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Accountability \* Integrity \* Reliability

United States Government Accountability Office  
Washington, DC 20548

July 18, 2008

Congressional Requesters

Subject: *Superfund: Funding and Reported Costs of Enforcement and Administration Activities*

The Environmental Protection Agency (EPA) estimates that one in four Americans lives within 3 miles of a hazardous waste site. To clean up these highly contaminated sites, the Congress established the Superfund program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980. EPA, the principal agency responsible for administering the Superfund program, has since identified more than 47,000 hazardous waste sites potentially requiring cleanup actions and has placed some of the most seriously contaminated sites on its National Priorities List (NPL). Through the end of fiscal year 2007, EPA had classified 1,569 sites as NPL sites.<sup>1</sup>

Cleanup efforts at NPL sites are typically expensive and can take many years. There are two basic types of cleanup actions: (1) removal actions—generally short-term or emergency cleanups to mitigate threats—and (2) remedial actions—generally long-term cleanup activities. Among other efforts, EPA may respond to and provide technical support for emergency actions, collect and analyze site data, and design and construct remedies, or oversee the work of others. However, the parties responsible for contributing to the contamination of a hazardous waste site are also primarily responsible for conducting or paying for the cleanup of the site. Responsible parties include current or former owners or operators of a site or the generators and transporters of the hazardous substances. CERCLA authorizes EPA to compel the responsible parties to clean up contaminated sites and also allows EPA to conduct cleanups and then seek reimbursement from the responsible parties. One of EPA's goals is ensuring that, to the extent possible, parties who are responsible for the contamination perform or pay for cleanup actions. In some cases, however, parties cannot be identified or may be unwilling or financially unable to perform the cleanup; we previously found that the number of NPL sites without viable responsible parties may be increasing.<sup>2</sup> In these cases, EPA can assume responsibility for site cleanup and seek reimbursement from any responsible parties that can be identified. The states may also play a significant role in cleaning up hazardous waste sites. Most states have established programs to help address hazardous waste sites, although many states have limited capacity to address costly and complex sites.

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<sup>1</sup>This number includes those sites on the NPL as well as those deleted from the NPL.

<sup>2</sup>GAO, *Superfund Program: Current Status and Future Fiscal Challenges*, GAO-03-850 (Washington, D.C.: July 31, 2003).

To fund program activities, CERCLA established a trust fund that was financed primarily by taxes on crude oil and certain chemicals, as well as an environmental tax assessed on corporations based upon their taxable income. Although the authority for these taxes expired in 1995, some tax revenues have continued to accrue to the fund as audits of past years' tax returns have led to the recovery of Superfund taxes previously owed by companies. In addition, the trust fund continued to receive revenue—also referred to as receipts—from various other sources, including appropriations from the general fund.<sup>3</sup> EPA receives annual appropriations from the trust fund for program activities; since 1981, Superfund appropriations have totaled over \$32 billion in nominal dollars, or about \$1.2 billion annually.<sup>4</sup> CERCLA authorizes EPA to use its Superfund appropriation to conduct cleanup actions, and the agency's Office of Solid Waste and Emergency Response (OSWER) is accountable for achieving Superfund's cleanup goals.<sup>5</sup>

CERCLA also authorizes EPA to use its Superfund appropriation for activities that support site cleanup. EPA's Office of Enforcement and Compliance Assurance (OECA) is responsible for enforcement actions, such as identifying responsible parties, compelling them to clean up the site, and recovering cleanup costs. Other EPA support offices, such as the Office of Administration and Resources Management and the Office of the Chief Financial Officer, help administer and manage the program. EPA has been criticized for the percentage of the total Superfund appropriation that it spends on support activities rather than directly to clean up sites on the NPL.

In this context, you asked us to examine the (1) sources of funding for the Superfund trust fund and (2) allocation of these resources to Superfund program activities, particularly enforcement and administration.

To determine the sources of funding that support the Superfund trust fund, we reviewed the President's Budget Appendices. We also reviewed annual appropriations laws and related committee reports. We analyzed the data in these documents and discussed our findings with EPA budget experts. To evaluate the costs of program activities, we obtained EPA data on overall Superfund program expenditures—also referred to as outlays—for fiscal years 1999 through 2007, as well as more detailed data on enforcement and administration expenditures. We also analyzed EPA data on the outcomes of its enforcement activities—specifically EPA's estimated value of these outcomes—for fiscal years 1979 through 2007, although we did not verify the accuracy of these estimates. In its response to a draft of this report, EPA indicated that the agency continually corrects and updates its historical Superfund enforcement outcome data, and therefore provided us with updated data through June 2008, which we have incorporated into the report. However, because changes to EPA's data are on-going, future analyses of this database may not match our results. In addition, we reviewed relevant documents, such as the Superfund Program Implementation Manual and prior evaluations of

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<sup>3</sup>The federal budget consists of several types of funds, including, among others, the general fund, special funds, and trust funds. General funds are the revenues not designated for specific purposes and fund, among other things, national defense, interest on the public debt, the operating expenses of most federal agencies, many grants to state and local governments, and some entitlements.

<sup>4</sup>Nominal dollars have not been adjusted for inflation.

<sup>5</sup>Only sites on the NPL are eligible for remedial actions financed by the trust fund; resources from the trust fund may be used to finance other types of response activities, such as removal actions, at both NPL and non-NPL sites.

the Superfund program, and interviewed agency officials in OSWER, OECA, and the Office of the Chief Financial Officer. Finally, we conducted detailed evaluations of the reliability of the data used in our analyses and concluded that these data were sufficiently reliable for our purposes; where necessary in the report, we note potential limitations of these data. We converted all dollar figures into constant 2007 dollars, except when we refer to dollars in appropriations documents; for those dollar figures, we use nominal dollars, in accordance with our policy to report the dollars that have actually been appropriated. For more detailed information on our scope and methodology, see enclosure I.

We conducted this performance audit from July 2007 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **Results in Brief**

The Superfund trust fund has received revenue from four major sources: taxes on crude oil and certain chemicals, as well as an environmental tax assessed on corporations based upon their taxable income; appropriations from the general fund; fines, penalties, and recoveries from responsible parties; and interest accrued on the balance of the fund. The contribution of each of these sources changes from year to year, although trends are evident when comparing the composition of trust fund revenue during the periods before and after the expiration of Superfund's taxes. For fiscal years 1981 through 1995, after which Superfund-related taxing authority expired, taxes accounted for about 68 percent of trust fund revenues; appropriations from the general fund for 17 percent; interest for 9 percent; and fines, penalties, and recoveries for 6 percent. In contrast, from fiscal years 1996 through 2007, taxes accounted for about 6 percent of trust fund revenues; appropriations from the general fund for about 59 percent; interest for about 16 percent; and fines, penalties, and recoveries for about 19 percent. Each year, appropriations laws stipulate the level of the annual EPA Superfund program appropriation from the trust fund, and, regardless of the balance of the fund, EPA can only expend what is appropriated. For fiscal years 1981 through 2007, the Congress appropriated an annual average of \$1.2 billion in nominal terms to EPA's Superfund program, although the annual level of appropriated funds has declined in recent years when adjusted for inflation. The balance of the trust fund also declined from \$4.7 billion at the start of fiscal year 1997 to \$173 million at the start of fiscal year 2007. In addition to setting an overall level of funds available for EPA's Superfund program, the Congress has transferred portions of EPA's Superfund appropriation to other agencies or programs that support site cleanup.

For fiscal years 1999 through 2007, EPA spent 77 percent of its Superfund monies on remedial and removal activities and almost all of the rest on enforcement and administration activities. During this period, overall program expenditures declined nearly 30 percent in constant dollars, from \$1.8 billion in fiscal year 1999 to \$1.3 billion in fiscal year 2007, mostly due to a decline in expenditures for remedial activities. Enforcement expenditures made up the largest portion of expenditures after site cleanup activities for fiscal years 1999 through 2007. EPA's annual enforcement expenditures fell from \$243 million to \$187 million over this period, but they consistently accounted for between 13 percent and 15 percent of total Superfund expenditures. Based on our analysis of EPA's data, agency enforcement activities at NPL sites through fiscal year 2007 have cumulatively provided benefits valued at \$29.9 billion to the program, mostly

from commitments from responsible parties to conduct cleanup actions. Superfund program administration costs also declined from fiscal year 1999 through fiscal year 2007, from \$143 million to \$132 million. Although declining in constant dollars, these costs increased from 8 percent to 10 percent of total Superfund expenditures during this period. EPA's data on Superfund program administration costs include the costs of activities undertaken by its support offices, such as efforts by the Office of the Chief Financial Officer to operate the agency's financial management system, which processes and documents Superfund program expenditures, data which is necessary to recoup cleanup and oversight costs. However, we identified inconsistencies in the data received for this report when compared to estimates of Superfund administration costs in previous reports published by the agency's Inspector General and others. These inconsistencies stem from, in part, differences in how administration costs are defined and classified. Moreover, some previous reports also identified potential inaccuracies in EPA's administration costs, including outdated information on the number of staff performing Superfund work, which is used in EPA's calculation of these costs. These inconsistencies and inaccuracies make it difficult to reliably estimate trends in Superfund administration costs over time.

