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**Making Superfund Work Better:
A Challenge for the New Administration**

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Before the
Subcommittee on Superfund, Ocean and
Water Protection
Committee on Environment and Public Works
U.S. Senate



Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to discuss our recent work on the Environmental Protection Agency's (EPA) Superfund program and present our views on EPA's Superfund management report. EPA's report responds to a commitment made by the new EPA Administrator during his confirmation hearings to examine this troubled program to clean up the nation's worst hazardous waste sites.

In summary, our work has shown that the nation has not been getting a fair return on its large investment in Superfund. The \$10 billion program has accomplished few major cleanups despite nearly a decade-long history and the obligation of \$4.5 billion. The most recent data compiled by EPA show that of the approximately 1,200 sites on or proposed for the National Priorities List, cleanups have been completed at only 41 sites and begun at another 204. These figures are even more startling when you consider that the seriousness of contamination at up to several hundred thousand additional potential hazardous waste sites may need to be eventually assessed.

Mr. Chairman, in your May 1989 comprehensive report on the Superfund program, you identified problems that have occurred over the years and made recommendations to improve the program.¹ Similarly, over the last few years, working under mandates from congressional committees and the 1986 Superfund reauthorization act, we have identified in a series of reports, management and operational problems that we feel have impaired Superfund's effectiveness. Specifically, we have questioned whether EPA has done all that it could to (1) get the most from contracting dollars, (2) maintain a stable, competent work force, (3) compel

¹Lautenberg-Durenberger Report on Superfund Implementation: Cleaning Up the Nation's Cleanup Program, Subcommittee on Superfund, Ocean and Water Protection, Senate Committee on Environment and Public Works, May 1989.

the organizations that contaminated the Superfund sites to pay for their cleanup, and (4) define the program's goals and work effectively toward achieving them.

EPA has also identified numerous weaknesses in the Superfund program as a result of the new Administrator's internal review of the program. Making many recommendations for improvement in Superfund areas, including problem areas identified in our own reviews, EPA's report appears to have taken an honest look at the program. Although some issues have not been dealt with directly, we believe the report can serve as the impetus for significant management improvements to Superfund. What remains to be done is the development of an implementation plan, which includes goals, priorities, and milestones for the recommended actions. Even more importantly, strong leadership, management commitment, and followup will be needed to analyze and implement those recommendations that make sense and keep the program on the right course.

GAO REPORTS

Before discussing EPA's Superfund report in more detail, I would like to spend a few minutes highlighting specific Superfund problems we have reported to the Congress in recent years.

Contract Management

One of these problems involves contracting. EPA's Superfund dollars largely go for contractor services covering the full range of program activities--from helping to develop regulations, to assessing the extent of contamination at sites, to doing the actual site cleanups. EPA's Procurement and Contracts Management Division expects to spend \$750 million on contractors in fiscal year 1989. In order to use its Superfund resources efficiently, EPA must manage its contractors well.

Most Superfund contractors work under cost-plus-award-fee contracts. Unlike fixed-price contracts, such as the Superfund construction contracts--which establish prices in advance of performance--cost-plus-award-fee contracts reimburse contractors for all allowable costs and pay base fees plus a variable award fee based on a subjective evaluation of performance. EPA uses cost-plus-fee contracts extensively because they can be awarded quickly, allow flexibility in directing the contractor, and are well suited for work that cannot be defined in detail ahead of time--such as planning Superfund cleanups at sites where the extent and nature of pollution is unknown. However, cost-plus-fee contracts carry inherent risks to the government because they provide fewer incentives for contractors to control costs.

We reported in July 1988 that EPA had not sufficiently controlled Superfund's cost-plus-fee contracts.² The focus of EPA management was on the timeliness and quality of contract work, not on cost control. At over half the Superfund sites we reviewed, inadequate contractor performance had increased costs. Although EPA could have challenged unallowable costs or negotiated cost increases, it accepted and paid most of these increases without challenge. This practice could have, in fact, sent contractors the message that all costs were acceptable regardless of performance, and increased contracting costs. In addition, we reported that EPA was paying fees for good performance to contractors whose work EPA later judged to be unsatisfactory. We recommended, in addition to specific corrective actions, that the EPA Administrator affirm his commitment to cost control by communicating to EPA officials the importance of balancing timeliness, quality, and costs. Although EPA officials generally agreed with our findings and took some actions, we remain concerned about the level of emphasis EPA is giving to contracting.

