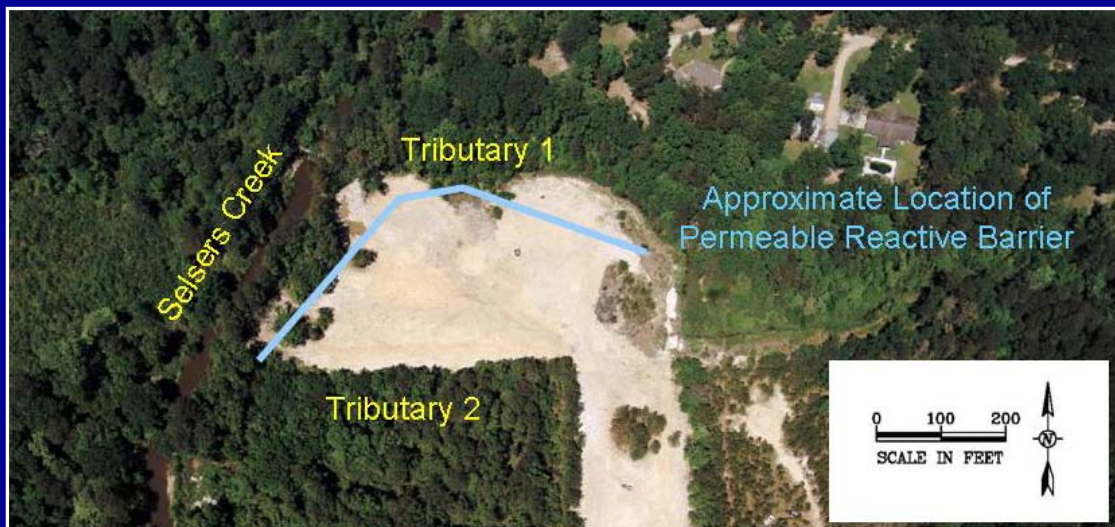




U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Annual Superfund Report to Congress for Fiscal Year 2009



OIG Scoreboard Summary of Superfund Results by OIG Goal – Fiscal Year 2009

Office of Inspector General (OIG) Goal: Contribute to human health and environmental quality through improved business practices, accountability, and integrity of program operations. Below are Superfund results of OIG work in terms of outputs, actions by EPA, and impacts.

Dollars in Millions

Audits, Program Evaluations, and Special Reviews

2	Legislative/Regulatory Changes/Decisions
17	Policy, Practice, Process Actions, or Changes Made
2	Critical Public or Congressional Concerns Addressed
8	Certifications/Validations/Verifications
57	Environmental or Business Recommendations for Improvement
5	Referrals for Agency Action
3	Environmental or Business Best Practices Identified
17	Environmental or Business Recommendations/Actions Sustained
2	Environmental or Business Risks Reduced or Eliminated
4	Environmental or Business Risks Identified
12	Recommendations Reported as Implemented Previously Identified Unimplemented by Follow-up
15	Unimplemented Recommendations Identified
\$0.5	Questioned Costs
\$31.6	Cost Efficiencies
\$0.02	Total Questioned Costs Sustained (includes costs questioned in prior periods)
\$63.7	Total Cost Efficiencies Sustained (includes efficiencies identified in prior periods)

Investigative Operations

\$3.3	Fines, Settlements, Restitutions
9	Indictments
5	Convictions
5	Sentencings
4	Administrative Actions
2	Allegations Disproved

Sources: Performance Measurement and Results System, Inspector General Enterprise Management System, Inspector General Operations and Reporting System, and other OIG reports.

**To find out more about the U.S. Environmental Protection Agency
Office of Inspector General and its activities, visit our Website at:**

<http://www.epa.gov/oig>

Cover photo: Aerial photograph of the northern portion of the Delatte Metals Superfund Site, Ponchatoula, Louisiana, showing the permeable reactive barrier and surface water features. This photograph was taken before houses were constructed northwest of Selsers Creek. (Source: EPA, with labels added by OIG)



Foreword

This report covers Fiscal Year 2009 Superfund activity of the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). The Superfund Amendments and Reauthorization Act of 1986 requires the OIG to annually audit the Superfund program and report the results to Congress.

As of May 2008, EPA had more than \$1.1 billion in over 800 Superfund special accounts. While EPA has addressed various aspects of managing special accounts, we found that EPA was holding in excess of \$88 million in reserve – funds that we believe could be used to support priority Superfund sites, including sites where human exposure is not under control. EPA generally agreed that it should reclassify or transfer \$6.6 million in idle special account funds and reevaluate the need for holding the \$88 million reserve.

