

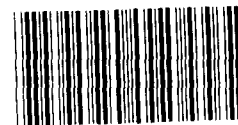
125938 20118

REPORT BY THE U.S.

General Accounting Office

EPA Could Benefit From Comprehensive Management Information On Superfund Enforcement Actions

The Environmental Protection Agency maintains detailed Superfund enforcement information in individual files and has developed information systems for reporting various categories of Superfund enforcement data. However, according to EPA enforcement officials, if the number of Superfund enforcement cases continues to rise as projected, it will become increasingly beneficial for EPA program managers to maintain more comprehensive tracking information to help answer questions such as "How long are different steps in the enforcement process taking?" and "Are the time frames that have been set for the process being met?" GAO recommends that EPA assess the feasibility of developing and maintaining a comprehensive Superfund enforcement management information system and, if cost effective, implement such a system.



125938



GAO/RCED-85-3
DECEMBER 28, 1984

030911

Request for copies of GAO reports should be sent to:

**U.S. General Accounting Office
Document Handling and Information
Services Facility
P.O. Box 6015
Gaithersburg, Md. 20760**

Telephone (202) 275-6241

The first five copies of individual reports are free of charge. Additional copies of bound audit reports are \$3.25 each. Additional copies of unbound report (i.e., letter reports) and most other publications are \$1.00 each. There will be a 25% discount on all orders for 100 or more copies mailed to a single address. Sales orders must be prepaid on a cash, check, or money order basis. Check should be made out to the "Superintendent of Documents".



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION

B-211463

The Honorable Elliott H. Levitas
Chairman, Subcommittee on Investigations
and Oversight
Committee on Public Works
and Transportation
House of Representatives

Dear Mr. Chairman:

As requested in your June 7, 1984, letter and in subsequent discussions with your office, we have reviewed the extent of EPA's management information for tracking Superfund enforcement actions. This report discusses the management information EPA maintains for this purpose and makes a recommendation to the Administrator, Environmental Protection Agency.

As arranged with your office, we are sending copies to the appropriate congressional committees; the Administrator, Environmental Protection Agency; and other interested parties.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "J. Dexter Peach", written over the typed name and title.

J. Dexter Peach
Director



D I G E S T

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly known as "Superfund," was enacted in response to the threat to public health and the environment posed by uncontrolled hazardous chemicals at thousands of disposal sites across the nation. The act established a \$1.6 billion fund to help clean up these sites and provided that the parties responsible for the hazardous conditions at the sites should either perform cleanups themselves or reimburse the government for cleaning up the sites. The Environmental Protection Agency's (EPA's) efforts to compel responsible parties to perform site cleanups or reimburse the government are generally referred to as "Superfund enforcement" actions.

At the request of the Chairman, Subcommittee on Investigations and Oversight, House Committee on Public Works and Transportation, GAO reviewed the extent to which EPA maintains management information for tracking Superfund enforcement actions. GAO found that EPA's headquarters and regional offices have detailed information in individual files and have created systems for reporting various categories of Superfund enforcement data. Most of these systems were developed in recent years as the growing number of cases prompted program managers to devise systematic ways of keeping track of individual enforcement actions. However, according to EPA enforcement officials, if the number of Superfund enforcement cases continues to rise as projected, it will become increasingly beneficial for EPA program managers to maintain more comprehensive Superfund enforcement tracking information to help them answer questions such as "How long are different steps in the enforcement process taking?" and "Are the time frames that have been set for the process being met?" Although several EPA enforcement program managers cited benefits that would result from having a system for providing

comprehensive information for tracking enforcement actions, EPA has not assessed the feasibility of implementing such a system.

THE SUPERFUND
ENFORCEMENT PROCESS

EPA's Superfund enforcement actions involve steps such as (1) identifying responsible parties, (2) notifying them of their potential liability for cleaning up the site, (3) negotiating with parties to determine if a mutually agreeable settlement is possible, and (4) recording any settlements that are reached. As of August 31, 1984, settlements for about \$304 million in responsible party cleanups had been reached.¹ If a settlement is not reached, EPA can clean up the site with federal funds and seek to recover the cost of cleanup later. Cost-recovery settlements for government-performed cleanups worth an additional \$6.4 million had been reached as of August 31, 1984. (See pp. 2 to 4.)

Superfund enforcement actions can be taken for different phases of a site cleanup. For example, EPA may wish to take an enforcement action to obtain cleanup or cost recovery for phases such as emergency cleanup, long-range cleanup of surface contamination, or ground-water cleanup. (See p. 3.)

