

Modernizing the Superfund Cleanup Program: Association of State and Territorial Solid Waste Management Officials Position Paper



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The Association of State and Territorial Solid Waste Management Officials (“ASTSWMO”) issued a position paper titled:

Modernizing the Superfund Cleanup Program (“Position Paper”)

ASTSWMO describes itself as an organization encompassing state and territorial solid waste management officials (and member agencies) from the 50 states, five territories, and the District of Columbia.

The Position Paper states that there are specific areas of the federal Superfund program (i.e., Comprehensive Environmental Response, Compensation, and Liability Act [“CERCLA”]) in which States:

... could contribute in a larger, more significant role which would make the process more efficient.

It notes that as of October 2019 there are 1,333 sites included on the United States Environmental Protection Agency’s (“EPA”) National Priority List (“NPL”). In addition, it is noted that while 424 sites have been deleted, EPA is under more pressure to “accelerate cleanups and close sites.”

ASTSWMO believes an opportunity exists to “leverage” both State and federal resources in order to accelerate such cleanups.

The Position Paper identifies areas it views as constituting priorities for improving the Superfund program.

The topics that are characterized as holding potential for modernization include:

- Increase State involvement in the Superfund process (referencing the advantage of having the States take lead agency status because of geographic proximity, etc.) – the position and recommendation of the organization includes reinforcing consultation expectations in the National Contingency Plan, ensuring State preference regarding lead designation
- Applicable or Relevant and Appropriate Requirements (ARARs) determinations (timely designation of State standards) – CERCLA should be updated to clarify that the State’s determine State ARARs for a site and State environmental covenant and land use control laws
- Allow State additional top-priority selections (noting each State may designate a single site as its top-priority to be placed on the NPL regardless of the Hazardous Ranking System score) – recommends authorizing 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 (actions must be consistent with the permanent remedy at the site) – grant States credit for the share of costs with

respect to a facility listed on the NPL under the National Contingency Plan for all amounts expended for all site activities including removal

- Public participation requirements (newspaper publication requirements are dated and do not reflect the multiple ways Americans receive their news today) – recommends adding electronic access to allowable methods to publish public notice
- National Contingency Plan (NCP) (the NCP should be updated to reflect lessons learned from 40 years of environmental cleanup experience) – recommends updating the NCP to reflect lessons-learned as previously described

A copy of the Position Paper can be found [here](#).