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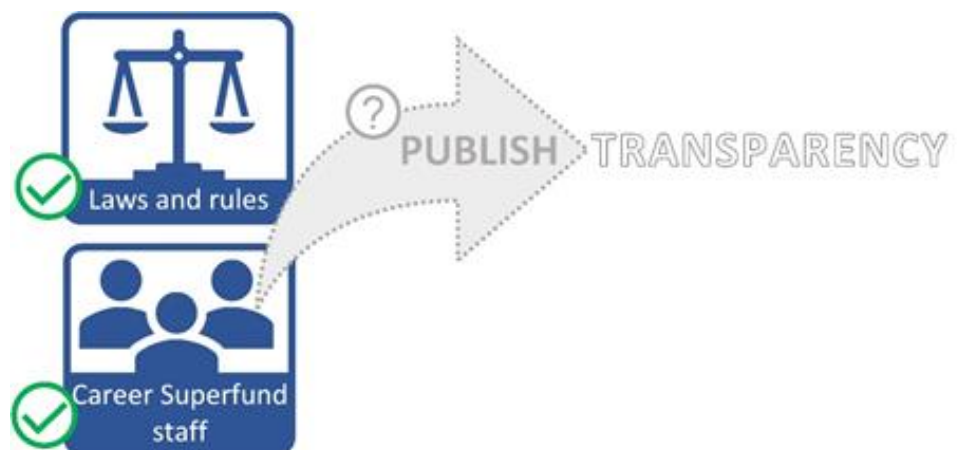


Cleaning up and revitalizing land

EPA Complied with Applicable Laws and Rules for the July 2017 Superfund Task Force Report but Could Improve Transparency

Report No. 19-P-0201

June 24, 2019



Report Contributors:

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Abbreviations

EPA U.S. Environmental Protection Agency
OIG Office of Inspector General
SFTF Superfund Task Force
U.S.C. United States Code

Cover Image: The image illustrates the need for the Superfund Task Force report to emphasize the role of EPA career staff to enhance transparency. (EPA OIG image)

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At a Glance

Why We Did This Project

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) conducted this audit to determine whether the EPA followed applicable criteria, such as laws and rules, in creating the Superfund Task Force (SFTF) and developing the task force's July 2017 report and recommendations.

On May 22, 2017, then EPA Administrator Scott Pruitt established the SFTF and charged it with providing recommendations within 30 days for improving and expediting site cleanups and promoting redevelopment. On July 25, 2017, the EPA's SFTF released its report and recommendations.

Among other issues, nongovernmental organizations expressed concerns about the need for transparency and the possibility that the SFTF favored enhanced economic development over public health.

This report addresses the following:

- *Cleaning up and revitalizing land.*

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List of [OIG reports](#).

EPA Complied with Applicable Laws and Rules for the July 2017 Superfund Task Force Report but Could Improve Transparency

What We Found

We found that the EPA created and preserved documentation of the organization and decisions of the SFTF in accordance with applicable recordkeeping requirements. The SFTF report recommendations were developed by EPA staff with experience in the Superfund program or related programs. We asked interviewees if unsolicited communications from industry, trade groups and individual companies impacted the recommendations. No interviewee indicated that communications from outside sources had an impact.

Emphasizing the role of EPA career staff in the SFTF would have enhanced the transparency of the project and perhaps alleviated public concerns about the process.

The SFTF report did not contain details about the process or list specific contributors to the report, as some similar Superfund studies have done. The SFTF report included an executive summary stating that "upwards of 80 highly experienced EPA professionals, including management and staff, were involved." The report also listed the names of individuals who led five groups, each representing one of five goal areas, stating they used their extensive program knowledge and experience to develop the specific actions in the report.

More than half of the SFTF members that we interviewed volunteered that the SFTF report was generated through the efforts of career EPA staff, consistent with prior Superfund reports. Further, task force members noted that while the SFTF goals were focused on economic issues associated with site cleanup and reutilization, the Superfund program's responsibility to protect human health and the environment did not change. We heard positive feedback from task force members, such as it was a collaborative process or a helpful effort.

The EPA report could have been more transparent with regard to the process used and the qualifications of the personnel involved, to allay public concerns and increase confidence in the recommendations.

Recommendation and Planned Agency Corrective Action

We recommend that the Deputy Administrator publish detailed information on the task force website about the SFTF effort, including details about the roles and responsibilities of career EPA staff. The agency agreed with the recommendation, and the recommendation is resolved with the agreed-to action pending.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

June 24, 2019

MEMORANDUM

SUBJECT: EPA Complied with Applicable Laws and Rules for the July 2017
Superfund Task Force Report but Could Improve Transparency
Report No. 19-P-0201

FROM: Charles J. Sheehan, Deputy Inspector General

A handwritten signature in blue ink that reads "Charles J. Sheehan".

TO: Henry Darwin, Associate Deputy Administrator and Chief of Operations
Office of the Administrator

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA&E-FY18-0291. This report contains findings that describe a problem the OIG identified and a corrective action the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

In accordance with EPA Manual 2750, your office provided an acceptable corrective action and milestone date in response to the OIG recommendation. The recommendation is resolved and no final response to this report is required. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Purpose

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) conducted this audit to determine whether the EPA followed applicable criteria, such as laws and rules, in creating the Superfund Task Force (SFTF) and developing the task force's July 2017 report and recommendations.

