the continuing work takes place to figure out how you are going to remediate it.

But really, I think in those cases, it is important for EPA

to have the expertise, to be able to figure out what are the steps that they can take in that very site-specific place, and to make sure that it has the expertise, and if it doesn't, that it can go outside to get it.

Senator Whitehouse. Mr. Radel, another site-specific question here. In the Navy property in Newport, Rhode Island, there is an abandoned hospital, which is on extremely valuable property, could be put to valuable reuse. It is within the boundaries of a Superfund site, although it appears to have itself very minor contamination.

In your experience, what would be the appropriate vehicles for trying to assist with the development and reuse of that hospital, even though it is within the Superfund boundary, if it can be shown that the contamination specific to the property is minor?

Mr. Radel. In my experience, if we could separate that hospital location from the overall Superfund site through some kind of segregation, modifying the parcel lots, I think that a competitive bid process for folks to come in and evaluate it, I think the market would take care of that one.

My suspicion would be, there is probably asbestos, ACM contamination in the building.

Senator Whitehouse. In the building itself, yes.

Mr. Radel. That could be pretty significant. So I think

an RFP for folks to come in and look, first an asbestos evaluation, and then bring folks in to look at it, and kind of get a sense for who would put an investment in to take on that risk would be worthwhile. Because I could see that being a motivating factor for folks to get involved in cleaning that up.

Senator Whitehouse. Waterfront property, no less.

Mr. Fox. EPA does have a policy called redefinition of Superfund sites, where you can go through a process and redefine the site boundaries and segregate that property.

Senator Capito. [Presiding.] I am going to go to Senator Husted from Ohio, since I am just getting back into the committee.

Senator Husted. Thank you, Chairwoman Capito. Welcome, thanks for joining us today.

Ohio is a State that has traditionally been part of our Nation's manufacturing heritage. Over time, it has had the legacy of some of the challenges of those industrial sites. We have had 38 Superfund sites, 31 of them have been addressed. But we have some that have been pending since 1993, one that has been pending since 1993. Many of these that have been pending over 15 years are over major aquifers, which citizens in our communities get their water.

Whether it be storm or hurricane or just the constant fact that we get rain a lot, and there is drainage and there is all

kinds of things that happen to these sites over time and how it can affect people's quality of life and health, what can we do to speed this up? I am interested in learning from all of you today what action can we take, what action can the government take, what action can States take? I want your best thoughts on how a State like Ohio can do a better job on cleaning up these last seven that are hanging out there.

We will start with you, Mr. Fox.

Mr. Fox. Sure. First of all, I worked on the Painesville Superfund site, so I am aware of what is going on in Ohio.

I really think that the Superfund remedy selection process is completely broken. I will tell you why. I have done work on the Superfund cleanups, RCRA cleanups, State voluntary cleanups, and there are really three issues that really go to what Mr. Radel said. It is who is exposed, meaning who are the receptors, what contaminants are they exposed to, and how do we cut off those exposure pathways. Those are the three things.

We have gotten bogged down in making the perfect the enemy of the good. And the good is for the remedy to be protective. It is always that, to make the remedy protective. But the process is so burdensome and cumbersome, and takes so long and is so costly that we don't serve the cleanup -

Senator Husted. Is that a law or a regulator problem?

Mr. Fox. That is the way that the National Contingency

Plan, which is the process for selecting the remedy, is actually implemented. It is not the law; it is the way it is being implemented.

And we can't have these be a science project. We want them to be technically sound. That is everybody's goal. But you can't have a process where you don't get a remedy selected, as you said, for 20 years. So that has to change.

Also, just to give you one example of this, I mentioned I worked on the Gowanus Canal, when a remedy was selected and they looked at the cost of implementing two CSO tanks, they thought that the remedy for that was going to cost \$77 million for the City of New York. The current estimate for that is over \$2 billion.

So that has to change, too. A realistic cost of what the remedy is to achieve the cleanup goals has to be incorporated into this process.

Senator Husted. Mr. Radel?

