



Office of Inspector General

Report of Audit

SUPERFUND

**Region 5 Oversight of PRP-lead
Remedial Design and Remedial Action**

Audit Report No. E1SGF8-05-0035-8100208

August 17, 1998

**Inspector General Division
Conducting the Audit:**

**Northern Audit Division
Chicago, Illinois**

Region Covered:

Region 5

Regional Office Involved:

Superfund Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF THE INSPECTOR GENERAL
NORTHERN DIVISION
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

August 17, 1998

MEMORANDUM

SUBJECT: Audit Report No. E1SGF8-05-0035-8100208
Region 5 Oversight of PRP-lead Remedial
Design and Remedial Action

FROM: Anthony C. Carrollo /s/
Divisional Inspector General for Audits
Northern Division

TO: David Ullrich
Acting Regional Administrator
Region 5

Attached is the final report on Region 5's oversight of PRP-lead remedial design and remedial action. The purpose of the audit was to evaluate the effectiveness of Region 5's oversight of responsible parties, and the impact of administrative reform on reducing oversight of cooperative responsible parties. We found that Region 5 had effective oversight over responsible parties. In FY 1998, Region 5 will be in a better position to evaluate the impact of the reduced oversight reform because of the evaluation form it will prepare for sites in the reform.

This audit report contains findings that describe problems the Office of Inspector General has identified and corrective actions the OIG recommends. This audit report represents the opinion of the OIG and the findings contained in this audit report do not necessarily represent the final EPA position. Final determinations on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures.

ACTION REQUIRED

In responding to the draft report, your office provided corrective actions, with milestone dates, for each recommendation. Therefore, no further response is required, and we are closing this report in our tracking system. Please track all corrective actions in the Management Audit Tracking System.

We have no objections to the further release of this report to the public.

We appreciate the cooperation you and your staff provided during this review. Should you or your staff have any questions, please contact Charles Allberry, Audit Manager, Northern Audit Division, at 312-353-4222.

EXECUTIVE SUMMARY

INTRODUCTION

The Office of Inspector General (OIG) performed an audit of Region 5's management of potential responsible party (PRP) lead remedial design and remedial action activities (remedial construction projects). We selected this audit because PRPs perform the majority of Superfund cleanup activities and many of these are in the remedial design and action phases. When the PRPs conduct the cleanup, the Environmental Protection Agency's (EPA) role is to ensure that the PRP complies with all applicable laws, regulations, and requirements; and meets all performance standards in the settlement agreement or order.

OBJECTIVES

The objectives of the audit were to determine, for PRP lead sites in the remedial design and action phases:

- if Region 5 was effectively overseeing responsible parties and
- the impact of the Superfund Administrative Reform on reducing oversight for cooperative responsible parties.

RESULTS IN BRIEF

Region 5 provided effective oversight of PRPs. Regional project managers (RPMs) ensured that remedies were being completed in accordance with the record of decision and that time schedules in the settlement agreement or order were met. The RPMs accomplished effective oversight by establishing good working relationships with the PRPs. This included open communication and working through issues as they occurred, before they turned into major problems. More frequent use of independent quality assurance teams is one area where Region 5 could improve its oversight of PRPs.

The impact of the reduced oversight administrative reform in Region 5 was difficult to measure due to (a) the inherent nature of the oversight process and (b) cost savings from reductions in

oversight not being computed. As a result, for fiscal years (FY) 1996 and 1997, the Agency could not determine the extent of the impact of this reform and whether it was successful in Region 5. For FY 1998, the Agency has developed an evaluation form that, when completed, may provide management with the information it needs to evaluate the impact of the reform.

RECOMMENDATIONS

We recommend that the Acting Regional Administrator, Region 5, take the following actions.

- Require the Superfund division to (1) use independent quality assurance teams for PRP lead remedial construction projects, and (2) verify that independent quality assurance teams are being used appropriately. When independent quality assurance teams are not used, the reasons for not using them should be documented.
- Ensure the Superfund division yearly completes the evaluation form for sites in the reduced oversight administrative reform in order to compute costs savings.

AGENCY COMMENTS AND ACTIONS

Region 5 agreed to take action to address the findings and recommendations in the report.

- Starting October 1, 1998, the RPM will evaluate the appropriateness of using an independent construction quality assurance team for each workplan received for PRP remedial construction projects performed pursuant to an EPA settlement or order. In any case where such a team will not be used, the RPM will document the reasons in a memorandum.
- The evaluation form for sites in the reduced oversight reform will be completed and submitted to EPA Headquarters by October 10, 1998.

OIG EVALUATION

**Region 5 Oversight of PRP-lead
Remedial Design and Remedial Action**

Region 5's actions, when completed, will address the findings and recommendations in the report.