EPA'S SUPERFUND ENFORCEMENT
CASE LOAD WILL INCREASE

As of August 31, 1984, EPA had sent out 5,250 letters to responsible parties for purposes such as notifying them of their liability for site cleanup. In addition, EPA had concluded 152 negotiations for site cleanup or cost recovery with responsible parties and had 125 ongoing negotiations. EPA estimates that the number of hazardous waste sites it has identified will eventually increase from about 18,000 to about 22,000 and that the number of these sites that are considered by EPA to be its worst sites--the Superfund sites--will increase from 538 to between 1,400 and 2,200. According to EPA enforcement officials, if the number of Superfund sites grows as anticipated, the level of Superfund enforcement will

¹The data in this report were the most current available at the time GAO completed its audit work.

increase as well. The officials said that an increase in enforcement actions will lead to an increase in the amount of tracking information that EPA managers will need to maintain. (See pp. 7 and 8.)

The amount of information that EPA collects on any enforcement action depends upon factors such as the number of responsible parties involved and the complexity of the case. For example, an enforcement action can involve hundreds of responsible parties if hundreds of hazardous waste generators and/or transporters contributed waste to the site. Complex legal cases can take several years to complete and can result in large quantities of data. The regional files that EPA maintains for some of these cases fill several file cabinets. (See p. 8.)

EPA'S SUPERFUND ENFORCEMENT TRACKING INFORMATION

According to EPA officials, in the early years of the Superfund program--when relatively few enforcement actions had been taken--program managers were able to keep track of the progress of each enforcement action. However, as the number of Superfund enforcement actions increased, the headquarters enforcement divisions and regional offices began creating individual management information systems to help track enforcement activities. Often the systems were developed to provide information in response to requests from upper-level EPA management or the Congress. (See p. 7.)

The information systems that EPA has developed can supply various types of Superfund enforcement tracking data. For example, one EPA headquarters division, the Office of Enforcement and Compliance Monitoring, has developed an automated information system that records milestone dates for enforcement cases that have been or are going to be filed in court. Another headquarters division, the Office of Waste Programs Enforcement, has recently automated the information it maintains on the status of Superfund enforcement cases, including information on dates such as when (1) the search for responsible parties is completed, (2) notice letters are sent to responsible parties, (3) negotiations with responsible

parties begin, (4) cases are referred from EPA's regional offices to EPA headquarters and the Department of Justice, (5) administrative orders are issued, and (6) settlements with responsible parties are reached. GAO's work in EPA's Boston and Chicago regions disclosed that these regional offices also maintain certain categories of summary data on Superfund enforcement cases, much of which is similar to the type of information maintained by EPA's headquarters divisions. (See pp. 8 to 13.)

According to EPA enforcement officials, management information systems such as these provide valuable Superfund enforcement data. They do not, however, provide data on all of the enforcement milestones EPA officials told GAO were significant for tracking Superfund enforcement actions. For example, although EPA has established a 60-day goal for concluding negotiations with responsible parties, EPA has not required the regional offices to maintain information on whether this goal is being met. In addition, data on whether responsible parties are meeting the agreed-upon milestones for site cleanup for all enforcement actions is not available in EPA's management information systems. (See pp. 8 to 14.)

EPA OFFICIALS' VIEWS ON THE
BENEFITS OF COMPREHENSIVE
ENFORCEMENT TRACKING INFORMATION

EPA enforcement program managers said that they could cite few examples of management problems caused by the absence of comprehensive enforcement tracking information, in part because the relatively small number of Superfund enforcement actions in the program's early years made tracking these actions comparatively easy. However, the program managers cited benefits that they believed would result from maintaining comprehensive Superfund enforcement tracking information. First, the information would allow managers to determine how long different steps in the enforcement process are taking so that reasonable time frames for completing these steps can be set. Second, it would provide an easy way to determine whether time frames set for the enforcement process are being met. Third, the information would help managers in workload planning by providing data on upcoming

enforcement steps. Fourth, the information would help EPA officials to more easily respond to requests for information from the Congress and other sources. (See pp. 13 and 14.)

Although enforcement officials from EPA's headquarters and Boston Regional Office cited benefits that would result from maintaining comprehensive Superfund enforcement tracking information, officials from EPA's Chicago Regional Office said they believed that using this information to set time frames for completing enforcement steps would not be very useful because the enforcement problems posed by every site are different. The officials were concerned that EPA headquarters officials would treat average time frames as a standard for evaluating regional performance on enforcement cases without regard for the differences between sites. (See pp. 13 and 14.)

EPA headquarters officials said that they had not yet developed a comprehensive management information system for Superfund enforcement actions because the information had not been a high priority in the early years of the program and because of budgetary constraints and competing demands on staff time. The officials noted that they are considering setting up a working group to explore the feasibility of such a system. (See pp. 13 and 14.)

RECOMMENDATION

In view of the growing enforcement workload, GAO recommends that the EPA Administrator assess the feasibility of developing and maintaining a comprehensive Superfund enforcement management information system and, if cost effective, implement such a system. In making this assessment, the Administrator should consider the needs of EPA's program managers and the Congress.

