

Why GAO Did This Study

Superfund is EPA's principal program to address sites with hazardous substances, and some of the most seriously contaminated of these sites are listed on the NPL. Many of these sites can affect Indian tribes or their land. EPA has a policy to consult with tribes when EPA actions or decisions may affect tribal interests, including on cleanup of NPL sites that are on tribal property or that affect tribes.

GAO was asked to analyze NPL sites that are on tribal property or that affect tribes and EPA's consultation with tribes at these sites. This report: (1) examines the extent to which EPA has reliable data identifying NPL sites that are located on tribal property or that affect tribes, (2) examines the extent to which EPA has reliable data on the agency's consultation with tribes regarding NPL sites, and (3) describes the actions EPA has taken to address the unique needs of tribes when making decisions about cleanup actions at Superfund sites. GAO reviewed laws and policies, assessed EPA data on NPL sites, and interviewed EPA and tribal officials about cleanup actions and consultations at six non-generalizable NPL sites selected in part for their geographic diversity.

What GAO Recommends

GAO is making four recommendations to EPA, including that it take actions to improve the data it collects and to clearly define circumstances under which consultation with tribes should be considered. EPA generally agreed with GAO's recommendations.

SUPERFUND

EPA Should Improve the Reliability of Data on National Priorities List Sites Affecting Indian Tribes

What GAO Found

The Environmental Protection Agency (EPA) does not have reliable data identifying National Priorities List (NPL) sites that are located on tribal property or that affect tribes. Specifically, EPA collects data on whether sites are on tribal property or have Native American Interest (a data variable indicating sites where tribal members or tribal land would be directly affected by the release of hazardous substances), as well as which tribes are associated with NPL sites. However, EPA's data are not always accurate or complete for a number of reasons. For example, EPA can have difficulty identifying some tribal property boundaries, and NPL site boundaries may evolve as the site is investigated and remediated. EPA does not have a regular review process for its data on whether an NPL site is on tribal property. In addition, EPA's guidance for determining whether a site has Native American Interest is unclear, and regions may not interpret it consistently. Without improving its review process and clarifying its guidance, EPA will not have reasonable assurance that its data on tribes that are affected by NPL sites are accurate or complete.

EPA consults with tribes when actions at an NPL site may affect tribal interests, but the agency does not have reliable data on its consultations with tribes. Data from EPA's system for tracking consultation did not include documentation of some consultations that GAO confirmed had occurred. One possible reason that EPA data are incomplete is that the agency's policy is unclear on which interactions are considered consultation and are therefore to be documented in EPA's system of record, which is not consistent with federal standards for internal control. EPA's policy provides a broad definition of consultation and specifies which staff are responsible for determining when consultation may be appropriate. However, the policy does not provide further guidance on the circumstances under which consultation should be considered. For example, it does not specify any specific points in the hazardous substance cleanup process at which consultation should be considered or provide further detail on which tribal interests should be considered when determining if tribal interests on NPL sites are affected. Without clarifying guidance to clearly define circumstances under which consultation with tribes should be considered, EPA cannot have reasonable assurance that it is applying its consultation policy consistently.

EPA has taken various actions to address the unique needs of tribes when making decisions about cleanup actions. These actions include minimizing tribal members' exposure to contaminants because of tribal lifestyle (e.g., greater consumption of local fish and game) and limiting potential damage to culturally important sites. For example, EPA officials said that at one site, they altered the design and route of the roads used to remove contaminated materials to minimize the impact of cleanup activities' on cultural resources. EPA also published a memorandum in 2017 with recommendations on considering tribes' traditional ecological knowledge in the cleanup process if tribes offer it.