

**Statement for the Record  
Department of the Interior  
House Energy and Commerce Subcommittee on  
Environment and the Economy  
On  
Federal Agency Responsibilities under CERCLA**

**September 11, 2015**

Thank you for the opportunity to present this statement for the record on the Department of the Interior's responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The Department administers a wide range of lands and resources, including the public lands, mostly in the West, wilderness areas, our National Park System, lands held in trust for Native Americans, and the National Wildlife Refuge System. In total, the Department manages over 500 million acres of land, together with associated waterways and plant and animal species. Among other things, the Department is responsible for managing energy and mineral development on Interior-managed lands, including on the Outer Continental Shelf, for addressing water issues in the West, and for managing timber-related activities on our public lands

Given the significant amount of land under the Department's jurisdiction and the broad mission carried out by its bureaus, the Department maintains an active program of environmental response and restoration under CERCLA. The Department and its bureaus see and address many different types of toxic sites, from abandoned hard rock mines and properties transferred to or acquired by the Department that were contaminated by past industrial, military, or other uses.

As requested by the Subcommittee, this statement focuses in particular on the challenges the Department and its bureaus face with regard to abandoned mine lands.

**General Implementation**

Like most federal agencies, the Department's authority to perform response actions derives from the broad authority provided to the President under CERCLA. Thus, under CERCLA the Secretary of the Interior has the authority to address the release or threatened release of hazardous substances on or from land under the Department's jurisdiction, custody, or control. The Secretary has delegated

this authority to the bureau directors. In addition, under CERCLA, the Department is designated as a trustee for natural resources, and must act as such on behalf of the public.

Environmental response and restoration activities under CERCLA for departmental and trust resources are coordinated by the Office of Environmental Policy and Compliance (OEPC). OEPC coordinates these activities among all bureaus when more than one bureau is involved, and collaborates with the bureaus and military agencies on any necessary remediation for former military sites on lands under the Department's jurisdiction. The Department has standardized procedures for performing response actions, as well as working with other agencies.

Generally, the Department or responsible bureau serves as the CERCLA "lead agency," authorized to respond to releases or threatened releases, that are not emergencies, on or from land under its jurisdiction, custody, or control. Although the Department does not have the authority to take action under CERCLA for emergency removal actions, emergency response actions may be carried out by the land managing bureau under other authorities, such as under authority of the bureau's general land management statutes, in support of the federal, state, or local emergency response officials.

The Department or responsible bureau may also serve in a "support agency" role at sites not under the Department's jurisdiction, and there are times where coordination with private property owners or state government agencies is necessary.

There are multiple funding sources for these actions within the Department. First, the Central Hazardous Materials Fund (CHF) is a Department-wide account that provides funding to land-managing bureaus for CERCLA response actions. Typically, the CHF receives both annual appropriations as well as funds from cost recoveries from Potentially Responsible Parties. Funding from the CHF may only be provided to projects that have completed a Preliminary Assessment/Site Inspection and for which the responsible bureau is undertaking additional response action using the Department's CERCLA authorities.

In addition, the bureaus typically have a bureau-specific account that can be utilized for CERCLA response actions. Often, the bureaus use these funds to perform the necessary steps for CERCLA projects to become eligible for CHF funding, as well as to support non-CERCLA projects, like petroleum spill response. Sometimes, the bureaus use these funds for lower priority or smaller

CERCLA projects than those requesting CHF funding.

As noted previously, given the large acreage managed by the Department and the broad mission of its bureaus, all of the land managing bureaus have in place some form of environmental response program. Several of the more significant programs in the land managing agencies are highlighted below.

#### *Bureau of Land Management*

The Bureau of Land Management is responsible for the management of nearly 250 million acres of land and 700 million acres of subsurface estate. This vast portfolio is managed on behalf of the public under the dual framework of multiple use and sustained yield, which means the BLM manages public lands for a broad range of uses, including renewable and conventional energy development, livestock grazing, timber production, hunting, fishing, recreation, and conservation.

With this broad mission, CERCLA authorities and responsibilities delegated to the BLM may involve addressing situations on BLM-managed public lands related to:

- authorized operations involving the use of hazardous substances;
- mitigation of hazardous substance releases from adjacent properties;
- illegal dumping;
- land acquisitions; and
- releases at historic/abandoned sites, such as abandoned mine lands.