Mr. Radel. I think Robert hit the key points. We have talked about them in our summaries.

I would say, not knowing anything about these seven sites, but the fact that they have been looked at and in the Superfund process for 20-plus years. My recommendation would be bring in a new team and audit all seven and just see where they are and how we can get to, I will use a football analogy, how we can get

to the end zone. There has to be so much data on these sites that you can almost come up with what are the hurdles here, what are we waiting on.

I think sometimes there are issues on the community side where maybe there is hesitancy to move things forward. But the flip side of that is the community has been waiting for 20-plus years for something to happen, so that is why they are upset, and who can blame them.

So I think a fresh set of eyes to look and audit these projects, and hopefully could clear the way that this isn't a 30-year project, as Rob said. Let's get to the end chapter, let's get to that end zone and let's look at it.

My inclination would be that there is so much data out there that if there are some data gaps that have to be completed, they are minor and there are things that should be able to done in relatively short order, just in my opinion, just because of the fact that these sites have been ping-ponged around for 30 some years. I think a new set of eyes would help audit that process.

Senator Husted. Mr. Gomez?

Mr. Gomez. Senator, I would say, because it is at the EPA regions where the work is taking place, so that you want to make sure that for Ohio, and Region Five, that they have the people they need to do the work. So I do agree that the remedy

selection process takes a long time. It takes a long time sometimes to list sites on the NPL but then also to get them cleaned up.

But you want to make sure that you have the staff, the regional staff who are doing the work, like the remedial project manager, for example, for each of those sites.

Senator Husted. Thank you, Chairman Capito.

Senator Capito. Senator Merkley.

Senator Merkley. Thank you, Madam Chairman.

Back when I was first elected to the Senate, Congressman Blumenauer took me out on the Willamette River for a 10-mile stretch, Portland Harbor Superfund site. He said, this has been going on for 10 years. This has to be resolved before I retire.

Well, he retired last January, and I have watched this with enormous frustration. Essentially, the project involves testing the soils along this 10-mile stretch, deciding what to excavate, what to cap, and then doing that, doing those two things, and what to leave to natural erosion, the natural process.

So finally, 17 years after it was listed, there was a record of decision about what to do. Still basically nothing has happened for cleanup. And it appears to me that the process is stalled, waiting for resolution about who among the potentially responsible partners will pay what, which means all kinds of lawyering, lawyers being hired every which direction,

all sorts of subgroups being formed to challenge the EPA's decision in court.

I think it has gone now through three rounds of testing the river, because every seven or eight years, it is like, oh, well, maybe the river has changed, maybe we need to reexamine where the contaminants are.

How do we stop this eternal process of planning and actually do the damned cleanup? Do we need to dive into the cleanup after the record of decision and not wait for the potentially responsible partners to sort out who will pay for it? How do we avoid this, now that we are 25 years into this project? I think this is emblematic of what has happened to many Superfund sites.

Whoever feels like they have the best insight on how to fix this.

Mr. Fox. I am involved in a lot of that litigation that you talked about. So I will speak against interest here. But that should never, those transaction costs should never slow down the cleanup.

EPA has many tools, I mentioned a couple, but they have other enforcement tools to bring the parties forward to do the work. They had to create the incentives for those parties to do it, so that you can't go to the same companies, deep-pocketed companies, every time and say, you have to pay 100 percent of

the cost, and you figure out how to sue the other 100 parties and spend 10 years in litigation doing that. That is inefficient,.

So I agree with you, I know the Portland Harbor site. Contaminated sediment sites are more complex than your typical site. But there are examples where there have been remedies selected in two or three years and the work started and partially completed.

So that remedy selection process is the obstacle, it is not private parties suing. That can happen separately, completely separately from the actual remedy selection and the cleanup.

Senator Merkley. So the remedy in this case was, the record of decision was made. Should the Federal Government be paying for the work until the responsible, potentially responsible partners sort out who pays for it?