GAO did not request EPA to officially comment on this report. However, GAO did discuss the matters presented in this report with EPA headquarters and regional program officials responsible for Superfund enforcement and their views have been included in the report where appropriate.

C o n t e n t s

		<u>Page</u>
DIGEST		i
CHAPTER		
1	INTRODUCTION	1
	Enforcement provisions of the act	1
	The Superfund enforcement process	2
	Objectives, scope, and methodology	5
2	A COMPREHENSIVE SUPERFUND ENFORCEMENT TRACKING SYSTEM COULD BENEFIT EPA MANAGEMENT	7
	EPA's Superfund enforcement tracking information	7
	EPA officials' views on the benefits of comprehensive enforcement tracking information	13
	Conclusions	14
	Recommendation to the EPA Administrator	15

ABBREVIATIONS

EPA	Environmental Protection Agency
GAO	General Accounting Office



CHAPTER 1

INTRODUCTION

During the 1970's the American public became increasingly concerned about the threat posed by uncontrolled hazardous chemicals at thousands of disposal sites across the nation. In response to this growing concern, the Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as "Superfund") to provide for emergency response and long-term cleanup at hazardous waste sites. To help pay for these cleanup activities, the Congress provided a \$1.6 billion fund. In addition, Superfund provided that the parties responsible for the hazardous conditions should either (1) perform cleanups themselves or (2) reimburse the fund for cleanups performed by the government.¹ EPA's efforts to achieve these objectives are generally referred to as "Superfund enforcement" actions.

In recent years EPA's Superfund enforcement program has been the subject of considerable controversy. One focus of this controversy has been the speed with which Superfund enforcement actions are taken. Answers to questions such as "How long do Superfund enforcement actions take?" and "What steps in the enforcement process require most time?" are important to evaluating the management of EPA's Superfund enforcement activities. Members of the Congress have recently expressed concern that EPA may not be maintaining the information needed to adequately answer these questions.

ENFORCEMENT PROVISIONS OF THE ACT

EPA's Superfund enforcement authority is derived principally from sections 106 and 107 of the act. Section 106 authorizes EPA (by Presidential delegation) to issue administrative orders that compel the responsible parties to clean up hazardous waste sites when it can be demonstrated that "there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility."² The responsible party and EPA may negotiate an agreement for cleanup, in which case EPA issues a "consent" order; or EPA may issue a "unilateral" order without input from the responsible party. As of August 31, 1984, EPA had issued 42 administrative consent orders and 89 administrative unilateral orders under

¹The parties responsible for site cleanup under Superfund include individuals, corporations, or other entities who are (1) past or present owners or operators of sites and/or (2) generators or transporters who contributed hazardous substances to sites.

²The President delegated authority for enforcing the act to EPA by Executive Order 12316 on August 14, 1981.

section 106. Failure to comply with a section 106 order may result in a fine of up to \$5,000 per day and punitive damages of up to three times the cost of cleaning up the site.

Section 106 also authorizes EPA to pursue a judicial remedy instead of an administrative one. Under this section EPA may ask a federal district court to require responsible parties to mitigate any danger or threat of danger from hazardous waste sites. If EPA and the responsible parties negotiate an agreement for cleanup, they may--subject to court approval--have the court issue a "consent decree." Consent decrees provide certain features that administrative orders do not, such as long-term court oversight of compliance with separate cleanup milestones. As of August 31, 1984, EPA had reached settlements resulting from both administrative and judicial actions under section 106 worth about \$304 million. Under these settlements, the responsible parties can clean up the sites themselves or pay contractors to provide cleanups according to the specifications agreed upon with EPA.

EPA may also clean up sites itself using Superfund money and file an action under section 107 to recover the cost of the cleanup. Section 107 provides that past and present owners and operators of sites and generators and transporters who contributed hazardous substances to sites shall be liable for all cleanup costs. As of August 31, 1984, EPA had successfully concluded cost-recovery actions at 35 sites for about \$6.4 million under section 107.

THE SUPERFUND ENFORCEMENT PROCESS

EPA regional offices conduct most of the steps in the Superfund enforcement process. However, Superfund enforcement actions can occur at different points in the cleanup process and can involve both regional and headquarters personnel. Cases can also involve hundreds of responsible parties, some of which can be identified late in the process. Because flexibility is required in dealing with these variables, it is difficult to define all of the decision points or milestones that are important for tracking Superfund enforcement actions. However, in general these actions include the following major elements:

- Responsible parties are identified.
- Responsible parties are notified of their potential liability for cleaning up the site.
- EPA and the responsible parties negotiate to determine if a mutually agreeable settlement is possible.
- Negotiated settlements are recorded in administrative orders or court-issued consent decrees. If a settlement has not been reached, EPA can (1) issue an administrative order or obtain a court order requiring the responsible

party to clean up the site and/or (2) clean up the site with federal funds and seek to recover the cost of cleanup later.

