

EPA SUPERFUND TASK FORCE REPORT

COMMENTS

September 25, 2017

Overview

Since 1980, EPA's Superfund program has protected people's health and the environment by successfully managing the cleanup of the Nation's most hazardous waste sites and responding to immediate risks during local and nationally significant environmental emergencies. In May 2017, EPA Administrator Scott Pruitt commissioned the Superfund Task Force to "provide recommendations on an expedited timeframe on how the agency can restructure the cleanup process, realign incentives of all involved parties to promote expeditious remediation, reduce the burden on cooperating parties, incentivize parties to remediate sites, encourage private investment in cleanups and sites and promote the revitalization of properties across the country." On July 25, 2017, the task force released its recommendations, which included 42 actions that it stated could be initiated without legislative change during the next year.

While the Superfund Task Force acknowledges the achievements of the Superfund program over almost 40 years, it makes some recommendations that suggest significant departures from past goals and approaches. The Environmental Protection Network (EPN), a group of former EPA officials and staff with many years of experience under both political parties, has serious concerns about many of the recommendations. The following are EPN comments on the Superfund Task Force recommendations.

Key Messages

- **Superfund has been an effective program for many years. Why upend it? In 2016 alone:**
 - EPA completed 105 "remedial" or cleanup construction projects and all construction work at 13 sites, initiated 44 cleanup construction projects, made 24 decisions on cleanup plans and updated 12 others, started 703 site investigations and removed two sites and a portion of another from the National Priorities List (NPL) of the most contaminated sites – all at sites not funded by government dollars.
 - In addition, the agency controlled potential or actual exposure at 12 sites, controlled the migration of contaminated groundwater at 17 sites and completed or oversaw work in 226 actions to address immediate or substantial threats to communities.
 - A *National Geographic* analysis of the efficacy of Superfund site cleanups concluded, "That these contaminated places are no longer the focus of national attention is in part due to a rarely cited phenomenon: governmental competence."
- **Many of the recommendations would require additional resources to achieve better outcomes, while the Trump/Pruitt Administration has proposed slashing funding for the Superfund program by 30%.** Even with the level funding contained in the continuing budget resolution funding the government into December 2017, it would not be possible to implement the report's recommendations effectively. When you overlay Superfund budget proposals and staff reductions against the Superfund Task Force recommendations, there are glaring inconsistencies.
- **Beware of fixes that are penny-wise and pound-foolish.** The process of cleaning up Superfund sites - where most of the contamination lies invisibly beneath the surface - is by nature complex.
 - Project teams need to research site histories to determine what chemicals were used and released and, depending on the type of contamination, sample contaminated land, water, sediment or air to define the full nature and extent of contamination. Cutting corners would result in insufficient data, selection

of ineffective or inappropriate remedies, and/or obstacles at the design and construction stages of cleanups. The results could be substantial time delays and added expenses related to redoing work.

- Funding for cleanups comes from either the government – federal Superfund or state funds – or responsible private parties required by law to cover cleanup costs. The identification of parties responsible for site cleanups translates into more sites being cleaned up. Although this task can be complex and resource-intensive, often involving extensive research, title searches, information request letters and more, it pays off in lowered government costs. Well worth the investment.
- **The stated intention of the EPA Administrator to be directly involved in decision-making at large sites and to focus weekly on 10 [high-priority sites](#) is impractical and technically questionable.** Competent decision-making on complex sites requires:
 - Expertise and detailed knowledge of the sites; this action could lead to second-guessing technically competent staff who are intimately familiar with the sites.
 - Knowledge needed to abide by statutory requirements, including long-term effectiveness of cleanups and preferences for the treatment of contaminated material.
 - The use of agency resources to fully brief the Administrator in advance of decisions.
- **The report does not pay sufficient attention to so-called “orphan sites,” for which viable responsible parties cannot be found to cover the costs of cleanups.** These sites must be cleaned up using taxpayer dollars and are among the biggest on the National Priorities List. In addition, budget cuts or even current spending levels will disproportionately affect orphan sites.
- **Some recommendations mirror those from previous Superfund streamlining studies, which have already resulted in accelerated decision-making and improvements to the program, while the real problem is the growing list of sites awaiting cleanup due to a lack of funding.**
 - The Superfund budget was essentially flat-lined between 2000 and 2012 and reduced by about 20% between 2013 and 2015.
 - The cost of treatment, disposal, operation and maintenance, transportation and labor has steadily increased since 2000 for the same types of cleanup plans selected in 2017.
 - Streamlined decision-making did not result in substantial savings needed to fund sites waiting for cleanup.

Serious Risks of Implementing the Recommendations

The key to success or failure lies in *how* the recommendations would be implemented.