Mr. Fox. There are many options that they have. One is they could do the work themselves and seek to recover it later. Two, they could have the private parties come forward and do that. But in order to incentivize the private parties to do that, those private parties want to know that they are not going to be in years and years of litigation to recover.

If there are 100 parties at the site, and the Federal Government says, you four do it, and then spend the rest of your time going against those other 96, that is inefficient.

Senator Merkley. Okay. Well, it is massively complex, and I have watched as personnel have changed in terms of trying to drive the process forward. I think there are probably several dozen very well-intentioned employees of EPA who have burned out over the process of trying to drive this forward in the context of the lawsuits and resistance and reexamining.

I would like to see the work done and get on with other challenges as opposed to spending endless years and endless amounts of money planning, replanning, replanning, trying to figure this out. If it requires major changes in how the law is designed, I want to understand those and see if we can make this process work more effectively.

I am extremely concerned now about the cuts to EPA's staff and how that may reverberate in terms of people continuing to drive the process forward. My whole impression has been that the potentially responsible parties understand every strategy for delay and are intent on pursuing those. Because they don't want to pay out, and this is going to be a billion dollar cleanup. They don't want to pay for a billion dollar cleanup.

So they have been very effective at working at that angle and having EPA competent staff are essential to keep the project moving forward. I am afraid with reductions in those staff we may see the problem just get worse.

Senator Capito. Thank you.

I would like to, we are hearing a lot about what is driving the costs. I talked about the Superfund premium. I think from the testimony we may not have the same name for it, but it is falling under the same umbrella of what I was talking about.

Let me just kind of dig deeper on this remediation plan holdup, Mr. Fox, that you have talked about. Is it a matter of the best strategy to clean up a particular site? Is it arguing over the best way to do it? We have heard it is not really arguing over who is going to pay for it. Or is that the holdup? Or is it, the science has not been done? I don't know. Point to one or two or three things in this process that we could change that would make this go faster.

Mr. Fox. First of all, I want to say I don't think the holdup is who is responsible for it. That is not the holdup in my mind.

Senator Capito. Okay.

Mr. Fox. I am going to echo what Mr. Radel said, and that is, there are very known ways to evaluate what the risk is at the site, and how to clean them up. Some sites are more complicated than others, but those general principles that I mentioned about knowing who is exposed, knowing what they are exposed to, and eliminating those pathways. I don't want to use the wrong term, but it is not rocket science. We have been doing this for a long time.

What happens in the process is so cumbersome, the reports, and back and forth on scientific stuff. It is not a science project where you have to study every molecule. You can get there much faster, get a remedy selected.

And by the way, Superfund contains a failsafe. Because the statute requires that every five years, the remedy that is selected and implemented is reviewed to see whether it is protective of the environment. So let's get it done through a much more streamlined remedy selection process. That is the major holdup as I see it.

Senator Capito. Mr. Radel, I am going to ask you, I am assuming that you have done cleanups for Superfund sites and cleanups for private or State level cleanups.

Mr. Radel. Correct.

Senator Capito. Okay. So I want to contrast those. When you do a cleanup, say, for a State or maybe for a private entity and you don't have this cumbersome process, would you agree with Mr. Fox that some of the things that are thrown into the Superfund process -- so how does that work in a different, when you are doing it for the State or for a private entity? You mentioned a site in West Virginia that is a Superfund site you are getting ready to do, the McElroy Mine, is that correct?

Mr. Radel. That is not a Superfund site, but I have a better example. The site we closed on in 2022 in Indiana was a

Superfund site. If we had done that cleanup under the voluntary program of Indiana versus how we did it under the Superfund program, just my consulting costs alone and to some extent my legal cost probably two times more doing it on the Superfund site than if we were doing that same work under a voluntary program.

As Rob said, it is almost like when you have your little kid anxious to go out and play, when we have a site, we want to clean it up, we want to get started with a remedial investigation and get to the RA. And Superfund, you have to stop, you have to do your QAPP, you have so many extra plans that you have to do.