A lack of viable potentially responsible parties is preventing EPA from recovering as much as 59 percent of the Superfund removal costs it incurs related to rapid response removal actions at non-National Priorities List sites. The Agency's ability to recover the government's costs from potentially responsible parties could be improved by better controls to monitor and document searches for potentially responsible parties, by ensuring EPA database quality, and by identifying all government costs related to Superfund accounts for possible recovery.

The data used to support EPA decisions on site remediations need to be of known quality. We found that the data available to Region 6 when it conducted its Five-Year Review of the Delatte Metals Superfund Site in Ponchatoula, Louisiana, were insufficient, and that the site's safety cannot be determined until further assessments are completed. However, at Neal's Dump Superfund Site near Spencer, Indiana, and at Jones Sanitation Superfund Site in Hyde Park, New York, our testing results generally supported EPA's monitoring results.

Hotline complaints related to Superfund activities are another source for our work. In one case, we found that EPA had provided for appropriate community involvement in the design of the East Mission Flats, Idaho, repository. Nevertheless, we concluded that analysis of geochemical and physical conditions should be completed and the adequacy of the repository design confirmed. In another case, involving the CTS Printex Superfund site in Mountain View, California, we determined that EPA inappropriately charged the responsible parties for costs that were outside the intended scope of the cost recovery agreement.

The Office of Solid Waste and Emergency Response's Regional Public Liaison program, which links EPA and stakeholders, has assisted many stakeholders despite limited resources. However, we found that the program does not sufficiently focus on or measure specific

outputs and outcomes and does not ensure offices consistently take steps to make stakeholders aware of the program.

Our criminal investigative work resulted in sentencing in a bid rigging case at the Federal Creosote Superfund Site in Manville, New Jersey; to date, seven individuals and three companies have pled guilty as part of this investigation. In another case, a New York businessman and his son were sentenced in connection with storing hazardous waste at a textile factory in Allentown, Pennsylvania.

We recognize the importance of Superfund activities to the health of our nation and the quality of our environment. We will continue to address Superfund program management and funding to assist Congress and EPA in their efforts to protect against potential adverse impacts resulting from Superfund sites.



Bill A. Roderick
Acting Inspector General

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Hazardous Substance Superfund Trust Fund

The Government Management and Reform Act requires federal agencies to prepare annual audited financial statements. The Act was passed to help improve agencies' financial management practices, systems, and controls so that timely, reliable information is available to manage federal programs.

One of the major entities included in the U.S. Environmental Protection Agency's (EPA's) financial statements is the Hazardous Substance Superfund Trust Fund. Our audit of EPA financial statements also meets our Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requirement to annually audit the Superfund Trust Fund. EPA presented the financial statements for Fiscal Year 2009 in a consolidated format and did not include a separate presentation on the Superfund Trust Fund.

The summary below of our Fiscal Year 2009 financial statement audit highlights areas that pertain to the Hazardous Substance Superfund Trust Fund. After the details on the financial statement audit are summaries of several other reviews we conducted that note ways EPA can improve its management of Superfund resources.

EPA Earns Unqualified Opinion on Financial Statements

We rendered an unqualified opinion on EPA's Consolidated Financial Statements for Fiscal Years 2009 and 2008 (restated), meaning that they were fairly presented and free of material misstatement. However, in evaluating internal controls, we noted three material weaknesses. A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected. The three material weaknesses are as follows:

- EPA understated accounts receivable for Fiscal Year 2008.
- EPA understated unearned revenue.
- Improvement is needed in billing costs and reconciling unearned revenue for Superfund State Contract costs.

In addition, we noted eight significant deficiencies. Significant deficiencies are deficiencies in internal controls that adversely affect the entity's ability to report financial data reliably in accordance with generally accepted accounting principles such that there is more than a remote likelihood that a misstatement of the entity's financial statements will not be prevented or detected. The eight significant deficiencies noted are as follows:

- EPA misstated uncollectible debt and other related accounts.
- EPA needs to improve billing and accounting for accounts receivable.
- Headquarters property items were not inventoried.
- EPA should improve its financial statement preparation process.
- Unneeded funds were not deobligated timely.
- Improvement is needed in managing data system user accounts.
- Las Vegas Finance Center needs improved physical access controls.
- Improved planning is needed for Customer Technology Solutions equipment.