Table Of Contents

EXECUTIVE SUMMARY	i
ABBREVIATIONS	v
CHAPTERS	
1 INTRODUCTION	1
Purpose	1
Background	1
Scope and Methodology	3
2 REGION 5'S OVERSIGHT OF PRPS WAS EFFECTIVE	4
Definition of Effective Oversight	4
Examples of Effective Oversight	5
Factors Contributing to Effective Oversight	6
Area for Improvement	7
Conclusion	9
Recommendation	9
Agency Comments and Actions	9
OIG Evaluation	9
3 IMPACT OF THE REDUCED OVERSIGHT REFORM WAS DIFFICULT TO MEASURE	10
Reduced Oversight Reform	10
Limited Effect On Oversight Decisions	11
Cost Savings Not Computed	11
Conclusion	12
Recommendation	13
Agency Comments and Actions	13
OIG Evaluation	14

EXHIBITS

1 Scope, Methodology, and Prior Audit Coverage 15

2 Related OIG Reports 18

3 Issues Corrected During the Audit 19

APPENDICES

1 Region 5 Response to the Draft Report 20

2 Distribution 25

ABBREVIATIONS

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
EPA	Environmental Protection Agency
FY	Fiscal Year
OIG	Office of Inspector General
PRP	Potential Responsible Party
ROD	Record of Decision
RPM	Remedial Project Manager

CHAPTER 1 Introduction

PURPOSE

The Office of Inspector General (OIG) performed an audit of Region 5's management of potential responsible party (PRP) lead remedial construction projects. We selected this audit because PRPs perform the majority of Superfund cleanup activities and many of these are in the remedial design and action phases. The objectives of the audit were to determine, for PRP lead sites in the remedial design and action phases:

- if Region 5 was effectively overseeing responsible parties and
- the impact of the Superfund Administrative Reforms on reducing oversight for cooperative responsible parties.

BACKGROUND

Congress established the Superfund program in 1980 by passing the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and amended it in 1986 with the Superfund Amendments and Reauthorization Act. The Superfund program provides Federal cleanup authority and funds to address the problem of hazardous waste sites. The National Priorities List identifies the most serious sites for possible long term remedial response. As of September 30, 1997, there were 1,405 sites on the National Priorities List.

After EPA determines the nature and extent of the contamination at a site, it announces the proposed method for cleaning up the site in the record of decision (ROD). The next two phases of the site cleanup are the remedial design and remedial action. During the remedial design, the technical specifications for the cleanup remedy and technologies are prepared. Remedial action involves the actual construction or implementation of the remedial design. As of September 30, 1997, about 43 percent of all Superfund sites were in the remedial design or action phases.

CERCLA requires EPA to take legal action against PRPs to ensure that they contribute their equitable share toward cleaning up Superfund sites. Through EPA's enforcement program, PRPs now perform about 70 percent of all cleanups. If a PRP elects to perform the remedial design or action, they must do so in accordance with a settlement agreement or in compliance with an EPA issued unilateral administrative order. The settlement agreement can be either an administrative order on consent, or judicial consent decree. When the PRPs conduct the cleanup under EPA oversight, EPA's role is to ensure that the PRP complies with all applicable laws, regulations, and requirements; and meets all performance standards in the settlement agreement or order. For sites where EPA is the lead agency enforcing the terms of the agreement or order, the EPA Remedial Project Manager (RPM) has the primary responsibility for overseeing the PRP. There are some sites where a state environmental agency enforces the terms of the agreement or order under state law.

At PRP lead sites, the RPM's role is one of coordination and monitoring. During remedial design, the RPM will review and approve documents such as the work plan, remedial design report, and construction quality assurance plan. During remedial action, the RPM, most often with the assistance of an EPA contractor, oversees the PRP's construction and implementation of the remedy. The level of oversight the RPM provides will depend upon the requirements of the settlement agreement or order, complexity of the remedy, past performance of the PRP, and qualifications of the PRP's design and construction teams.

Administrative Reforms

Since 1993, EPA has announced three sets of reform initiatives designed to improve the Superfund program. The purpose of the reforms were to assist state and local governments, communities, and industries by making cleanups easier and promote economic redevelopment at Superfund sites. The reforms were also to protect public health and the environment by increasing the speed and lowering the cost of cleanups, while promoting fairness for stakeholders. The reduced oversight reform is one of the reforms that impact how EPA oversees PRPs.

EPA designed the reduced oversight reform with the goal of decreasing the cost of EPA's oversight of PRPs. As the Superfund program matured, PRPs had developed considerable experience in conducting cleanup activities. In addition, PRPs were working cooperatively with EPA during the cleanup and enforcement processes. In recognition of this, and to promote further cooperativeness, under this reform EPA rewards PRPs who have experience and are cooperative by significantly reducing oversight. EPA maintains sufficient oversight to ensure that the work is performed properly and in a timely manner.