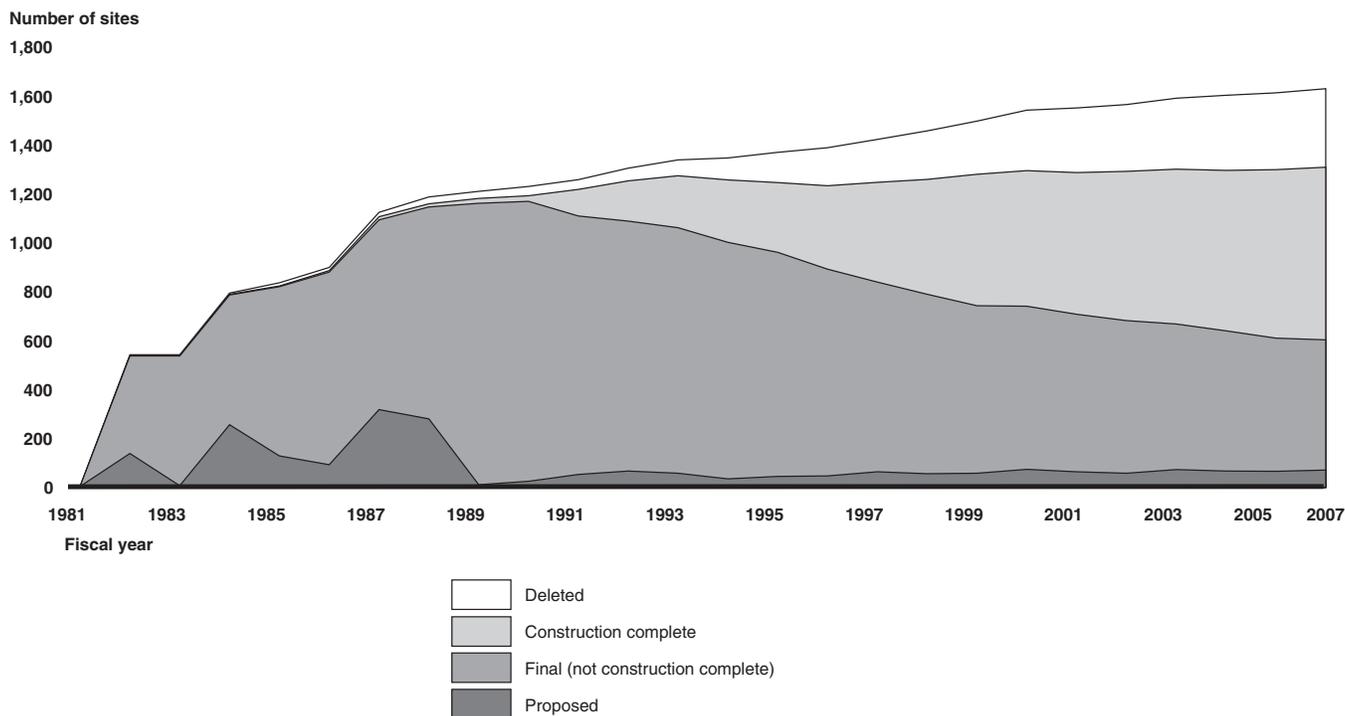
We provided a draft of our report to EPA and the Department of Justice for comment. EPA generally agreed with the report's descriptions of Superfund funding sources, and stated that the report provided a sound historical representation of trust fund balances and revenue and an accurate description of the program. The agency also provided some specific suggestions and technical clarifications, which we incorporated into the report as appropriate. EPA's comments are reprinted in enclosure II. The Department of Justice did not comment on the draft, but provided a technical clarification, which we incorporated into the report.

## **Background**

The Superfund cleanup process begins with the discovery of a potentially hazardous site or the notification to EPA of possible releases of hazardous substances that may threaten human health or the environment. Citizens, state agencies, EPA regional offices, and others may alert the agency to such threats. EPA regional offices use a screening system to numerically assess the potential of sites to pose a threat to human health and the environment; those sites that score sufficiently high are eligible for proposal to the NPL. EPA publishes a list of proposed sites in the *Federal Register*; the list is subject to a period of public comment. Those proposed sites that are later listed on the NPL are known as "final" NPL sites. Cleanups at NPL sites progress through several steps: investigation and study, remedy selection and design, and remedial action. When all physical construction at a site is complete, all immediate threats have been addressed, and all long-term threats are under control, EPA generally considers the site to be "construction complete." Most sites then enter into an operation and maintenance phase when the responsible party or the state ensures that the remedy continues to protect human health and the environment. EPA may have further responsibilities at a site after construction is completed, such as continuing groundwater restoration efforts or monitoring the sites to ensure that the remedy remains protective of human health and the environment. Eventually, when EPA and the state determine that no further site response is needed, EPA deletes the site from the NPL. Figure 1 illustrates the number of sites at each stage of the NPL process since the Superfund program began. By the end of fiscal year 2007, EPA had proposed 66 sites that it either decided not to list or had not yet determined whether to list on the NPL. Moreover, of the 1,569 NPL sites, (1) 321 were deleted because they no longer posed threats to human health or

the environment; (2) 713 were declared construction complete, but not yet deleted; and (3) 535 were not yet construction complete by the end of fiscal year 2007.<sup>6</sup>

**Figure 1: Status of Proposed, Final, and Deleted NPL Sites, by Fiscal Year**



Source: GAO analysis of EPA data.

Note: Although the Superfund program began in 1981, no sites were listed on the NPL until 1982. Most of the deleted sites shown were also classified as construction complete. However, for purposes of depicting the status of cleanup of sites on the NPL, we chose to include in the construction complete category only those sites that EPA had declared construction complete but had not yet deleted from the NPL.

EPA also conducts removal actions, which are often short-term cleanups or preventive actions at sites that pose immediate threats to human health or the environment. Removal actions may include, for example, excavating contaminated soil, erecting a security fence, stabilizing a dike or impoundment, or taking abandoned drums to a proper disposal facility to prevent the release of hazardous substances into the environment. CERCLA limits removals conducted by EPA to a 1-year effort and \$2 million in expenditures, although some removal actions may qualify for exemptions to these limits.

CERCLA established a liability scheme that holds certain parties responsible for the release or threat of release of hazardous substances. Furthermore, courts have interpreted responsible-party liability under Superfund to be strict, joint and several, and retroactive. Under strict liability, a party may be liable for cleanup even though its actions were not considered negligent when it disposed of the wastes. Because liability is joint and several, when the harm done is indivisible, one party can be held responsible for the full cost of the remedy even though that

<sup>6</sup>Almost all of the deleted sites were declared construction complete prior to deletion; however, according to EPA, of the 321 deleted sites, four sites were deleted and referred to other authorities without being declared construction complete. Additionally, five sites were proposed for listing but were deleted before being finalized on the NPL.

party may have disposed of only a portion of the hazardous substances at the site. Retroactive liability means that liability applies to actions that took place before CERCLA was enacted.

Early in the cleanup process, EPA conducts a search to find all of the potentially responsible parties. It collects evidence to support the identification of individual parties by issuing information requests (under CERCLA's authority); reviewing documents, such as shipping records; conducting interviews; and performing other research. As part of this process, EPA not only determines parties' involvement at the site but also potential legal defenses or exemptions from liability. CERCLA provided EPA with several mechanisms to compel identified parties to assume responsibility for cleaning up Superfund sites. If EPA has already conducted work at a site—including investigating a potential Superfund site or monitoring the work of others—the agency can recover the costs of these activities, as well as related support costs. Moreover, EPA can order, or ask a court to order, responsible parties to conduct the work directly. If the responsible parties do not comply with EPA's orders, they may be liable for fines accrued each day of noncompliance as well as damages of up to three times the amount spent by EPA as a result of the parties' noncompliance—in addition to the costs of cleanup—creating a substantial incentive for compliance. Other Superfund enforcement authorities include, for example, receiving reimbursement for the costs of overseeing responsible parties' efforts.

Since 1990, EPA and the Department of Justice have pursued a policy of “enforcement first,” which emphasizes that responsible parties should clean up Superfund sites when possible. Moreover, these agencies prefer to induce parties to clean up sites through settlement rather than by ordering parties to conduct such work or bringing lawsuits against them. EPA has previously reported that, if the agency has funds available to conduct cleanup actions at a site, responsible parties may be more likely to take responsibility for the cleanup because they may believe that delaying settlement could lead EPA to proceed with the cleanup, and fighting and losing a cost recovery lawsuit would be more expensive than undertaking the cleanup themselves.<sup>7</sup> Additionally, several CERCLA provisions and EPA procedures assist in the settlement process with certain types of parties. For example, EPA may assume responsibility for a portion of the response costs in cases where one or more responsible parties are unable to contribute, so as to reduce the liability of other parties. In the case of some small contributors—known as *de minimis* parties—EPA attempts to achieve an early settlement in exchange for protection from further enforcement action.

### **Superfund Trust Fund Revenue Has Decreased and the Funding Sources' Relative Contributions Have Changed over Time**

The Superfund trust fund has received revenue from four major sources: (1) taxes on crude oil and certain chemicals, as well as an environmental tax assessed on corporations based upon their taxable income; (2) appropriations from the general fund; (3) fines, penalties, and recoveries from responsible parties; and (4) interest accrued on the balance of the fund. The contribution that each of these sources has provided to funding the Superfund program has varied over time, particularly since the expiration of Superfund's taxes in 1995. Each year, the Congress decides how much money to appropriate for EPA's Superfund program from the trust fund and provides direction on how the funds should be spent. The annual level of appropriations to EPA's Superfund program has declined over time.

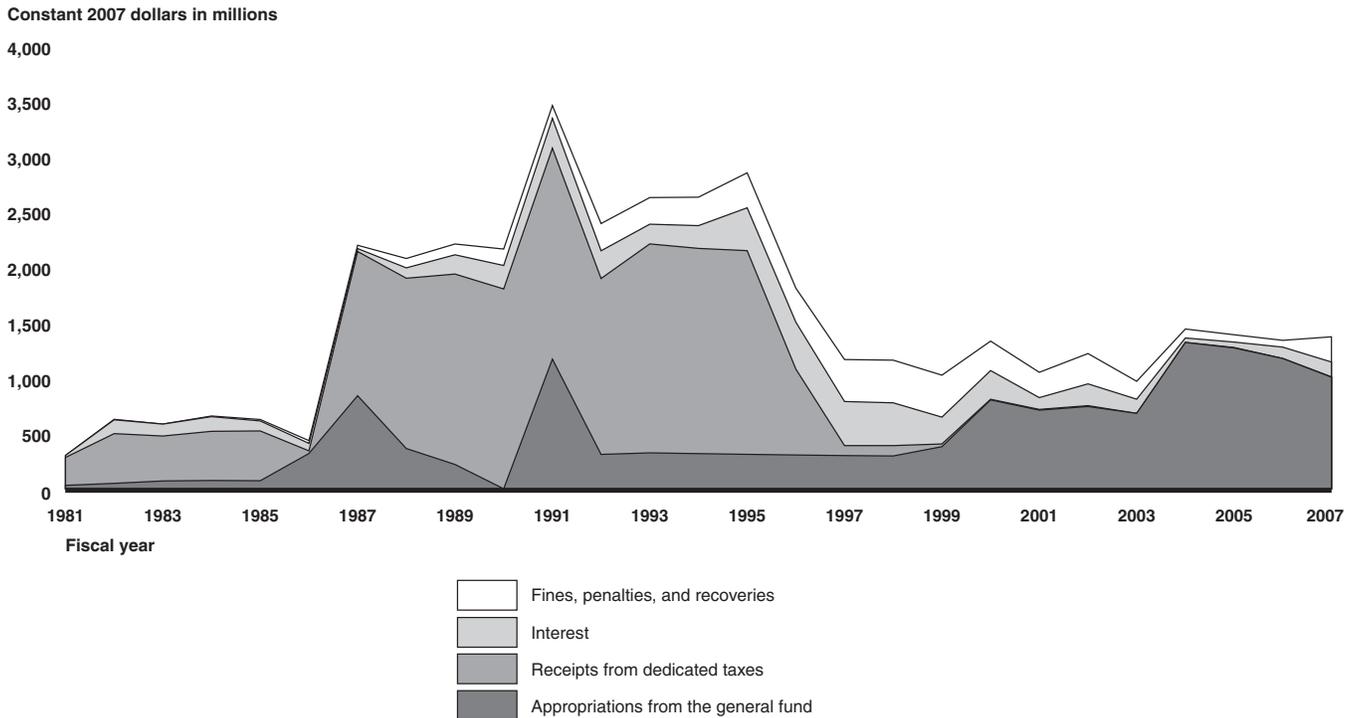
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<sup>7</sup>EPA, *Superfund: Building on the Past, Looking to the Future*, (Washington, D.C.: Apr. 22, 2004).

