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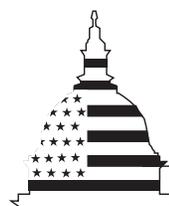
Before the Subcommittee on VA, HUD, and Independent
Agencies, Committee on Appropriations, U.S. Senate

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HAZARDOUS WASTE

**Observations on EPA's
Cleanup Program and
Budget Management
Practices**

Statement for the Record by
Peter Guerrero,
Director, Environmental Protection Issues,
Resources, Community, and Economic
Development Division



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Mr. Chairman and Members of the Subcommittee,

We are pleased to provide you with information on the Environmental Protection Agency's (EPA) hazardous waste cleanup programs to assist in your deliberations on the agency's budget request for fiscal year 2000. Our work has determined that EPA faces several management challenges in implementing two of its hazardous waste cleanup programs—the Superfund program, under the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as CERCLA, and the Corrective Action program, under the Resource Conservation and Recovery Act, commonly known as RCRA. For the Superfund program, we found that the agency needs to better control cleanup costs, especially contractors' costs. For the Corrective Action program, we found that four key factors are hampering the progress of cleanups, including companies' reluctance to begin cleanups without an economic incentive and EPA's lack of resources to direct more companies to conduct cleanups. These management challenges demonstrate that the agency could more cost-effectively implement the Superfund program but needs more resources for the Corrective Action program—findings that are relevant to your decisions on the levels of new funding for these programs.

More specifically, you asked us to provide information on three management issues confronting these cleanup programs: (1) the amount of contracts that EPA has awarded to private companies that conduct Superfund cleanup activities for the agency, (2) the extent to which EPA is using its "Contracts 2000" initiative as a vehicle to improve the agency's Superfund contract management practices, and (3) our perspective on the potential effects of transferring \$25 million from the Superfund program's budget to the Corrective Action program's budget as a means of increasing the number of cleanups under RCRA. Our observations are based predominantly on two reports. In October 1997, we reported on the progress of cleanups under the Corrective Action program. Today, we are issuing a report discussing the progress that EPA and other federal agencies have made in resolving Superfund program management issues.¹

In summary, we observed the following:

- EPA may be retaining more contractors than it needs to conduct its Superfund cleanup work. As a result, contractors often have low levels of work and high program support costs, such as those for rent and

¹Superfund: Progress Made by EPA and Other Federal Agencies to Resolve Program Management Issues (GAO/RCED-99-111, Apr. 30, 1999) and Hazardous Waste: Progress Under the Corrective Action Program is Limited, but New Initiatives May Accelerate Cleanups (GAO/RCED-98-3, Oct. 21, 1997).

managers' salaries. Given that EPA expects its future Superfund workload to decrease as states take on more cleanups that the agency would otherwise have managed under Superfund and as cleanup construction is completed at more sites, contractors will continue to incur high program support costs unless EPA makes adjustments in the number of contracts it awards.

- EPA could use the team that is managing its Contracts 2000 initiative—an effort designed to help the agency put in place the Superfund cleanup contracts it needs and assess its contract management practices—to address some of the recurring contract management issues we have identified, such as high program support cost rates. However, the agency could not provide us with documentation describing the (1) overall plan that the team would use to determine what options it would recommend that the agency adopt for improving Superfund contract management practices, and (2) time frames for implementing these improvements.
- Transferring \$25 million from Superfund to the Corrective Action program could help EPA achieve more RCRA cleanups; however, we cannot determine with certainty what impact this transfer would have on Superfund. When we assessed the progress of cleanups under the Corrective Action program, we found that it was slow, in part because companies responsible for conducting cleanups at their facilities did not begin the cleanups unless they had a business incentive to do so, such as wanting to sell or redevelop the property, or until EPA directed them to do so. At the same time, we found that EPA lacked the resources it needs to direct more companies to begin cleanups. Therefore, providing more funds for corrective actions could increase cleanup activities. In our report on Superfund program management issues, we observed that for fiscal year 1998, EPA had more sites ready to begin the construction of a cleanup method than funds available. Thus, reducing the program's budget could further delay cleanups. Nevertheless, EPA has the flexibility to propose how it will use the funds it receives for Superfund, such as the relative amounts it would like to use for remedial work and enforcement actions. Therefore, EPA might be able to manage a reduction in its budget by cutting its administrative costs rather than performing fewer cleanup activities.

Background

When EPA awards a Superfund contract, it specifies that the contractor will obtain up to a certain dollar amount of cleanup work over a given time period. As the contractor conducts the work, it incurs costs—both direct costs that can be attributed to an individual site and indirect costs that are not site specific. EPA pays the contractor for both types of costs. EPA tracks the amount of non-site-specific costs it pays as a percentage, or rate, of the

total contract costs that it covers. One subset of these indirect costs is the contractor's program support costs, for items such as rent and managers' salaries. Since the mid-1990s, EPA has used 11 percent as its target for program support costs.