**SCOPE AND
METHODOLOGY**

We performed our audit in accordance with the Government Auditing Standards, 1994 Revision, issued by the Comptroller General of the United States, and included such tests as we saw necessary to complete our objectives.

For further details on the audit scope, methodology, and prior audit coverage, see exhibit 1.

CHAPTER 2

Region 5's Oversight Of PRPs Was Effective

Region 5 provided effective oversight of PRPs. Regional project managers (RPMs) ensured that remedies were being completed in accordance with the record of decision (ROD) and that time schedules in the settlement agreement or order were met. The RPMs accomplished effective oversight by establishing good working relationships with the PRPs. This included open communication and working through issues as they occurred, before they turned into major problems. More frequent use of independent quality assurance teams is one area where Region 5 could improve its oversight of PRPs.

DEFINITION OF EFFECTIVE OVERSIGHT

The objectives of PRP oversight are to ensure that the remedies the PRPs implement protect the public health and the environment and that the remedial actions comply with the settlement agreement or order. To accomplish this, the RPMs must ensure that PRPs (1) implement the remedies described in the ROD and settlement agreement or order and (2) meet time schedules in the settlement agreement or order. Holding PRPs responsible and accountable for the remedial actions is the ultimate goal of oversight. According to *Guidance on Oversight of PRP Performed RD/RA*, dated February 14, 1990, EPA developed a focused approach to oversight of PRPs consisting of two elements.

- The RPMs should concentrate their efforts on certain key documents and activities throughout the remedial design/remedial action process. RPMs must use a high level of oversight at the onset of the remedial design and again when the remedial action is initiated. The amount of oversight effort may be increased or decreased over time, depending on various factors including the PRPs capabilities and competence, the implementation of a construction quality assurance program, and the nature of the remedy.

- The PRP should use an independent quality assurance team during construction. The independent quality assurance team, obtained by the PRP, provides a level of confidence to the PRP by selectively testing and inspecting the work of the construction contractor, and ensuring the construction quality control plan is effectively implemented. The quality assurance team must be completely independent of the construction contractor so the results of the quality assurance are unbiased and objective. This is standard practice in the private sector and will keep the responsibility for quality assurance with the PRP.

**EXAMPLES OF
EFFECTIVE
OVERSIGHT**

Region 5 provided effective oversight of PRPs. The RPMs ensured that PRPs implemented remedies that protected the public health and environment and complied with the settlement agreement or order.¹

For the 13 sites selected for audit, the RPMs ensured that the remedies were being implemented in accordance with the ROD and settlement agreement or order. Where there were changes to the remedy, the changes were documented through ROD amendments or Explanation of Significant Differences reports. These changes resulted from collection of additional data, field investigations, and design studies that occurred after the ROD. The changes often resulted in a savings of time and money which was beneficial to the public health and environment. For example, at one site, new information was identified during the pre-design and design of the remedy which resulted in a ROD amendment. The changes included having off-site rather than on-site incineration, and doing excavation of the waste rather than bioremediation. Clean-up levels will still be met and the change in remedy will result in a quicker, cheaper clean-up. The RPM estimated that instead of taking until 2026 for the bioremediation to be accomplished, the cleanup should be completed by the year 2000 with a cost savings of \$30 million.

¹Of the 15 sites reviewed, 2 sites had on-going negotiations that impacted the implementation and timeliness of the remedy. Therefore, we have excluded these 2 sites from our conclusions regarding EPA's oversight.

For 11 of the 13 sites, the remedies were being completed in accordance with the time schedules in the settlement agreements or orders.² For example, at one site, the PRP met the dates anticipated in the settlement agreement or order for both the remedial design and remedial action. The ROD anticipated that it would take five years for the PRPs to implement the remedy. The PRPs completed construction at this site in five years and three months.

**FACTORS
CONTRIBUTING TO
EFFECTIVE
OVERSIGHT**

There were a couple factors that contributed to Region 5's effective oversight of PRPs at the 13 sites in our review. They included good working relationships between RPMs and the PRPs and early identification of problems.

Generally, the RPMs had a good working relationship with the PRPs due to their rapport and communications.

- At one site, a good working relationship occurred because (1) the RPM thought the PRP was cooperative, (2) there was open communication between the parties, and (3) the PRP thought the RPM was competent and knowledgeable.
- According to the PRP at another site, the RPM was responsive to the PRP's needs, and clearly communicated EPA's views. The RPM listened to the PRP and took the PRP's views and concerns into consideration.

A second factor contributing to effective oversight was early identification of problems. This occurred through RPM site visits and the RPMs' open communication with the PRPs and EPA's on-site contractors. Early identification allowed the RPM and PRPs to resolve problems before implementation of the remedy or time schedules were affected.