²Superfund Contracts: EPA Needs to Control Contractor Costs (GAO/RCED-88-182, July 29, 1988).

EPA's new contracting initiative, called the Alternative Remedial Contract Strategy, will increase the number of Superfund contracts EPA awards. This strategy will replace the handful of large nationwide remedial contracts with 40 or more regional contracts. It will also decentralize contract oversight by placing contracting officers in the regional offices. EPA believes that by allowing decisions to be made at the local level rather than at headquarters, the new strategy will increase competition and speed cleanups. In our view, this approach also brings with it the need for even stronger EPA oversight.

EPA's Superfund contractors who design cleanup remedies and have access to EPA's enforcement plans also work for the private parties liable for cleanup costs. EPA needs to carefully control these potentially conflicting contractor roles to ensure that contractor work is objective and sensitive enforcement information is safeguarded. In a February 1989 report, we disclosed serious weaknesses in EPA's conflict-of-interest controls.³ For example, we reported that EPA had not routinely reviewed contractor operations for conflicts or even documented what actions were taken to resolve conflicts when they were discovered. In addition, because requirements were not clear, contractors were supplying EPA with varying amounts of information on potential conflicts. EPA has not yet formally responded to the recommendations we made for preventing conflicts of interest.

Maintaining a Capable Work Force

Another issue EPA has to contend with is maintaining an effective Superfund work force. At the same time EPA has been

³Superfund Contracts: EPA's Procedures for Preventing Conflicts of Interest Need Strengthening (GAO/RCED-89-57, Feb. 17, 1989).

trying to build a Superfund staff, the private hazardous waste industry has been growing. EPA has at times had difficulty competing with the private sector for people, and as a result, personnel turnover in the Superfund program has been high.

In an October 1987 report to the Congress, we discussed a growing employee retention problem as employees left Superfund primarily to seek better opportunities for advancement.⁴ They frequently went to work in the hazardous waste field, getting an average of about \$7,000 more a year than they earned at EPA. One-third of the Superfund employees we surveyed said they planned to look for other jobs the following year. As you noted in your May 1989 Superfund report, Superfund employee turnover remains much higher than turnover in other EPA programs despite EPA's efforts to improve compensation and other job features.

Our 1987 report also discussed ways to improve EPA's measurement of how many Superfund employees were needed and how productively employees were working. Large differences we found in the size and occupational skills of the Superfund staff from one EPA region to another suggested that EPA needed a better basis for its work force decisions. We recommended that EPA use actual data on the time needed for various Superfund tasks to calculate required staff size, instead of relying solely on the judgment of managers. We also said that EPA should make use of available data to measure the productivity of Superfund staff. EPA did not accept these recommendations because it thought the program was too new and varied too much from site to site to make more objective measurements of staff needs or productivity practical. We think this EPA position is mistaken and that, after almost 10 years of experience, EPA should be able to devise more exact ways of

⁴Superfund: Improvements Needed in Work Force Management
(GAO/RCED-88-1, Oct. 2, 1987).

determining the work force it needs and measuring employee productivity.

Superfund Enforcement

Another area that warrants close attention is EPA's enforcement activities; that is, its efforts to get those responsible for hazardous waste sites to either clean up the sites themselves or pay the cost of an EPA cleanup. So far, these efforts have lagged; as of March 1989, EPA had paid all costs at over half of the Superfund sites where preliminary studies were underway, remedies were being designed, and construction was started or completed. EPA had spent \$1.7 billion that is now recoverable from responsible parties, according to the Superfund Enforcement Chief's best estimate. EPA has received only \$126 million of this amount, however, as of January 1989, according to a Financial Management Division official.

We expect to issue a final report to this Subcommittee in September on our review of the Superfund enforcement program. We did, however, issue an interim report on our findings in October 1988.⁵ In that report, we disclosed various enforcement weaknesses that have slowed the cleanup process and in some cases reduced the share of cleanup costs borne by responsible parties. These included:

--late and incomplete searches for responsible parties
and failure to pursue parties once they are found,

⁵Superfund: Interim Assessment of EPA's Enforcement Program
(GAO/RCED-89-40BR, Oct. 12, 1988).