Four Major Revenue Sources Support the Superfund Program, the Largest of Which Is Now Appropriations from the General Fund

Figure 2 shows the contribution of the four principal sources of trust fund revenue since the program’s inception in fiscal year 1981.

**Figure 2: Major Sources of Revenue for the Superfund Trust Fund, Fiscal Years 1981 through 2007**



Source: GAO analysis of data from the President’s Budget Appendices.

Note: In fiscal year 1981, the trust fund received an appropriation from the Pollution Fund. We have included this money under the category of appropriations for ease of presentation. We did not include revenue from offsetting collections, as these data were only available for selected years.

For fiscal years 1981 through 2007, taxes constituted, on average, about 45 percent of revenue for the Superfund trust fund, while appropriations from the general fund made up about 33 percent. Accrued interest and fines, penalties, and recoveries constituted smaller portions of trust fund revenue, at about 12 percent and 11 percent, respectively.<sup>8</sup>

These overall numbers mask changes over time in the composition of the Superfund trust fund. In particular, the expiration of the Superfund taxes in 1995 significantly changed the relative contributions of the key sources of trust fund revenue. For fiscal years 1981 through 1995, Superfund’s taxes accounted for approximately 68 percent of trust fund revenue. In recent years, however, the trust fund has increasingly relied on appropriations from the general fund. From fiscal year 1996 through 2007, appropriations from the general fund accounted for nearly 60 percent of trust fund revenue. Table 1 compares trust fund revenue from the period before and after the taxes expired.

<sup>8</sup>Totals add to more than 100 percent due to rounding.

**Table 1: Trust Fund Revenue in the Periods before and after the Superfund Taxes Expired**

Constant 2007 dollars in millions		
Revenue source <sup>a</sup>	Fiscal years 1981-1995 (percent of total revenues)	Fiscal years 1996-2007 (percent of total revenues)
Receipts from dedicated taxes <sup>b</sup>	\$18,018 (67.5%)	\$936 (6.0%)
Appropriations from the general fund <sup>c</sup>	4,616 (17.3)	9,281 (59.2)
Interest	2,412 (9.0)	2,543 (16.2)
Fines, penalties, and recoveries	1,634 (6.1)	2,906 (18.6)
<b>Total</b>	<b>\$26,680 (100%)</b>	<b>\$15,667 (100%)</b>

Source: GAO analysis of data from the President’s Budget Appendices.

Notes: Percents and totals may not add due to rounding.

<sup>a</sup>We did not include revenue from offsetting collections, as these data were only available for selected years.

<sup>b</sup>The Superfund program continued to collect some taxes after the authority expired as a result of adjustments to prior years corporate tax returns based on audits conducted by the Internal Revenue Service.

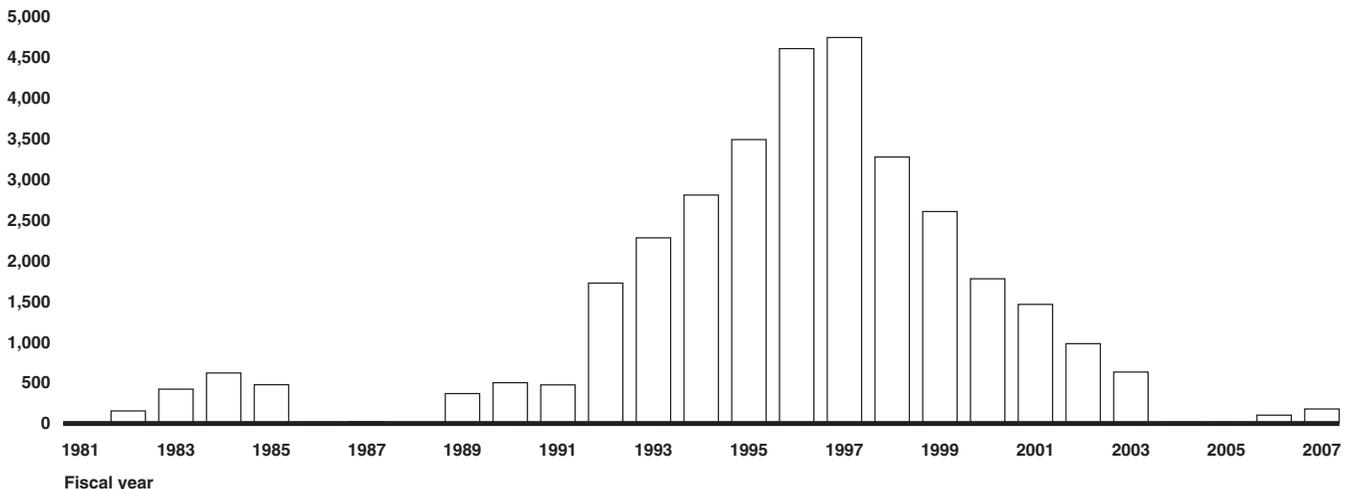
<sup>c</sup>In fiscal year 1981, the trust fund received an appropriation from the Pollution Fund. We have included this money under the category of appropriations for ease of presentation.

**The Superfund Trust Fund Balance Has Decreased Since the Expiration of the Taxes**

The balance of the trust fund has varied over time, largely depending on the government’s ability to collect taxes to support the Superfund program. For example, when the balance of the trust fund fell in the mid-1980s, the Superfund Amendments and Reauthorization Act of 1986 extended the Superfund taxes and provided additional taxing authority. In 1995, the authority for the taxes expired, and it has not been reinstated. Shortly after the expiration of the taxes, at the start of fiscal year 1997, the trust fund balance reached its peak at \$4.7 billion; in 1998, the trust fund balance began decreasing. Figure 3 shows changes in the balance of the Superfund trust fund for fiscal years 1981 through 2007. At the start of fiscal year 2007, the trust fund had a balance of \$173 million.

**Figure 3: Balance of the Superfund Trust Fund at the Start of Each Fiscal Year**

Constant 2007 dollars in millions



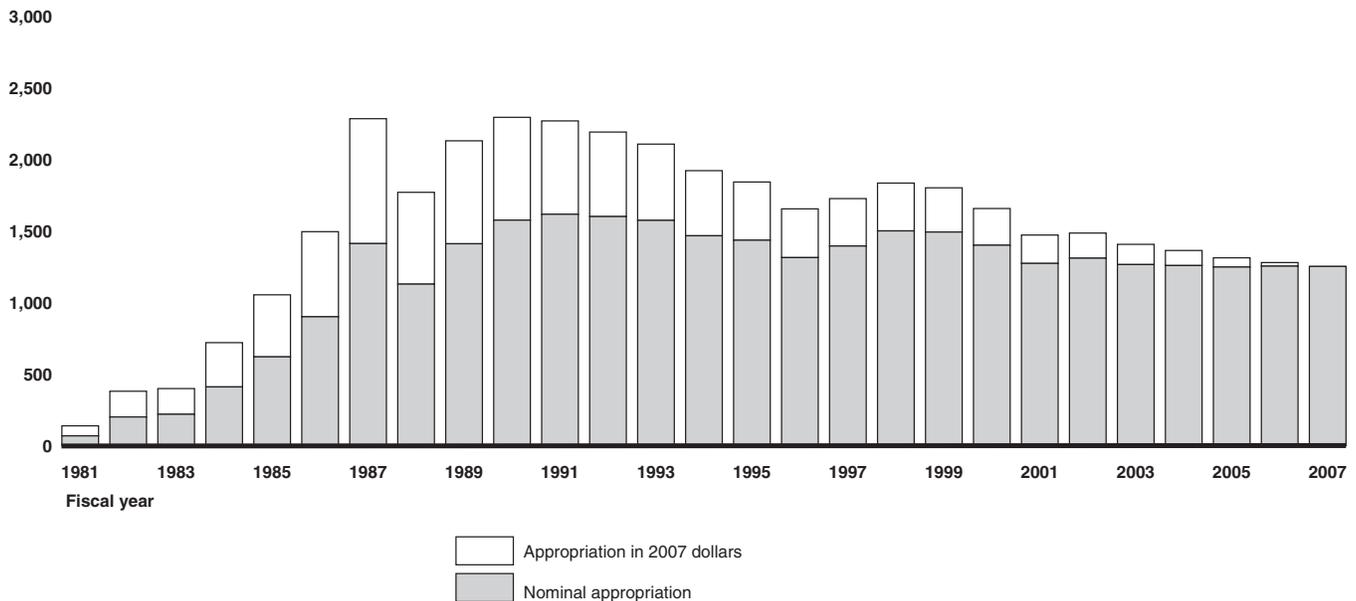
Source: GAO analysis of data from the President’s Budget Appendices.

## The Congress Guides EPA's Use of Its Superfund Appropriation

Although the trust fund supports the Superfund program, EPA does not have the authority to use the fund without appropriations from the Congress. Since fiscal year 1981, the annual appropriation to EPA's Superfund program has averaged approximately \$1.2 billion in nominal dollars.<sup>9</sup> In many years, the appropriation constituted only a portion of the total dollars available in the trust fund. For example, the trust fund had a balance of \$3.8 billion at the start of fiscal year 1997, and the appropriation to EPA's Superfund program was \$1.4 billion. In recent years, however, congressional appropriations have declined when adjusted for inflation. Figure 4 shows appropriation levels in nominal and constant dollars since fiscal year 1981.

**Figure 4: EPA's Superfund Program Appropriation, Fiscal Years 1981 through 2007**

Dollars in millions



Source: GAO analysis of appropriations laws and the President's Budget Appendices.