Background

On May 22, 2017, then EPA Administrator Scott Pruitt established the SFTF and charged it with providing recommendations within 30 days for improving and expediting site cleanups and promoting redevelopment. The SFTF included participants from the EPA's:

- Office of Land and Emergency Management.
- Office of Enforcement and Compliance Assurance.
- Office of General Counsel.
- Region 3, which is the agency's lead region for the Superfund program.
- Other EPA headquarters offices and regions.

On July 25, 2017, the EPA released the Superfund Task Force Recommendations report. The task force provided 42 specific and detailed recommendations for the Superfund program, organized under five goals:

- Expediting Cleanup and Remediation.
- Re-Invigorating Responsible Party Cleanup and Reuse.
- Encouraging Private Investment.
- Promoting Redevelopment and Community Revitalization.
- Engaging Partners and Stakeholders.

Also on July 25, 2017, then EPA Administrator Pruitt issued a memorandum¹ in response to the report. The memorandum was a directive instructing agency leaders to immediately implement certain actions to address the report's recommendations. The actions are listed verbatim in Table 1.

¹ July 25, 2017, memorandum titled *Receipt of Superfund Task Force Report and Next Steps for Revitalizing the Superfund Program*.

Table 1: Actions to implement per Administrator’s July 2017 memorandum

| Action |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Prioritize and take action to expeditiously effectuate control over any site where the risk of human exposure is not fully controlled. Within 60 days, regions should prepare a report to the chair of the task force that identifies these sites and describes when such risks are expected to be controlled. |
| Utilize early or interim response actions, including removal authority or interim remedies, more frequently as appropriate to address immediate risks, prevent source migration and return portions of sites to reuse while more-detailed evaluations of other portions of sites are ongoing. We should not allow for years of study to delay addressing immediate risks. |
| Prioritize development of Remedial Investigations and Feasibility Studies for those sites and projects that require more immediate action to focus the use of available funds and resources. |
| Identify potential pilot contaminated sediment or complex groundwater sites where Adaptive Management strategies can be implemented. |
| Regions should begin compiling existing information on the cleanup status and reuse potential (as applicable) of each National Priorities List site in their region for submission to the task force. |
| Track remedy implementation and completion progress in real time with the Superfund Enterprise Management System or with another mechanism, if more efficient. |
| Focus training, tools and resources on current National Priorities List sites with the most reuse potential. |
| Work with Potentially Responsible Parties, state, tribal and local governments and real estate professionals to identify opportunities for PRP-lead cleanups to consider future reuse in cleanups. |
| Each region shall submit to the task force chair within 60 days the total of their indirect costs charged to the PRPs for FY 16 and FY 17 to date, as well as the formula by which that is derived. |
| Encourage PRPs to work with end-users to voluntarily perform assessment and additional cleanup or enhancement work to achieve reuse objectives and to fund or perform enhanced cleanup or ‘betterment’ by voluntarily entering into agreements with end-users. |
| Use purchase agreements for potential Bona Fide Prospective Purchasers outlining their actions necessary to preserve their BFPP status. |
| Use enforcement authorities, including unilateral orders to recalcitrant PRPs, more actively in order to discourage protracted negotiations over response actions. |
| Maximize deletions and partial deletions of sites that meet CERCLA and National Contingency Plan requirements. Within 60 days, regions should formulate a list of NPL sites expected to be proposed for deletion or deleted within 12 months of today’s date and submit the list to the chair of the task force. |

Source: July 25, 2017, memorandum titled *Receipt of Superfund Task Force Report and Next Steps for Revitalizing the Superfund Program*.

BFPP: Bona Fide Prospective Purchasers
 CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act
 FY: Fiscal Year
 NPL: National Priorities List
 PRP: Potentially Responsible Party

The EPA has created a list of “Superfund Sites Targeted for Immediate, Intense Action” (the “Administrator’s Emphasis List”) and a “Superfund Redevelopment Focus List” because of these recommendations. The SFTF has issued quarterly reports that provide a list of accomplishments from each fiscal quarter, starting in October 2017. The EPA also released the Superfund Task Force Recommendations 2018 Update on July 23, 2018.

The Federal Records Act (44 U.S.C. § 3101 et seq.) and the EPA *Interim Records Management Policy* (explicitly citing the Federal Records Act) require that the EPA:

make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency’s activities.

Nongovernmental organizations expressed concerns about the need for transparency related to SFTF operations, the pursuit of cleanup strategies that manage or contain toxic hazards instead of complete removal or other permanent remedies, and the possible subjectivity of the SFTF to favor enhanced economic development over public health. In addition, some environmental nongovernmental organizations have expressed concerns that actions by the now former EPA Administrator reversed or weakened regulatory programs, which may have further created concerns that the Superfund program was also targeted for similar program dismantling.