--delayed negotiations and limited use of enforcement authorities, and

--slow action to recover costs.

Searches and Tracking Systems

EPA's enforcement efforts begin with a search for parties responsible for contaminating Superfund sites and liable for cleanup. At about one-third of the sites undergoing cleanup, EPA searches as of October 1988 have not identified any responsible parties able to pay cleanup costs. In response to our questionnaire, 50 percent of the regional project managers and attorneys said they were dissatisfied with the thoroughness of the searches in the past year. In a 1988 study, EPA management also identified problems, including poorly done investigations. Yet, EPA has no system for identifying inadequate searches that should be redone. In addition, although EPA guidance recommends that searches be completed well before any federal funds are spent for cleanup, about half the 65 searches we reviewed had not been completed by then.

After potentially responsible parties have been found, the next step is for EPA to send them letters requesting information on their activities at the sites. But, because two of the three regions we reviewed did not routinely track responses to these letters or always pursue responsible parties, some parties may have avoided their share of site cleanup costs.

Negotiating and Compelling Cleanups

Negotiations with responsible parties have been late starting and slow concluding. While the potent enforcement authorities EPA has been given by the Superfund law can help bring responsible

parties into negotiations and hasten settlements when they get there, EPA has infrequently used these authorities.

At the sites we reviewed, delays in starting negotiations slowed cleanup an average of over 4 months. Once they began, the negotiations were often prolonged. About 25 percent exceeded 6 months--EPA's goal for completion.

At the same time, enforcement tools, such as court enforceable orders to pay for clean up or pay heavy fines and Department of Justice legal actions, have been seldom used. Your recent Superfund report underscores this by pointing out that EPA has referred only three cases to the Department of Justice for action to require cleanup since the Superfund amendments of 1986 and from fiscal years 1981 to 1987 had issued only 15 administrative orders requiring cleanup.

We know that, when used, these administrative orders can produce results. While EPA issued orders during only 2 of the 18 negotiations we reviewed that exceeded the 6-month EPA standard, settlements were reached in both cases soon after the orders were issued. Superfund project managers and attorneys told us in response to our questionnaire that enforcement techniques were underutilized.

Cost Recovery

In addition to trying to get responsible parties to pay for cleanup initially, enforcement also involves recovering the costs of an EPA cleanup. As we mentioned earlier, EPA has recovered very little of the money spent cleaning up sites. In fact, as of June 1989, EPA has only achieved 32 percent of its goal to recover \$450 million by 1991, according to a Financial Management Division official. Several factors hinder EPA's cost recovery. For example, EPA so far has not attempted to recover all its indirect

costs of cleanup, such as preliminary assessments of potential sites and research and development. EPA estimates that total indirect costs approach \$1 billion. Another obstacle is EPA's slow issuance of letters to responsible parties demanding payment. EPA guidance stipulates time frames for such letters. However, in the three regions we reviewed, EPA did not issue demands for payment within these time frames in 70 percent of the 47 cases we reviewed.

Many of the problems we found in our enforcement review have been caused in part by the continued lack of EPA resources. In fact, 83 percent of the respondents to our questionnaire believe that their regions definitely need additional personnel. Again, as we pointed out earlier, EPA would be in a better position to determine its work force needs by using objective measures. Another factor that created problems was the separation in the regions of technical and legal staff--the technical staff being in one division and the legal staff in another. Fifty percent of the respondents to our questionnaire said this split had decreased their ability to work efficiently over the past year.

Setting and Meeting Goals

Beyond dealing with the contracting, personnel, and enforcement problems that have troubled the program, EPA, working with the Congress, needs to define Superfund's goals more clearly. What is it that Superfund is to accomplish, how long should it take, how much ought it cost, and who should pay for it? EPA needs to better recognize that Superfund is a long-term program and establish an infrastructure to support it--including long- and short-term goals, and a reliable, comprehensive management information system.

Two of our reports bear on this subject. In December 1987 we estimated that up to 425,000 sites nationwide may need to be

evaluated for Superfund action.⁶ Presently, EPA's principal Superfund information system lists about 31,000 sites for evaluation. Our estimate indicates that the hazardous waste site problem is potentially many times larger than has so far been recognized. We believe this issues raises the question about the appropriate federal role in the national cleanup effort. EPA, however, had not actively sought information on the sites that are not recorded in its data base.

