



United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-272215

June 10, 1996

The Honorable Christopher S. Bond
Chairman, Committee on Small Business
United States Senate

Dear Mr. Chairman:

On April 15, 1996, we reported to you on the potential for the Environmental Protection Agency (EPA) to save time and money through the use of non-time-critical (NTC) removals for Superfund cleanups.¹ Compared with the traditional remedial process, the NTC removal process saves time and money by considerably shortening the planning process for cleanups.² However, our report identified two requirements in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that constrain the use of NTC removals: (1) a 12-month limit on the duration of removal actions and (2) a \$2 million limit on the cost of removal actions. While the law provides for a waiver of these limits, EPA regions have varying interpretations of what qualifies an NTC removal for a waiver. These varying interpretations have discouraged the wider use of NTC removals among the regions.

¹See A Superfund Tool for More Efficient Cleanups (GAO/RCED-96-134R, Apr. 15, 1996).

²Most removals are quick actions to respond to emergency or time-critical threats. However, in recent years, EPA has begun to use NTC removals to respond to threats where action can be delayed to plan for a substantial cleanup. NTC removals result in quicker cleanups than those under EPA's traditional remedial program because they streamline the steps used to study a site's contamination and design a cleanup method. Although NTC removals are appropriate for cleaning up portions of many Superfund sites, these sites may also require very complex actions that are more appropriately conducted under the remedial program's more extensive planning process.

Because NTC removals save time and money, you asked us to provide you with information on (1) what changes to the law's time and cost limits could help to ease constraints on NTC removals and (2) whether EPA believes that limits on removal actions are necessary or appropriate. To address these objectives, we analyzed EPA's data on the duration and cost of NTC removals. We interviewed cleanup officials at EPA's headquarters including the Senior Manager for Emergency Response and the Superfund Reform Coordinator, who presented the agency's official position on time and cost limits on removal actions. We also interviewed branch chiefs responsible for Superfund cleanups in six of EPA's regional offices. We selected these regions to provide broad geographic coverage and to include regions whose use of NTC removals ranged from few to many.³

RESULTS IN BRIEF

Data on the 40 NTC removals conducted through March 1995 show that a large majority had a duration of less than 3 years (30 out of the 38 for which data were available). Similarly, a large majority of NTC removals cost \$5 million or less (28 out of the 35 for which data were available). (Enc. I presents these data.) EPA's headquarters and regional cleanup managers both agree that raising the time and dollar limits on removals would improve the cleanup process by reducing the number of NTC actions for which a waiver of the legislative limits has to be justified. However, EPA's headquarters and regional officials differ somewhat on the level at which the limits should be set. EPA's headquarters managers state that the agency's official position is that the time and dollar limits on removals should be raised to 2 years and \$4 million, respectively. Five of the six regional cleanup managers said that it would be helpful to raise the limits to 3 years and \$5 million because under these limits, most NTC actions would not require a waiver. One regional cleanup manager stated that 2-year, \$5 million limits would accommodate most of the region's NTC removals.

Cleanup managers at EPA headquarters and in the regions also have different views on whether time and dollar limits on removal actions are necessary or appropriate. EPA's headquarters officials believe that time and dollar limits on removal actions are needed to ensure that before excessive amounts of time

³The six regional offices that we contacted are Boston, Mass.; Philadelphia, Pa.; Atlanta, Ga.; Kansas City, Kans.; Denver, Colo.; and San Francisco, Calif. These are the same regions that we contacted in our earlier work on the potential for NTC removals to save time and money on Superfund cleanups.

and money are expended on a removal action, the removal action is consistent with any long-term remedial actions that may eventually be taken at the site. However, the headquarters officials would like the time limit on removals to be defined so that delays due to factors such as seasonal weather changes do not count against the time limit. Five out of the six regional officials we talked to questioned the need to have a time limit on removals because they view the limit as an arbitrary or bureaucratic requirement having little justification. Three out of these five regional officials also questioned the dollar limit on removals. They believe that the money spent on removal actions will be self-limiting, given the need to spread EPA's Superfund budget among many competing cleanup actions. One regional official disagreed, however, stating that he believes legal limits on removal actions help to distinguish between when to use removal procedures and when to use remedial procedures. (Enc. II summarizes our discussions with EPA officials.)

SCOPE AND METHODOLOGY

To respond to the requested objectives, we first reviewed data from a survey that EPA conducted on the universe of 81 NTC removals that had been started as of March 1995 (including 40 that had progressed beyond the study phase). We analyzed the data to determine how the duration and cost of NTC removals conducted to date compare with the time and dollar limits under the current law. We then discussed this comparison with EPA's cleanup managers at headquarters and in six regions. These managers' experience represents a cross-section in the use of NTC removals. We asked these officials for their opinions on what changes to the time and cost limits on removals would help to ease constraints on NTC actions. We also discussed whether they believe that time or cost limits on removal actions are necessary or appropriate.

We performed our work in late May and early June 1996 in accordance with generally accepted government auditing standards. We did not verify the accuracy of the data that EPA collected in its March 1995 survey.

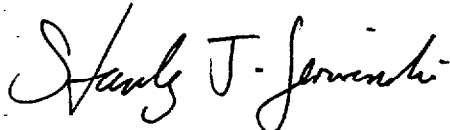
AGENCY COMMENTS

EPA managers and staff in the Office of Emergency and Remedial Response and the Office of the Comptroller commented on a draft of this report and agreed with the facts presented. The officials asked, however, that we clarify the agency's position on why time and cost limits on Superfund removals are necessary. The officials stated that legislative limits are needed to ensure that before excessive amounts of time and money are expended on a removal action, the removal is consistent with any long-term remedial actions that may eventually be taken at the site. We revised the report to incorporate this comment.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 10 days after the date of this letter. At that time, we will send copies to the Administrator of EPA. We will make copies available to others on request.