Over time, with congressional approval, the source of funding for some activities has shifted from EPA's Superfund program appropriation to other funding sources, which affects the comparison of appropriation levels in some years. For example, historically, funds for Superfund-related activities at the Agency for Toxic Substances and Disease Registry and the National Institute of Environmental Health Sciences came from EPA's Superfund appropriation. For fiscal year 2000, these agencies—which conduct health assessments at hazardous waste sites, among other things—received \$130 million through EPA's Superfund appropriation. For fiscal year 2001, the Congress began providing these two agencies with funds for such activities through their own appropriations. Similarly, beginning in fiscal year 2003, the Congress used a separate EPA appropriation to provide funds for the Brownfields program, which supports the redevelopment of sites that are potentially contaminated. For fiscal years 1999 through 2002, congressional committees recommended that

<sup>9</sup>Our guidance recommends we present budget numbers in nominal terms to match what has actually been enacted or proposed at the time, what is reported in budget documents, or both, rather than adjusting for inflation. Therefore, throughout this section, we will present all data in nominal dollars, except where we illustrate trends over time, in which case we will also provide constant dollars.

EPA allocate more than \$90 million annually for the Brownfields program from its Superfund funding.

While the annual appropriation determines how much of the Superfund trust fund EPA can spend each year, the Congress provides direction on how EPA should use its appropriation. For example, for fiscal year 2005, the Congress directed that \$13 million be transferred to the Inspector General appropriation to fund Superfund-related audits. Additionally, \$36 million was transferred to the Science and Technology appropriation for related research efforts. Congressional committees also direct EPA to allocate money from the Superfund appropriation to other federal agencies. In many years, committee reports directed funds to the Department of Justice to support EPA's enforcement efforts; for fiscal year 2005, for example, the reports recommended that EPA allocate more than \$27 million to the department. At the recommendation of congressional committees, EPA also provides support to other agencies, including the Department of the Interior, which supports EPA's ability to prepare for hazardous waste releases; the National Oceanic and Atmospheric Administration, which provides technical support for coastal remediation projects; and the United States Coast Guard, which directly conducts some removals in coastal areas. Congressional committees recommended funding of nearly \$11 million from the Superfund appropriation for fiscal year 2005 for these and other federal agencies' activities.

Within EPA's Superfund program, the agency also receives direction from congressional committees about how to allocate its resources to different priorities. From fiscal year 1996 to fiscal year 2006, committees directed program appropriations into three broad categories—response and cleanup, enforcement, and management and support. Starting in 2006, however, the committees began providing direction using a total of 39 more narrowly defined categories. For example, instead of directing an overall amount for management and support, one of the three broader categories, congressional committees now direct funds for these activities to 11 of the narrowly defined categories.

Congressional committees provide much of this direction through reports prepared to accompany the appropriations laws. As a matter of law, instructions in committee reports and other legislative history about how funds should be spent do not impose any legal requirements on federal agencies. However, as the Supreme Court has pointed out in the past, agency decisions to ignore congressional expectations may expose them to grave political consequences.<sup>10</sup> As a matter of policy, EPA generally abides by the language in reports that accompany appropriations laws.

### **Enforcement and Administration Costs as a Percent of Superfund Expenditures Increased from Fiscal Year 1999 through Fiscal Year 2007**

For fiscal years 1999 through 2007, remedial and removal activities constituted the majority of EPA's Superfund expenditures. EPA spent most of the remaining Superfund expenditures on enforcement and administration. Enforcement activities provide monetary and other benefits to the Superfund program. Superfund program administration costs, which consist of expenditures by several agency support offices, are primarily used for facilities, operations, and security and accounted for approximately 9 percent of costs throughout the period. These activities include, for example, operating the agency's financial management system, which

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<sup>10</sup>Lincoln v. Vigil, 508 U.S. 182, 193 (1993).

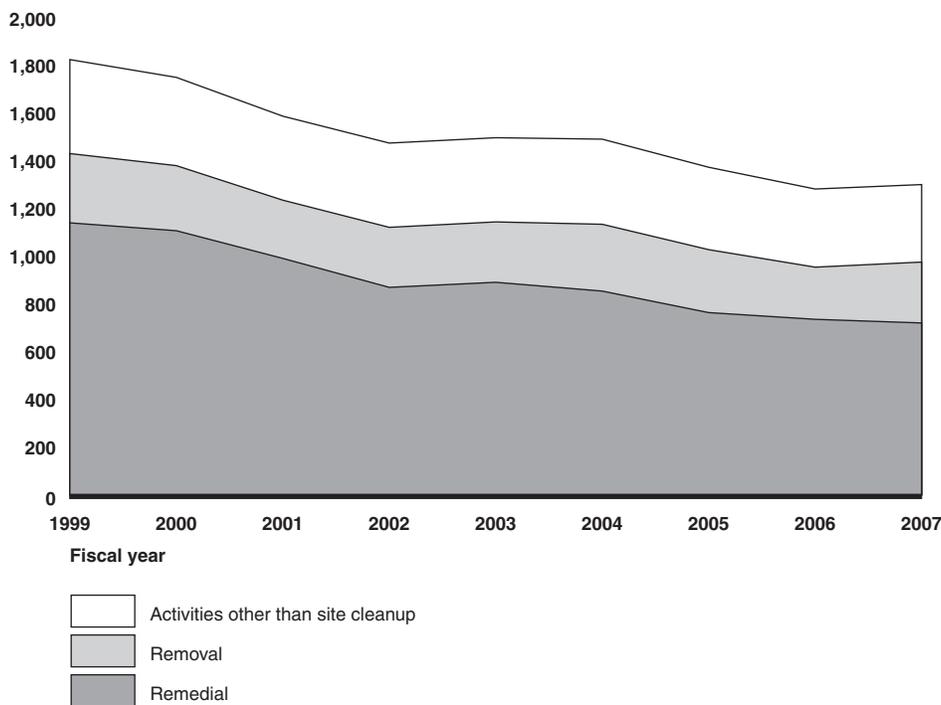
provides important benefits to the Superfund program. However, the classification of costs as administration-related has varied.

**EPA Uses the Majority of Superfund Expenditures for Remedial and Removal Activities, but Total Expenditures Declined Nearly 30 Percent**

For fiscal years 1999 through 2007, EPA used approximately 77 percent of its Superfund expenditures for site cleanup activities, namely remedial and removal actions; most of the remainder was spent for enforcement and administration-related activities.<sup>11</sup> Over the period, the overall level of Superfund expenditures fell from \$1.8 billion to \$1.3 billion, or approximately 29 percent. Expenditures on the remedial program account for the majority of this decline (see fig. 5). However, expenditures for removals and nonsite cleanup activities also declined during this period.

**Figure 5: EPA Superfund Expenditures, Fiscal Years 1999 through 2007**

Constant 2007 dollars in millions



Source: GAO analysis of EPA data.

Note: These data exclude reimbursable expenditures and other expenditures related to the Brownfields program, transfers to other EPA appropriations, and the 2002 Homeland Security Supplemental appropriation. Other Superfund expenditures related to homeland security are included in various categories. The level of expenditures in each category—but not the total—could vary based on whether certain costs are classified as administration-related.

<sup>11</sup>Due to changes in EPA’s budget structure, EPA was unable to comparably categorize some expenditures. These expenditures never accounted for more than 0.2 percent of annual expenditures. Over the entire period, these other expenditures constituted 0.05 percent of Superfund expenditures.

EPA funds a variety of activities under the remedial category, including

- collecting and analyzing site data to determine the potential effects of contaminants on human health and the environment,
- conducting or overseeing investigations to select appropriate remedies,
- constructing or overseeing the construction of remedies, and
- ensuring long-term protectiveness by overseeing maintenance activities and conducting 5-year reviews of sites.

Similarly, EPA funds many activities related to removal actions, including

- assessing the threats of hazardous waste releases to determine whether removal actions are necessary;
- responding to the release of hazardous waste at sites that pose an immediate threat to public health or the environment;
- developing and maintaining the infrastructure necessary to respond effectively to releases, whether they are accidental, intentional, or a result of a natural disaster; and
- coordinating with the Department of Homeland Security and other federal agencies during natural disasters and other major environmental incidents.

#### Superfund Enforcement Expenditures Support a Variety of Activities That EPA Data Indicate Have Provided Almost \$30 Billion in Value to the Program

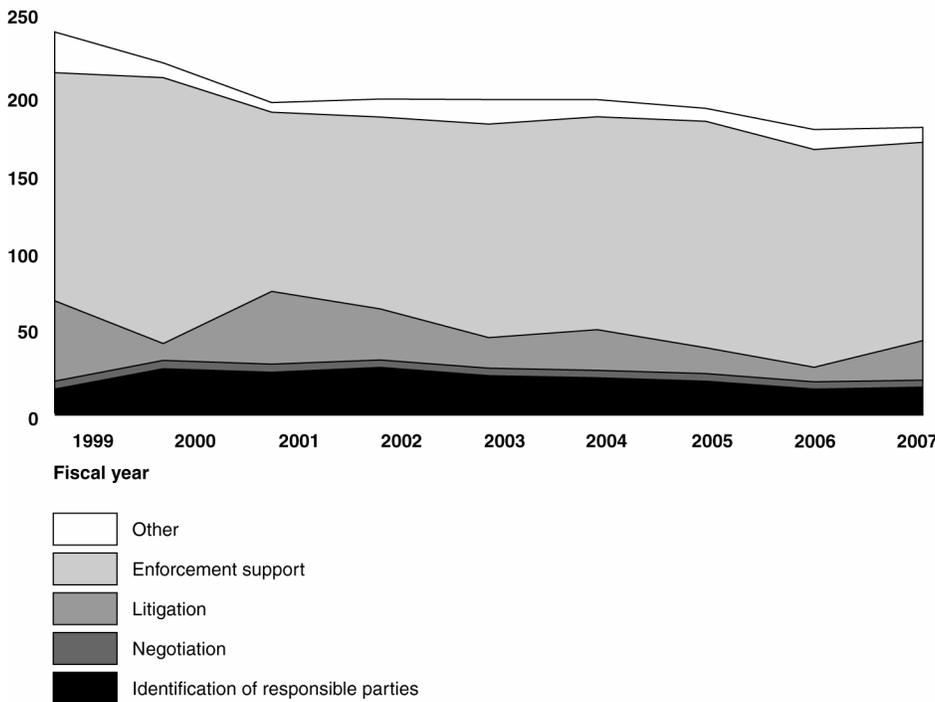
In fiscal year 2007, Superfund enforcement expenditures totaled approximately \$187 million, which represents a decrease of more than 23 percent from fiscal year 1999. However, the proportion of total program expenditures going to enforcement has remained relatively consistent, at around 14 percent, because overall program funding also decreased during this period. EPA's enforcement expenditures—which accounted for the majority of expenditures not related to site cleanup—fund four major categories of activities: (1) identifying responsible parties, (2) negotiating with these parties, (3) litigating against some parties, and (4) supporting EPA's enforcement work.<sup>12</sup> Within these categories, EPA uses action codes to identify the specific type of activity funded by each expenditure. EPA also provides funding to the Department of Justice for assistance with enforcement work. See figure 6 for an analysis of enforcement expenditures over time.