In our view, better information on these sites is essential to defining what should be Superfund's scope, its budget, and its goals. The government needs to decide how much of the nation's hazardous waste site problems should be EPA's responsibility and how much time can safely be taken cleaning up these sites. Then, reasonable performance goals can be established for Superfund.

Our November 1988 report on EPA's failure to meet most of the deadlines specified in the Superfund reauthorization act shows that EPA needs to better focus its efforts toward meeting congressionally mandated goals.⁷ Largely because it was dissatisfied with Superfund implementation, the Congress wrote almost 80 deadlines for EPA action into the 1986 Superfund reauthorization act. At the request of this Subcommittee, we examined EPA's record in meeting many of these deadlines and found that EPA had missed most of them in part because it had not managed its activities to meet them. In fact, when we started our review, we had to research the reauthorization act ourselves to catalogue the deadlines because EPA did not know how many there were. We recommended that EPA improve its information system for tracking

⁶Superfund: Extent of Nation's Potential Hazardous Waste Problem Still Unknown (GAO/RCED-88-44, Dec. 17, 1987).

⁷Superfund: Missed Statutory Deadlines Slow Progress in Environmental Programs (GAO/RCED-89-27, Nov. 29, 1988).

its progress toward meeting statutory deadlines for top management's use in promoting compliance with these deadlines.

This concludes my summary of recent GAO work on the Superfund program. I would like to turn now to EPA's report.

GAO COMMENTS ON EPA'S REPORT

Overall, EPA's report is a frank and constructive self-evaluation of the Superfund program. For this ambitious study, EPA listened to the criticisms of many different groups and proposed a host of recommendations to correct the problems. Because the report was not issued during our review, we analyzed the most recent draft reports and discussed them with the EPA official in charge of the review. Many of the report's recommendations represent a new effort to implement the 1986 Superfund Amendments and Reauthorization Act (SARA). For example, the report's emphasis on enforcement mirrors the emphasis that SARA placed on using enforcement tools--inducements as well as penalties--to get Superfund sites cleaned up. The report also calls for improving two other SARA initiatives--technical assistance grants for the public and a program to develop innovative technologies through site demonstrations. If implemented, the report's recommendations should improve Superfund's effectiveness. The EPA official in charge of the report said that EPA's next step is to prepare a plan for implementing the report's recommendations.

In addition to expressing general support for EPA's report, I have some comments focusing on those segments that specifically relate to our prior work.

Contract Management

In the contracting area, for example, we have reported weaknesses in EPA's efforts to prevent conflicts of interest. EPA

recognizes such weaknesses in its report and makes several recommendations for improvement. EPA recommends requiring additional procedures for detecting and avoiding conflicts of interest and providing guidance for contractors.

However, we continue to be concerned about other contracting weaknesses, primarily in the area of cost control. In addition, EPA's Office of Inspector General has identified numerous weaknesses in Superfund contracting. In an earlier draft of its management report, EPA recognized the need for improvements in contracting, but the latest draft report has not developed specific recommendations. Greater emphasis on contract management, such as controlling contractor costs as well as conflicts of interest, should be included in EPA's agenda because of the large dollar amounts at stake.

Superfund Work Force and Enforcement

EPA's recommendations appear to begin to address two issues we identified in our reports--a capable work force and a strong enforcement program. In its report, EPA recognizes the problem of high turnover rates in Superfund personnel and recommends several actions to retain the staff, including pay increases and other incentives, such as more flexible leave policies and retention bonuses. However, as we mentioned earlier, the use of objective measurements would help EPA determine its work force needs. EPA also recognizes weaknesses in its enforcement program. Some of EPA's recommendations that we endorse include increasing the use of enforcement orders, more aggressive action to obtain information from responsible parties, and improvements in cost recovery.

Setting and Meeting Goals

EPA's report draft did not adequately address the issues of statutory deadlines or a comprehensive management information system. As this Subcommittee is aware, EPA has not been successful in these areas. We believe, therefore, that EPA's Superfund action plan should include a commitment to meet the deadlines the Congress established for the Superfund program. EPA should improve its tracking of progress on deadlines and work with the Congress on possible slippages. In addition, the Superfund information systems are not providing accurate information on the program. For example, they do not contain all sites that states have identified as potentially requiring cleanup nor do they provide full cost recovery information. Improvements must be made to the systems if EPA is to have adequate information on which to base its goals and make informed decisions.