A QAPP, by way of example, Quality Assurance Project Plan, where you go through basically a really thorough analysis of the laboratories that you are going to use, the laboratory that you are going to use to test the groundwater, the dirt, and things. And it is a very detailed process, it is an expensive process, there are smart people involved.

But we are using EPA certified labs --

Senator Capito. So they're already certified?

Mr. Radel. We are already using an EPA certified lab. But I have to do this extra level of detail to satisfy the Superfund requirements. That is one small example.

But it just compounds, it compounds. Instead of getting

focused on what are the issues, how do we deal with them and how do we clean them up to be protective of human health and environment and then integrated development, we are still in this process of this plan, that plan, this plan.

Senator Capito. Right. So I mean it would, it begs the question, if you are using an EPA certified lab, why do you have to keep going back and recertifying --

Mr. Radel. Begs my questions, for sure.

Senator Capito. Mr. Fox, let me ask you, just from the folks that live in and around Superfund sites, they have great economic development promise, in my view, because they are clean, it is much easier for a developer in some cases to come in, because the work has already been done. What do you see when you go into different communities about the restlessness of, why is it taking so long, not adding the economics onto the health issues that are sometimes associated with these sites?

I think what we are doing is we are stymieing communities from being able to have confidence that they can redevelop, or be living in a healthy community.

Mr. Fox. I agree with you 100 percent. I see it over and over again. Communities are frustrated because the potential exists for a win-win-win. Redevelopment of the site, protective of their human health and the environment. And the longer it goes on, they become distrustful.

Senator Capito. Right.

Mr. Fox. They become distrustful of EPA, they become distrustful of the private parties who are doing the work, and it feeds upon itself. Speeding up the process will get this back to productive use and eliminate the exposure of these communities, and they will eliminate that distrust.

Senator Capito. Thank you.

Senator Blunt Rochester?

Senator Blunt Rochester. Thank you, Chairwoman Capito and Ranking Member Whitehouse. And thank you to the witnesses. As you can hear from the questions that are being asked, I think this is an issue that cuts across party lines, it cuts across rural, urban, wherever you are.

We know that the Superfund program is vital to communities across the Country. It ensures that our lands are clean. It is important for economic development issues. And it helps protect the health of Americans, even after the original polluters are gone.

By cleaning up these industrial pollutants, we can decrease the risk of cancer, heart disease, and respiratory illness.

Mr. Gomez, your testimony and extensive research on the Superfund program highlights issues related to site complexity as a factor in delays. Can you further discuss how site complexity leads to delays, and how a project may utilize

funding to clean these types of sites?

Mr. Gomez. Sure. We have also been talking about the sediment sites; I think everyone has had examples. Senator Merkley talked about one in his State. Those sediment sites, where the sediment is contaminated, it could be miles of contamination along a river.

So those are areas that take a lot of work and resources for EPA to sort of figure out the contamination, where it is spreading. There are other site characteristics also that can be complicated in terms of tidal movements.

So figuring out in those cases where the contamination is, what is it, is it migrating, how to contain it, how to treat it, that requires a lot of time and resources. Those are the biggest sites. They take over a decade to work on. I think Senator Merkley talked about over 20 years in his case. I know that in your State there are some as well that are sediment sites.

There is a lot of knowledge and information already on treating and dealing with sediment sites, even though each Superfund site is different. But there is a lot of knowledge and expertise already there that the agency needs to make sure that it is using as it moves forward.

Senator Blunt Rochester. Yes, I would say we know that this takes reliable and robust funding to really deal with the

cleanup of these contaminants. It is why the Bipartisan Infrastructure Law was so important. Someone mentioned the IRA as well.

In Delaware, we have Standard Chlorine, a site that is known as an orphan site, because the original polluter has since gone bankrupt. So again, back to how that impacts communities, this has left the site in the hands of the State and EPA to clean up and protect the community's health and safety.

Mr. Gomez, the Standard Chlorine site is a complex site. What factors should be considered before a cleanup takes place or is completed?

Mr. Gomez. This is one of the orphan sites you were talking about as well?