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<sup>12</sup>Based on EPA documentation and interviews, we developed the four categories used in this section and confirmed our analysis with EPA officials. However, we were unable to place 6 percent of enforcement expenditures into any of these four categories. Most of these expenditures were attributable to technology projects that were not related to specific sites. Uncategorized enforcement expenditures also included activities related to (1) the oversight of responsible parties, although EPA officials told us these responsibilities are no longer considered enforcement-related; (2) the development of EPA's cost recovery claims; and (3) specific steps that are taken as part of the cleanup process, including site assessment activities, community relations activities done to address community concerns, and technical support for remedial actions.

**Figure 6: Superfund Enforcement Expenditures, Fiscal Years 1999 through 2007**

Constant 2007 dollars in millions



Source: GAO analysis of EPA data.

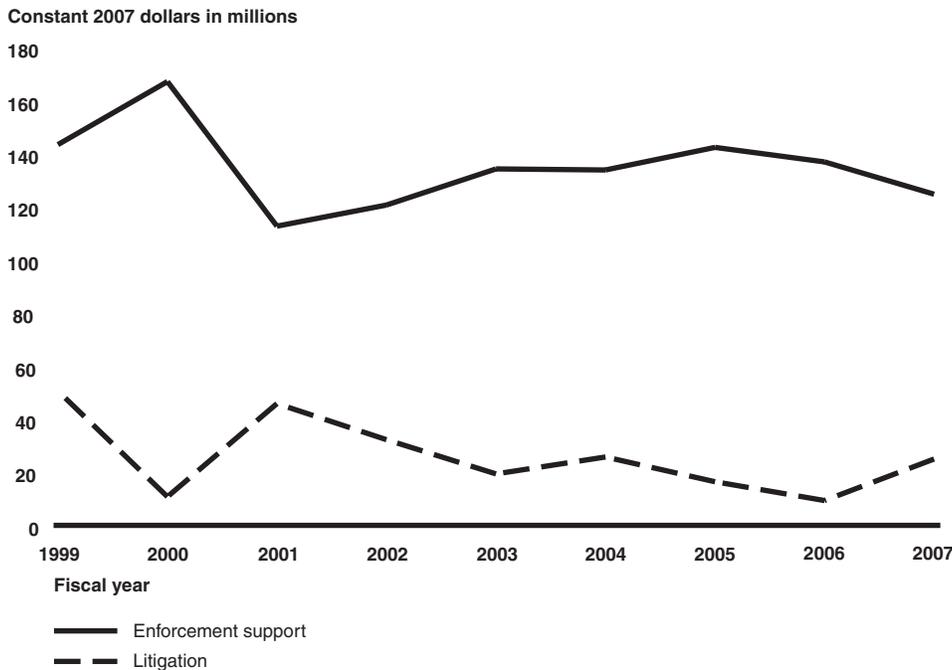
In fiscal year 1999, costs related to identifying responsible parties were \$15 million, or 6 percent of total enforcement expenditures. In fiscal year 2007, these costs increased slightly to \$16 million, representing 9 percent of enforcement expenditures. However, the costs of these activities peaked at \$29 million in fiscal year 2002, constituting nearly 15 percent of expenditures. EPA conducts the activities in this category to develop an enforcement case; specific activities include interviewing responsible parties, as well as preparing and reviewing relevant documents. Other components of this category include maintenance of enforcement and administrative records, which are necessary to the enforcement process, and laboratory analyses, which primarily supports analyses done to link a responsible party to a site contaminant.

The costs of negotiating with responsible parties were relatively stable during this period—\$5 million in fiscal year 1999 and just over \$4 million in fiscal year 2007. Moreover, negotiation costs were consistently about 2 percent of enforcement expenditures. Most expenditures in this category are classified under a generic negotiation category, though some expenditures are characterized by a specific type of negotiation.<sup>13</sup>

As figure 7 shows, expenditures related to litigation and enforcement support varied during this period.

<sup>13</sup>Some negotiation expenditures fund alternative dispute resolution, in which cost recovery actions are resolved using mediation or arbitration. Other types of activities classified as negotiation include (1) removal negotiations, which involve discussions between EPA and responsible parties over parties' liability and willingness and ability to implement a removal action; and (2) work done to prepare and issue administrative orders that can compel responsible parties to conduct cleanup actions and may also involve cost recovery.

**Figure 7: EPA Expenditures for Litigation and Enforcement Support Activities, Fiscal Years 1999 to 2007**



Source: GAO analysis of EPA data.

Litigation expenditures were just over \$50 million in fiscal year 1999 and fell to \$25 million in fiscal year 2007. However, the proportion of enforcement expenditures categorized as litigation ranged from a low of 5 percent in fiscal year 2000 to a high of 23 percent in fiscal year 2001. Litigation expenditures are largely site-specific and can vary depending on the particular site litigation activities. Moreover, a small number of sites can raise the overall level of spending on litigation. Specific litigation activities include establishing EPA’s Superfund claims when a responsible party files for bankruptcy, filing a judicial action charging criminal violation of CERCLA, preparing a case for referral to the Department of Justice, and assisting the department in pursuing cases against responsible parties.<sup>14</sup>

Enforcement support activities constituted the majority of enforcement expenditures. As the figure shows, in fiscal year 1999, expenditures on enforcement support were \$143 million, which was 49 percent of enforcement expenditures; in fiscal year 2007, although expenditures fell slightly to \$125 million, these activities constituted 64 percent of enforcement expenditures. However, as with litigation expenditures, the level of spending on enforcement support activities varied during this period. According to EPA data, nearly 60 percent of all enforcement expenditures were classified using the action code “general enforcement,” one of the main components of this category. These costs were \$117 million in fiscal year 1999 and \$114 million in fiscal year 2007, although they ranged from a low of \$95 million in fiscal year 2001 to a high of \$142 million in fiscal year 2000. EPA defines general enforcement activities as supporting the management and evaluation of the Superfund program. Other activities in the enforcement support category include reviewing program and technical site documents, preparing and

<sup>14</sup>Most Department of Justice activities funded by Superfund are coded as litigation expenditures in our analysis. The department provides information to EPA regarding the activities it carries out related to the Superfund program; however, due to differences in how EPA and the department code various activities, costs for some nonlitigation activities, such as the negotiation of settlements, may be included in this category.

reviewing administrative records, attending public meetings concerning a site, and maintaining enforcement databases.

Our analysis of EPA data showed that the agency’s enforcement expenditures at NPL sites alone have returned benefits valued at an estimated \$29.9 billion to the Superfund program through fiscal year 2007.<sup>15</sup> EPA takes enforcement actions at other hazardous waste sites not on the NPL; however, we limited our analysis to the results of EPA’s enforcement actions at proposed, final, and deleted sites. According to EPA officials, the agency’s enforcement priority is for parties to accept responsibility for cleanup actions; a substantial majority (over 75 percent) of the total monetary value of enforcement activities at NPL sites represents EPA’s estimated value of commitments by responsible parties to conduct work at sites.<sup>16</sup> Other monetary outcomes of EPA’s Superfund enforcement activities include the recovery of costs EPA previously spent at sites, payment for future site costs, and penalties assessed to responsible parties. Table 2 shows the results of EPA’s enforcement activities for fiscal years 1979 through 2007.

**Table 2: Estimated Value of Superfund Enforcement Activities at NPL Sites, Fiscal Years 1979 through 2007**

Constant 2007 dollars in millions	
Type of value	Amount
Past costs recovered	\$5,104.5
Future costs obtained	2,222.9
Estimated value of responsible party work commitments	22,525.6
Penalties assessed	50.7
<b>Total</b>	<b>\$29,903.7</b>

Source: GAO analysis of EPA data.

Note: According to EPA, past costs recovered and future costs obtained include both federal and state costs. Penalties include both statutory and stipulated penalties. We did not evaluate the accuracy of these estimates. Enforcement activity outcome values were adjusted to constant 2007 dollars based on the completion date of the activity outcome, not the date the amount was paid or the work conducted.

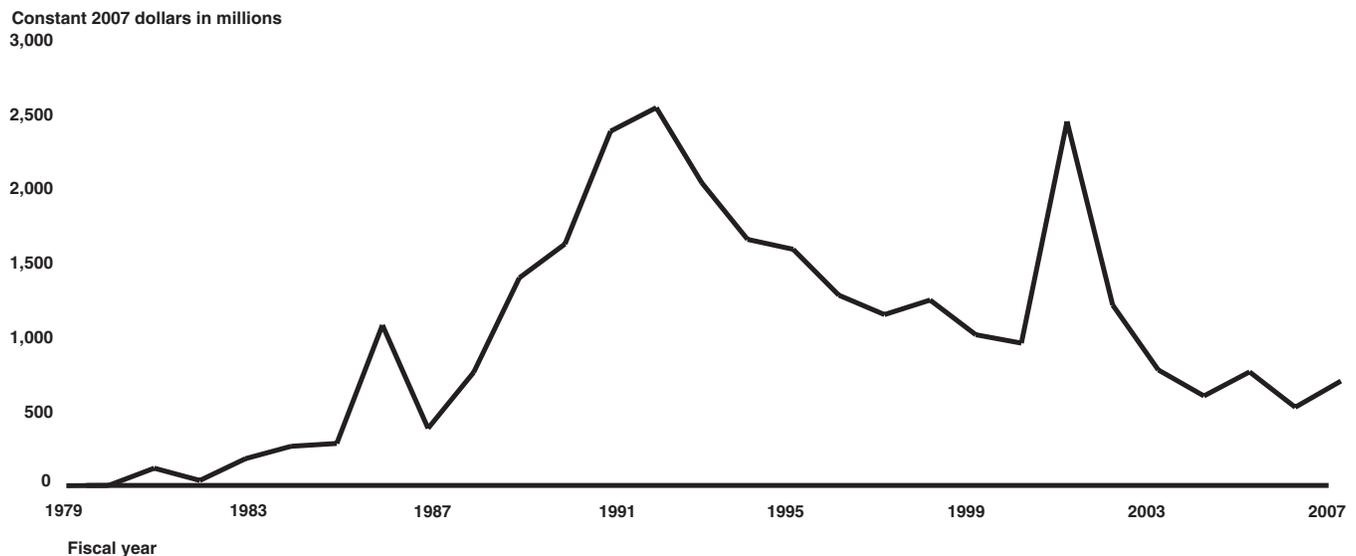
<sup>15</sup>This total represents EPA’s estimate—as of June 2008—of the value of enforcement activities at proposed, final, and deleted Superfund sites for fiscal years 1979 through 2007. In part, this total is an estimate because the value of the responsible party work commitments reported by EPA is an estimated value—or projected cost—of the activities these parties agree to perform and does not represent the actual amount of money spent by responsible parties at sites as a result of EPA’s enforcement activities. Also, the total is an incomplete estimate because these data do not include payments for future EPA oversight of work conducted by the responsible parties or interest payments from responsible parties who arrange to pay EPA over time. Furthermore, EPA may take or assist states in taking enforcement actions, the results of which are not included in the total we present in this report. For example, according to an EPA official, in some instances states take the primary lead in an enforcement action, and EPA generally plays only an advisory role in these actions. The official stated that the agency excludes the outcomes of these enforcement actions from its accomplishment reporting, and, therefore, we excluded them from our analysis. Also, the EPA official told us that Superfund enforcement outcomes reported prior to the passage of CERCLA in 1980 represent outcomes at sites that were ultimately listed on the NPL, but for which enforcement actions were initiated under the Resource Conservation and Recovery Act. The Congress passed the Act in 1976 to establish a framework for managing hazardous waste from its generation to final disposal.