Further, we noted one noncompliance issue involving EPA's need to continue efforts to reconcile intra-governmental transactions.

In a memorandum from the Chief Financial Officer dated November 12, 2009, the Agency recognized the issues raised and indicated it will take corrective actions.

We issued our report (10-1-0029) on November 16, 2009.

Superfund Special Accounts Need Improved Management

EPA had not used about \$65 million in Superfund special accounts that were available because it lacked some management controls. Additionally, EPA was holding more than \$88.4 million in special account funds in reserve that could potentially be put to better use.

EPA is authorized to retain and use funds received in settlements to address Superfund response actions contemplated in settlement agreements. EPA retains these funds in site-specific "special accounts." As of May 2008, EPA had over \$1.1 billion in 819 Superfund special accounts.

EPA's fragmented and uncoordinated approaches to account for special account funds led to missed opportunities to fund needed Superfund clean-ups. Visibility was lacking over the amount and use of special account funds. In three previous reports, we had recommended that about \$59 million of the \$65 million of idle special account funds be reclassified or transferred to the Superfund Trust Fund. In this report, we recommended that the remaining approximately \$6.6 million be reclassified or transferred to the Trust Fund. While EPA has addressed various aspects of managing special accounts, it needs to make some additional improvements. Also, EPA was holding more than \$88.4 million in reserve that could be used to support priority Superfund sites, including sites where human exposure was not under control.

We recommended that EPA implement needed management controls. EPA needs to provide a central management official for special account funds, use available account data, and implement new policies and public reporting requirements. Also, EPA should reclassify or transfer the remaining \$6.6 million in idle special account funds, and reevaluate the need for holding the \$88.4 million in reserve. EPA generally concurred with our recommendations.

We issued our report (09-P-0119) on March 18, 2009.

EPA Could Increase Superfund Cost Recovery at Non-National Priorities List Sites

EPA is only recovering a fraction of the Superfund removal costs it incurs related to rapid response removal actions at non-National Priorities List sites because it says there is a lack of viable potentially responsible parties. Improvements in EPA's controls over identifying responsible parties may improve recovery of the government's clean-up costs.

CERCLA authorizes EPA to address releases of hazardous substances that require a rapid response and to pay for clean-up costs before identifying a responsible party. The Act authorizes EPA to recover these costs.

A review of a sample of removal actions showed that EPA collected from responsible parties approximately 11 percent (\$31.4 million of \$294.5 million) of the Federal Government's costs for conducting removal actions. According to EPA, about another 30 percent (\$86.0 million) of the costs are pending further government action. EPA indicated most of the remaining \$177.1 million is unrecovered because of a lack of viable potentially responsible parties.

Although EPA has a high rate of success in addressing cost recovery requirements prior to the expiration of the statute of limitations, it has limited control in other key areas that affect its ability to recover the government's costs from responsible parties. EPA also does not review and monitor charges made to all Superfund accounts so all appropriate site costs can be recovered.

We recommended that EPA implement improved controls to monitor potentially responsible party search completions and consistently document these searches, ensure EPA database quality, and ensure the government's costs related to Superfund accounts are identified for possible recovery. EPA concurred with our recommendations.

We issued our report (09-P-0144) on April 27, 2009.

Agency-wide Policy Would Improve Monitoring of Obligations under Superfund Cooperative Agreements

An Agency-wide policy for monitoring obligations under Superfund Cooperative Agreements and identifying amounts available for deobligation is needed.

A Cooperative Agreement is a legally binding obligating document that provides funding to a State to carry out or assist with Superfund removal and/or remedial activities. Timely review and deobligation of unneeded funds allow these funds to be used on other Superfund priorities.

We identified several best practices used by Regions 3, 5, and 8, such as (1) requiring that States submit detailed reports on the status of each Superfund site twice a year, (2) requiring that budget officers solicit information from project officers and other staff twice a year to identify potential funds for deobligation, and (3) performing a deobligation exercise twice a year for Superfund Cooperative Agreements.

We identified \$331,802 of open obligations in Region 3 that needed to be deobligated. During our audit, the Agency deobligated \$330,370 of that amount. The Agency deobligated \$1,432 less than the amount originally identified for one agreement because of a final drawdown.