Senator Blunt Rochester. Yes.

Mr. Gomez. Right. So, right, the orphan sites is an area that EPA has to figure out, if it tries to find a responsible party, otherwise it has to do it itself and then try to recoup those funds.

That is where appropriations do come into play, because you want to make sure that funding is available to start new projects in that case. Because EPA historically focuses appropriations on ongoing remedial action.

So what we have learned from our work is in the past, EPA doesn't start new remedial actions, because it doesn't have the

funds to do it, because it is prioritizing the funds that it has to continue the cleanup on those that are already taking place. Because it is less expensive to just continue that. Whereas if you stop them, you have to remobilize all of the equipment that you are working on.

So yes, for orphan sites, that is a challenge. But when there have been supplemental appropriations, the agency has been able to focus on those. You had mentioned the Infrastructure Act. That allowed EPA, in fact I think their latest report to Congress from last year, over 100 sites were able to start remedial actions. So they have been using those funds for that purpose.

Senator Blunt Rochester. And I know we can all speak to the health aspects of this. But could you speak specifically to it for a complex site? For example, does the EPA need to consider contamination migration? Can you talk a little bit about that as well?

Mr. Gomez. Sure. So for these sites, there is a lot of sampling that has to take place and modeling. The sampling is sort of getting at what you are talking about, figuring out, first trying to characterize what the contaminants at the site are, if they are migrating, where they are going.

The modeling aspect is again trying to sort of figure out the inputs from the data that you are collecting in the sampling

to figure out again how the contaminations might migrate, but also how it might affect the risk that is there.

So those are things that take a lot of resources and take a lot of time from the agency. There is also uncertainty in the model so that you have to spend enough resources to make sure that the models are predictive of what might actually be taking place.

Senator Blunt Rochester. I have run out of time. So I will submit more questions for the record.

Thank you so much to the witnesses, and I will also submit some questions for the other witnesses as well regarding complex sites.

Thank you, and I yield back.

Senator Capito. Thank you.

Senator Schiff?

Senator Schiff. Thank you, Madam Chair. Congratulations on your former staff who moved forward in the confirmation process.

Senator Capito. Yes, thank you.

Senator Schiff. She had the best training possible, clearly.

Thank you all for coming in to testify. Mr. Fox, it is good to see you again. In the interest of full disclosure, we are law school classmates. Somehow you must be in a much less

stressful line of work; you still have much more hair than I do.

Mr. Fox, you testified about one idea to improve the timeliness of cleanup. That was mandatory agency review times. I guess I have a couple related questions. One is, in the States that have adopted those kinds of time periods, what is the repercussion if the agency doesn't get the work done in time? Is it an automatic approval of the remediation plan?

Then a related question is, if we are, and it is an attractive idea that I have thought about in other contexts, but if we don't have the staffing at EPA, if we further reduce staffing at EPA, if the reason for the delays by the agencies is there just aren't the personnel, then does that work? Or does that just result in remediation plans being approved without any review?

How much of the issue of the current delays is simply lack of capacity at EPA? Does your proposal work if we don't address that?

Mr. Fox. That is a fair question. I don't think the primary issue is the lack of staffing. And I can relate Pennsylvania and New Jersey examples of deemed approvals. It is a deemed approval.

So if you do not respond within specific time frames, and there are different time frames for different reports, that is written into the regulations, then it is a deemed approval.

You don't want a deemed approval, to be honest with you. The goal is not to get something approved because the agency hasn't reviewed it. The goal is to make the agency review it.

And it has worked, it has speeded things up tremendously. I would say we certainly have not overfunded our State agency in Pennsylvania.

So I think that is a real issue, but I don't think that is the heart of the problem. It is the time it takes to review. It can go on for years before you get a response. That just can't happen.

Senator Schiff. We have seen that in California, where it has gone on for years and years.

If it isn't staffing, then what do you think it is that accounts for such delays?

Mr. Fox. I think it is the overly prescriptive nature of the Superfund remedial selection process, which has too many bells and whistles that are unnecessary.