Within the Superfund program, EPA established a long-term contracting strategy to identify and implement needed contract management improvements. An outgrowth of this strategy is EPA's Contracts 2000 initiative. Under this initiative, a team of EPA staff are helping the agency put in place the contracts it will need to manage its future cleanup workload and to assess and update its Superfund contract management practices. One of the issues that the team has identified as needing resolution is the type and number of contracts to use in the program. How EPA resolves this issue could affect the program support cost rate that it pays.

Contractors' Superfund Program Support Costs Are Still High, in Part, Because EPA Has Too Many Contracts for Its Cleanup Workload

In a 1997 report on contract management issues,² we stated that the percentage of funds EPA was paying contractors for program support costs (e.g., rent and salaries) was high relative to the percentage it was paying for cleanup costs. Specifically, the program support costs ranged from 21 to 38 percent of the total costs for some of the new Superfund contracts that EPA was awarding as its old contracts expired. These amounts exceeded EPA's target of 11 percent. In August 1998, we further reported that, overall, contractors' program support costs averaged about 29 percent of total contract costs.³ For our report on contract management issues, we reviewed the 15 new Response Action Contracts that EPA had awarded and determined that the program support cost rates for 5 of them were below EPA's target and the rates for 10 of them exceeded EPA's target, ranging from 16 to 76 percent with a median of 28 percent.⁴ According to several EPA contracting officers, the agency expects such high rates for new contracts until it has had time to award enough work to all of the contractors. The officials predict that as EPA awards more work assignments, these program support cost rates should decrease.

However, the uncertain future of the program may make such a decrease difficult to achieve. When EPA began replacing its expiring contracts with

²Superfund Program Management (GAO/HR-97-14, Feb. 1997).

³Superfund: Analysis of Contractor Cleanup Spending (GAO/RCED-98-221, Aug. 4, 1998).

⁴Five of these 15 contracts were less than a year old and two additional ones were just awarded at the time of our review. EPA plans to eventually award a total of 19 contracts nationwide.

new contracts, it had to decide how many contracts to award. In September 1992, it used the number of work assignments under its 45 expiring contracts to project the number of work assignments it would have in the future. Because the agency expected the number of work assignments to remain steady, it believed that if it reduced the number of contracts it awarded, it could give its contractors more work and their program support cost rates would decrease. Initially, EPA decided to reduce the number of contracts from 45 to 22; later, it further reduced the number to 19 because it no longer expects to have the workload it originally predicted. However, EPA may still have more contracts in place than it needs. For example, EPA has been enrolling fewer sites in the program in recent years. In addition, the four EPA regions with the highest Superfund workload indicated that, as the states take on greater cleanup responsibilities, fewer sites will enter the program. With fewer sites, contractors will have less work and EPA will have less chance to reduce its program support cost rates.

EPA will soon have an opportunity to review the number of contracts it should have in place and to try to better control program support costs. EPA designed the current Superfund contracts to last 5 years, with an option to renew them for another 5 years. The 5-year base period will be up for 11 of the current contracts within about 2 years and EPA will have to determine whether to exercise its option to renew them.

Recurring Problems Raise Broader Questions About Superfund Contracting That Could Be Addressed Through EPA's Contracts 2000 Initiative

While reviewing EPA's progress in resolving Superfund program management issues, including contractors' high program support cost rates, we determined that these problems may be symptoms of more systemic issues associated with EPA's Superfund contracting. EPA could use its Contracts 2000 initiative to address some of the following issues we identified:

- Could the agency more quickly and aggressively test and implement alternative types of contracts, such as fixed-price or performance-based contracts, in addition to or instead of using cost-reimbursable contracts as it now does? A cost-reimbursable contract, under which EPA agrees to pay all of a contractor's allowable costs, places most of the financial risk on the government because the work to be performed at a site is uncertain in nature and extent and EPA therefore cannot accurately predict its costs. A fixed-price contract, used for clearly defined and more routine cleanup actions, reduces the financial risk to the government because the parties agree on a price for the contractor's activities and the contractor bears the

risk of performing at the agreed price. The Office of Management and Budget has also been urging EPA to make more use of performance-based contracts, which establish a price structure for a contractor's services that rewards the contractor for superior performance, allowing the government to better ensure the receipt of high-quality goods and services at the best price. EPA has begun to use both fixed-price and performance-based contracts on a limited basis at pilot sites.

- Is it cost-effective for EPA to duplicate the infrastructure necessary to manage contracts in each of its 10 regional offices as it is now doing?
- Are there new and more effective ways to build more competition into EPA's contracting process? Allowing multiple contractors to bid on portions of cleanup work could help to control costs.
- Has EPA lowered its contract management costs through its recent use of the U. S. Army Corps of Engineers to manage a portion of its cleanup work? Because the Corps specializes in and conducts a significant amount of construction contracting for the federal government, it may be better equipped than EPA to manage Superfund construction contracts. If using the Corps has been cost efficient for EPA, should it give the Corps additional cleanup work to manage?