We recommended that EPA incorporate the best practices noted into a uniform policy for reviewing unliquidated obligations under Superfund Cooperative Agreements in all regions. The Agency agreed with our recommendation.

We issued our report (09-P-0214) on September 22, 2009.

EPA Should Strengthen Controls over Interagency Agreement Unliquidated Obligations

EPA has not closed out interagency agreements that have at least \$4.2 million of unneeded funds that should be deobligated, including \$2.9 million in Superfund agreements. EPA deobligated an additional \$2.3 million as a result of our audit. These funds could be used for other environmental projects.

An interagency agreement is a written agreement between federal agencies in which one agency provides goods or services to another agency on a reimbursable basis. EPA has interagency agreements with the U.S. Army Corps of Engineers and other agencies to conduct clean-up work at Superfund sites. It is EPA's policy to close all interagency agreements within 270 days after the project period expires. As part of close-out, unliquidated obligations should be deobligated so that the funds can be used for other purposes.

Controls for identifying funds for deobligations were not always effective. Appropriate EPA personnel did not effectively monitor interagency agreements to ensure they were closed out in a timely manner and that unneeded funds were deobligated. The annual unliquidated obligation review was not effective and did not identify funds that should have been deobligated. EPA staff cited various reasons, including unfamiliarity with procedures and difficulties working with other agencies.

We recommended that EPA deobligate the remaining \$4.2 million in unliquidated obligations, and establish various procedures to address the deficiencies noted. The Agency agreed with our recommendations and has begun establishing needed procedures.

We issued our report (09-P-0086) on January 26, 2009.

Remedial Action Decision Making

We performed in-depth reviews of the reliability of site-specific analytical data for sound site remediation decisions. Also, we worked closely with the Agency to characterize Superfund sites. Through these and other actions, we are working to ensure that EPA decisions on site remediation are based on data of known quality. During 2009, we found ways in which EPA could improve remedial action decision making.

Safety Determination for Delatte Metals Superfund Site Unsupported

EPA's protection determination for the Delatte Metals Superfund Site, Ponchatoula, Louisiana, was not supported by its data.

Soil and water at Delatte were contaminated with metals from battery recycling and smelting operations. EPA deleted Delatte from the National Priorities List in 2005, signifying clean-up goals were achieved through remedial action.

Despite evidence of potential remedy failure, EPA Region 6 determined during its Five-Year Review at the site in November 2007 that conditions protect human health and the environment in the short term. However, our review showed that the permeable reactive barrier was not treating all of the shallow contaminated groundwater before it discharges to surface water, and migration of metal contaminants was uncontrolled. Also, metal concentrations in surface water greatly exceeded site clean-up standards, site access was uncontrolled, sufficient testing of the groundwater and surface water was not performed, and the required inspection of the permeable reactive barrier was not performed. EPA research scientists also raised concerns about the effectiveness of the permeable reactive barrier and recommended that Region 6 conduct additional testing.

The data available to Region 6 when it conducted its Five-Year Review, combined with our results, show that the site's safety cannot be determined until the effectiveness of the permeable reactive barrier and the risk posed by the migration of metals are assessed.

EPA Region 6 proposed actions to ensure that the Delatte clean-up remedy is performing as intended. These actions are under review. In its official comments, EPA Region 6 did not agree to amend the determination it made in 2007 to state that more information is needed to make a safety determination for the site. However, during the audit resolution process, Region 6 agreed with the OIG and amended its safety determination.

We issued our report (09-P-0029) on November 19, 2008.

Sampling Results at New York Superfund Site Generally Consistent with EPA Data

Our independent sampling results at the Jones Sanitation Superfund Site in Hyde Park, New York, were generally consistent with EPA Region 2 historical data. However, better documentation is needed to explain Region 2's conclusion that sodium and nickel exceedances do not threaten human health and the environment.

Jones Sanitation had received and treated septic and industrial wastes containing hazardous substances. The site, which operated from approximately 1956 to 1990, was deleted from

the National Priorities List in 2005. The OIG is testing long-term monitoring results at Superfund sites EPA has deleted from the List.

In April 2008, the OIG obtained groundwater and surface water samples from Jones Sanitation and nearby areas and conducted a site inspection. Our independent sampling results were generally consistent with the sampling data that Region 2 has historically obtained. In addition, our site inspection showed the site was properly maintained and secured and is consistent with information Region 2 has obtained on the site conditions. Of the 113 chemical compounds that could be compared, only sodium and nickel were found to exceed standards in the residential wells or to have the ability to potentially migrate off-site at levels above standards. Region 2 did not document a concern with these and concluded the site remedy remains protective to human health and the environment.

