To: Clancy Tenley (tenley.clancy@epa.gov)[tenley.clancy@epa.gov]; Nancy Lindsay[Lindsay.Nancy@epa.gov]
Cc: JOHN LYONS (Lyons.John@epa.gov)[Lyons.John@epa.gov]; HERRERA, ANGELES[herrera.angeles@epa.gov]
From: Manzanilla, Enrique
Sent: Thur 2/11/2016 9:45:57 PM
Subject: FW: CRS research on Governor concurrence

Enrique Manzanilla

Director, Superfund Division

US EPA Region 9 - Pacific Southwest

(415) 972 3843

From: Ball, Harold
Sent: Thursday, February 11, 2016 1:32 PM
To: Minor, Dustin <Minor.Dustin@epa.gov>
Cc: Manzanilla, Enrique <Manzanilla.Enrique@epa.gov>
Subject: CRS research on Governor concurrence

The result of the Congressional Research Service (CRS) research on requirement for Governor concurrence for listing was shared with Brent Maier. See email from Reid staffer Ryan Mulvenon below.

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Harold Ball, Chief, NV & Federal Facilities Section (S82), EPA Region 9 Superfund, w) 415.972.3047, c) 415.819.9821, ball.harold@epa.gov

From: Mulvenon, Ryan (Reid) [mailto:Ryan_Mulvenon@reid.senate.gov]
Sent: Wednesday, February 10, 2016 8:54 AM
To: Maier, Brent <Maier.Brent@epa.gov>

Subject: RE: connect today re: anaconda

Brent—here is what I got back from CRS. Does this match up on your end?

Do you think EPA will have the timeline and TP's we discussed by the end of the week?

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In response to your question, the Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act for FY1996 (P.L. 104-134) restricted the Environmental Protection Agency (EPA) from using any funds provided in that Act to propose or list a site on the National Priorities List (NPL) unless the Governor of the state in which the site is located submitted a written request for the listing.

This restriction applied only to the use of appropriations enacted in P.L. 104-134 for FY1996 and was not a permanent restriction that applied to the use of appropriations enacted for future fiscal years. The Veterans Affairs, Housing and Urban Development, and Independent Agencies Appropriations Act for FY1997 (P.L. 104-204) did not include a similar restriction.

However, EPA subsequently issued a guidance document on November 14, 1996, that established a formal policy to continue seeking state input and Governor concurrence when considering the listing of a site on the NPL, consistent with the statutory direction in P.L. 104-134 that applied to the use of FY1996 appropriations. This document is attached. EPA also developed a Model Letter to request the concurrence of the Governor of a state prior to proposing a site located within that state for listing on the NPL.

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes the EPA Superfund program and the NPL site listing process. CERCLA does require the concurrence of a state in **deleting** a site from the NPL. See Section 121 of CERCLA (42 U.S.C. 9621), subsection (f). To date, Congress has not similarly amended the statute to require state concurrence for **adding** a site to NPL.

However, P.L. 107-118 amended CERCLA in 2002 to give greater deference to the preference of states in finalizing the listing of a site on the NPL if a state is already pursuing the remediation under its own authorities, with certain exceptions identified in the statute. See Section 105 of CERCLA (42 U.S.C. 9605), subsection (h).

Although CERCLA does not broadly bar the listing of a site on the NPL without state concurrence, proceeding with an NPL listing without state support may limit the ability of the federal government to perform the remediation if federal Superfund appropriations are needed and the state is not willing to pay its cost-shares and to provide certain assurances.

CERCLA makes the obligation of federal Superfund appropriations for remedial actions conditional upon the state agreeing to pay 10% of the costs of construction and 100% of the costs of long-term operation and maintenance (with the exception of remedial actions involving the treatment of surface water or groundwater that may be federally funded for the first 10 years of operation and maintenance).

See Section 104 of CERCLA (42 U.S.C. 9604), subsection (c)(3) and (c)(6), as discussed in the section on Federal-State Cost Sharing in CRS Report R41039, *Comprehensive Environmental Response, Compensation, and Liability Act: A Summary of Superfund Cleanup Authorities and Related Provisions of the Act*.

If the responsible parties at a site are paying for the remediation through federal enforcement of their liability under CERCLA, state cost-shares are not required. However, CERCLA still requires that states be provided the opportunity for "substantial and meaningful" involvement in the initiation, development, and selection of remedial actions, and authorizes the application of state standards to remedial actions.

See Section 121 of CERCLA referenced above, and the section on State Participation and Cleanup Standards in CRS Report R41039 cited above.

Because of the level of state involvement, the Superfund program is not an entirely federalized program, but may be characterized as more of a federal-state partnership. For this reason, listing

a site on the NPL without state support may have an impact on the remediation process and resources.