Steve gave one example of a QAPP. There are a number of different examples. It is just overly prescriptive and unnecessary to get to a protective remedy.

Senator Schiff. And Mr. Gomez, do you have a similar or contrary view on that?

Mr. Gomez. I think there is something to be said for that. What we have learned from the work, that it is important to have

the staffing that is there. But I think that the Superfund program has been in place for a very long time. So I think there is an opportunity, especially as Congress is considering changes, to look at the process and perhaps look to see where most of the time is spent. We have some new work that we are starting. We are going to be looking at the funding, and then some planned work, to just look at the overall Superfund process.

So in those places, perhaps, where there are the longest times, try to figure out why and what can be done to change it.

Senator Schiff. The DOGE website announced a few weeks ago that it intends to shut down the EPA regional office in Los Angeles. Can you describe, Mr. Gomez, a bit about what those regional offices do and what will that mean in terms of Superfund sites around L.A.?

Mr. Gomez. Sure. So in the Superfund program, the work takes places at the regional offices. So you have to, if you are going to make changes, any kind of changes, you have to keep in mind how those regional resources might be affected, because those are the folks that are doing the work.

So yes, I think we are also, in our work, waiting to see if there are going to be any proposed changes, what that may mean for how the program is carried out.

Senator Schiff. So if that office closes, then they would

just have to deploy EPA personnel from farther away?

Mr. Gomez. I think that is one of the comments that is out there, is that people might be given additional responsibilities. So how that may affect their work is yet to be seen, if that takes place.

Senator Schiff. Yes. Because among others, you are probably familiar with the Stringfellow Acid Pits in Riverside County, that was added to the National Priority List. Apparently it has been on that list year after year after year.

I appreciate your testimony and suggestions you have made. Thank you, Madam Chair, for holding the hearing. We will follow up with some additional questions for the record.

Senator Capito. Thank you.

I believe Senator Kelly is on his way, so we will wait just a few minutes, and while we wait, I want to ask an additional question.

On the train derailment in Ohio several years ago, we had testimony in this committee about EPA's role. We also heard again, delays in cleaning it up. Part of the problem, from my understanding, was that certain States decided, even though they had certified, probably, EPA certified toxic, folks that could take toxic material into their businesses, that is their business, that certain States said, we don't want that in our State. I believe Michigan, if I am recalling correctly, was one

of the States that said this.

Have you run into this type of issue as you are remediating, either you, Mr. Fox, or Mr. Radel, where you have had a refusal to accept toxic materials that you are taking? I am assuming you do this, take it an EPA certified site. Is this an issue?

Mr. Radel. My experience is that I have not run into that. If we are going to an offsite location in whatever State it is, that location is permitted to accept those hazardous wastes, and they have a permitted facility that is either a landfill, an incinerator, or whatever it might be.

So they have the permit, you have the right DOT permits and you have the right transporter, I have not seen an instance in my experience where anything has been denied. Because we are using all the proper protocol.

Senator Capito. Right. That is what I thought. Mr. Fox, do you recall that?

Mr. Fox. There are two issues. One is, there is a limited number of hazardous waste disposal sites. You don't have this great selection.

I suspect that a lot of that was community opposition.

Senator Capito. It was.

Mr. Fox. Yes. That was, we don't want that. The facility is properly permitted to accept it.

Senator Capito. Right.

Mr. Fox. But the community says, I don't want that waste. You are taking it off of there and putting it into my community.

I am assuming that was probably what was behind it.

Senator Capito. Yes, and it kind of blows up into a --

Mr. Fox. A political issue, as opposed to a regulatory issue.

Senator Capito. Yes. I just hope -- these are professionals that are going to the letter of the law to be able to dispose of this, and actually creating a business model that can help you and help all these other sites. It was rather, I think kind of shocking, not just to me but to them, that this was going on, when these sites have been there forever, the cleanup sites.

Mr. Fox. Trust me, to get a RCRA permit for a hazardous waste disposal facility is a rigorous process.