Enforcement actions can be taken for both "removal" actions (when a quick response is needed to mitigate a substantial danger) and "remedial" cleanups (which provide a long-term solution when time is available).

Enforcement process for removal actions

The type of enforcement action taken on removal cleanups depends on whether a responsible party who is willing and able to perform the removal can be readily contacted. If, upon contacting the responsible party, a rapid settlement and cleanup appear likely, EPA can record the agreement in a consent order and allow the responsible party to perform the removal action. However, if the responsible party is unknown or is reluctant to act, EPA generally pays for the removal action out of Superfund money and seeks to recover the cost later. EPA officials told us that this is the most common method of handling removals because it allows the quick cleanup response considered necessary. To obtain cost recovery, EPA generally identifies the responsible parties and sends them a letter demanding payment. If the responsible parties do not pay, EPA refers the case to the Department of Justice for litigation.

Enforcement process for remedial actions

The enforcement procedures for remedial cleanups are more complex and time-consuming than those for removals. First, EPA conducts a search to identify all potentially liable responsible parties. Then, after the responsible parties are identified, EPA sends them notice letters that may, among other purposes, notify the responsible parties that (1) they are liable for site cleanup, (2) they may negotiate to conduct the technical investigation and review of cleanup alternatives (known as the remedial investigation/feasibility study), (3) the remedial investigation/feasibility study is complete and that specific actions are required for cleanup, and/or (4) a date, time, and location have been set to meet with EPA. Notice letters may also request that responsible parties submit information to EPA, such as the identity, volume, and transporter of hazardous substances stored at the site.

EPA may negotiate with responsible parties to determine whether they will perform various phases of site cleanup, such as the remedial investigation/feasibility study, cleanup of surface problems at the site, or cleanup of groundwater contaminated by the site. They may negotiate for one phase at a time or for several phases at once.

If negotiations are successful, the terms of the agreement between EPA and the responsible parties are incorporated into an administrative consent order or a consent decree. An EPA regional attorney told us that when many parties are involved in negotiations, they are more willing to agree to a financial settlement in which each party contributes a portion of the cleanup cost, rather than to a settlement where the parties actually join in cleaning up the site. The financial settlement alternative is similar to cost recovery, because the responsible parties contribute money while EPA arranges for the cleanup. If the amount of the settlement is not enough to cover eventual cleanup costs, EPA can take a cost-recovery action against the same responsible parties--provided the original settlement did not preclude this--and against any other responsible parties who did not participate in the settlement.

If negotiations are unsuccessful, EPA can (1) use Superfund money to clean up the site or (2) issue a unilateral administrative order or obtain a court order forcing the responsible parties to clean up the site. When EPA cleans up the site with fund money, the agency attempts to recover the cost of the cleanup later. EPA sends a demand letter for payment to the responsible parties. If the responsible parties ignore the demand letter, the case is forwarded for litigation. When EPA issues a unilateral administrative order or obtains a court order requiring site cleanup, the responsible party must comply with the terms of the order or face the prospect of paying fines and damages.

State involvement in Superfund enforcement

Unlike some environmental laws--such as the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act--Superfund does not provide authority for delegating EPA's enforcement responsibility to the states. However, states can order private responsible parties to take removal and remedial cleanup actions under state laws and can, under two conditions, use section 107 of Superfund to recover their own expenditures for cleaning up sites. The two conditions provided for in the act are that (1) the state brings suit in a federal district court rather than a state court and (2) the cleanup action the state is seeking to recover funds for must be consistent with the National Contingency Plan. This plan, first published by EPA in 1968 to outline procedures for oil-spill cleanups, was revised by EPA in 1982 to include a delineation of federal and state response authorities for abandoned or uncontrolled hazardous waste sites.

State laws authorizing hazardous waste cleanup enforcement actions cover a wide spectrum. For example, Minnesota and New Hampshire have their own Superfund-like hazardous waste cleanup laws that contain enforcement provisions. Michigan, on the other hand, has a hazardous waste law that provides authority for cost recovery but not for compelling cleanups by responsible

parties. In further contrast, Connecticut has no Superfund-like legislation but has expanded the authority of its water pollution control laws to cover hazardous waste cleanup and enforcement activities.

According to an EPA policy document, Superfund's silence on state delegation means that EPA and the states must establish a collaborative relationship without a specific statutory framework.³ In general, EPA's regional offices and the states determine for themselves the nature and extent of their relationship. However, EPA enforcement officials told us that if a state is taking or planning to take enforcement action at a site, EPA will generally classify the site as "state enforcement lead" and avoid or postpone federal enforcement action pending the results of the state's enforcement action. According to both EPA and state enforcement officials, information sharing between EPA and the states tends to be handled informally. For example, although EPA headquarters enforcement officials know the states have taken several enforcement actions, they told us that they did not know the number or location of all state enforcement actions. EPA attorneys said that Superfund does not give EPA the authority to require the states to submit information on the progress of state enforcement actions.

