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ENVIRONMENTAL
PROTECTION

Selected Issues Related to
EPA's Fiscal Year 1997
Appropriation

Statement for the Record by
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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to participate in the Subcommittee's hearing on the Environmental Protection Agency's (EPA) fiscal year 1997 appropriation. As you requested, GAO has reviewed certain aspects of EPA's Leaking Underground Storage Tank program. Specifically, we are providing information on (1) the extent of the leaking underground storage tank problem, (2) federal and state funding for the program, and (3) EPA's plans for future involvement in the program. In addition, at your request, this statement provides our views on the potential for EPA to recover excess funds currently obligated for inactive Superfund cleanup contracts.

In summary, we found the following:

- Releases from underground storage tanks are occurring nationwide. EPA estimates that about 400,000, or 20 percent, of the over 2 million tanks regulated by the agency have leaked or are leaking.
- Since the leaking underground storage tank program began in 1987, EPA has distributed about \$500 million to the states. In addition, the legislatures of 44 states have created state programs to help owners pay for cleaning up leaking tanks.
- EPA plans to reduce its future involvement in regulating tanks and cleaning up releases because it believes that (1) releases will largely be cleaned up, (2) fewer tanks will leak as older tanks are brought up to current design standards and new tanks that meet the current standards are installed, and (3) the states have developed regulatory programs and established cleanup funds.
- Under the Superfund program, during fiscal years 1994 and 1995, EPA recovered \$330 million in excess funds obligated for inactive Superfund projects and made these funds available for other Superfund projects. We have identified an additional \$164 million that may be recoverable.

Background

Releases from leaking underground storage tanks can contaminate groundwater, streams, and soil. EPA estimates that about half of the confirmed releases have reached groundwater, the source of drinking water for about half of the U.S. population. Petroleum fuels—the most prevalent contaminant—usually contain harmful chemicals, such as benzene, a carcinogen. Releases can also cause fires or explosions that threaten human safety.

The Hazardous and Solid Waste Amendments of 1984 amended the Resource Conservation and Recovery Act to regulate underground tanks for storing petroleum and hazardous chemicals. The Superfund Amendments and Reauthorization Act of 1986 created the Leaking Underground Storage Tank trust fund, to be financed by a tax of 0.1 cent on certain motor fuels, as well as cleanup costs recovered from responsible parties. (The authorization for this tax expired in December 1995.) EPA may use the fund to pay for the costs of tank cleanup in the event of an emergency, where no responsible party has been identified, or where a responsible party is failing to comply with a cleanup order. EPA may also use the fund for enforcement activities, and may pursue cost recovery actions against responsible parties. States may exercise similar cleanup and enforcement authority if they have entered into cooperative agreements with EPA. EPA may provide money from the fund for reasonable state costs under such a cooperative agreement.

Under the Hazardous and Solid Waste Amendment provisions governing underground storage tanks, EPA has issued regulations to establish technical standards and operating requirements for tank owners and operators in three areas: (1) tank design and installation, (2) release detection, and (3) spill and overfill control. New tank systems, those installed after December 22, 1988, must meet the tank design and installation requirements. Owners of existing tanks are required to upgrade their systems by December 22, 1998. Release detection requirements for existing tanks were phased in between 1989 and 1993. All tanks are subject to spill and overfill controls.

Extent of the Leaking Tank Problem

Over 2 million tanks are regulated by EPA under the Resource Conservation and Recovery Act, and the agency estimates that about 20 percent have leaked or are leaking.¹ Of these 400,000 tanks, releases have already been confirmed for over 303,000, and EPA anticipates that 100,000 additional releases will be identified as owners and operators replace or upgrade their tanks to meet the current standards. States are reporting about 600 additional releases each week.

Cleanups have been completed for approximately 131,000, or about 43 percent, of the 303,000 confirmed releases. Cleanups are in process for another approximately 107,000, or 35 percent. Although this effort indicates that EPA, the states, and tank owners and operators have made

¹Exempted from EPA's regulations are an estimated 3.9 million tanks, such as farm and residential tanks with a capacity of 1,100 gallons or less that hold motor fuel used for noncommercial purposes and tanks that store heating oil used on the premises where it is stored.

considerable progress in cleaning up releases, the remaining 65,000 confirmed releases and the 100,000 additional releases anticipated by EPA are more extensive than the cleanups that been completed since the beginning of the program.

Revenues of about \$1.6 billion were collected for the Leaking Underground Storage Tank trust fund before the authority for the tax expired in December 1995. Annual appropriations to EPA for the program have been substantially less than the tax revenues collected, leaving a balance of about \$1 billion in the trust fund. The appropriations totaled about \$591 million through fiscal year 1996. The current trust fund balance would finance appropriations for the program at their historical level for about 15 years.

Through fiscal year 1995, EPA has allocated to the states about \$466 million, or over 85 percent of the funds appropriated for the program, retaining the balance (about \$80 million) for its own administration of the program. The states have used their allocations principally to pay for about 1,500 state and local staff to oversee cleanups of contaminated sites by tank owners and operators (37 percent) and to take enforcement actions to get owners and operators to clean up releases or pay for cleanups (35 percent). The remaining 28 percent of the federal funds was used to pay for the cleanup of sites needing emergency attention or for which no viable responsible party could be found.

In addition to receiving federal funds, 44 states have established financial assurance funds for the owners and operators of underground storage tanks. These state funds are generally used to reimburse the owners or operators of tanks for the costs of cleanups. In total, the states collect over \$1 billion a year in fees for these funds. Although the funds collected are substantial, EPA has reported that, in total, the outstanding claims by the owners and operators exceed the approximate current balance of these funds by about \$400 million.