²At two sites, we had some concerns about the timeliness of the remedy implementation. At one of these sites, we had an issue with the level of oversight. However, for that site, Region 5 has agreed to take action to address our concerns. At the other site, the delays occurred a number of years ago. The exceptions we found were isolated instances and not indicative of regional oversight.

- At one site, the RPM made weekly visits to determine for himself how the work was progressing and to resolve any potential problems that might arise. He met with the PRP group and their contractors. If a problem surfaced, they all discussed it, and agreed to a solution that all the parties could accept and still meet the requirements for the clean-up. The weekly meeting fostered a sense of trust and cooperation among the various parties involved in the work. This cooperation went a long way in helping the PRP meet its time frames for site clean-up.

- At another site, the RPM made site visits to resolve any issues or problems that arose and that the EPA on-site contractor or state representative brought to his attention. The on-site contractor kept in daily phone contact with the RPM, when needed, to inform him of the work being done and any potential problems. The involved parties discussed problems and resolved them early. In this way, major issues never arose between the PRP and EPA.

**AREA FOR
IMPROVEMENT**

Region 5 could improve the quality of its oversight by increasing the use of independent quality assurance teams. For some sites, the personnel performing quality assurance were not independent. This was because the RPMs did not view the use of independent quality assurance teams as necessary to ensure appropriate cleanup. As a result, quality assurance could be reduced and EPA could be taking on extra work, responsibility, and risk.

The February 1990, *Guidance on Oversight of PRP Performed RD/RA*, recognized the importance of using an independent quality assurance team during construction. That document identified the use of independent quality assurance teams as an important aspect of PRP oversight. The guidance does provide regions the flexibility to decide to increase their oversight if there is not an independent quality assurance team. However, the ultimate goal is to hold the PRP accountable.

Use of independent quality assurance teams is (1) prevalent in EPA guidance and (2) standard practice in industry. The September 1997 Draft EPA order, *Policy and Program Requirements for the Mandatory Agency-wide Quality System*, and industry standards, recommend the use of independent quality assurance teams. According to these documents, one element of a quality system is a quality assurance organization independent of the organization conducting environmentally-related measurements.

Nine of the sites in our sample had construction quality assurance plans with sufficient information to evaluate the independence of the quality assurance contractor. Five of these nine lacked an independent quality assurance team. Based on the comments from the RPMs, they did not believe it was necessary that the quality assurance contractor be independent. For example, at one site the quality assurance team consisted of contractor employees that were from the same company. The RPM said that requiring separate, independent contractors would be overkill. At another site, where the PRP contractor was performing quality assurance, the RPM did not perceive this as a problem since EPA had its own on-site contractor and the RPM made site visits.

The purpose of an independent quality assurance team is to provide confidence that the constructed remedy meets project requirements through testing and inspection of the construction contractor's work. It is necessary for the quality assurance team to be completely independent of the construction contractor so the results of the quality assurance are unbiased and objective. If there is no independent quality assurance team, the PRP, and ultimately EPA may in some cases be unable to reasonably ensure that performance measures are met. Therefore, it is possible that EPA would need to expend a greater amount of time and resources on-site to achieve a reasonable confidence that the constructed remedy meets project requirements.

CONCLUSION

Region 5 provided effective oversight of PRPs. Effective oversight resulted from good working relationships and open communication between the RPM and PRP, and early identification of problems. As a result, the cleanups are progressing on schedule. Region 5 could improve the effectiveness of its oversight by more frequently using independent quality assurance teams.

RECOMMENDATION

We recommend that the Acting Regional Administrator, Region 5, require Superfund division to (1) use independent quality assurance teams for PRP lead remedial construction projects where appropriate, and (2) verify that independent quality assurance teams are being used appropriately. When independent quality assurance teams are not used, the reasons for not using them should be documented.

**AGENCY COMMENTS
AND ACTIONS**

Region 5 agreed with the recommendation and proposed that, starting October 1, 1998, the RPM will evaluate the appropriateness of using an independent construction quality assurance team for each workplan received for PRP remedial construction projects performed pursuant to an EPA settlement or order. In performing this evaluation, the RPM will use EPA's Guidance on Oversight of PRP Performed RD/RA dated February 14, 1990, and other applicable EPA regulations and guidances, as references. In any case where such a team will not be used, the RPM will document the reasons in a memorandum.

OIG EVALUATION

Region 5's actions, when completed, will address the finding and recommendation in this chapter.

CHAPTER 3

Impact Of The Reduced Oversight Reform Was Difficult to Measure

The impact of the reduced oversight administrative reform in Region 5 was difficult to measure due to (a) the inherent nature of the oversight process and (b) cost savings from reductions in oversight not being computed. Specifically,

- the reform had only a limited effect on how Region 5 determined the appropriate level of oversight at PRP cleanups.
- Region 5 could not compute cost for savings from reductions for fiscal years (FY) 1996 and 1997 because management did not require RPMs to identify oversight activities that they reduced.