OBJECTIVES, SCOPE, AND METHODOLOGY

By letter dated June 7, 1984, and in subsequent discussions with his office, the Chairman, Subcommittee on Investigations and Oversight, House Committee on Public Works and Transportation, requested us to review the extent of EPA's management information for tracking the progress of cost-recovery actions and privately financed cleanups under Superfund. As agreed with the Chairman's office, we obtained information on

- what management information systems EPA has for recording Superfund enforcement tracking information and
- what milestones and decision points EPA management believes are important for tracking Superfund enforcement actions.

As further agreed with the Chairman's office, these steps were accomplished principally through (1) discussing the Superfund enforcement process and its significant milestones and decision points with EPA's technical and legal program managers in EPA's Washington, D.C., headquarters and in Regions I (Boston) and V (Chicago) and (2) obtaining information and opinions on EPA's headquarters and regional enforcement tracking efforts by interviewing EPA officials, reviewing the documents EPA maintains on the subject, and examining the reports produced

³EPA policy paper on "EPA/State Relationship in Hazardous Waste Enforcement Under the Comprehensive Environmental Response, Compensation, and Liability Act" (October 2, 1984).

by EPA's management information systems. We did not examine the accuracy of EPA's enforcement data, since our review was focused on the extent of EPA's information systems rather than the data maintained in the systems.

When the Chairman's letter was received in June 1984, we had already begun reviewing EPA's Superfund enforcement information systems as part of our basic legislative responsibilities. Our audit work was conducted from February 1984 to August 1984. The data in this report was the most current available at the time we completed our audit work.

The Chairman's office requested that we should not obtain official agency comments. However, the matters presented in this report were discussed with EPA headquarters and regional program officials responsible for Superfund enforcement and their views have been included in the report where appropriate. Except as noted above, we made our review in accordance with generally accepted government auditing standards.

CHAPTER 2

A COMPREHENSIVE SUPERFUND ENFORCEMENT TRACKING

SYSTEM COULD BENEFIT EPA MANAGEMENT

EPA's headquarters and regional offices have created systems for reporting various categories of enforcement data. Most of these systems were developed in recent years as the growing number of cases prompted program managers to devise systematic ways of keeping track of individual enforcement actions. According to EPA enforcement officials, if the number of Superfund enforcement cases continues to rise as projected, it will become increasingly beneficial for EPA program managers to maintain more comprehensive Superfund enforcement tracking information to help them answer questions such as "How long are different steps in the enforcement process taking?" and "Are the time frames that have been set for the process being met?" Although several EPA enforcement program managers cited benefits that would result from having a system for providing comprehensive information for tracking enforcement actions, EPA has not assessed the feasibility of implementing such a system.

EPA'S SUPERFUND ENFORCEMENT TRACKING INFORMATION

According to EPA enforcement officials, in the early years of the Superfund program--when relatively few enforcement actions had been taken--program managers were able to keep track of the progress of each enforcement action. However, the level of Superfund enforcement activity has increased considerably since then. For example, whereas EPA had issued four administrative orders under section 106 of Superfund by the end of fiscal year 1982, the total had grown to 29 by the end of 1983 and to 131 by August 31, 1984. As the number of Superfund enforcement actions increased, the headquarters enforcement divisions and regional offices began creating systems to help track enforcement activities. Often these systems were developed to provide information in response to requests from upper-level EPA management or the Congress.

EPA's Superfund enforcement case load will increase

As of August 31, 1984, EPA had sent out 5,250 notice letters to responsible parties for purposes such as notifying them of their liability for site cleanup. In addition, EPA had concluded 152 negotiations for site cleanup or cost recovery with responsible parties and had 125 ongoing negotiations. EPA estimates that the number of hazardous waste sites it has identified will eventually increase from about 18,000 to about 22,000 and that the number of these sites that are considered by EPA to be its worst sites--the Superfund sites--will increase from 538 to between

1,400 and 2,200.¹ According to EPA headquarters enforcement officials, if the number of Superfund sites grows as projected, the level of Superfund enforcement will increase as well. The officials said that an increase in enforcement actions will lead to an increase in the amount of tracking information EPA managers will need to maintain for monitoring the progress of these actions.

The amount of information that EPA collects on any enforcement action depends upon factors such as the number of responsible parties involved and the complexity of the case. For example, an enforcement action can involve hundreds of responsible parties if hundreds of hazardous waste generators and/or transporters contributed waste to the site. Complex legal cases can take several years to complete and result in large quantities of data. The regional enforcement files for some of these cases fill several file cabinets with detailed information on the case and copies of pertinent materials such as notice letters and records of meetings with the responsible parties.