<sup>16</sup>Responsible parties are not required to provide EPA with information on the actual costs of implementing Superfund site response actions. Therefore, EPA data on the value of responsible party work commitments are taken primarily from the estimated cost of response alternatives as identified in removal documents or Records of Decision for individual Superfund sites. According to agency guidance, these estimates are expected to range from -30 percent to +50 percent of the actual project cost. We did not evaluate the extent to which cost estimates in Superfund site Records of Decision reflect the actual costs incurred by responsible parties for implementing the remedial actions.

According to OSWER and OECA officials, EPA typically takes multiple enforcement actions that result in settling responsibility with parties for the costs of work at a Superfund site. The officials said that EPA often pursues responsible parties for the costs (or work) related to investigating the site and studying the feasibility of various remedial alternatives first. EPA then pursues responsible parties for the costs (or work) related to designing and implementing the remedial action at a later date. Moreover, the officials said that EPA's enforcement actions may result in separate agreements with different parties concerning their responsibility for the costs of cleaning up a site.

For fiscal years 1999 through 2007, EPA's total enforcement expenditures have averaged about \$199.2 million each year. Over this same period, EPA's recoveries of costs previously spent by the agency at NPL sites—as well as payments by parties to fund future site costs—averaged \$302.5 million annually, with a high of \$568.5 million in fiscal year 1999 and a low of \$161.3 million in fiscal year 2006. These amounts represent (1) recoveries of money which help replenish the trust fund and (2) payments for future site costs that may allow EPA to use its appropriation for work at other sites. EPA's return on its enforcement expenditures is greater when considering the value of work commitments. Including the commitments of responsible parties and other returns on enforcement activities, such as penalties, the estimated value of all EPA enforcement outcomes at NPL sites averaged just over \$1 billion per year for fiscal years 1979 through 2007. However, as figure 8 shows, the return has varied from year to year, with a high of over \$2.6 billion in fiscal year 1992 and a low of \$0 in fiscal year 1980.

**Figure 8: Estimated Value of Enforcement Outcomes at NPL Sites, Including Commitments from Responsible Parties, Cost Recoveries, Payment for Future Site Costs, and Penalties, Fiscal Years 1979 through 2007**



Note: We did not evaluate the accuracy of these estimates. Enforcement activity outcome values were adjusted to constant 2007 dollars based on the completion date of the activity outcome, not the date the amount was paid or the work conducted.

Owing to the nature of the enforcement process, enforcement expenditures in any particular year do not necessarily relate to enforcement outcomes in that year because some enforcement actions take years to resolve. For example, in March 2008, EPA and the Department of Justice reached a \$250 million settlement with a responsible party at one Superfund site that included

reimbursement of federal costs for investigation and cleanup of the site, as well as future cleanup costs. Although this enforcement outcome will be recorded in fiscal year 2008, it was the result of actions over a number of years; the Department of Justice initially filed suit against the responsible party in March 2001.

Total estimated enforcement values at individual sites with at least one monetary outcome ranged from a low of \$2 at one site to a high of over \$1 billion at another, with an average of almost \$26 million per site. Table 3 provides a more detailed analysis of the total estimated enforcement values achieved at sites for fiscal years 1979 through 2007.

**Table 3: Estimated Value of Superfund Enforcement Activities at NPL Sites for Fiscal Years 1979 through 2007**

Constant 2007 dollars in millions		
Estimated value of enforcement activities at sites	Number of sites (percent of total)	Total enforcement value (percent of total)
Less than \$100,000	28 (2.5%)	\$0.9 (0.0%)
\$100,000 to \$999,999	159 (13.9)	72.8 (0.2)
\$1,000,000 to \$9,999,999	431 (37.8)	1,971.3 (6.6)
\$10,000,000 to \$99,999,999	472 (41.4)	15,151.6 (50.7)
\$100,000,000 and over	51 (4.5)	12,707.1 (42.5)
<b>Total</b>	<b>1,141 (100%)</b>	<b>\$29,903.7 (100%)</b>

Source: GAO analysis of EPA data.

Note: We did not evaluate the accuracy of these estimates. Enforcement activity outcome values were adjusted to constant 2007 dollars based on the completion date of the activity outcome, not the date the amount was paid or the work conducted. Percents may not to 100 add due to rounding.

While the vast majority of sites for which EPA provided enforcement outcome data (1,141 out of 1,160) had at least one monetary outcome, EPA took enforcement actions at 243 NPL sites that did not result in a monetary outcome. Nevertheless, nonfinancial outcomes are important for the Superfund program. For example, in some cases EPA has to undertake an enforcement action in order to gain access to a site (or to gain access for responsible parties conducting work at sites). In such instances, EPA’s enforcement activities play an important role in allowing the cleanup to continue.

Facilities, Operations, and Security Expenditures Constitute Half of All Administration Costs, but the Classification of These Costs Varies

According to EPA data, from fiscal year 1999 through fiscal year 2007, administration expenditures decreased by 7 percent, from \$143 million to approximately \$132 million. The agency used half of these expenditures to pay for rent, utilities, security, and related expenses that are attributed to the Superfund program, including expenditures at EPA’s headquarters and regional offices. However, because overall Superfund expenditures decreased at a greater rate during this period, EPA’s administration costs constituted a greater share of total Superfund expenditures by fiscal year 2007—from 8 percent to more than 10 percent. EPA officials pointed out that many costs related to administration, such as rent, are somewhat fixed and not necessarily related to changes in the level of expenditures on cleanup activities in the short term. Therefore, these administration costs may not change as quickly as other expenditures.

Although we did not collect detailed data for this entire period, table 4 provides additional information on the types of expenses and activities funded by EPA’s administration expenditures during fiscal year 2007.

**Table 4: EPA Superfund Expenditures for Administration Activities in Fiscal Year 2007**

Dollars in millions	
<b>Program/selected activities</b>	<b>Expenditure</b>
<b>Facilities, operations, and security</b> —paying for rent, utilities, and security; ensuring property management; providing mail and transportation services; and supplying occupational health benefits	\$65.41
<b>Planning, budgeting, and finance</b> —managing the budget process, including formation and execution; and billing responsible parties for EPA oversight work	21.03
<b>Acquisition management</b> —managing contracts; and fostering relationships with state and local governments	18.52
<b>Information technology infrastructure and data management</b> —providing agency information technology infrastructure; supporting the collection, management, and analysis of EPA data; protecting confidentiality, availability, and integrity of EPA data; and ensuring the security of classified information	16.53
<b>Human resources management</b> —providing training; managing workforce and succession planning; and participating in interagency councils and improvement initiatives	5.19
<b>Grants and interagency agreement management</b> —ensuring grants produce measurable environmental results; and meeting fiduciary standards for grants and interagency agreements	2.69
<b>Alternative dispute resolution &amp; legal advice</b> —supporting the use of alternative dispute resolution in negotiations with responsible parties; and providing legal advice during negotiations with responsible parties and other entities	1.40
<b>Information exchange</b> —maintaining intergovernmental network of environmental data; and issuing monthly enforcement alerts	1.37

Source: GAO analysis of EPA data.

EPA officials told us that the administration expenditures in table 4 represent the activities of the agency’s support offices. These four offices and their primary responsibilities include the following:

- *Office of Administration and Resources Management*—human resource management, facilities management, and contracts and grants management.
- *Office of the Chief Financial Officer*—annual budget process, performance management, strategic planning, and financial payment and support services.
- *Office of Environmental Information*—collection and management of agency environmental data, including ensuring the accuracy and reliability of such data and developing tools to access and analyze these data.
- *Office of General Counsel*—legal support for agency rules, policies, and litigation undertaken with Department of Justice attorneys.

In addition to providing funding for the offices and lab spaces where EPA conducts work, EPA's administration support activities provide a variety of benefits to the Superfund program. For example, the Superfund program relies upon the contract management activities of the Office of Administration and Resources Management, because contractors conduct many Superfund activities, including searching for responsible parties and cleaning up hazardous waste sites. Attorneys in EPA's Office of General Counsel provide legal advice and counsel program staff on federal laws, as well as executive orders, regulations, policies, guidelines, case decisions, state laws, and local ordinances that may affect the program or specific hazardous waste sites. Additionally, the Office of the Chief Financial Officer operates the agency's financial management system, which processes and documents Superfund program expenditures. The accuracy of this documentation is crucial for Superfund cost recovery claims; according to EPA data, this work allowed the agency to recover costs of over \$190 million in fiscal year 2007.

In the past, we, EPA, the agency's Inspector General, and others have published different amounts of spending on administration activities for fiscal years 1999 through 2003. For example, in 2003, we reported that EPA used 22 percent of its Superfund expenditures, or \$334 million, in fiscal year 2002 for "management and administration," which included nonsite-specific costs, such as program management and budgeting, policy development and implementation, emergency preparedness activity, contract and information management, training, and general support.<sup>17</sup> Table 5 presents the data EPA provided to us for administration costs and the amounts reported previously.