As a result, for FY 1996 and 1997, the Agency could not determine the extent of the impact of this reform and whether it was successful in Region 5. For FY 1998, the Agency has developed an evaluation form that, when completed, may provide management with the information it needs to evaluate the impact of the reform.

Region 5 was not the only region that had difficulty determining the impact of this administrative reform. A recent OIG report also found that Region 2 could not show actual reductions in oversight. Details of this OIG report are included in exhibit 2.

REDUCED OVERSIGHT REFORM

In July 1996, the Superfund program issued guidance to help the regions identify those sites where PRPs were cooperative and capable and, therefore, reductions in oversight were appropriate. To implement this reform, the guidance called for the regions to perform specific activities, including the following:

- Use the criteria in the guidance to identify sites where reduced oversight was appropriate.

- Maintain documentation showing the criteria used, including the specific criteria set forth in the guidance, in determining that each site was or was not appropriate for reduced oversight.
- Report estimates of how much oversight had been reduced at sites during 1996.

**LIMITED EFFECT ON
OVERSIGHT
DECISIONS**

The reduced oversight reform had only a limited effect on how Region 5 determined the appropriate level of oversight at PRP cleanups. Some of the RPMs who had sites in this reform stated that without this reform they would not have been comfortable reducing oversight. However, other RPMs stated that this reform had no impact on their decision to reduce oversight.

The inherent nature of the oversight process, in part, limited the impact of this reform. Because each site, and each PRP is different, Agency guidance does not establish a defined level of oversight that must be used at every Superfund site. For example, Agency guidance states that RPMs have the flexibility to adjust the level of oversight as they see necessary. The guidance on reduced oversight gave limiting the number of field visits based on PRP competence as an example of reduction in oversight. However, even before EPA issued the reduced oversight guidance, RPMs could limit the number of site visits. Therefore, it is difficult to determine whether the RPMs decision to reduce oversight was because of this reform or whether they would have done so without this reform.

**COST SAVINGS NOT
COMPUTED**

For FY 1996 and 1997, Region 5 could not document costs savings attributed to this reform. While some RPMs could estimate cost savings from reductions in oversight, there was no documentation to support the estimates. Other RPMs did not estimate the cost savings. This occurred because RPMs did not document the activities that they reduced. For FY 1998, Region 5 will estimate cost savings for all sites in this reform.

In FY 1998, the Office of Site Remediation and Enforcement prepared an evaluation form that Region 5 will complete during the fourth quarter for all sites in the reform. The evaluation form includes several questions that are aimed at estimating costs savings from reductions in oversight. The questions include identification of the following:

- planned oversight costs before changes due to the reform,
- decisions the region made to reduce oversight prior to the site's inclusion in the reform, and
- reductions in oversight that were made as a result of participation in the reform.

With the completion of the evaluation forms, Region 5 management may have the information it needs to evaluate the success of this reform. This evaluation is important for several reasons.

- Throughout the Agency there is a greater emphasis on measuring the results of EPA activities. While there are many activities that EPA cannot measure, there are cost savings associated with reductions in oversight that it can estimate if the necessary information is collected.
- Information on the success of this reform at specific sites will assist management in determining whether it should reduce oversight at more sites.

CONCLUSION

The Agency's original goal for this reform was to reduce oversight costs at sites where the PRPs were cooperative and capable. While this reform did influence some RPMs to reduce oversight, the impact of the reform was limited and difficult to measure. The evaluation form the Agency prepared will assist Region 5 in computing the costs savings from this reform. While the Agency has modified the emphasis of this reform to maximizing the efficiency and effectiveness of PRP oversight, a significant factor, and the true measure of success for this reform, remains reduction in oversight costs.

RECOMMENDATION

We recommend that the Acting Regional Administrator, Region 5, ensure the Superfund division yearly completes the evaluation form for sites in this reform in order to compute costs savings.

**AGENCY COMMENTS
AND ACTIONS**

During 1998, Region 5 took significant actions to improve the management of this reform. During the year, Region 5 issued several memorandums to Superfund staff explaining how the reform was to be conducted. RPMs identified sites that should be included in the reform and documented how oversight was reduced. For 15 sites, RPMs met with PRPs to discuss how the reform would be implemented at the site. RPMs began to document the cost savings that were achieved. Letters were also sent to the PRPs after they were billed for oversight costs, describing what type of reduced oversight activities took place.

In responding to the draft report, Region 5 proposed the following schedule for annual reporting of oversight reductions:

- | | |
|------------|---|
| July 28-30 | Evaluation form will be discussed at the national Superfund Division Directors meeting in Denver, CO. |
| August | RPMs will fill out the evaluation form. |
| September | Regional contacts on reform will collect, analyze, and transmit evaluations to EPA-Headquarters. |
| October 10 | Regional evaluations due to EPA-Headquarters. |

OIG EVALUATION

Region 5's actions, when completed, will address the finding and recommendation in this chapter.