EPA headquarters has several systems that contain Superfund enforcement tracking information

Most of the Superfund enforcement tracking information maintained at EPA headquarters is located in two offices, the Office of Enforcement and Compliance Monitoring, which is mainly involved in the legal aspects of enforcement, and the Office of Waste Programs Enforcement, which has general programmatic responsibility for hazardous waste enforcement. Each office maintains a variety of enforcement-related management information, including information used in monitoring the progress of individual Superfund enforcement actions.

The Office of Enforcement and Compliance Monitoring

The case tracking information maintained by the Office of Enforcement and Compliance Monitoring provides information on cases that have been or will be filed in court. The office's principal case tracking system is an automated Enforcement Docket System that houses management information on hazardous waste enforcement actions. According to an EPA system description, the Enforcement Docket System was established for tracking and managing judicial enforcement cases, maintaining a historical record of enforcement cases, and conducting a variety of analyses for management purposes. EPA enforcement program managers can use the system to help review the progress of cases, determine the length of time the steps in the enforcement process take after a case has

¹See EPA's Preliminary Estimates of Future Hazardous Waste Cleanup Costs are Uncertain (GAO/RCED-84-152, May 7, 1984), for a discussion of the variables and uncertainties involved in these estimates.

been referred to EPA headquarters, forecast when future actions on cases will likely occur, and review the case loads and level of activity of enforcement personnel. For example, EPA managers can use the docket system to verify how long a case has been with the Department of Justice. If a case has not been filed in court within 60 days, EPA officials discuss the matter with Department of Justice officials.

The docket system includes both general descriptive information on cases and case-tracking information. The descriptive information includes items such as the names of the EPA and Department of Justice officials involved, the laws that are being used to bring the enforcement actions, and a narrative summarizing some of the significant details of the cases. The details recorded in the narrative can include items such as descriptive information on the sites and records of contacts with responsible parties. The case-tracking information available in the docket system is generally limited to recording milestone dates starting from when a case has been referred by EPA's regional offices to EPA's headquarters and does not show data on enforcement activities that occurred prior to the referral. The milestones most commonly tracked include when (1) cases are referred to EPA headquarters and to the Department of Justice, (2) cases are filed in court, and (3) cases are concluded through a settlement or court-rendered verdict. Milestone dates such as when (1) notice letters are sent to the responsible parties, (2) EPA receives responses to these letters, (3) responsible party searches begin and end, and (4) negotiations with responsible parties begin and end are not generally collected, although this information sometimes appears in the case summary narratives. The data is usually recorded in the individual case files maintained by regional attorneys.

The Office of Enforcement and Compliance Monitoring's National Enforcement Investigations Center in Denver, Colorado, maintains a system that some regional offices use for tracking whether responsible parties are meeting the milestones for site cleanup that are recorded in consent decrees. The Center's principal mission is to provide technical support, such as taking site samples of hazardous wastes, for EPA's enforcement actions. According to an August 15, 1984, memorandum from EPA's Deputy Administrator, the regional offices can choose whether to use the National Enforcement Investigations Center's system or use other means of tracking compliance with consent decree milestones, such as recording the information themselves. An Office of Enforcement and Compliance Monitoring project manager told us that in order to provide more complete data for headquarters managers, the office is planning to begin compiling summary information on consent decree compliance on an agencywide basis in January 1985. Neither the National Enforcement Investigations Center's system nor the agencywide summary is designed to include data on responsible parties' compliance with administrative orders.

The Office of Waste Programs Enforcement

The Office of Waste Programs Enforcement collects case-tracking information on both judicial and administrative enforcement actions. This information is maintained primarily in the office's Case Management System. The office also maintains a Superfund Enforcement Tracking System and produces a weekly report that records case-tracking information on some Superfund sites of particular interest to top-level management. In addition to these systems, the office helps the regions prepare Superfund Comprehensive Accomplishments Plans that provide information on planned activities for each region--such as enforcement plans to refer cases to EPA headquarters--by fiscal year and quarter and records whether the activities were accomplished.

The Case Management System is an automated data base that contains information on cases that are under development, signed administrative orders, cases that have been referred to the Department of Justice for litigation, cases that have been filed in court, and settlements with responsible parties. The system includes information on dates such as when (1) the search for responsible parties is completed, (2) notice letters are sent to responsible parties, (3) negotiations with responsible parties begin, (4) cases are referred from EPA's regional offices to EPA headquarters and the Department of Justice, (5) administrative orders are issued, and (6) settlements with responsible parties are reached. Information on milestones such as when (1) responsible party searches begin, (2) responses to notice letters are received, (3) negotiations are completed, and (4) the responsible parties have completed cleanup actions in compliance with administrative orders are not currently included in the system. However, EPA has plans to begin collecting information on additional milestones in fiscal year 1985, including when negotiations end and when responsible parties have completed all cleanup actions at a site.