Senator Capito. Right. My understanding as well.

All right, Senator Kelly.

Senator Kelly. Thank you, Madam Chair.

Mr. Gomez, good morning. I want to ask you for your perspectives about a group of Superfund sites, the more than 500 abandoned uranium mines on the Navajo Nation. I have discussed these frequently before this committee. I want to get your perspective on how we address this issue.

First off, as you may know, the Navajo Nation is spread across three States, actually four now with a little purchase in Colorado. The majority of the Nation is in Arizona; it is about the size of West Virginia, the Navajo Nation, in Arizona, but it stretches into both Utah and New Mexico, and there are abandoned mines in all three States, more than 500 of them.

As you may also know, those three States are all served by different EPA regional offices. Arizona is Region 9, Utah is 8, New Mexico is Region 6. While Region 9 is the lead office for all issues on the Navajo Nation, we have run into issues because of the split jurisdiction.

For example, mines just off of tribal land are coordinated through other regional offices. Often it is other EPA regional offices in New Mexico or Utah that have relationships with hazardous waste landfills, contractors, and responsible parties to carry out this mine cleanup.

Mr. Gomez, are you aware of other similar instances where a group of Superfund sites stretch across EPA regions?

Mr. Gomez. That is a really good question, and I am not aware that that is the case. But we can look to see if other tribal nations are sort of spanning across multiple EPA regions. But at this point, I can't recall one, but we will double check.

Senator Kelly. Okay. And so, Congress has periodically established geographic offices at EPA to help carry out programs

within a region that faces similar issues by virtue of geography, including the Great Lakes Office or the Chesapeake Bay Office. When it comes to Superfund cleanups, what role have these offices played in helping to coordinate CERCLA efforts in a more streamlined fashion?

Mr. Gomez. I am not sure that we have done work on that, but we can look at that. So I am obviously very familiar with the Great Lakes Office, as you noted, that is a separate office as well. We can look to see, to the extent that they have worked with the EPA Region 5 in this case, for the Midwest, to see whether they go back and forth and share information. That is a good question.

Senator Kelly. Yes, I think, my sense is that they probably do.

Mr. Gomez. Okay.

Senator Kelly. Another challenge that has been facing cleaning up the Navajo Nation mines is that the remedial actions identified for mine sites are extremely costly, and it is technically challenging. In many instances, the preferred solution would require digging up hazardous waste rock and transporting it hundreds of miles to a waste repository.

This seems like a classic case of needing to find a new and different technological solution to address this kind of cleanup.

Mr. Gomez, what tools and authorities exist within the Superfund program to help accelerate research and development efforts to find new and more efficient and more cost effective site cleanup methods?

Mr. Gomez. Currently, the Office of Research and Development at EPA is the one that does a lot of that research that the Superfund program relies on. For example, in toxicity studies, on research on new technologies to make sure that the remedies are working as intended.

So there are those opportunities there that are currently taking place, and go back and forth. You are right, that mining sites are the sites that are very costly. So in our past work, when we have looked at the cost to remediate sites, mining sites are pretty high, because of the things that you talked about in terms of having to dig it out, transporting the waste, removing it offsite, then treating it.

So those are challenges for EPA.

Senator Kelly. It is good that EPA has research and development efforts underway to solve challenging problems like this.

I will note that a lot of the west faces very similar issues to what we are seeing on the Navajo Nation. I think the entire region could benefit from the expertise of a geographic office like the Great Lakes Office.

That is why Senator Lummis and I introduced legislation called the Legacy Mine Cleanup Act, which would authorize an Office of Mountains, Deserts, and Plains at EPA to address issues unique to the western United States.

Madam Chair, I know we have had a good conversation with your staff, and I hope to find a path forward for this legislation through the committee process here in the coming weeks.

Senator Capito. We will take a look at it. Thanks.

Senator Kelly. Thank you.

Senator Capito. I think Senator Whitehouse has a final question.

Senator Whitehouse. If you don't mind, Chairman. Thank you very much.