Scope, Methodology, and Prior Audit Coverage

SCOPE AND METHODOLOGY

Our audit focused on Region 5's Superfund program and its oversight of PRP lead remedial construction projects. We performed our fieldwork from October 7, 1997 to June 17, 1998.

As part of our review, we used the following EPA guidance as criteria for evaluating Region 5's activities:

- OSWER Directive 9355.5-01, *Guidance on Oversight of PRP Performed RD/RA*, dated February 14, 1990.
- OSWER Directive 9200.4-15, *Reducing Federal Oversight at Superfund Sites with Cooperative and Capable Parties*, dated July 31, 1996.
- *Special Account Reform Implementation Notebook*, issued by the Office of Site Remediation Enforcement, in March 1997.

To evaluate Region 5's oversight of PRPs and the impact of the two reforms, we selected a sample of 15 PRP lead sites that had remedial design and action activities either (1) completed between October 1, 1995, and December 8, 1997 or (2) in progress as of December 8, 1997. In selecting the 15 sites, we selected 7 sites that were part of the reduced oversight reform and 2 sites that had special accounts as of December 8, 1997. We selected the sample based on information from CERCLIS as of December 8, 1997. We did not evaluate the controls related to CERCLIS and the adequacy of the controls were not critical to the results of our audit.

To determine if Region 5 was effectively overseeing PRPs, we reviewed EPA's files relating to the remedial design and action, and discussed the site activities and EPA's oversight with the RPM for each site in our sample. As appropriate, we contacted the PRPs and state officials to obtain their opinions on EPA's oversight. We also discussed with Region 5 management the controls that were in place to ensure that RPMs were effectively overseeing PRPs.

To evaluate the impact of the reduced oversight reform, we determined the following for the sites in our sample that were part of the reform:

- how the site was selected for the reform,
- what activities were reduced,
- whether reductions in oversight were appropriate, and
- what documentation was maintained regarding cost savings from reductions in oversight.

Based on the sites in our sample, we expanded our review to all sites that were part of the reduced oversight reform to determine whether issues we identified in our sample existed at other sites.

During the audit, we dropped one objective on evaluating the impact of the special account reform for two reasons. First, the Agency has not completed the guidance on disbursing special account funds to PRPs. Second, the reform was relatively new, and there were only two remedial design and action sites that had special accounts in Region 5. The enforcement negotiations at the two sites had not reached a point where we could evaluate the impact of the special account. Therefore, we did not pursue this objective further during this audit, but referred what we had found to another OIG office that was performing a detailed review of the special account administrative reform.

During the audit, Region 5 took action to correct several problems we identified. The problems, and actions Region 5 took, are described in exhibit 3.

We issued position papers to the Director, Superfund Division, Region 5 between May 26 and June 9, 1998. We discussed the position papers with Superfund program personnel and considered their comments in preparing the draft report. The draft report was issued to the Acting Regional Administrator, Region 5, on June 29, 1998. The Acting Regional Administrator responded on July 30, 1998. The response was incorporated into the report, and included in Appendix 1.

**PRIOR AUDIT
COVERAGE**

One component of Region 5's oversight of PRPs is the billing of oversight costs. In March 1997, the OIG issued a report on Region 5's Billing and Collection of Accounts Receivable (Report No. 7100139). The audit found that for Superfund oversight billings, Region 5 did not (1) promptly send initial billings, (2) timely send follow-up notices on unpaid balances, or (3) include delinquent amounts on subsequent billings. As a result, the Superfund Trust Fund was not timely replenished.

In responding to the audit report, Region 5 agreed to take a number of corrective action to improve the billing and collection of oversight costs. Follow-up audit work to these corrective actions was performed as part of the OIG's annual audit of the Agency's financial statements. As a result, we did not review the issue of billing of oversight costs during this audit.

RELATED OIG REPORTS

The OIG recently issued a draft report on Region 2's Billing of Superfund Costs (Report no. E1SFF8-02-0007-8100206). As part of the audit, the OIG evaluated Region 2's efforts to implement the reduced oversight administrative reform. The report found that Region 2 had identified six Superfund sites as candidates for reduction in oversight. However, the Region had not reported estimated oversight reductions.

The report noted that the impact of administrative reform was difficult to assess for several reasons, including the lack of accurate information regarding specific site reductions. There was also no defined level of the amount of oversight EPA was to perform, which made it difficult to identify what qualified as a reduction in oversight. It was also difficult to quantify the value of activities EPA did not perform.

ISSUES CORRECTED DURING THE AUDIT

During the audit, we identified two issues that Region 5 corrected during our fieldwork. One concerned the level of regional oversight at a specific site and the second was the accuracy of management list of sites in the reduced oversight reform.