Any discussion of goals must also focus on the allocation of resources. EPA recognizes in its report, particularly in the enforcement and remedial areas, that additional resources will be needed to improve the program. EPA does not plan to request additional funds, but rather will attempt to reassign its funds, for example, by increasing the number of employees and reducing contracted services. We support EPA's efforts to implement the report's recommendations within existing budget limitations if possible and believe that EPA should work with the Congress to determine the nature of and priorities for those reassigned resources.

At the time of our review, EPA had not completed an implementation plan with priorities, milestones, and followup. These elements will be essential to determine whether EPA's report will result in the changes expected.

Strong Leadership and
Management Support Needed

EPA must provide a realistic implementation plan and strong leadership if the Superfund report is to achieve its intended results. The size of the program, which costs almost as much as all of EPA's operating programs combined, requires this kind of effort, as does the persistence of problems that have plagued it, due in no small part to the complexity of the program itself.

In the absence of management commitment, problems can persist in programs despite recognition of them. For example, although for years EPA has been aware of the loss of revenue from not recovering indirect costs of the Superfund program, we believe the problem has gone unresolved because of insufficient management commitment to correct this situation. As a result, EPA, in its report, is just now recommending rulemaking to recover these costs. In the meantime, EPA will continue to lose revenue because it cannot go back to recover the indirect costs after it has settled with responsible parties.

EPA's report does not deal extensively with the organizational arrangement for Superfund, though in order to be sure that top management's attention is spotlighted on the program, some change in organization may be appropriate. Superfund currently resides in an office that handles several other major environmental efforts, including the Resource, Conservation, and Recovery Act (RCRA) program and the Underground Storage Tanks program. At the time Superfund was assigned to this office, it was expected to be a short-term cleanup program. Since that time, however, the program has grown significantly and is now recognized to be a long-term commitment that will last well into the 21st century. In addition, we have reported that the RCRA and storage tank programs have their own significant and unique problems. With so much of EPA's resources spent on the Superfund program and so many changes

looming, perhaps a separate Assistant Administrator for Superfund is needed. The Congress and EPA may want to consider the advantages of such a position.

CONCLUSIONS

The recommendations in EPA's report go a long way to improving a program that EPA recognizes is filled with problems. We would add that attention to cost controls in contracting, statutory deadlines, and a comprehensive information system would further improve EPA's plan.

We are hopeful that this fresh internal look at Superfund will result in a better program to clean up the nation's hazardous waste sites. However, insightful reports such as this one are sometimes shelved and do not always result in needed change. Therefore, we remain cautious about the ultimate outcome of this report. We stress that the report's recommendations for change will require a firm, continued, and concentrated commitment from top management as well as at the staff level. An Assistant Administrator for Superfund might provide the strong leadership necessary to bring about needed change without disrupting the cleanup progress.

Mr. Chairman, we would be pleased to assist the Subcommittee in its continuing oversight of Superfund as EPA implements the recommendations in its recent report. This concludes my prepared statement. I will be glad to respond to any questions that you or members of the Subcommittee may have.

RECENT RELATED GAO REPORTS

Superfund Contracts: EPA's Procedures for Preventing Conflicts of Interest Need Strengthening (GAO/RCED-89-57, Feb. 17, 1989).

Superfund: Missed Statutory Deadlines Slow Progress in Environmental Programs (GAO/RCED-89-27, Nov. 29, 1988).

Superfund: Interim Assessment of EPA's Enforcement Program (GAO/RCED-89-40BR, Oct. 12, 1988).

Superfund Contracts: EPA Needs to Control Contractor Costs (GAO/RCED-88-182, July 29, 1988).

Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management (GAO/RCED-88-101, Aug. 16, 1988.)

Superfund: Extent of Nation's Potential Hazardous Waste Problem Still Unknown (GAO/RCED-88-44, Dec. 17, 1987).

Hazardous Waste: Issues Surrounding Insurance Availability (GAO/RCED-88-2, Oct. 16, 1987).

Superfund: Improvements Needed in Work Force Management (GAO/RCED-88-1, Oct. 26, 1987).