EPA's Plans for Future Involvement in the Program

EPA officials told us that the agency plans to substantially reduce its role in the Leaking Underground Storage Tank program over the next several years. The agency's rationale is that (1) the states have developed regulatory programs for underground storage tanks and generally have established funds to assist tank owners and operators with cleanup costs, (2) most contaminated sites will be cleaned up, and (3) substantially fewer new releases are anticipated as the old tanks are either closed or upgraded

to meet the current standards. Nonetheless, EPA recognizes that before it reduces its role, the states must first develop effective programs that give priority to controlling the leaks from the tanks that pose the greatest threats to human health and the environment.

Even though states have developed regulatory programs and tank cleanup and enforcement capabilities, EPA has approved only 22 state underground storage tank regulatory programs to operate in lieu of the federal program. Furthermore, several state officials told us that they anticipate that many tank owners, especially small businesses, will have difficulty upgrading their tanks by 1998, as EPA's regulations require. These officials said that many tank owners subject to the 1993 deadline for leak detection have not met it. For example, an Alabama program official surveyed the eight states in EPA's Region IV in April 1996 and found that, according to these states' estimates, about 12 percent to 75 percent of the tanks did not meet leak detection requirements. Each of the eight states anticipated that tank owners and operators would have difficulty complying with the requirements for upgrades.

EPA believes that a fundamental challenge in state programs for leaking underground storage tanks is the need to focus limited resources on high risk sites, while ensuring that all sites move toward cleanup. Accordingly, in March 1996, EPA announced an initiative to create a partnership with the states and industry to focus resources on cleaning up releases that pose the greatest risks. According to EPA, many state agencies have followed cleanup standards adopted from other programs, such as the Superfund program, and applied them uniformly to remediating releases from underground storage tanks. EPA stated that many of these cleanup requirements are based on generic numerical standards, and it has become apparent that applying these standards without considering the actual and potential risk that a release may pose is neither (1) an effective way to protect human health and the environment nor (2) an efficient way to manage and oversee underground storage tank cleanups.

Under its initiative, EPA, state governments, the American Society for Testing and Materials, and six major oil companies signed a memorandum of understanding to reduce risk by targeting resources for cleanup on those releases that pose the greatest risk. Under the agreement, EPA and each of the industry partners contributed \$100,000 toward developing and delivering a series of training sessions to be provided to interested states to teach the new risk-based approaches to cleanup. The industry partners

also agreed to provide technical expertise and resources, such as demonstration sites and peer review assistance.

As of April 1996, 43 states had indicated an interest in receiving training in the new risk-based cleanup approach. Thirty-seven states had completed at least one of the three training modules. Twenty-one states had completed the training and were modifying their programs to incorporate risk-based approaches.

Status of EPA's Efforts to Identify Superfund Contracts With Excess Funds

During fiscal years 1990 through 1995, EPA obligated about \$3.9 billion for Superfund contracts, according to the agency's Office of Acquisition Management. As the work is performed, the contractors are paid and the obligations are liquidated. The amount of funds obligated for a particular contract often exceeds the amount eventually paid to the contractor for various reasons. For example, the cost of the work completed may be less than the amount obligated. The unspent funds should be deobligated and used for other Superfund activities, once the original contracts are closed.

In July 1994, EPA's Office of Inspector General reported that as of March 1993, contracts awarded under the Superfund cleanup program had balances of over \$100 million in unspent obligated funds that were no longer needed for their original purposes. The Superfund program accounts for about \$3.9 billion, or approximately 54 percent of the \$7.2 billion that EPA obligated for contracts during fiscal years 1990 through 1995. The Superfund program has received appropriations that remain available for use until expended. Thus, the Inspector General reported that the unspent obligated funds could be deobligated and used for ongoing or new Superfund projects.

In early 1994, EPA initiated an agencywide effort to place a high priority on the timely recovery of Superfund contract funds that remain obligated but are no longer needed for the purposes of the original obligation. As part of this effort, EPA created the Superfund Deobligation Task Force to develop guidance on and pursue the recovery of excess funds. The task force, composed of members from several headquarters offices and all of EPA's regions, attempted to identify unspent funds remaining on completed projects. In fiscal year 1994, the task force identified about \$160 million in excess funds that was subsequently recovered and used to fund other Superfund cleanup work. In fiscal year 1995, the task force recovered an additional \$170 million, for a total of \$330 million that the agency has made available to support additional cleanup work.

The task force reported that about \$230 million of the \$330 million recovered was associated with projects on which all work had been completed. The remaining \$100 million was recovered through EPA's success in requiring parties responsible for contamination at Superfund sites to take financial responsibility for the cleanups.

Our review of the funds obligated for EPA's Superfund contracts indicates that substantial amounts remain obligated for completed projects. We used EPA's data systems to identify unspent obligations for current contracts whose (1) work has been completed or (2) specified performance period has expired. On this basis, we identified \$164 million in potential recoveries.² In addition, other recoveries are possible during the year to the extent that EPA is successful in requiring cleanups to be performed by responsible parties.

EPA officials told us that the agency will continue to take timely deobligation actions to recover funds. EPA's ability to do this will depend largely on the agency's success in first identifying and closing completed contracts. Indeed, the Inspector General's July 1994 report pointed out that by not taking aggressive action in identifying and closing such contracts, the agency contributed greatly to its failure to recover unneeded funds. The Inspector General said that, in some cases, contracts had not been closed for many years after work had been completed.

²We did not verify the accuracy or reliability of these data systems.

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