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UNITED STATES GENERAL ACCOUNTING OFFICE

o WASHINGTON, D.C. 20548

FOR RELEASE ON DELIVERY
EXPECTED AT 10:00 A.M., EST, APRIL 20, 1982

STATEMENT OF
HENRY ESCHWEGE, DIRECTOR
COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION

BEFORE THE
SUBCOMMITTEE ON HUD-INDEPENDENT AGENCIES
OF THE
SENATE COMMITTEE ON APPROPRIATIONS
ON

EPA'S PROGRESS IN IMPLEMENTING
THE SUPERFUND PROGRAM



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MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

WE ARE HERE TODAY TO DISCUSS THE RESULTS OF OUR REVIEW OF THE SUPERFUND PROGRAM--A PROGRAM DESIGNED TO FINANCE AND CLEAN UP UNCONTROLLED HAZARDOUS WASTE SITES. IMPLEMENTATION OF THE PROGRAM DURING ITS FIRST 15 MONTHS HAS BEEN HAMPERED BY A LACK OF FINAL POLICIES AND GUIDANCE. TO DATE, THERE HAVE BEEN FEW SUPERFUND-FINANCED REMEDIAL ACTION ACCOMPLISHMENTS.

BACKGROUND

THE SUPERFUND LEGISLATION WAS ENACTED ON DECEMBER 11, 1980, TO CONFRONT THE CLEANUP PROBLEM POSED BY UNCONTROLLED HAZARDOUS WASTE SITES. THE ACT PROVIDES FOR A \$1.6 BILLION FUND TO BE ACCUMULATED FROM TAXES ON PETROLEUM AND CERTAIN CHEMICALS AND FEDERAL APPROPRIATIONS OVER THE FISCAL YEAR 1981-85 PERIOD. THE FUND IS TO BE USED BY THE FEDERAL GOVERNMENT, PRIMARILY BY THE ENVIRONMENTAL PROTECTION AGENCY (EPA), OR A STATE GOVERNMENT TO CLEAN UP SPILLED TOXIC WASTES AND HAZARDOUS WASTE SITES WHERE THE RESPONSIBLE PARTY DOES NOT TAKE APPROPRIATE ACTION. EFFORTS

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TO RECOVER CLEANUP COSTS FROM THE RESPONSIBLE PARTY MAY BE MADE SUBSEQUENTLY. THE LEGISLATION IS STRUCTURED TO COMPLEMENT EXISTING LAWS GOVERNING HAZARDOUS WASTE AND ENCOURAGES RESPONSIBLE PARTIES TO VOLUNTARILY MITIGATE THE DAMAGE FROM THIS WASTE.

THE LEGISLATION ALSO PROVIDES FOR REVISION OF THE EXISTING NATIONAL CONTINGENCY PLAN BY JUNE 1981 TO INCLUDE SEVERAL ITEMS, SUCH AS METHODS AND CRITERIA FOR DETERMINING THE APPROPRIATE EXTENT OF CLEANUP ACTIONS; A LISTING OF NATIONAL PRIORITIES FOR CLEANUP ATTENTION; AND ROLES AND RESPONSIBILITIES FOR THE VARIOUS FEDERAL, STATE, AND LOCAL GOVERNMENTS INVOLVED IN IMPLEMENTING THE LEGISLATION.

BEFORE AUTHORIZING A SUPERFUND-FINANCED REMEDIAL ACTION, EPA MUST OBTAIN ASSURANCES FROM THE AFFECTED STATE THAT IT WILL: (1) ASSUME OPERATIONS AND MAINTENANCE RESPONSIBILITY FOR ALL REMOVAL AND REMEDIAL MEASURES THAT ARE IMPLEMENTED, (2) PROVIDE, IF NECESSARY, AN OFF-SITE DISPOSAL FACILITY, AND (3) SHARE IN THE COSTS OF THE REMEDIAL ACTION.

AS YOU REQUESTED, WE REVIEWED THE SUPERFUND PROGRAM TO IDENTIFY ISSUES OR PROBLEMS CONCERNING THE SELECTION OF CANDIDATE SITES FOR SUPERFUND ATTENTION; THE EXTENT AND COST EFFECTIVENESS OF REMOVAL, REMEDY, AND OTHER MEASURES AT CANDIDATE SITES; AND THE ABILITY OF STATE GOVERNMENTS TO CARRY OUT THEIR SUPERFUND RESPONSIBILITIES.

