



Highlights of [GAO-06-900T](#), a testimony before the Subcommittee on Superfund and Waste Management, Committee on Environment and Public Works, U.S. Senate

Why GAO Did This Study

Under the Environmental Protection Agency's (EPA) Superfund program, parties responsible for pollution bear the cost of cleaning it up. However, these parties sometimes no longer exist, leaving the problem for others, typically the federal government, to address. Furthermore, many sites' cleanup remedies leave some waste in place, relying on institutional controls—legal or administrative restrictions on land or water use—to limit the public's exposure.

GAO was asked to summarize the findings of its August 2005 report, *Environmental Liabilities: EPA Should Do More to Ensure that Liable Parties Meet Their Cleanup Obligations* (GAO-05-658) and its January 2005 report, *Hazardous Waste Sites: Improved Effectiveness of Controls at Sites Could Better Protect the Public* (GAO-05-163). GAO's statement addresses the actions EPA could take to better ensure that parties meet their cleanup obligations and the long-term effectiveness of institutional controls in protecting the public. GAO's reports recommended, among other things, that EPA (1) implement a financial assurance mandate for businesses handling hazardous substances; (2) enhance its oversight and enforcement of existing financial assurances and authorities; (3) ensure that the frequency and scope of monitoring of controls sufficiently maintain their effectiveness; and (4) ensure that information on controls reported in new tracking systems accurately reflects actual conditions.

www.gao.gov/cgi-bin/getrpt?GAO-06-900T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact John B. Stephenson at (202) 512-3841 or stephensonj@gao.gov.

SUPERFUND

Better Financial Assurances and More Effective Implementation of Institutional Controls Are Needed to Protect the Public

What GAO Found

EPA faces significant challenges in seeking to hold businesses responsible for their environmental cleanup obligations. These challenges often stem from the differing goals of environmental laws, which hold polluting businesses liable for cleanup costs and other laws which, in some cases, allow businesses to limit or avoid responsibility for these liabilities. For example, businesses can legally organize or restructure in ways that can limit their future expenditures for cleanups. They can do this by separating their assets from their liabilities using subsidiaries, for example. While many such actions are legal, transferring assets to limit liability may be prohibited under certain circumstances. Such cases, however, are difficult for EPA to identify and for the Justice Department to prosecute successfully. Notwithstanding these challenges, EPA could better ensure that bankrupt and other financially distressed businesses meet their cleanup obligations by making greater use of existing authorities. For example, EPA has not implemented a 1980 statutory mandate under Superfund to require businesses handling hazardous substances to demonstrate their ability to pay for potential environmental cleanups—that is, to provide financial assurances. Also, EPA has done little to ensure that businesses comply with the agency's existing financial assurance requirements in cleanup agreements and orders. Moreover, greater use of other existing authorities—such as tax offsets, which allow the government to redirect tax refunds it owes businesses to agencies with claims against them—could produce additional payments for cleanups from financially distressed businesses.

EPA also faces a number of challenges in ensuring the long-term effectiveness of institutional controls—legal or administrative restrictions on land or resource use to protect against exposure to residual contamination—at Superfund sites. Institutional controls were applied at most of the Superfund sites GAO examined where waste was left in place after cleanup. However, documentation of remedy decisions often did not discuss certain factors called for in EPA's guidance. Relying on institutional controls as a major component of a site's remedy without carefully considering all key factors—particularly whether controls can be implemented in a reliable and enforceable manner—could jeopardize the remedy's effectiveness. In addition, EPA faces challenges in ensuring that institutional controls are adequately implemented, monitored, and enforced. For example, EPA often does not verify that institutional controls are in place at Superfund sites where cleanup has been completed but residual contamination remains. At the time of GAO's review, EPA had begun implementing a tracking system to improve the agency's ability to ensure the long-term effectiveness of institutional controls in the Superfund program. However, the tracking system being implemented included data that were essentially derived from file reviews. These data may or may not reflect institutional controls as actually implemented, leaving in question whether the public is adequately protected from health and environmental risks