Please call me at (202) 512-6520 if you or your staff have any questions about this report. Major contributors to this report were Richard P. Johnson, Angelia V. Kelly, Eileen R. Larence, and Patricia J. Manthe.

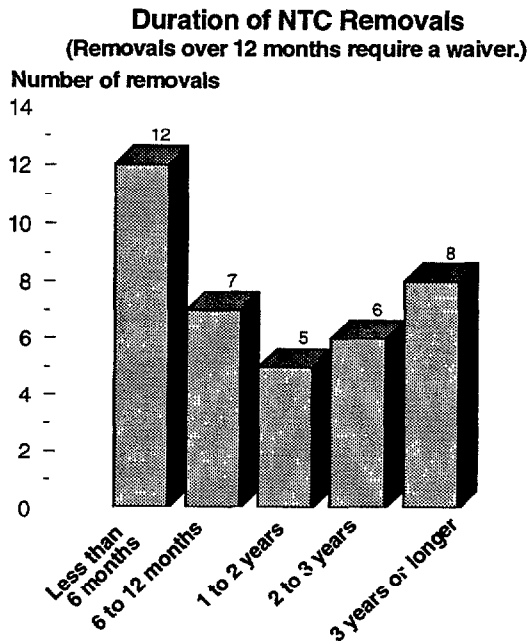
Sincerely yours,



Stanley J. Czerwinski
Associate Director, Environmental
Protection Issues

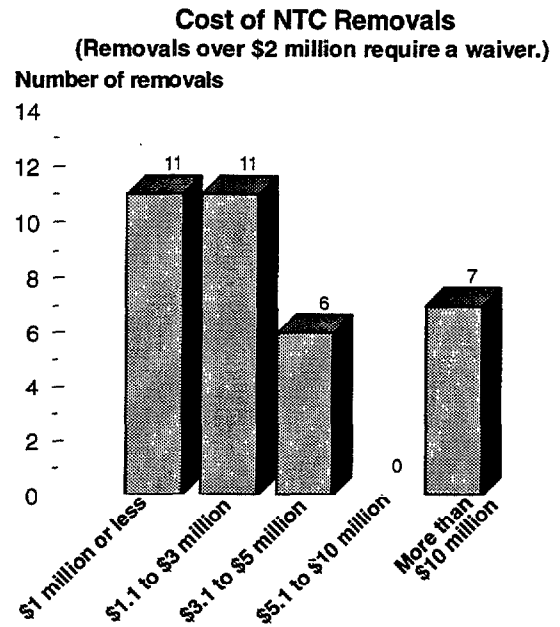
Enclosures - 2

MANY NTC REMOVALS EXCEED TIME OR COST LIMITS UNDER THE CURRENT LAW



Note: By law, time and cost limits only apply to federally financed actions. However, EPA considers these limits in approving privately funded actions.

Source: EPA's data as of March 1995.



Note: EPA aggregated actions costing \$1.1 to \$3 million, so it is unclear how many actions in that interval are over \$2 million.

EPA OPINIONS ABOUT TIME AND COST LIMITS ON REMOVALS

EPA organizational unit	What changes to the limits would help ease constraints on NTC removals?	Are limits on removal actions necessary or appropriate?
Headquarters	<p>EPA's official position is that the limits on removals should be raised to 2 years and \$4 million, as proposed in S. 1285. While headquarters officials state that precisely determining the optimal level for the limits is difficult, they believe that 2-year, \$4 million limits are reasonable and certainly less constraining than the current limits. In addition, EPA's headquarters officials would like the time limit on removals to be defined more flexibly. Under current law, once the removal action begins, periods of inactivity (related to factors such as seasonal weather changes) count against the time limit. The EPA officials would like the time limit to apply only to periods of active site work.</p>	<p>EPA's headquarters officials believe that limits on removals are needed to ensure the proper balance in the Superfund program between removal actions and long-term remedial actions. The headquarters officials state that the legislative limits ensure that before excessive amounts of time and money are expended on a removal action, the removal is consistent with any long-term remedial actions that may eventually be taken at the site.</p>
Regions	<p>Five of the six regional cleanup managers we contacted favored increasing the limits on removals to 3 years and \$5 million on the basis of their recent experience with NTC removals. One of these five stated that a \$5 million limit might be a little low, however. Another regional cleanup manager stated that 2-year, \$5 million limits would accommodate most of the region's NTC removals. Several of the regional officials stated that it is difficult to determine exactly where to set the limits.</p>	<p>Five of the six regional officials questioned the need for a time limit on removals because they find the limit to be an arbitrary or bureaucratic requirement having little justification. One of these officials explained that although removals were originally intended to be quick actions, recent experience has shown that lengthier removals can be cost-effective. Three of these five officials also questioned the dollar limit on removals because they believe that competing demands for cleanup funds will limit the amount spent on any one removal action. One of these officials suggested that in lieu of the current limits in the law, EPA headquarters could provide guidance on the time for and cost characteristics of actions that may be more appropriate for the removal, as opposed to the remedial process. Another regional official disagreed, however, stating that he believes it is appropriate to have legal limits on removal actions to distinguish between when to use removal or remedial procedures.</p>

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