At 1 of 15 sites, we had concerns about the level of oversight Region 5 was providing. We discussed our concerns with management, and they agreed to assess the level of oversight that was needed and prepare a plan of action for continuing work at the site. We reviewed Region 5 assessment and plan of action and determined that the planned oversight would address our concerns.

During our review we found Region 5's list of sites in this administrative reform was inaccurate. Region 5 continually updates the list of sites in this reform because of changing conditions, such as a remedial action being completed, or the relationship with the PRP's has changed. However, for some of the sites that Region 5 management identified as part of this reform, the RPMs stated that they were not aware that the site was part of the reform nor were they reducing oversight. To determine the extent to which the list was inaccurate, we evaluated a list Region 5 management provided us dated March 13, 1998. Of the 16 remedial design or remedial action sites on the list, two did not have reduced oversight. We also found two sites that RPMs stated they were reducing oversight and they considered part of this reform, but were not included on the March 13, 1998 list. After discussing this issue with Region 5, it took action to improve the controls over the accuracy of the list, including specific criteria that must be met before a site is identified as part of the reduced oversight reform.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 30 1998

REPLY TO THE ATTENTION OF:

MEMORANDUM

SUBJECT: Draft Audit Report E1SGF8-05-0035
Region 5 Oversight of PRP-Lead Remedial
Design and Remedial Action

FROM: David A. Ullrich
Acting Regional Administrator

TO: Anthony C. Carollo
Divisional Inspector General for Audits
Northern Division

Thank you for the opportunity to comment on the subject draft audit report.

Attached is the Region's response to the report. If you have any questions, please contact William Munro, Director, Superfund Division at 3-9773.

Attachment

cc: Robert Springer, ARA for RMD
William E. Munro, Director, Superfund Division
Cyprian Ejiasa, Regional Comptroller
Howard Levin, Acting Chief, Program Accounting & Analysis Section

Recycled/Recyclable•Printed with Vegetable Oil Based Inks on 100 Recycled Paper (40% Postconsumer)

Note: The original response was signed by Jerri-Anne Garl for David A. Ullrich.

DATE: JUL 23 1998

SUBJECT: Draft Report No. EISGF8-05-0035
Region 5 Oversight of PRP-Lead Remedial Design
and Remedial Action

FROM: William E. Muno, Director
Superfund Division

TO: Howard Levin
Regional Audit Coordinator (MF-10J)

We have reviewed the Draft Report referenced above, prepared by the Office of the Inspector General for the Northern Division (OIGND), U.S. Environmental Protection Agency, and offer our comments below. Our individual remarks follow an identification of the Section or Chapter of the Draft Report that we are commenting upon.

Executive Summary

We acknowledge the two primary findings summarized in the **Results in Brief** subsection. We agree with the first finding that Region 5 provided effective oversight of PRPs. In regard to the second finding, we believe it would be more accurate to state that the “impact of the reduced oversight administrative reform in Region 5 was *difficult to measure*”, rather than say the “impact...was *limited*”. We will explain our reasoning for this comment later in this memorandum.

Consistent with other Sections of the Report, we believe the first bullet point of the **Recommendation** subsection should be revised to read:

- “We recommend that the Acting Regional Administrator, Region 5,
- require the Superfund Division to (1) use independent quality assurance teams for PRP-lead remedial construction projects where appropriate, and (2) verify that independent quality assurance teams are being used appropriately. When independent quality assurance teams are not used, the reasons for not using them should be documented.”

This wording reflects the way this recommendation is articulated at the end of Chapter 2 of the Draft Report, and clarifies that when such teams are used, they are only used during the construction phase of a project.

Note: The original response was signed by William E. Muno.

Chapter 1, Introduction, Background

For clarity, we suggest portions of paragraphs 2 and 3 be written as follows, with our additions italicized:

“...If a PRP elects to perform the remedial design or action, they must do so in accordance with a settlement agreement *or in compliance with an EPA-issued unilateral administrative order*. The settlement agreement can be either an administrative order on consent, or a judicial consent decree. When the PRPs conduct the cleanup *under EPA oversight*, EPA's role is to ensure that the PRP complies *with* all applicable laws, regulations, and requirements; and meets all performance standards in the settlement agreement *or order*. *For sites where EPA is the lead agency enforcing the terms of the agreement or order*, the EPA Remedial Project Manager (RPM) has the primary responsibility for overseeing the PRP. *There are some sites where a State environmental agency is enforcing the terms of an agreement or order under State law.*”

“...During remedial action, the RPM, *most often with the assistance of an EPA contractor*, oversees the PRP's construction and implementation of the remedy. The level of oversight the RPM provides will depend upon the requirements of the settlement agreement *or order...*”

Chapter 2

Anywhere the term “settlement agreement” is used, the phrase “or order” should be added directly thereafter.