PROGRAM IMPLEMENTATION PROBLEMS

EPA'S IMPLEMENTATION OF THE SUPERFUND PROGRAM HAS BEEN HAMPERED BY A LACK OF FINAL POLICIES AND GUIDANCE. FOR EXAMPLE,

EPA MISSED THE CONGRESSIONALLY MANDATED DUE DATE OF JUNE 1981 FOR PUBLISHING THE REVISED NATIONAL CONTINGENCY PLAN AND THE LISTING OF NATIONAL PRIORITIES FOR REMEDIAL ACTION. IN EARLY FEBRUARY 1982, EPA OFFICIALS ESTIMATED THAT BOTH THE REVISED PLAN AND THE LISTING WOULD NOT BE FINALIZED UNTIL DECEMBER 1982, OR 18 MONTHS LATER THAN THEIR ESTABLISHED DUE DATE. THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA HAS ORDERED EPA TO PUBLISH THE PLAN IN FINAL FORM BY MAY 28, 1982. EPA PUBLISHED THE DRAFT PLAN ON MARCH 12, 1982. EPA IS NOW ESTIMATING A JANUARY 1983 ISSUE DATE FOR THE NATIONAL PRIORITY LIST.

ON MARCH 11, 1982, EPA ISSUED FINAL GUIDANCE DESCRIBING THE ASSURANCES THAT STATES MUST PROVIDE BEFORE SUPERFUND MONIES CAN BE OBLIGATED FOR REMEDIAL ACTIONS. ALTHOUGH DRAFT INTERIM GUIDANCE, DATED AUGUST 3, 1981, EXISTED BEFORE THEN, OFFICIALS FROM STATE GROUPS AND THE FOUR STATES WE VISITED CONSIDERED THE DELAYS IN REVISING THE PLAN AND IN PROVIDING THE FINAL GUIDANCE TO BE THE MAIN FACTORS HAMPERING CLEANUP EFFORTS TO DATE. FOR EXAMPLE, JUST PRIOR TO THE MARCH 1982 PUBLICATION OF THE DRAFT PLAN AND FINAL COOPERATIVE AGREEMENT GUIDANCE, THE NATIONAL GOVERNORS' ASSOCIATION ISSUED A RESOLUTION STATING "* * * DUE TO THE ABSENCE OF PROGRAM GUIDELINES AND CLEAN-UP STANDARDS, THE NATIONAL PROGRAM IS STALLED. STATES, MANY OF WHOM HAD ACTIVE CLEAN-UP PROGRAMS BEFORE SUPERFUND WAS ENACTED, ARE RELUCTANT TO TAKE ACTION." THE NATIONAL CONFERENCE OF STATE LEGISLATURES ESTIMATED THAT FUNDING FOR SUPERFUND ACTIONS MAY BE A PROBLEM FOR THE IMMEDIATE FUTURE SINCE MANY STATE LEGISLATURES HAVE ALREADY ADJOURNED WITHOUT ALLOCATING SPECIFIC SUMS FOR THEIR SHARE OF SUPERFUND-FINANCED REMEDIAL ACTION COSTS.

LIMITED NUMBER OF FACILITIES ARE
ELIGIBLE FOR REMEDIAL ACTION

ALTHOUGH THE SUPERFUND LEGISLATION REQUIRED A NATIONAL PRIORITY LIST OF AT LEAST 400 SITES BY JUNE 1981, EPA WAS ONLY ABLE TO PROVIDE AN INTERIM LIST OF 115 SITES AND THEN ONLY BY OCTOBER 1981. EPA DECIDED TO DEVELOP THE INTERIM PRIORITY LIST BECAUSE IT REALIZED THAT THE LEGISLATIVELY MANDATED DEADLINE WOULD NOT BE MET. IN EPA'S VIEW, THE INTERIM LIST WAS BENEFICIAL IN THAT IT STARTED THE SUPERFUND SITE CLEANUP PROGRAM MOVING AND PROVIDED VALUABLE EXPERIENCE IN IMPLEMENTING A SITE PRIORITIZATION SYSTEM.