The BLM uses its authority under CERCLA to remediate environmental contamination on the public lands it manages, to prepare and implement emergency response contingency plans for oil and chemical spills, and to recover costs from Potentially Responsible Parties. Key BLM programs that carry out these functions are the Abandoned Mine Lands Program, discussed below, and the Hazardous Materials Management Program, which ensures that the BLM is in compliance with federal and state environmental regulations; acts to protect human health and the environment by cleaning up hazardous waste sites; and implements federal initiatives directed at improving environmental management and sustainability.

#### *National Park Service*

The National Park System, which celebrates its centennial anniversary next year, includes 408 areas covering more than 84 million acres in every state, the District of Columbia, American Samoa,

Guam, Puerto Rico, and the Virgin Islands. These areas include a wide range of cultural and natural landscapes, such as national parks, monuments, battlefields, military parks, historical parks, historic sites, lakeshores, seashores, recreation areas, and scenic rivers and trails.

When the resources under NPS management are damaged by hazardous substances, the NPS's Resource Protection Program, in the Environmental Quality Division, will assist parks by providing direct support to prevent or minimize damage to park resources, and in documenting injuries and obtaining funds to implement restoration projects for injured resources.

#### *U.S. Fish and Wildlife Service*

The U.S. Fish and Wildlife Service manages the National Wildlife Refuge system, comprising more than 560 refuges located in all 50 states and 150 million acres of land primarily for the benefit of fish and wildlife. The FWS also manages 74 fish hatcheries and related facilities used for endangered fish recovery and to restore native fishery populations. The FWS is responsible for the protection and conservation of certain trust species, including species listed as threatened or endangered under the Endangered Species Act, migratory birds, and certain marine mammals.

The FWS uses two major programs to clean up contaminated land: the Refuge Cleanup Fund (RCF) and the CHF, discussed previously. The RCF program addresses approximately five-to-six projects per year. The RCF is managed by the National Wildlife Refuge system, and is effective for cleaning up smaller-scale sites, such as soil contamination from petroleum spills and contamination issues identified during environmental compliance audits. The RCF also is instrumental in funding the collection of preliminary information about sites in order to confirm whether or not contamination is present. The FWS currently manages approximately 15 ongoing CHF projects, ranging from the closure and monitoring of former municipal landfills to the clean-up of former industrial and military activities.

The Ecological Services Program within the FWS is responsible for working with partners for the conservation, protection, and enhancement of fish and wildlife and their habitat. The Ecological Services Program works with partners to prevent contamination; identify and assess any contamination adversely affecting fish and wildlife; provide guidance to reduce the damage to important habitats and trust resources from oil spills or the release of other hazardous materials, and participate in contaminant cleanup and restoration activities.

In cooperation with state, tribal and federal co-trustees, FWS staff investigates injuries that result from the release of hazardous material and oil spills and applies their unique technical expertise to reduce the impact on natural resources and to restore injured resources. Through Interagency Agreements with the Environmental Protection Agency, U.S. Forest Service, and the BLM, the FWS currently supports risk assessment, cleanup, remediation, and restoration activities at multiple active CERCLA sites across the United States, including abandoned mines. Other contaminants that can impact resources under the jurisdiction of the FWS include:

- nonpoint source pollution from agriculture and urban runoff;
- point source pollution from industrial and municipal waste treatment facilities; and
- discharges of dredge and fill material;

In addition to on-the-ground actions, the FWS participates in the development of Departmental Program guidance and participates in damage assessment cases funded by the Departmental Program.

### **Abandoned Mine Lands**

Abandoned mines pose a serious threat nationwide, including on lands managed by the Department. Given the significant amount of land managed by the Department's bureaus, addressing hazards created by abandoned mines on federal lands is an important objective.

The significant concentration of known abandoned mines and related features on lands under the Department's jurisdiction occur on BLM and NPS-managed lands and are associated with both public safety hazards and environmental and natural resource impacts.

Over the last 150 years, much of the public land managed by the BLM has experienced some form of mining activity, which has ranged from exploration to full development. In many cases, this activity has resulted in disturbed and sometimes contaminated land across parts of the West. Mining activities prior to January 1, 1981, the effective date of the BLM's Surface Management regulations, were often not properly reclaimed, and in many cases no financially responsible party exists to help pay for the cleanup. The BLM's abandoned mine land program has identified approximately 49,000 abandoned AML sites on BLM administered public lands.