**Table 5: Comparison of Published Data on EPA Administration Expenditures**

Constant 2007 dollars in millions

Fiscal year	GAO, 2008 (percent of total Superfund expenditures)	EPA Inspector General, 2006 <sup>a</sup> (percent of total Superfund expenditures)	National Advisory Council for Environmental Policy and Technology, 2004 <sup>b</sup> (percent of total Superfund expenditures)	GAO, 2003 <sup>c</sup> (percent of total Superfund expenditures)	Resources for the Future, 2001 <sup>d</sup> (percent of total Superfund expenditures)
1999	\$143 (8%)	\$438 (23%)	\$417 (25%)		\$652 (35%)
2000	132 (8)	439 (23)			
2001	138 (9)	436 (25)			
2002	135 (9)	441 (26)		\$334 (22%)	
2003	135 (9)	492 (28)	497 (35)		

Sources: GAO analysis of EPA, National Advisory Council for Environmental Policy and Technology, and Resources for the Future data.

Notes: We provided the data that were available in each report. Although the National Advisory Council for Environmental Policy and Technology report showed a figure for the years between fiscal year 1999 and fiscal year 2003, the report only provided exact amounts, which are necessary to make comparisons, for the beginning and end of the period.

<sup>a</sup>EPA, Office of Inspector General, *EPA Can Better Manage Superfund Resources*, 2006-P-00013 (Washington, D.C.: Feb. 28, 2006).

<sup>b</sup>National Advisory Council for Environmental Policy and Technology, *Final Report*, (Washington, D.C.: Apr. 12, 2004).

<sup>c</sup>GAO-03-850.

<sup>d</sup>Resources for the Future, *Superfund's Future: What Will it Cost?*, (Washington, D.C.: 2001).

<sup>17</sup>GAO-03-850.

These reports used varying methodologies to obtain and analyze EPA's expenditure data.

- For this report, EPA provided us with data in four broad categories: remedial, removal, enforcement, and administration. As mentioned, to illustrate administration expenditures, EPA officials included all Superfund-related costs of the agency's support offices. Officials also explained that their goal in categorizing administration expenditures was to be consistent with how funds were appropriated to EPA.
- In the Inspector General's 2006 report, officials obtained data from EPA and used the agency's official definition of administrative and programmatic costs to categorize these data.<sup>18</sup>
- The National Advisory Council for Environmental Policy and Technology's information comes directly from EPA data provided to the council, which identified programmatic and administrative funds.
- In our 2003 report, we also relied on EPA to determine what activities it considered to be administrative.
- Resources for the Future conducted its own analyses of EPA expenditure data to identify expenditures related to program support and administration. Unlike the other publications, this report used its own definition of administration costs.

Underlying the differences in the data presented in these reports, one of the more important differences was variation in the categorization of agency payroll costs. The only payroll costs that were categorized as administration in this study were those associated with the agency's support offices. In general, EPA categorized payroll costs according to the activities with which these costs were associated. For example, EPA categorized all OECA payroll costs as enforcement-related expenditures. In contrast, some previous reports included all Superfund program payroll costs in the administration category. Several reports cited concerns with this approach, however. In the Inspector General's report, for example, OSWER officials disputed the agency's official definition of administration costs (which includes all payroll costs), maintaining that some payroll costs should be categorized as programmatic, such as when staff are performing site-specific cleanup activities. The National Advisory Council for Environmental Policy and Technology also noted that, by including all payroll costs in the definition of administration costs, most enforcement costs were categorized as administrative. Other reports, such as our 2003 report and the Resources for the Future report, included some payroll costs in the administration category and others in programmatic categories. EPA officials told us that different definitions of administration costs may be necessary for different analyses, such as developing EPA's budget or calculating indirect costs, which—along with site-specific costs—can be recovered from responsible parties.

By removing all OSWER and OECA payroll costs from the administration category, EPA may have addressed the concerns raised by OSWER and the National Advisory Council for Environmental Policy and Technology. However, the new data may understate administration

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<sup>18</sup>This definition is provided in EPA's *Administrative Control of Appropriated Funds*, which outlines the principles and policies to control the use of its funds.

expenditures because they do not include OSWER and OECA payroll costs that are administrative in nature. Program management and administration activities are carried out in each headquarters office as well as each region. For example, Resources for the Future identified several categories of activities that OSWER and OECA conduct that the report included as administration costs: (1) planning, budgeting, and other analyses carried out by OSWER officials; (2) enforcement planning activities and public outreach and communication efforts conducted by OECA officials; and (3) laboratory analyses supporting enforcement investigations undertaken by the National Enforcement Investigations Center.

In addition to differences in the definition of administration costs, the level of these costs may be misstated—EPA’s Inspector General and the agency itself identified concerns with Superfund administration costs. The Inspector General found that EPA had not included all agency funds that subsidize Superfund activities in its accounting system. Each year, the Superfund program—and other programs across the agency—receive support from the Environmental Programs and Management appropriation for a wide range of EPA costs, including those that cannot be attributed to a specific program.<sup>19</sup> These costs support, among other things, personnel compensation and benefits, travel, procurement, and contract activities. EPA financial statements for fiscal years 1998 through 2006—the years for which data are available—show that the Superfund program received, on average, \$74 million in services funded by the Environmental Programs and Management appropriation.<sup>20</sup>

EPA and the Inspector General also noted that the allocation of support costs to agency programs is based on outdated workforce plans. According to EPA, the agency’s workforce model has not been updated since the early 1990s, despite many significant changes to the Superfund program in the intervening years, including increased homeland security duties and evolving responsibilities as NPL sites progress through the cleanup process. Because EPA allocates some support costs on the basis of the number of staff working in a program area, an outdated workforce plan could have implications for the level of support costs charged to the Superfund program. EPA’s Inspector General found that 9 of 10 regions redirect some portion of their Superfund personnel to other regional activities, such as community involvement, public affairs, or the Regional Administrator’s office.<sup>21</sup>

EPA and its Inspector General made several recommendations regarding the classification of EPA’s administration costs and other related issues. Some of these recommendations, along with EPA’s response, are provided in table 6.

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<sup>19</sup>The Environmental Programs and Management appropriation is one of EPA’s largest appropriations, funding the work of more than 10,000 agency staff.

<sup>20</sup>In some years, the Superfund program received services funded by additional EPA appropriations, which are also included in this figure.

<sup>21</sup>Inspector General officials did not verify whether these activities were related to Superfund.

**Table 6: Selected Recommendations on Administration Costs and EPA’s Response**

<b>Report and recommendations</b>	<b>EPA’s response<sup>a</sup></b>
<b>EPA, <i>Superfund: Building on the Past, Looking to the Future</i> (2004)</b>	
Collect data each year on the amount of funds spent on cleanup or on those activities that are necessary to get to the cleanup phase and communicate those costs more effectively.	EPA planned no additional action to address this recommendation because this is an ongoing effort and the information would be reported out on a regular basis.
Identify ways to simplify the internal budget structure to reduce the costs of moving money around the agency.	EPA took no action on this recommendation because it did not believe the current budget structure constrained the efficient use of resources.
Evaluate the number of staff doing Superfund work at headquarters and make every effort to redirect resources to activities that more directly contribute to site cleanup.	EPA indicated that its workforce analysis would guide future allocation of resources.
Consider transferring some or all of Superfund management and support costs to the Environmental Programs and Management appropriation. <sup>b</sup>	EPA took no action because it determined the option was not feasible.
<b>EPA Inspector General, <i>EPA Can Better Manage Superfund Resources</i> (2006)</b>	
Define costs in a manner that supports management decision making.	EPA is reviewing the applicability of its current definition of administration costs and may explore alternative approaches.
Conduct a workforce assessment or develop a workload model.	EPA is conducting a workforce assessment. The current milestone date for completion of this project is July 30, 2008.
Declare the accounting for administration and support activities and the lack of a current workload model as internal control weaknesses.	Office of Inspector General officials told us they closed this recommendation because EPA planned to address other recommendations.

Source: EPA.

<sup>a</sup>EPA responses to these recommendations were provided in EPA, *The 120-Day Study: Action Plan*, (Washington, D.C.: February 2005) and EPA Office of Inspector General, *Congressionally Requested Report on Office of Inspector General Unimplemented Recommendations (Revised)*, 08-P-0123 (Washington, D.C.: Mar. 31, 2008), as well as our interviews with Inspector General officials.

<sup>b</sup>This suggestion was listed as an option for EPA, rather than a recommendation.

## Agency Comments and Our Evaluation

We provided EPA with a draft of this report for its review and comment. The full text of EPA’s comments is included in enclosure II. The agency stated that it generally agreed with the report’s descriptions of funding sources that support the Superfund trust fund, and that the report provided a sound historical representation of trust fund balances and revenue, as well as an accurate description of the programs it supports. EPA also provided suggestions on three specific sections of our report; our evaluation of their comments is described below.

EPA requested that we clarify our description of the relationship between the balance of the trust fund and the funding available to the agency. Although we believe that we accurately portrayed this relationship—including specifically pointing out that EPA can only spend what has been appropriated by the Congress—we revised our report to more clearly reflect the nature of the relationship between the trust fund and annual appropriations.

The agency also commented that our description of expenditures, while factually accurate, was unclear due to our use of both nominal and constant dollars, and the fact that we presented an analysis of enforcement and administration expenditures in the same section of the report. With regard to our use of nominal and constant dollars, we noted in the report that we present all dollars in constant 2007 dollars, except when we refer to dollars in appropriations documents; for those dollar figures, we use nominal dollars, in accordance with our policy to report the amounts that were enacted at the time, presented in budget documents, or both. Regarding our presentation of EPA expenditures, we provided information on all EPA Superfund expenditures as well as detailed descriptions of enforcement and administration expenditures at the request of the Congress. Although we provided data on enforcement and administration in the same section, the focus of the section was not a comparison between these two categories, but rather a comprehensive description of each.

Finally, EPA stated that the agency's definition of administration costs was developed at the request of and was approved by the Congress. We acknowledge in the report that EPA has an official definition of administration costs. However, EPA has not consistently used this definition and officials told us they are evaluating whether to revise the agency's official definition. Furthermore, we and others identified additional issues potentially impacting the accuracy and consistency of analyses of EPA's administration costs. As a result of these issues, published data on administration costs are often not comparable. As EPA points out, different studies may have different perspectives on the kinds of costs that should be considered administration-related. Nevertheless, we believed that it was important to explain why the numbers presented in this report vary from those presented in other recent reports.

EPA also provided technical comments, which we have incorporated into this report as appropriate.

We also provided the Department of Justice with a draft of this report for review and comment; they did not comment on the draft report but provided one technical clarification, which we incorporated into the report.

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As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Administrator of the EPA, the Attorney General of the United States, appropriate congressional committees, and other interested parties. We will also make copies available to others on request. In addition, the report will be available at no charge on our Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact John B. Stephenson at (202) 512-3841 or stephensonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in enclosure III.

