

GAO REPORT REVEALS IMPROPER MANAGEMENT OF THE EPA SUPERFUND PROGRAM

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In September 2016, US Senators Jim Inhofe and Mike Rounds released a report conducted by the Government Accountability Office (GAO), that investigated the Environmental Protection Agency's (EPA) management and cleanup of Superfund contaminated sediment sites.- The GAO report reveals continued, systemic problems with the EPA's management of such Superfund sites, and makes various recommendations for improving how the EPA approaches associated investigation, coordination, and cleanup processes.

More specifically, the GAO report noted – as a primary concern – the EPA's lack of proper documentation, consideration, and procedure in connection with the 11 required risk-management principles.- Our California contamination lawyers note that without full and proper risk-management documentation, the cleanup process is unsupported by rational risk analysis.

Widespread Failure to Address Risk-Management Principles

Since the early 2000s, the regional Superfund program has been required to properly document and consider 11 risk-management principles when developing a cleanup and management plan for a Superfund contaminated sediment site.- The cleanup plan must be reasonably connected to the risk-management principles and tailored to the site at-issue.

In 2002, the Contaminated Sediments Technical Advisory Group (CSTAG) was created to engage with Superfund managerial teams on the risk-management process at particularly complex contaminated sediment sites.- CSTAG monitors progress and gives advice on relevant sites throughout the cleanup process.- CSTAG is expected to review risk-management consideration documentation and issue recommendations for cleanup based on such documentation.

The September 2016 GAO report assessed 18 contaminated sediment Superfund sites, and found that – at 2 of the sites – no documentation existed demonstrating that the consideration of the required risk-management principles.- At 7 of the 18 contaminated sediment sites, there was some documentation reflecting a risk-management analysis, but such analysis was found to be so severely lacking in detail as to potentially constitute a lack of consideration altogether.

Process is Rushed and Lacks Site-Tailored Consideration

The GAO report noted that the risk-management process for many Superfund contaminated sediment sites was rushed and was not – as Senator Inhofe noted – “tailored to the risks at individual sites.”- Specifically, CSTAG experts were not given relevant site information with enough time to properly analyze the risks or make carefully considered recommendations as to risk-management and subsequent cleanup.- Instead, the report found that the Superfund program systemically affirmed risk-management consideration for a given site without the requisite full and detailed analysis.

GAO Recommendations

The fundamental problem noted by the GAO report was the absence of detailed risk-management analysis documentation (and in some cases, a lack of such documentation altogether), leading to uninformed CSTAG review and recommendations for cleanup.

The GAO report recommended that the EPA provide further clarification on the procedures necessary to get CSTAG complete risk-management documentation so that the cleanup process is properly informed by detailed risk-management analysis that is specifically tailored to a given Superfund site.- The EPA accepted and agreed with the recommendation made by the GAO report on this issue.