



Superfund Community's Response to EPA's Task Force Report

The Trump Administration and newly-appointed EPA Administrator Scott Pruitt claim to desire to return Superfund cleanups “to their rightful place at the center of the EPA’s core mission”¹, however their actions speak differently: their proposed budget includes a 30% cut in funding to the Superfund. In April, Pruitt assembled a Task Force to provide recommendations for the future of Superfund, chaired by Albert Kelly, a prior bank chairman with no environmental experience. On June 22nd, the report was released and the recommendations it contains raise major concerns decreasing cleanup oversight, privileging corporate interests over public health, and a lack of community involvement¹.

In response, CHEJ has prepared a point-by-point rebuttal of the key recommendations of Pruitt’s report. We intend to share this document with members of our coalition to serve as a guide in the on-going process of organizing together in the pursuit of Superfund reform and Environmental Justice.

Below, excerpts from the EPA task force report are bolded and italicized. Each section covers a goal from the task force, followed by our critique and commentary.

High attention is given to the Administrator’s keen focus on sites that have seemingly taken far too long to remediate.

- Administrator Pruitt has taken over approval and review authority for sites in excess of \$50 million, which risks shutting out community input and involvement in many of the nation’s largest Superfund sites.
- The report recommends the EPA “determine any site where human exposure is not under control”, yet it does not indicate how this will be executed. In order to determine the state of human exposure, thorough health studies are necessary, yet there is no reference to site health studies in the entire report. The health studies performed at Superfund sites are inadequate, often resulting in findings that are inconclusive and short-sighted. Exposure to environmental pollution must receive the same type of government response as infectious diseases or mass cases of food contamination, including a timely response. Objective, independent, thorough, long-term studies of residents' health conditions are crucial to determining appropriate cleanup strategies and monitoring response efficacy.

¹ https://www.epa.gov/sites/production/files/2017-07/documents/superfund_task_force_report.pdf

Third party investments in NPL cleanups will become an operational way for the agency to accelerate cleanups and promote reuse of NPL sites. This will be done by identifying reuse candidate sites that are selected to pilot innovative tools and incentives.

- While site reuse may be desirable, reuse potential should not be a primary tool in gaining funding and accelerating cleanups. Third party investment is not a stable source of funds for every site. Moreover, when the proposed 30% Superfund budget cut is coupled with the prioritization of reusable sites, sites which pose a threat to human health yet have no redevelopment potential could be left without sufficient funds to proceed with cleanup and no opportunity for third party investment.
- This section recommends “***publicizing site-specific information, including reuse fact sheets to inform the community and developers about properties with reuse potential.***” Site-specific information needs to be published publically in a timely manner for all sites, not merely those with reuse potential. Communities whose welfare is at stake have the right to understand the conditions they are exposed to and participate in the cleanup decision making process. Transparency and community involvement/engagement should not merely be a method to facilitate redevelopment - it must be central in all stages of the cleanup process, from evaluation, to remedy selection, to execution and ongoing monitoring of success.
- This section recommends “***entering into site-specific agreements that define the responsibilities and liabilities of a third party investor***” and “***utilizing alternative approaches to financing site cleanups, including environmental liability transfer approaches.***” However, third party investment and brownfield redevelopment often bring about future issues in liability. End-users purchase sites without taking on future liability and when Responsible Party cleanup is deemed complete they are often released from liability as well. However, in the cases where containment fails or cleanup later proves ineffective, such properties are left without a liable party, and become orphaned sites which must be remediated with taxpayer money.
- When sites are redeveloped, institutional controls are often put in place to restrict the type of activity which can take place on the property (ranging from light industry to residential use), however, over time these controls almost always fail and are ignored. In order to ensure properties are used in a safe manner, either institutional controls must be strengthened so that if land use is altered in future, the property must be further cleaned accordingly, or we will have to simply remediate all reusable sites according to residential guidelines.

NPL sites at which remedies have already been selected will be prioritized for faster completion and deletion from the NPL.

- We are concerned over industry representatives calling for the development of exit strategies, usually including the removal of a site from the National Priority List (NPL). This may not sound initially worrying, however, they simultaneously push for cleanup strategies that merely manage or contain toxic hazards, as opposed to complete removal or other permanent remedies (which are required by law to be considered under the Superfund Amendments and Reauthorization Act of 1986). When ‘bandaid’ methods are employed at NPL sites, or in situations where permanent treatment technologies do not exist, exit strategies will not be possible, as the sites require continual maintenance and monitoring. This is evident through the history of the Superfund: only 30% of the sites where construction is completed have been removed from the NPL, as the rest require long-term management. Thus, these two goals for which industry advocates are incompatible. If Responsible Parties want their sites to be delisted from the NPL, they must either pursue complete cleanup or accept the necessary continual oversight to ensure that toxic hazards are under control.
- This section advises that the EPA “revise NPL deletion policy to maximize statutory flexibility”, which yet another example of how the Task Force caters to private interests and not public health. Instead of devoting time to bending the cleanup standards to allow responsible parties to hastily conclude remedial action, the EPA should be focusing on ensuring that toxic sites are thoroughly cleaned to safe levels.