- The desire to shortcut the Remedial Investigation and Feasibility Study (RI/FS) process could lead to unintended consequences. This critical stage in the Superfund process evaluates the extent and nature of the contamination at sites and assesses the potential risks to people and the environment from the contamination.
 - The time it will take to clean up a site cannot be assumed before the nature and extent of contamination are known and must be based on site-specific facts. Arbitrary timelines would be misleading to stakeholders and might jeopardize protection of human health and the environment. A properly done RI/FS enables the agency to select the appropriate remedies, a critical step toward cleanup.
 - Streamlined RI/FSs are likely to require additional work at the design stage, when cleanup plans are actually prepared. There is a history of streamlining, which has not been successful in speeding up final actions.
 - Fixing the remedial investigation to a deadline could jeopardize the effective practice of using a phased approach, whereby the results of one phase of the investigation inform the scope of the next phase. This phased approach has been recommended by EPA for many years and can save time in the long run.
 - Faster action often requires additional resources.

- The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) that governs Superfund, requires potentially responsible parties to reimburse EPA for the costs of doing RI/FS's. EPA has no legal leeway to reduce their financial responsibilities. To do so would be a violation of CERCLA.
- Under CERCLA, there are nine criteria that must be applied in selecting cleanup plans for contaminated sites: overall protection of human health; compliance with applicable or relevant and appropriate requirements; long-term effectiveness and permanence; reduction of toxicity, mobility and volume through treatment; short-term effectiveness; implementability; cost, including capital and operation and maintenance expenses; and state and community acceptance. EPA continues to have a legal obligation to consider these criteria each time it selects a cleanup plan.
- For the sake of streamlining and expediency, will EPA move toward "presumptive remedies," standard cleanup approaches for each type of site regardless of site-specific conditions? Presumptive remedies could violate the statutory preference for treating contaminated material and the criterion of reducing the toxicity, mobility or volume of the material through treatment. This approach would likely result in more capping of contaminated material in place and closed sites that could not be productively reused, rather than requiring treatment or removal to permitted treatment, storage and disposal facilities.
- The Administration's objective of reducing the burden on responsible parties may be the primary objective for the recommendations. While continuing the use of best practices, such as the phased approach employed since 1996, seems logical, there is concern that EPA would move toward less effective cleanup methods. These include monitored natural attenuation (i.e. relying on natural processes to reduce contamination over time), and waivers for the lack of technical practicability if it can be demonstrated that compliance with certain technical requirements cannot be met from an engineering perspective. Also at risk are the statutory preference for treatment and the criterion of reducing toxicity, mobility or volume through treatment of contaminated material.
- There is no indication how 10 high-priority sites will be selected. This creates a risk that passive remedies as described above would be selected and used as precedents for less proactive and timely cleanups at other sites. There is also an overall risk that cleanup criteria would be weakened.
- An emphasis on "removal actions," which address emergency, immediate or short-term problems at sites, could lead to less protective or less permanent cleanup plans. Cleanup criteria for these type of responses are often less stringent than more long-term actions to clean up sites.
- The push for streamlining and less stringent cleanup levels may make it more difficult for sites to be used for purposes other than future industrial locations. Communities often want to reuse sites for residential use, which requires more stringent cleanup levels, not less, to protect people from more toxic levels of residual contamination. The potential for less-stringent remedies may also expose the agency to public objections and delays, and could lead to more congressional oversight.
- States play a pivotal role in the selection of cleanup plans and must be involved in any new process. If a state does not concur on the cleanup plan selected for a given site or refuses to pay its percent share of the costs, there is a strong chance the cleanup will not be implemented until EPA and the state come to a mutually acceptable agreement. In such cases, EPA could try to get a responsible party to do the work, but that usually requires assurances that the state will not proceed separately with an action against the private party.

How to Apply MORE Resources to Superfund Cleanups

- Fund additional enforcement activities. Superfund enforcement has historically returned about \$8 in cleanup commitments from potentially responsible parties for every dollar spent on enforcement. If the goal is to "do more with less" government resources, investing in enforcement is a good way to leverage limited federal dollars.
- Fund cleanups at sites where cleanup plans have been selected, but are still waiting for funding for design and construction work. A reduction in funding for remedial work will only lead to more sites awaiting cleanups.
- Fund modifications to cleanup plans at sites for which required five-year reviews have determined that the selected cleanup approach is no longer protective. This can result from changed or newly discovered site conditions or advances in science resulting in new data on toxicity.
- Fund research needed to establish the toxicity of emerging chemicals of concern and on the synergistic effects of exposure to multiple chemicals.

For more information:

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