Our reviews over the years have consistently shown that without the sustained attention of high-level management, EPA has not always succeeded in implementing and sustaining contracting reforms. Because of this history, we were concerned when the agency could not provide documentation describing the (1) overall plan that the Contracts 2000 team would use for determining what options it would recommend that the agency adopt to improve Superfund contracting practices and (2) the time frames for implementing these improvements. As a result, we do not know whether EPA will move quickly enough to put improvements in place before it decides whether to exercise the option to review its Superfund contracts for another 5 years.

While Shifting Funds Could Accelerate Corrective Action Cleanups, the Impact on Superfund Is Uncertain

Our work has demonstrated that limited resources have delayed the progress of cleanups under the Corrective Action program; therefore, moving more funds into the program from the Superfund program could help accelerate RCRA cleanups. While we are uncertain how such a shift would affect the Superfund program, EPA may have the flexibility to minimize the impact of a reduction in funds on Superfund cleanups.

Lack of Resources Hampers EPA's Ability to Perform Corrective Action Cleanups

In 1997, we assessed the status of EPA's RCRA Corrective Action program. This program was designed for currently operating facilities that must clean up contamination at their sites, whereas the Superfund program was intended to address contamination at abandoned sites. At the time of our review, we found that only about 8 percent of the approximately 3,700 nonfederal facilities nationwide that treat, store, or dispose of hazardous waste—including only about 5 percent of the approximately 1,300 facilities EPA considers to pose the highest risks—had completed cleanup actions under the Corrective Action program, according to EPA's data. About 56 percent of the remaining facilities—including about 35 percent of those posing the highest risks—had yet to begin the formal cleanup process. While some facilities had undertaken cleanup actions outside the program, the extent of such actions is unknown because the actions are not reflected in EPA's program data.

Contributing to this slow rate of progress was that, without a business incentive, companies were reluctant to initiate cleanups until EPA, or a state implementing the program for EPA, directed them to do so. According to several cleanup managers we spoke with, companies will generally ensure that the contamination at their facilities does not pose an immediate danger to public health or the environment, whether or not EPA or a state has directed the facility to enter the Corrective Action program. However, the companies in our survey appeared to undertake more comprehensive cleanup actions only when they had an economic incentive to do so because the corrective action process can be costly and time-consuming. According to one cleanup manager at a large corporation, the company may not be anxious to pursue a cleanup if the contamination is not posing an immediate threat, the facility is not losing revenue, or the company is not incurring a financial liability by delaying the cleanup.

Although EPA is aware that cleanups are progressing slowly, we found that the agency could not direct more facilities to begin cleanups because it lacked the necessary resources. In fiscal year 1997, EPA expected to direct cleanups at less than 2 percent (46) of the 1,886 facilities—427 of which were high priorities—that had not yet begun cleanup. For example, program managers in one region projected that they would have enough resources that fiscal year to direct companies to begin cleanups at only 4 of their 69 high-priority facilities awaiting cleanup. Likewise, another region had 82 high-priority facilities that were eligible for and awaiting corrective action but expected to be able to enforce such action at only three of the facilities during that fiscal year because of resource constraints. Furthermore, several of EPA's program managers in

headquarters and the two regions noted that they may never have the resources to get to the 1,459 lower-priority facilities that were in EPA's corrective action workload at that time. According to EPA Corrective Action program managers, the program's budget did not increase for fiscal years 1998 or 1999. Therefore, the problems we identified in our earlier review remain.

Effect of Moving Funds Out of the Superfund Program Is Difficult to Predict

EPA officials have stated that the agency has serious concerns about transferring funds out of the Superfund program and is evaluating the effect of such a transfer on the agency's Superfund cleanup goals. As we stated in our report on Superfund program management issues, in fiscal year 1998, EPA had 50 sites that were ready to start constructing the cleanup method but funded 38 of them, at a cost of \$200 million, or about 13 percent, of its \$1.5 billion overall Superfund budget.⁵ Given that EPA did not provide funds for all 50 sites, additional cuts to the program's budget could reduce the number of future construction activities the agency could fund.

However, EPA has some flexibility to determine the amount of funds it plans to spend on its various Superfund program activities. Our ongoing work reviewing EPA's total Superfund expenditures demonstrated that for fiscal years 1996 through 1998, EPA spent about 60 percent of its Superfund budget on its own site-specific and contractors' cleanup costs and 40 percent on non-site-specific costs, including its own program management and administrative activities.

Furthermore, we found that over these same 3 years, the amount of funds going to contractors for cleanup work and to other site-specific work was declining. Given that the Superfund program is now almost 20 years old and most sites are in construction and moving toward completion, we would expect to see more spending for cleanups and less for administrative costs. Such a shift in spending would be consistent with changes in the types of work needed and with efficiencies gained through experience. Since such a shift has not yet occurred, EPA may have opportunities to achieve more administrative efficiencies, which it can use instead of cuts in actual cleanup work to offset a reduction in funding for the Superfund program.

⁵In addition to these new construction projects, EPA continued to fund ongoing longer-term construction projects and shorter-term cleanup actions at numerous sites.

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