NPL sites in the assessment and investigation stages will be expedited by applying new technologies and approaches.

- The report suggests modifying how groundwater designation is determined for aquifers which are not reasonably anticipated for drinking water - this could allow such sites go untreated. However, consumption is not the only pathway of toxic exposure - even when a contaminated aquifer is not a source of drinking water, the groundwater plume may migrate miles, contaminating soil and releasing vapor which can pose a major health hazard.
- The Task Force recommends developing improved groundwater restoration guidance to make use of flexibilities inherent in CERCLA and the NCP. One such flexibility they list is ‘monitored natural attenuation’, which in essence is doing nothing - watching and waiting for the contaminants to take care of themselves. Many may claim that the chemicals in the aquifer degrade over time, however there is no scientific data to support that this indeed occurs, as opposed to the dilution of contaminants that occurs when the groundwater plume expands.

Efforts to secure PRP commitments to perform timely, high quality cleanup will be invigorated. EPA will provide increased inducements and deterrents to encourage PRPs to quickly complete negotiations and cleanup commitments.

- The report recommends “**Reducing oversight costs for PRPs that perform timely, high quality work. This may include a compromise that reduces indirect cost charging.**” Administrative and oversight costs primarily fund two things: enforcement and community involvement. We strongly caution that these are not corners to be cut -- without proper oversight and public accountability, the Superfund would lose much of its remaining efficacy. Placing faith in responsible parties' remediation ignores that they have a vested interest in finishing as quickly and cheaply as possible, threatening the health of local communities.
- There are already indications that polluting companies have changed their cleanup responses due to a perception that oversight will decrease under Administrator Pruitt. Devon Energy, which previously donated thousands to Pruitt, former Attorney General of Oklahoma, has recently backed off from settlement plans. According to the New York Times, Devon Energy “had been prepared to install a sophisticated system to detect and reduce leaks of dangerous gases”² for one of its gas plants, and “had also discussed paying a six-figure penalty to settle claims by the Obama administration that it was illegally emitting 80 tons each year of hazardous chemicals, like benzene, a known carcinogen.” Since Pruitt’s appointment, however, they now refuse to install emissions controls and are “re-evaluating their settlement posture.”
- This section also proposes “**designating a singular agency or third party to oversee certain aspects of the cleanup**”. The use of third-party monitoring to oversee Superfunds cleanup is not a new idea - it has been proposed multiple times over the history of Superfund and protested each time for the same concerns which apply to this day. Third party monitoring threatens the public’s ability to access information relevant to their health, because the monitoring official is not a government body, thus the Freedom of Information Act does not apply. The public has always been the primary watchdog over local toxic hazards, as they are the only stakeholder that is fundamentally driven by protecting public health, as opposed to financial motivations, however, if third party monitoring is implemented, they could be cut out of the process entirely.
- This section of the Task Force advocates the expansion of the Superfund Alternatives program, in which the responsible parties agree to cleanup a site and avoid being listed on the National Priority List. This cleanup method provides benefits to the polluter while hampering citizen participation that is provided for under the Superfund program. In particular, Technical Assistance Grants (when provided) are awarded by the responsible corporation rather than EPA, a neutral entity. The alternative approach came about primarily because responsible parties did not want their site added to the Superfund list

because of the stigma it creates. Not only does this approach allow companies to avoid the perceived stigma associated with an NPL site, but it also allows companies to avoid listing an NPL site as a liability in its financial papers. This can have a significant impact, especially if the company is to be sold. This backroom cleanup alternative further raises our concern over decreased community involvement and the lack of sufficient EPA oversight.

Development of strong stakeholder relationships is key to EPA's remediation success.

- This final section of the task force recommends “***higher focus on our Federal industry partners***”, openly admitting that they prioritize corporate interests over public health. The report gives little mention of the primary stakeholders under the Superfund program - the communities whose lives and well-being are continually threatened. In fact, the report only mentions health six times with four of those in the Executive Summary. Redevelopment is mentioned 39 times. Economic development, while important to community revitalization, can never supersede public health.
- Community Involvement Plans (CIP) must be drafted, finalized, and implemented.
- Community Advisory Committees (CAC) must include real community members who live and work around Superfund sites, not just local government representatives. Local knowledge offers indispensable on-the-ground insight and perspective, and we strongly support all stakeholders at the discussion table early in the process.
- The final recommendation of the report is stakeholders engage “***joint identification of barriers to success***”. The largest barrier to success in the last decade has been lack of funding, largely due to the repeal of the Polluter’s Pay tax. To make matters worse, the Trump administration has proposed a 30% cut in Superfund funding which would debilitate cleanup efforts. We must reinstate the Polluter’s Pay Tax if we are truly committed, as Administrator Scott Pruitt claims, to restoring Superfund cleanups “to their rightful place at the center of the agency’s core mission.”³ Private investment and “alternative funding mechanisms” can’t come close to compensating for the Superfund budget cuts and the high volume of abandoned sites.