TO DETERMINE WHICH SITES WOULD MAKE THE INTERIM LIST, EPA DEVELOPED A HAZARD RANKING SYSTEM. THE SYSTEM IS DESIGNED TO SCORE A SET OF FACTORS, SUCH AS POTENTIAL CONTAMINATION OF GROUND WATER OR SURFACE WATER AND THE AMOUNT AND TOXICITY OF HAZARDOUS WASTE AT THE SITE.

STATES AND EPA REGIONS WERE ALLOWED WIDE DISCRETION IN SELECTING SITES FOR SCORING. BECAUSE THERE WAS LIMITED TIME TO GATHER DATA, THE SITES SELECTED WERE GENERALLY THOSE FOR WHICH DATA WERE ALREADY AVAILABLE. EPA OFFICIALS COULD NOT PROVIDE AN ESTIMATE OF THE TOTAL NUMBER OF SITES ACTUALLY CONSIDERED FOR THE INTERIM LIST. EPA RECORDS SHOWED, HOWEVER, THAT AT LEAST 3,500 OF NEARLY 9,600 IDENTIFIED SITES LACKED PRELIMINARY ASSESSMENTS. THESE ASSESSMENTS INVOLVE THE COLLECTION OF AVAILABLE BACKGROUND INFORMATION WITHOUT ACTUALLY VISITING THE SITE. THE STATES AND/OR EPA REGIONS APPLIED THE HAZARD RANKING SYSTEM TO ABOUT 282 SITES AND SUBMITTED THE SITE SCORES TO EPA HEADQUARTERS AS CANDIDATES FOR THE INTERIM LIST. THESE 282 SITES LARGELY REPRESENT SITES

THE STATES BELIEVED SHOULD BE CONSIDERED FOR SUPERFUND ATTENTION.

WHEN EPA UNCOVERED PROBLEMS CONCERNING THE NATIONWIDE CONSISTENCY OF THE SCORING SYSTEM'S APPLICATION, THE TOP 175 OF THESE SITES WERE RESCORED AND THEN RECONSIDERED FOR THE INTERIM LIST. EPA DID NOT RESCORE ALL 282 SITES SINCE THE LIST WAS ALREADY LATE AND IT BELIEVED THAT THE TOP 175 WOULD YIELD A GOOD TOP 100.

EXAMPLES OF THE PROBLEMS FOUND DURING THE SCORING PROCESS INCLUDED MEASURING AND DOCUMENTING WASTE QUANTITY AT A SITE AND DETERMINING THE AFFECTED TARGET POPULATION. EPA OFFICIALS TOLD US THAT THESE PROBLEMS CAN BE ALLEVIATED BY ADDITIONAL TRAINING, GUIDANCE, AND POSSIBLE CHANGES TO THE SCORING SYSTEM. THEY PLAN TO ADDRESS SUCH ISSUES BEFORE SITE SCORING FOR THE NATIONAL PRIORITY LIST IS PERFORMED LATER THIS YEAR.

OF THE 115 SITES SELECTED, 94 WERE SELECTED ON THE BASIS OF SCORE ALONE, WHILE 21, WHICH SCORED TOO LOW TO MAKE THE LIST, WERE ADDED AS STATE-DESIGNATED TOP PRIORITY SITES. THE SUPERFUND ACT ALLOWS EPA THE LATITUDE TO MAKE SUCH ADDITIONS. THE SCORING/ SELECTION PROCESS SHOWED THAT THE INTERIM LIST DOES NOT NECESSARILY REPRESENT THE WORST SITES IN THE NATION OR THE STATES. RATHER, IT REPRESENTS HIGH SCORING PROBLEM SITES PLUS STATE TOP PRIORITY SITES. UNTIL THE NATIONAL PRIORITY LIST OF AT LEAST 400 SITES IS FINALIZED, THE NUMBER OF FACILITIES ELIGIBLE FOR SUPERFUND-FINANCED REMEDIAL ACTION IS LIMITED TO THE 115 SITES ON THE INTERIM LIST.