A handwritten signature in black ink, reading "John B. Stephenson". The signature is written in a cursive style with a long horizontal line extending to the right.

John B. Stephenson  
Director, Natural Resources  
and Environment

Enclosures

*List of Requesters*

The Honorable James M. Inhofe  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Chuck Hagel  
United States Senate

The Honorable John Thune  
United States Senate

The Honorable John Campbell  
House of Representatives

The Honorable Charles W. Dent  
House of Representatives

The Honorable Mark Steven Kirk  
House of Representatives

## Enclosure I

### Objectives, Scope, and Methodology

This report provides information about the (1) sources of funding for the Superfund trust fund and (2) allocation of these resources to Superfund program activities, particularly enforcement and administration.

To determine the sources of funding that support the Superfund trust fund, we reviewed the President's Budget Appendices for fiscal years 1983 through 2009. These documents contain budget information from fiscal year 1981, the first year of the Superfund program, through fiscal year 2007. After compiling these data, we reviewed them with Environmental Protection Agency (EPA) budget experts to confirm their accuracy. We also reviewed annual appropriations laws and related conference reports in order to compile information on direction provided by the Congress for spending.

To analyze the costs of program activities, we obtained EPA data on overall Superfund program expenditures—also referred to as outlays. EPA budget staff grouped expenditures into major categories, such as administration and removal, based on their knowledge of the programs and provided us with a more detailed breakdown of administration expenditures for fiscal year 2007. We limited our scope to fiscal years 1999 through 2007 because EPA changed the way it accounted for certain budget items in fiscal year 1999; this change makes it difficult to obtain consistent data prior to that year. EPA also updated its system in fiscal year 2004 and, because of this, EPA budget officials created a crosswalk between the two time periods to ensure the expenditures were consistent. EPA provided us with expenditure data for these years; our comparisons to agency obligation data showed that expenditures and obligations were somewhat similar for the years in which we had both sets of data. Specifically, expenditures ranged from 5 percent higher than obligations to 16 percent lower than obligations during fiscal years 2004 through 2007.

EPA also provided us with enforcement expenditure data for fiscal years 1999 through 2007 by action code, which EPA uses to identify expenditures. We grouped action codes into categories in consultation with EPA officials. These data were also limited in scope to fiscal years 1999 through 2007 because of constraints similar to those described above.

Finally, EPA provided us with data on outcomes of enforcement actions at sites on the National Priorities List (NPL), including past costs recovered, future costs obtained, estimated value of responsible parties' work commitments, and penalties. We used these data to calculate the value of enforcement outcomes, for fiscal years 1979 through 2007, although we did not evaluate the accuracy of EPA's estimates. In its response to a draft of this report, EPA indicated that it had made a number of corrections and updates to data on the outcomes of its enforcement activities; these corrections occurred after the agency provided us with a version of these data for fiscal years 1979 through 2007. For example, the agency indicated that in reviewing enforcement outcomes from the 1980s and 1990s, EPA regions identified certain outcomes that did not have their full value included in the agency's data because of the way earlier versions of the database had been constructed. Due to the number and amount of these differences, EPA provided us with a more recent version of the dataset, updated through June 2008, which we analyzed for this report. However, because EPA continually corrects and updates its historical Superfund enforcement outcome data, future analyses of this database

may not match our results. We considered data from fiscal year 1979 because the earliest Superfund enforcement outcome with monetary value was achieved in this year. Although this outcome occurred before the Superfund program began, the outcome was related to a site that was later listed on the NPL, and EPA officials told us that they classified it as a Superfund enforcement outcome.

We converted all dollar figures into constant 2007 dollars, except when we refer to dollars in appropriations documents; for those dollar figures, we use nominal dollars. It is our policy to match what has actually been enacted or proposed at the time, what is reported in budget documents, or both.

We also reviewed relevant documents, such as the Superfund Program Implementation Manual and prior evaluations of the Superfund program, and interviewed agency officials in the Office of Solid Waste and Emergency Response (OSWER), the Office of Enforcement and Compliance Assurance (OECA), and the Office of the Chief Financial Officer. To determine previous findings related to administration costs, we reviewed reports from GAO, EPA, the agency's Inspector General, and others.

To ensure the reliability of the data we used for this report, we reviewed two relevant EPA databases: (1) the Integrated Financial Management System, from which our expenditure data were drawn, and (2) the Comprehensive Environmental Response, Compensation, and Liability Information System, from which site status and enforcement outcome data were drawn. For both data sources, we interviewed EPA officials about the methods used by the agency to ensure data reliability, manually and electronically reviewed the data, compared data to other published sources, and followed up with EPA regarding specific questions that we had as a result of our review. We spoke with officials from OSWER, OECA, and the Office of the Chief Financial Officer. Based on these interviews and our own analyses, we concluded that these data were sufficiently reliable for the purposes of this report. Where necessary in the report, we note potential limitations of these data.

We conducted this performance audit from July 2007 to July 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## Enclosure II: Comments from the Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 24 2008

OFFICE OF  
CHIEF FINANCIAL OFFICER

Mr. John B. Stephenson, Director  
Natural Resources & Environment  
Government Accountability Office  
441 G Street, N.W. Room 2075  
Washington, D.C. 20548

Dear Mr. Stephenson:

Thank you for the opportunity to comment on the draft report entitled "Superfund: Reported Costs of Enforcement and Administration Activities (GAO-08-841R)." We appreciate the collegial working relationship and dialog with GAO as this report was developed.

Overall, we generally agree with the descriptions contained in this report on sources of funding that support the Hazardous Substance Superfund trust fund. This report provides a sound historical representation of the trust fund balances and revenues, as well as an accurate depiction of the program these resources support once appropriated.

However, EPA has identified the following areas in the draft report for which we provide additional clarification and suggestions.

### **Relationship of Trust Fund Balances, Appropriated Resources, and Agency Activities**

EPA requests that the report be modified to more accurately address the relationship between the balance of the trust fund and funding available to the Agency. Historically, the available balance of the trust fund has not impacted the level of resources appropriated to the Agency for the Superfund program. Through its annual appropriations bills, Congress transfers money into the trust fund and appropriates money out of the trust fund to provide the program with the level of funding that Congress determines is appropriate. Regardless of the balance of the trust fund, the Agency only has authority to spend resources that are appropriated from the trust fund by Congress. We appreciate the difficulty in accurately portraying the relationship of the trust fund, appropriated resources, and Agency activities, and have recommended several edits to more accurately explain this relationship (see enclosure).

### **Presentation of Expenditures by Category**

The depiction of expenditures in a particular category (e.g., response, enforcement, administration, etc.), as compared to the total expenditures of Superfund appropriated resources we believe could be clarified further in the draft report. While the analysis is factually accurate, combining certain categories for analysis, and the mixing of nominal and constant dollars in the text, did not provide a clear picture of the trend in resources for the categories being discussed.

For example, on page 16 of the draft report, the title “Enforcement and Administration Costs Increase from 22 to 25 percent of Superfund expenditures from Fiscal Year 1999 through 2007” and the following paragraph, while factually correct, could be misleading in that the reader may have the impression that from fiscal years 1999 to 2007 enforcement expenditures increased. In contrast to the title, on page 18 it is noted that in fiscal year 2007, Superfund enforcement expenditures totaled approximately \$187 million, representing a 23 percent decrease from fiscal year 1999. The draft report also notes that, “the proportion of total program expenditures going to enforcement remained relatively consistent, at about 14 percent.” These statements appear to contradict the title and paragraph on page 16 that combines administrative and enforcement expenditures.

EPA suggests re-titling the section header on page 16 to avoid inconsistency and perhaps including a chart to depict the categories, which may provide additional clarification and support the analysis being discussed.

### **Discussion on Superfund Administration Expenditures**

The Agency maintains a definition of programmatic and administrative costs for the purposes of all Agency programs, and this definition includes payroll as part of administrative costs. The classification of payroll as administrative can be traced to 1993 when EPA’s Congressional appropriation subcommittees reclassified EPA’s account structure by directing EPA “to develop a single definition of ‘administrative’ and ‘programmatic’ expenses that can be used across all accounts/appropriations”.<sup>1</sup> For FY 1994, EPA submitted a “Global Expense Definition” and “Appropriation Restructuring and Implementation Guidebook” for Congressional approval. These reports described how EPA intended to capture “administrative” and “programmatic” costs by budget object class, and included payroll under the definition of “administrative” costs. The Congressional appropriation subcommittees approved EPA’s “Global Expense Definition” and “Appropriation Restructuring and Implementation Guidebook,” and since that time EPA has operated under this framework.

However, EPA also has the discretion to provide data in a manner that meets the needs of the requestor. The Agency, first and foremost, strives to provide financial information in a manner that meets the needs of the requestor for the study being conducted while maintaining an accurate representation of the data. You note in your draft report that EPA has provided

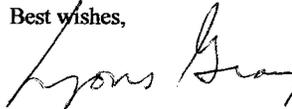
<sup>1</sup> See FY 1993 Conference Report for the *Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Bill, 1993*, dated September 24, 1992 (Report 102-902) and the House of Representatives *Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Bill, 1994*, dated June 22, 1993 (Report 103-150).

administration data for the Superfund program using different definitions of “administrative” costs. This data was provided to multiple requestors on multiple studies, and EPA worked with those requestors to determine what information the requestors sought for the purposes of their respective studies. As evidenced by your report, different requestors have had different perspectives on what costs should be considered administrative in nature. We have suggested several modifications for the discussion on the Agency’s administration expenditures for the Superfund program (see enclosure).

EPA requests that the report be modified to address several additional technical corrections and edits (see enclosure). In addition to suggested edits reflecting the items discussed above, we offer additional clarification on the Superfund remedial and enforcement process.

Again, we appreciate the opportunity to work with your team on this review and your consideration of technical corrections. If you have any other comments or questions about these corrections, please contact Carol Terris, Acting Director of the Office of Budget at 202-564-0533.

Best wishes,



Lyons Gray  
Chief Financial Officer

Enclosure

## **Enclosure III**

### **GAO Contact and Staff Acknowledgments**

#### **GAO Contact**

John B. Stephenson, (202) 512-3841 or [stephensonj@gao.gov](mailto:stephensonj@gao.gov).

#### **Staff Acknowledgments**

In addition to the contact named above, Vincent P. Price, Assistant Director; Tim Bazzle; Krista Loose; Christopher Murray; and Kathleen Padulchick made key contributions to this report. Elizabeth Beardsley, Virginia Chanley, Michele Fejfar, Carol Henn, Richard Johnson, and Carol Herrstadt Shulman also made important contributions.

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