This is for Mr. Fox. You have obviously had a lot of experience in this space. There is a phenomenon that I think is real that I would like you to react to, which is that when there is a focus on a particular Superfund site and there is a particular potentially responsible party who has the deep pockets to do the necessary funding to clean up the site, and they become kind of a primary actor in that Superfund cleanup, they can have motives of their own.

They can wish for control over how the remediation is done and argue, hey, I am going to end up paying for this, I am

entitled to a voice in how it gets done. They can have the desire for control over what happens with other potentially responsible parties, and there have been cases in which the primary target, if you will, the primary funder, stalls things up to push EPA to look for a greater contribution from other responsible parties.

And then they can have a third concern, which is that if they can put a fixed expenditure on their books year after year after year after year for this cleanup, so that it just doesn't affect the bottom line particularly, then they have a sudden incentive to draw out the remediation as long as they can, both to keep the annual number under what they have internally allocated as a problem, and because who knows? Somebody might come along and throw out the whole EPA Superfund team, and now they can come in and say, hey, we have all sorts of new opportunities here to shut down our own responsibility.

So it strikes me that the PRP is not necessarily the victim entirely of bureaucratic delay, but in particular circumstances can actually be a cause and protagonist in the question of delay of the cleanup of the site. I would be happy to have you respond to that now and I would also be happy to have you write out a more thoughtful and complete answer, if you would like to.

But I see circumstances in which PRPs become part of the problem and not part of the solution.

Mr. Fox. I think that is a fair question. It is a very complex question, which I probably will have to write, but I will just give you a couple of quick thoughts, if you don't mind.

The first one is on the control over the remedy. I think it is correct that private parties would like to control the remedy.

But understand that the way the statute is written, ultimately the decision on the remedy is always the agency's. Even if a private party is under an order to suggest what the remedy should be, the selection of the remedy is done by the agency and the statute does not allow for pre-enforcement review of that remedy selection.

So there is only a certain amount of control you can get on remedy selection.

The second point you made with respect to going against other parties is undeniably correct. A central PRP is always looking to spread those costs among other parties who are liable, whether they do it through their own litigation or they encourage EPA to pursue those parties. That is clearly a dynamic that happens at site after site.

I would quibble with you a little bit on wanting to spread out the costs over time. The reason I would quibble with that is because the cost expands to fill the time. The longer these

go on, the costs increase, not just the transaction costs to get to the remedy selection, but the cost of the remedy increases as well.

So I am not sure that in all cases it is actually in the economic interests of the private party to say, let's string this out over time. It may be better to have a more cost effective remedy done quickly, and then try to spread those costs among other parties.

I am happy to expound upon that in writing.

Senator Whitehouse. I think on that last point, while the argument you have made may be the case in certain circumstances, I don't think it obviates the prospect that there are times in a large corporation when, to put something under a cap so you know it is going to be forever, and you have time value of money working in your favor because it is an out year expenses that you are moving it out to, when the financial object of the PRP's role becomes one that incentivizes delays.

Mr. Fox. I can't say that that never happens. I am just saying it doesn't always happen that way.

Senator Capito. Okay, good. With no further questions, I would like to thank the witnesses and all my colleagues for participation.

Senators who wish to submit written questions for the record have until 5:00 p.m. on Wednesday, April 23rd, to do so.

The witnesses' responses to those questions are due back to the committee no later than close of business Wednesday, May 7th, and will be submitted for the record.

I would like to say just in closing that I think, first of all, this has been an excellent hearing, because you are all so knowledgeable on the issue, having lived it. But I think we have good bipartisan agreement here that the system is broken. We have put more money into this recently. We want to see it result in completions of these projects as much as you do.

So let's work together to try to find a solution, and hopefully we can ameliorate some of the problems that have been identified today.

Thank you very much.

Senator Whitehouse. And I will second that emotion.

Senator Capito. Thank you. This hearing is adjourned.

[Whereupon, at 11:18 a.m., the hearing was adjourned.]