Office of Waste Programs Enforcement officials said that they have decided to accord a high priority to enhancing the case management system by gathering additional information on the development and progress of cost-recovery cases. The officials noted that it is important to track cost recovery cases because these cases must be initiated before the statute of limitations on individual cases expires.

The Superfund Enforcement Tracking System was originally developed by the Office of Enforcement Counsel-Waste to be an enforcement activity tracking system. However, when the Office of Waste Programs Enforcement assumed responsibility for the system in June 1982 after a reorganization, the system's data base was limited to the names of notice letter recipients and the issue dates of notice letters. Although superseded by the Case Management System for the purpose of tracking enforcement actions, the Superfund Enforcement Tracking System continues to serve as a repository of information on responsible parties.

The Office of Waste Programs Enforcement's weekly report, which is sent to the Office of the Assistant Administrator for Solid Waste and Emergency Response, includes information on the office's activities, including short (generally one to three sentences) descriptions of enforcement-related activities at several important sites. The report also provides lists of issued administrative orders and cases that have been referred to the Department of Justice, filed in court, or resulted in settlements. Although the weekly report provides narrative information on the progress of enforcement actions at several sites, it does not record dates for tracking milestones at all Superfund sites.

The Superfund Comprehensive Accomplishments Plans provide information on each region's plans for enforcement activities on a quarterly basis and record whether those plans were accomplished within the expected quarter. The categories tracked in the plans include sites where the region plans to (1) conclude site classification and responsible party search procedures, (2) begin negotiations with responsible parties, (3) issue administrative orders, (4) refer judicial enforcement cases (such as cost recovery cases) to headquarters, (5) continue to oversee ongoing responsible party cleanup activities, and (6) begin technical studies for sites to be cleaned up as a result of enforcement actions. The plans also list cases which have been filed in court under sections 106 and 107. According to enforcement officials from the Office of Waste Programs Enforcement, adding tracking information on responsible party compliance with consent decrees and administrative orders is a high office priority for fiscal year 1985.

Other offices in EPA headquarters also maintain management information systems that supply enforcement-related information on subjects such as program priorities, accomplishments, and funding needs. In general, these systems provide summarized data for upper-level managers. For example, as part of its monthly reporting procedures, the Office of Policy and Program Management in the Office of Solid Waste and Emergency Response publishes a Site Status Summary Report that summarizes the status of removal actions, remedial actions, and enforcement actions at each Superfund site. The information is derived from sources such as the Case Management System and includes information on whether a responsible party has been identified; how many notice letters have been sent; whether negotiations are planned, underway, suspended, or completed; whether a settlement has been reached; whether an administrative order has been referred to EPA headquarters or issued; whether litigation is ongoing; and whether a consent decree has been issued. Dates when enforcement activities have occurred are not included, nor is information on enforcement actions at sites not on the National Priorities List.²

²The National Priorities List identifies hazardous waste sites that are eligible for remedial action under Superfund.

EPA's Regions I and V maintain
varying amounts of Superfund
enforcement tracking information

The two EPA regional offices in our review, Region I and Region V, did not maintain the same type or amount of management information on Superfund enforcement actions. Region V, which has 140 Superfund sites, routinely maintains more summary information on Superfund enforcement actions than Region I, which has 45 Superfund sites. In both regions, detailed information on enforcement actions is maintained in the files on individual sites. Officials in both regional offices provide Superfund enforcement information for the EPA headquarters management information systems discussed above, such as the Enforcement Docket System, Case Management System, and Superfund Comprehensive Accomplishments Plans. Neither region has a system that provides comprehensive information on all Superfund enforcement actions initiated at the region.

Region I

Region I contributes information to the EPA headquarters' management information systems and has recently implemented a system to track and summarize information on Superfund enforcement actions. According to the Chief of Region I's Enforcement and Cost Recovery Section, a system for tracking Superfund enforcement actions was not needed until recently because there was relatively little enforcement activity and few requests for enforcement information. However, because of what the section chief said she believed will be a likely increase in Superfund enforcement actions, Region I has created a system to track the beginning and ending dates for (1) responsible party searches, (2) technical studies to determine the most cost-effective means of cleaning up sites, and (3) negotiations for cleanup. Region I has developed and distributed a form for recording this information and has acquired a personal computer for data storage and retrieval.

In addition to its tracking system, Region I maintains logs for sites in which dates for certain milestones are recorded. The dates include when information requests and notice letters are sent to responsible parties, the date of each response, and the dates of subsequent correspondence.

Region V

EPA's Region V maintains summarized Superfund enforcement information in two regional status reports, in addition to contributing information to the headquarters management information systems. One of the regional reports, an enforcement status summary report, is prepared on a monthly basis. This report records each site's classification; which and how many site actions EPA concluded with consent decrees, consent administrative orders, and unilateral administrative orders; and which cases EPA referred to the Department of Justice.