Scope and Methodology

We conducted our work from October 2018 to May 2019. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The project team interviewed 32 of the approximately 100 staff and managers that the EPA identified as members of the SFTF. Interviewees included staff from the Office of Enforcement and Compliance Assurance, Office of Land and Emergency Management, and Office of the Administrator. The team asked a series of 23 questions, many with multiple sub-questions, to determine:

- How SFTF members were selected.
- How the SFTF goals and recommendations were developed.

- The extent to which SFTF meetings were documented.
- Whether relevant documents were shared among SFTF members.
- The role EPA staff had in the development of the SFTF report and recommendations.
- Whether external influence (such as comments by industry) was a factor in the development of the SFTF report and recommendations.

We reviewed the SFTF report, the SFTF website and similar Superfund studies from the past. We also reviewed the Federal Records Act and the EPA's *Interim Records Management Policy*.

Results

We found that the EPA created and preserved documentation of the organization and decisions of the SFTF in accordance with applicable recordkeeping requirements, including the Federal Records Act and the EPA's *Interim Records Management Policy*. The EPA also shared examples of documents that industry groups provided to the SFTF for consideration and confirmed that these documents are being retained in accordance with the Federal Records Act and the EPA's *Interim Records Management Policy*. The recommendations were developed by EPA staff with experience in the Superfund program or related programs. We asked interviewees if unsolicited communications from industry, trade groups and individual companies impacted the recommendations. No interviewee indicated that communications from outside sources had an impact. However, the EPA report could have been more transparent with the process that was used, and the qualifications of the personnel involved, to allay public concerns and increase confidence in the recommendations.

The SFTF report did not contain details about the process or list specific contributors to the report, as some similar Superfund studies have done. The SFTF report included an executive summary stating that "upwards of 80 highly experienced EPA professionals, including management and staff, were involved." The report also listed the names of individuals who led five groups, each representing one of five goal areas, stating that they used their extensive program knowledge and experience to develop the specific actions in the report.

More than half of the SFTF members that we interviewed volunteered that the SFTF report was generated through the efforts of career EPA staff, which is consistent with prior Superfund reports. Further, most task force members noted that while the SFTF goals were focused on economic issues associated with site cleanup and reutilization, the Superfund program's responsibility to protect human health and the environment did not change. We heard positive feedback from task force members, such as it was a collaborative process or a helpful effort.

Conclusions

A majority of the SFTF members we interviewed stated that the SFTF report was generated through the efforts of career EPA staff. The EPA did not acknowledge this element in the report, which may have led to some suspicion from nongovernmental environmental organizations about the motives of the effort. Including this critical element in the SFTF report would have enhanced the transparency of the project.

Recommendation

We recommend that the Deputy Administrator:

1. Publish detailed information on the task force website about the Superfund Task Force effort, including details about the roles and responsibilities of career EPA staff.

Agency Response and OIG Evaluation

The EPA's acting Deputy Administrator provided a response to our draft report. We included the response in Appendix A. The agency agreed with the recommendation in its response and provided a completion date for the corrective action in a separate communication. The recommendation is resolved with corrective action pending.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

| Rec. No. | Page No. | Subject | Status ¹ | Action Official | Planned Completion Date | Potential Monetary Benefits (in \$000s) |
|----------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------------|-------------------------|-----------------------------------------|
| 1 | 5 | Publish detailed information on the task force website about the Superfund Task Force effort, including details about the roles and responsibilities of career EPA staff. | R | Deputy Administrator | 8/31/19 | |

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Agency Response to Draft Report




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 20, 2019

OFFICE OF THE
ADMINISTRATOR

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft No. Project No. OA&E-FY18-0291, "EPA Complied with Applicable Laws and Rules for the July 2017 Superfund Task Force Report but Could Improve Transparency," dated May 8, 2019

FROM: Henry Darwin 
Acting Deputy Administrator

TO: Tina Lovingood
Director, Land Cleanup and Waste Management Directorate
Office of Audit and Evaluation, Office of the Inspector General

Thank you for the opportunity to respond to the conclusions in the Office of the Inspector General's draft report titled "EPA Complied with Applicable Laws and Rules for the July 2017 Superfund Task Force Report but Could Improve Transparency." The following is a summary of the U.S. Environmental Protection Agency's overall position along with its position on the report recommendation.

AGENCY'S OVERALL POSITION

The EPA appreciates the OIG noting that the Superfund Task Force met applicable recordkeeping requirements. As mandated by the *Federal Records Act* and the EPA *Interim Records Management Policy*, documentation of the task force's decisions and materials provided by industry groups were preserved. The EPA is pleased that task force members described a positive and collaborative process. The EPA acknowledges that the Superfund Task Force report lacked some details about the process and a list of contributors.

AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

The EPA reviewed the OIG's results and concurs with the provided recommendation. To address the recommendation, the EPA will include additional information about the process and contributors in the final Superfund Task Force report, which will be available to the public on the EPA's internet site. In the future, the agency will strive to increase transparency on both process and contributing personnel.

CONTACT INFORMATION

If you have any questions regarding this response, please contact Barry Breen, Acting Assistant Administrator for the EPA Office of Land and Emergency Management, at (202) 566-0200.

Distribution

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