Examples of Effective Oversight

In paragraph 2, the first sentence should begin, “For *the* 13 sites *selected for the audit...*”

Similarly, paragraph 3 should begin, “For 11 of *the* 13 sites...”

Area for Improvement

Paragraph 1, third sentence should read, “This was because the RPMs did not view the use of independent quality assurance teams as *necessary to ensure an appropriate cleanup.*”

Paragraph 5, third sentence should read, “If there is no independent quality assurance team, the PRP, and ultimately EPA, *may in some cases not be able to* reasonably ensure that performance measures are met.”

Recommendation

As we commented on the Executive Summary Section, the only change to this text, for accuracy, would be to substitute the phrase “*remedial construction projects*” for the phrase “remedial design/remedial action sites”.

The Region 5 Superfund Division agrees with the Recommendation, using the substituted phrase noted in our comment above.

Corrective Action and Timeframe

October 1, 1998 Each new workplan, received after this date, for remedial construction activities to be performed by a PRP pursuant to an EPA settlement agreement or order, will be evaluated by the RPM as to the appropriateness of utilizing an independent construction quality assurance team. In performing this evaluation, the RPM will use EPA's Guidance on Oversight of PRP Performed RD/RA dated February 14, 1990, and other applicable EPA regulations and guidances, as references. In any case where such a team will not be utilized, the RPM will document the reasons in a memorandum.

Chapter 3

We believe the title of Chapter 3 is misleading. A more appropriate title for the Chapter would be “Impact of The Reduced Oversight Reform was Difficult to Measure” versus “Impact of The Reduce Oversight Reform was Limited”. Starting in fiscal year 1998, Region 5 has been able to document how reduced oversight has been implemented at those Superfund sites where there are capable and cooperative PRPs. Several memos were issued to Superfund staff during fiscal year 1998 which explained how this reform was to be conducted. Remedial Project Managers (RPMs) who had sites impacted by the reform, knew that in order to receive recognition for work performed under the reform, three tasks needed to be accomplished. Briefly, the tasks were 1) meet with the PRPs to inform them of the reduced oversight approach which was implemented at the site; 2) issue the PRPs an oversight bill and 3) send the PRPs a letter which documents how EPA reduced oversight activities during the billing period. It should be noted that the sites which were addressed under this reform were sites that the RPMs themselves had decided to put forward as reduced oversight candidates. Specifically, the RPMs knew about the reform, its measures, and how the reform would impact their approach to implementing oversight. In summary, to state that the reform had limited effect on oversight decisions does not properly characterize the Region 5 Superfund Division's efforts in implementing this reform.

Cost Savings Not Computed

This section should include the following statements:

“Starting in FY 1998, however, RPMs began to document the cost saving activities which

took place at privately funded clean ups. RPMs met with PRPs from fifteen privately funded clean up sites to discuss how the reform would be implemented on a site specific basis. Additionally, letters were sent to the PRPs after they were billed, describing what type of reduced oversight activities took place during the billing period.”

These sentences should be inserted after the fourth sentence in the introductory paragraph of this section. The Region 5 Superfund Division has put a tremendous amount of effort in FY 1998 into how it manages this reform. It is disappointing that the report does not reflect these efforts and changes which have improved the documenting of the reform in FY 1998.

Conclusion

The first sentence of this section should read as follows:

“The Agency's original goal for this reform was to reduce oversight costs at those sites *where the PRPs have been capable and cooperative.*”

The Draft Report fails to recognize that EPA's original intent for the reform was to target those sites which have capable and cooperative PRPs. Once the regulated community understood that EPA would reduce oversight costs for PRPs who were capable and cooperative, presumably the message would circulate regarding the type of behavior EPA was trying to encourage among the regulated community.

Recommendations

The Region 5 Superfund Division agrees with the Draft Report's recommendation to complete the evaluation form for sites in the reform on an annual basis.

Corrective Action and Timeframe

The following schedule will be followed for the remainder of FY 1998 to implement the Draft Report's recommendation for annual reporting of oversight cost reduction:

- | | |
|------------|---|
| July 28-30 | Evaluation form will be discussed at the national Superfund Division Directors meeting in Denver, CO. |
| August | RPMs will fill out the evaluation form. |
| September | Regional contacts on reform will collect, analyze and transmit evaluations to EPA-Headquarters. |
| October 10 | Regional evaluations due to EPA-Headquarters. |

DISTRIBUTION

Region 5

Senior Leadership Team
Audit Followup Coordinator
Library

Headquarters

Assistant Administrator for Enforcement and Compliance Assurance (2201)
Assistant Administrator for Solid Waste and Emergency Response (5101)
Agency Followup Official (3101)
Attn: Assistant Administrator, OARM
Agency Followup Coordinator (3304)
Attn: Director, RMD
Headquarters Library (3404)

Office of Inspector General

Inspector General
GAO Issue Area Planner