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June 27, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave Northwest
Washington, D.C. 20460

Dear Administrator Pruitt:

I write concerning the Superfund program. I am encouraged to see you leading the agency into a new era of focus on this program with the formation of a Superfund improvement task force and more direct involvement by the Administrator. At the same time, the $330 million cut to the program included in the Fiscal Year 2018 Environmental Protection Agency (EPA) budget request does not seem to reflect that same level of commitment and I am working to increase that funding as a member of the Senate Committee on Appropriations. In addition to ensuring sufficient appropriations, I would also like to work with you on improving implementation of the Superfund program, including through a number of recommendations included below.

Montana is home to nearly 20 National Priorities List Superfund (NPL) sites—including the Columbia Falls Aluminum Company Plant, Libby Asbestos, and Silver Bow Creek/Butte Area sites, the last of which includes the infamous Berkeley Pit. Superfund sites pose well-documented burdens on and risks to local communities. For one, the stigma associated with Superfund sites deters citizens from moving their residences or businesses to the area and broadly tarnishes a community's reputation. According to a study prepared for the EPA, "when cleanup is delayed for ten, fifteen, and even up to twenty years, the discounted present value of benefits of cleanup are mostly lost because sites are stigmatized and the homes in the surrounding communities are shunned." Furthermore, the report's psychological model "suggests that, for very large sites, expedited cleanup and simplifying the process to reduce the number of stigmatizing events that attract attention to sites would reduce property losses." Secondly, while the data on potential loss in property values as a result of the presence of Superfund sites vary, one study found that residential properties near Superfund sites increased in value by 18.6% to 24.5% when a Superfund site was deleted from the NPL, demonstrating the direct financial toll sites exact by simply existing. When a site occupies space, moreover, commercial, residential, industrial, or recreational use which would otherwise contribute to the local economy and enhance quality of life are more difficult or impossible.

Most importantly, Superfund sites pose health complications to surrounding residents. Among the ample research on this topic, one study published by the American Economic Association compared birth outcomes before and after a site clean-up for mothers who live within 2,000 meters of the site and those who live between 2,000-5,000 meters of a site. It found that proximity to a Superfund site before cleanup is associated with a 20 to 25% increase in the risk of congenital anomalies. All of these negative repercussions should propel the federal government to act more aggressively and efficiently than it has in the past.

While the Superfund program was initially designed to serve as a solution for a limited number of sites, I agree with the Government Accountability Office (GAO) assessment: to the detriment of the taxpayer, "the scope and cost of Superfund have greatly exceeded initial expectations." Case in point, the Superfund cleanup list has grown from 406 initial sites in 1983 to 1,336 NPL sites as of mid-May 2017. Clearly, the federal government must do better in delisting these hazardous sites and returning them to productive use.

As the taskforce develops recommendations on ways to improve the Superfund program, I also encourage the administration to consider the below recommendations which have been developed in consultation with concerned Montanans and are designed to return Superfund sites to productive use more expeditiously:

Implement meaningful performance measures
Currently, the EPA evaluates the progress on a Superfund site using measures such as whether remediation construction has been complete, as well as the number of remedial site assessments completed. While having these data points is important for EPA's internal purposes, instituting more results-oriented units of measure, such as how much of a site has been returned to productive use, would promote more expeditious cleanup and benefit local communities.

Fortunately, sections of several sites in Montana have already returned to reuse. For example, 250 acres of the Anaconda Co. Smelter site now house a 21-hole golf course. The Libby Ground Water Contamination site, meanwhile, supports commercial and light industrial uses, as well as sawmill operations, and site stakeholders are considering installing a fishing pond on the former mill property. Such accomplishments should be central measures of success for hazardous sites, creating for a results-oriented approach to Superfund.

Increase the pace of cleanup
I wholeheartedly agree with GAO's assessment: "Pace of cleanups need to be accelerated." The slow pace of Superfund cleanup is one of the most common critiques of the program and should be prioritized. The agency should explore which projects to remediate first such that sites can be readied for removal from the NPL quickly and returned to productive use.

Reduce administrative costs
As both EPA under your leadership and GAO have suggested, I too urge EPA to reduce administrative costs. Administrative costs are often heavy and hinder the pace of cleanup is appropriate and I urge you to take actions to ensure program funding is used efficiently and appropriately.

Use the NPL as a tool of last resort
A GAO report found use of the NPL as a mechanism of last resort to be among the reasons the number of new nonfederal sites added to the NPL each year declined steadily from 37 sites in fiscal year 1999 to 12 in fiscal year 2007. In contrast, from fiscal years 2008 through 2012, there was a general increase in the number of new nonfederal sites added to the NPL annually. According to EPA officials as stated in the report, this increase was due in part to an agency policy shift toward using the NPL when deemed the best approach for achieving site cleanup rather than as a mechanism of last resort. To decrease the rate at which Superfund sites are added to the NPL, EPA

mechanism of last resort. To decrease the rate at which Superfund sites are added to the NPL, EPA should return to using the NPL as a mechanism of last resort. Delegating remediation management and oversight to state agencies—in the case of Montana, the Montana Department of Environmental Quality—would be one way to do so when feasible. Utilizing the Superfund alternative approach, whereby EPA uses the same investigation and cleanup process and standards that are used for sites listed on the NPL, but avoids a NPL listing, could also be utilized more frequently.

Facilitate on-the-ground cooperation with impacted parties
Reaching agreements on assignment of liability with potentially responsible parties, state and local governments, citizens, and other involved stakeholders, moreover in a timely manner, has also been a consistent challenge to site cleanup. To facilitate dispute resolution and promote beginning remediation as quickly as possible, EPA should work to build consensus when developing remediation plans.

Enforce standards consistently
Because Superfund is implemented in a decentralized manner, central management oversight and controls by EPA are necessary to avoid inconsistency leading to confusion, unnecessary costs and, for some sites, ineffective cleanup. As the Office of Technology Assessment put it, "Lack of consistency among hundreds and, eventually, thousands of sites is not an academic issue. Harm to human health and the environment, loss of public confidence in government, and wasting money are what's at stake." EPA should implement consistent remediation and cleanup processes across all EPA regions, as well as conduct diligent oversight of area offices in their execution of Superfund cleanup efforts.

Prioritize Superfund among other EPA programs
The success of the Superfund program will depend on the focus the EPA Administrator ascribes it. Given that Superfund is a program with direct impacts to citizens' health and property—particularly compared to other EPA programs whose impacts are less tangible—Superfund should be prioritized within the agency's budget and staff resources.

I would also like to offer myself as a resource to the EPA in the Senate to assist in improving the Superfund program, including through implementation of the above recommendations administratively or legislatively as appropriate. Finally, I would like to reemphasize my standing invitation for you to visit my state and take a firsthand look at a Montana Superfund site.

Thank you for your consideration and I look forward to working together on this important issue.

Sincerely,

STEVE DAINES
United States Senator