Over the last six years the BLM has mitigated 6,321 AML physical safety sites, restored the water quality on 8,435 acres of BLM managed land, and conducted monitoring on 5,138 AML sites. Each year an average of 5,400 new AML sites are discovered, with many millions of acres of BLM lands remaining to be inventoried. The BLM continues to develop new processes to more effectively inventory AML sites on the nearly 250 million acres of surface estate and 700 million acres of mineral estate that it manages. This inventory work focuses on high-priority areas, as established by environmental and physical safety risk criteria.

The BLM prioritizes abandoned mine reclamation work based on public safety and environmental risk. The highest priority is given to mines that present the greatest risk to the public, such as those located closest to population centers, schools, or recreation areas, and those with the greatest potential environmental concern. Criteria for the ranking of environmental sites includes human presence, threat to the environment, relative toxicity of contaminants, impacted media and location of the site relative to surface water and/or groundwater, aquifer characteristics, and soil or sediment characteristics.

AML sites are also present on NPS lands throughout the country. NPS began to collect data on AML sites on park lands in 1983, and in September 2014 completed the first comprehensive inventory and assessment of AML sites in the park system. Extraction activities left behind 37,050 AML features in 133 units of the system. The vast majority – 81% - of features are located in the NPS Pacific West Region, especially in Death Valley National Park, Mojave National Preserve and Lake Mead National Recreation Area. However, AML features are distributed throughout the system and are a significant management issue in all regions.

The majority of AML features on NPS lands, 31,437 - almost 85%, do not require remedial action either because they do not constitute a threat to human health and safety or generally do not pose a natural resource problem. Almost 1,800 features (about 5%) have already been remediated. However, over 3,800 of these features (over 10%) in 76 park units do require remedial action to mitigate public safety threats and natural resource impacts.

According to the NPS, the principal cause of death at AML sites nationwide is drowning in water-filled quarries and pits. Other risks include vertical drop-offs; unstable structures and rock falls; deep and unstable pit walls; deadly gases and radioactive air; abandoned explosives; hazardous chemicals; and high concentrations of contaminants inherent to the mineral deposit. Mine

contaminant releases can affect natural resources such as air, soil and water quality as well as plant and animal health.

The responsibility to reclaim dangerous AML sites is resource intensive and requires cooperation with federal, state, and local partners. Even dangerous mines that have been properly sealed off are sometimes vandalized, entered, and left open. AML sites are also prone to erosion and destabilization of natural topography due to the interruption of natural drainages by mining-related excavation and tailing and waste rock placement. Impacts to scenic qualities of natural areas can also occur at AML sites. However, there are other factors that merit management attention in AML site assessment and treatment, including the historic value of mines, some of which are listed in the National Register of Historic Places, and the wildlife habitat value of AML sites for species such as bats.

With this in mind, the goal of programs addressing AML issues in the Department is to work to remediate the physical safety hazards, such as shafts, adits, and entrances, and environmental threats associated with abandoned mine sites.

### *Addressing Priorities*

Due to the abandoned nature of these sites, the public is often left with the bill for remediation of legacy abandoned mines, rather than the companies who originally developed the resources. The Administration has continued to request funds to address this significant problem; the Department prioritizes these activities and addresses those priorities within available resources.

The BLM's 2016 budget request for the AML Program is \$19.95 million. The NPS's request includes \$5 million in Construction funding to initiate AML remediation efforts, however NPS is continuing efforts to fund a comprehensive program to address all of the AML features requiring mitigation.

The Administration has included in its 2016 budget request, and in prior budgets, a legislative proposal intended to address the legacy of abandoned hardrock mines. The Administration's proposal would hold the hardrock mining industry responsible for the remediation of abandoned hardrock mines, just as the coal industry is responsible for remediating abandoned coal sites.

The proposal would levy an AML fee on uranium and metallic mines on both public and private lands, which would be assessed on the volume of material displaced after January 1, 2016. The receipts would be split between federal and non-federal lands, and the Secretary would disperse the share of non-federal funds to each state and tribe based on need. States and tribes would select their own priority projects using established national criteria.

The proposed hardrock AML fee and reclamation program will operate in parallel with the coal AML reclamation program as part of a larger effort to ensure the most dangerous abandoned coal and hardrock AML sites are addressed by the responsible industries. With the number of identified sites increasing as better inventories are performed, we recognize that there is a very large unmet need to address this problem.

### **Conclusion**

The significant acreage managed by the Department and the broad mission that the Department and its bureaus undertake necessitate robust implementation of CERCLA. Within that program, the remediation of abandoned mine lands on lands under the Department's jurisdiction remains a challenge.