Region V's second enforcement status report is prepared biweekly for each Superfund site. This document has spaces to record the dates EPA included sites on the National Priorities List, began and ended responsible party searches, sent notice letters to responsible parties, concluded negotiations, referred cases to EPA headquarters and the Department of Justice, and arrived at settlements. The document shows if negotiations are ongoing or completed but does not show how long negotiations took.

EPA OFFICIALS' VIEWS ON THE
BENEFITS OF COMPREHENSIVE
ENFORCEMENT TRACKING INFORMATION

Enforcement officials said that they could cite few examples of management problems caused by the absence of comprehensive enforcement tracking information, in part because the relatively small number of enforcement actions in the program's early years made tracking these actions comparatively easy. Enforcement officials from EPA headquarters and Region I cited management benefits that would result from having the information, but Region V enforcement officials said they believed that the information would have limited value.

According to the Chief of Region I's Enforcement and Cost Recovery Section, a Superfund enforcement tracking system was not needed until recently because there were relatively few cases to manage and relatively few requests for regional enforcement information. She said, however, that she believes a tracking system is now needed for several reasons. First, Region I has limited resources to handle the increasing number of Superfund enforcement cases. According to the section chief, a tracking system would help her make better resource allocation decisions by providing data on the status and upcoming requirements of all cases. Second, a tracking system would show Region I how long it took to complete various enforcement activities. The section chief said this information is particularly important for setting reasonable time frames for the responsible parties to complete the technical studies of site problems and alternative cleanup methods. Third, the section chief noted that EPA headquarters, Region I management, and the public are becoming more concerned about Superfund enforcement activities and are requesting information that the regional staff could obtain more readily if a tracking system were in place.

The chiefs of the Remedial Response Branch and Regional Counsel Hazardous Waste Branch from Region V said that without a formal management information system, they cannot identify the average time it takes to perform each step in the enforcement process, set time frames based on historical norms, or determine where these time frames are being met and where there are deviations. However, the branch chiefs said that they believed determining time frames and deviations from them is not very useful because the enforcement problems posed by every site are different. Many variables are involved, such as the magnitude of

cleanup required, the type of waste at the site, and the number of parties responsible for the hazardous waste. The branch chiefs were concerned that EPA headquarters officials would treat norms as an evaluation standard without regard for all the variables.

The Associate Enforcement Counsel for Waste Enforcement in the Office of Enforcement and Compliance Monitoring and the Director, Office of Waste Programs Enforcement, believed that comprehensive Superfund enforcement tracking information would provide certain benefits. Both officials agreed with the section chief in Region I that the information would be useful in (1) determining how long different steps in the enforcement process are taking so that reasonable time frames can be set, (2) determining whether time frames set for the enforcement process are being met, and (3) more readily answering requests for information from the Congress and other sources. For example, although EPA has established a 60-day goal for concluding negotiations with responsible parties, EPA has not required the regional offices to maintain information on whether this goal has been met. In addition, the Director, Office of Waste Programs Enforcement, said that comprehensive tracking information would help EPA enforcement officials plan for varying work loads by providing data on when different types of actions are likely to be needed on enforcement cases.

The Associate Enforcement Counsel for Waste Enforcement and the Director, Office of Waste Programs Enforcement, echoed the Region I section chief's statement that developing a comprehensive Superfund enforcement management information system was a relatively low priority in the early years of the program because of the small number of enforcement cases. These officials noted that competing demands on funds and staff time also helped prevent a comprehensive system from being developed.

EPA's efforts to improve its management information systems, such as Region I's recently implemented tracking system and the Office of Waste Programs Enforcement's automated system, indicate that Superfund enforcement tracking information is now receiving a higher priority. In addition, program management officials in the Office of Waste Programs Enforcement said that EPA is considering setting up a working group to explore the feasibility of implementing a comprehensive system.

CONCLUSIONS

EPA's headquarters and regional offices have detailed information in individual files and have created information systems for reporting various categories of enforcement data. Most of these systems were developed in recent years as the growing number of cases prompted program managers to devise systematic ways of keeping track of individual enforcement actions. According to EPA enforcement officials, if the number of Superfund enforcement cases continues to rise as projected, it will become increasingly beneficial for EPA program managers to maintain more

comprehensive Superfund enforcement tracking information to help them answer questions such as "How long are different steps in the enforcement process taking?" and "Are the time frames that have been set for the process being met?" Although several EPA enforcement program managers cited benefits that would result from having a system for providing comprehensive information for tracking enforcement actions, EPA has not assessed the feasibility of implementing such a system.

RECOMMENDATION TO THE EPA ADMINISTRATOR

In view of the growing enforcement workload, we recommend that the EPA Administrator assess the feasibility of developing and maintaining a comprehensive Superfund enforcement management information system and, if cost effective, implement such a system. In making this assessment, the Administrator should consider the needs of EPA's program managers and the Congress.

(089266)





30116

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE \$300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE



THIRD CLASS