NATIONAL HAZARDOUS WASTE SITE
INVENTORY DOES NOT EXIST

ALTHOUGH EPA HAS TWO PRIMARY DATA BASES ON UNCONTROLLED, ABANDONED, OR INACTIVE HAZARDOUS WASTE SITES, IT LACKS A NATIONAL

INVENTORY OF THE TOTAL NUMBER OF SUCH SITES EXISTING IN THE NATION. AS OF FEBRUARY 28, 1982, EPA LISTED ABOUT 10,300 SITES IN ITS SITE TRACKING SYSTEM DATA BASE. AT THE SAME TIME EPA ALSO LISTED IN ANOTHER DATA BASE SOME 9,200 SITES THAT WERE REPORTED UNDER SECTION 103(c) OF THE SUPERFUND LEGISLATION, WHICH REQUIRED CERTAIN PERSONS TO NOTIFY EPA BY JUNE 1981 OF THE EXISTENCE OF SITES WHERE HAZARDOUS WASTES HAD BEEN STORED, TREATED, OR DISPOSED. ALTHOUGH THESE DATA BASES HAD NOT BEEN REVIEWED TO DETERMINE WHETHER DUPLICATE SITES EXISTED, EPA OFFICIALS ESTIMATED THAT BY THE END OF MAY 1982 BOTH DATA BASES WOULD BE SCREENED AND MERGED TO ARRIVE AT THE OVERALL NUMBER OF SITES KNOWN OR REPORTED TO EPA. THIS NUMBER WILL NOT REPRESENT THE TOTAL NUMBER OF SUCH SITES EXISTING IN THE NATION SINCE A COMPREHENSIVE NATIONAL STATE-BY-STATE INVENTORY HAS NOT YET BEEN COMPILED.

IN OUR NOVEMBER 1980 REPORT "HAZARDOUS WASTE DISPOSAL METHODS: MAJOR PROBLEMS WITH THEIR USE," (CED-81-21) WE RECOMMENDED THAT EPA INITIATE SUCH A COMPREHENSIVE NATIONAL INVENTORY. EPA RESPONDED IN MARCH 1981 THAT ALTHOUGH NEARLY 8,000 POTENTIAL UNCONTROLLED HAZARDOUS WASTE SITES HAD BEEN IDENTIFIED, A SINGLE THOROUGH ASSESSMENT OF THE UNIVERSE OF POTENTIAL PROBLEM SITES DID NOT EXIST. UNTIL SUCH AN INVENTORY IS COMPILED, THE FULL EXTENT OF THE NATION'S UNCONTROLLED HAZARDOUS WASTE SITE PROBLEM WILL REMAIN UNKNOWN.

CONGRESS AUTHORIZED \$20 MILLION FOR SUCH AN INVENTORY IN ITS 1980 AMENDMENTS TO THE RESOURCE CONSERVATION AND RECOVERY ACT. THE ADMINISTRATION HAS NOT REQUESTED THE AVAILABLE FUNDING FROM THE

CONGRESS. THE STATES, HOWEVER, BELIEVE FUNDING IS NEEDED TO ADEQUATELY INVENTORY AND ASSESS SITES AS TO THEIR POTENTIAL FOR BECOMING SUPERFUND CANDIDATES.

SITE CLEANUP--A LENGTHY AND FLEXIBLE PROCESS

AS OF APRIL 9, 1982--NEARLY 16 MONTHS SINCE SUPERFUND WAS ENACTED--THERE WERE FEW SUPERFUND-FINANCED REMEDIAL ACTION ACCOMPLISHMENTS. EPA PLANS TO SPEND ABOUT \$43.1 MILLION (\$36.8 MILLION FROM SUPERFUND, \$5.8 MILLION UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT, AND \$.5 MILLION FROM OTHER SOURCES) FOR REMEDIAL ACTION ACTIVITIES AT 40 OF THE 115 SITES ON THE INTERIM PRIORITY LIST. COOPERATIVE AGREEMENTS HAVE BEEN SIGNED FOR 11 OF THESE SITES--5 ARE SUPERFUND-FINANCED WHILE THE REMAINING 6 ARE FUNDED WITH RESOURCE CONSERVATION AND RECOVERY ACT MONIES-- AND 25 OTHERS ARE UNDER NEGOTIATION. EPA REPORTS SHOWED THAT \$15.4 MILLION FROM ALL FUNDING SOURCES HAD BEEN OBLIGATED FOR SITE REMEDIAL ACTIVITIES. THIS INCLUDED 27 INVESTIGATION/FEASIBILITY STUDIES, 7 ENGINEERING DESIGNS, AND 1 CONSTRUCTION PROJECT.

BASED ON EPA'S ESTIMATE THAT IT WILL TAKE 3-YEARS OR LONGER TO COMPLETE THE NECESSARY INVESTIGATION/FEASIBILITY AND DESIGN STUDIES AND ACTUAL CONSTRUCTION FOR A TYPICAL SITE, THE SUPERFUND PROGRAM WILL BE APPROACHING ITS FIFTH YEAR IN 1985 BEFORE AT LEAST A SIZEABLE PORTION OF THE INTERIM PRIORITY LIST SITES WILL BE CLEANED UP. USING THE SAME EPA ESTIMATE, IT WOULD BE JANUARY 1986 OR LATER BEFORE MANY OF THE 400 OR MORE SITES ON THE NATIONAL PRIORITY LIST ARE CLEANED UP. EPA ESTIMATES THAT ONLY 170 SUPERFUND-FINANCED CLEANUPS WILL BE PERFORMED DURING THE LIFE OF THE FUND.

EPA INTENDS TO USE A FLEXIBLE APPROACH IN DETERMINING THE DEGREE OF CLEANUP REQUIRED AT SITES. THIS APPROACH IS OUTLINED IN THE CURRENT DRAFT OF THE NATIONAL CONTINGENCY PLAN BUT IS SUBJECT TO CHANGE AS A RESULT OF PUBLIC COMMENTS. ACCORDING TO THE DRAFT PLAN, ANY APPROPRIATE STANDARD OR CRITERIA WILL BE CONSIDERED IN DETERMINING CLEANUP LEVELS, ALONG WITH OTHER TECHNOLOGICAL AND ENVIRONMENTAL FACTORS.

GIVEN THIS LENGTHY AND FLEXIBLE PROCESS, EPA WILL HAVE FEW CLEANUP EXPERIENCES TO REPORT BY DECEMBER 1984 WHEN IT IS REQUIRED TO PROVIDE SUCH INFORMATION TO THE CONGRESS. AREAS TO BE DISCUSSED IN THE REPORT INCLUDE A PROJECTION OF ANY FUTURE FUNDING NEEDS REMAINING AFTER SEPTEMBER 30, 1985, WHEN THE AUTHORITY TO COLLECT TAXES EXPIRES.

OBLIGATIONS LAG BEHIND APPROVED
SPENDING LEVELS--TRUST FUND BALANCE
GROWING

LACK OF AVAILABLE FUNDING FOR SUPERFUND ACTIVITIES IS NOT A CAUSE FOR LIMITED PROGRAM ACCOMPLISHMENTS. IN FACT, SUPERFUND OBLIGATIONS LAG FAR BEHIND THE SPENDING LEVELS APPROPRIATED BY THE CONGRESS. AS OF MARCH 31, 1982, EPA REPORTED CUMULATIVE OBLIGATIONS OF \$83.9 MILLION FOR ALL SUPERFUND ACTIVITIES, INCLUDING BOTH EMERGENCY REMOVAL AND REMEDIAL ACTIONS AND OTHER PROGRAM COSTS, FINANCED IN FISCAL YEAR 1981 AND THE FIRST 6-MONTHS OF FISCAL YEAR 1982. EPA'S APPROPRIATION FOR THIS PERIOD WAS NEARLY \$265 MILLION (\$74.7 MILLION FOR FISCAL YEAR 1981 AND \$190 MILLION FOR FISCAL YEAR 1982). EPA, THEREFORE, HAS ABOUT \$181 MILLION AVAILABLE FOR THE REMAINING 6-MONTHS OF FISCAL YEAR 1982. OF

COURSE, UNUSED FUNDS CAN BE CARRIED FORWARD TO THE NEXT FISCAL YEAR.

AS OF MARCH 31, 1982, THE TREASURY DEPARTMENT ESTIMATED THAT SUPERFUND HAD ABOUT \$303 MILLION CREDITED TO IT FROM TAX REVENUES AND OTHER RECEIPTS, SUCH AS GENERAL REVENUE APPROPRIATIONS AND INTEREST INCOME. ACTUAL EPA EXPENDITURES WERE \$38.3 MILLION LEAVING A FUND BALANCE OF ABOUT \$265 MILLION. DURING THE FIRST 6-MONTHS OF THIS FISCAL YEAR, THE FUND BALANCE INCREASED AN AVERAGE OF OVER \$21 MILLION EACH MONTH.

MR. CHAIRMAN, THIS CONCLUDES MY STATEMENT. WE WILL BE PLEASED TO RESPOND TO YOUR QUESTIONS.