We recommended that Region 2 demonstrate and document that off-site migration of sodium, nickel, and any other compounds exceeding applicable standards are controlled at the site, and that the Region modify and/or re-initiate some off-site monitoring if the Region determines such monitoring is needed. EPA agreed with our recommendations.

We issued our report (09-P-0243) on September 23, 2009.

Sampling Results at Indiana Superfund Site Consistent with EPA Results

Groundwater sampling at the Neal's Dump Superfund Site in Indiana showed that polychlorinated biphenyls (PCBs) did not exceed safe levels for drinking water.

Neal's Dump, near Spencer, Indiana, was one of the sites we sampled as part of our testing of long-term monitoring results. The site had been contaminated with PCBs from disposal of electrical equipment and other materials. EPA deleted the site from the National Priorities List in 1999, which signified clean-up goals had been achieved. Groundwater samples that we independently took in May 2008 from two private drinking water wells on residential properties adjacent to the site showed that PCBs did not exceed safe levels for drinking water. These results are consistent with EPA's monitoring results.

We issued our report (09-P-0110) on March 4, 2009.

Hotline Allegation on East Mission Flats Repository Unsubstantiated

EPA Region 10 and the Idaho Department of Environmental Quality allowed appropriate community involvement and provided adequate notice when selecting the East Mission Flats, Idaho, repository location and soliciting comments on the proposed plan, location, and designs. Remedial actions in the Bunker Hill Mining and Metallurgical Complex Superfund Site will generate the soils to be stored at the repository. However, the amount of water that will be introduced into the repository with flooding and rising groundwater levels remains unresolved.

An environmental organization in Kellogg, Idaho, alleged in a Hotline complaint that the public was not appropriately notified of repository plans and did not have an opportunity to provide comments. CERCLA incorporates public involvement in the remediation

process. We found that appropriate notice and community involvement were provided, and that many physical aspects of flooding have been investigated and considered in the design process.

However, we found that the geochemical aspects and potential for releasing dissolved contaminants had yet to be investigated. The proposed repository site is located in an area that floods annually. Region 10 and Idaho have not sufficiently analyzed geochemical conditions expected to form near the repository base, the potential for annual flooding to introduce water into the repository, and the possibility that dissolved contaminants will migrate away from the repository. In response to our concerns, Region 10 and the Idaho Department of Environmental Quality prepared a draft scope of work for the needed analysis; much of that work was completed.

We recommended that Region 10 finish analyzing the geochemical and physical conditions and confirm the adequacy of the repository design. Region 10 concurred with the recommendation and prepared a technical analysis.

We issued our report (09-P-0162) on June 8, 2009.

EPA Inappropriately Charged Oversight Costs at CTS Printex Superfund Site in California

EPA Region 9 inappropriately charged oversight costs to responsible parties for the CTS Printex Site for greening and other activities.

The OIG received a Hotline complaint that alleged mismanagement and abuse of authority regarding Region 9 management of the CTS Printex Superfund Site in Mountain View, California. The allegations we reviewed involved inappropriate oversight costs and the site boundary definition.

We concluded that Region 9 inappropriately charged the responsible parties for costs associated with staff time spent reviewing a housing developer's use of "green building practices." Region 9 also charged the site account for its time spent responding to and preparing for our review. These activities are outside the intended scope of the cost recovery agreement between Region 9 and the responsible parties. Also, Region 9 has not taken appropriate steps to timely amend the 1991 Record of Decision, even though new human health risks have been identified (vapor intrusion).

During our review, we could not substantiate claims that Region 9 expanded the definition of the CTS Printex Site beyond that described in EPA's 1991 Record of Decision, or that other clean-up agreements were reached or implemented.

Region 9 agreed with our recommendations to amend the 1991 Record of Decision and withdraw inappropriate oversight charges. The Region also agreed to conduct training to ensure that regional staff charge time consistent with the consent decree and national guidance. The Region has adjusted its charges to the responsible parties and removed \$6,084 from oversight bills.

We issued our report (09-P-0131) on March 31, 2009.

Response Claims and Contract Reviews

CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, authorizes EPA to pay any claim for response costs as a result of carrying out the National Contingency Plan. Potentially Responsible Parties, who often make these claims, are required to enter into a Preauthorized Decision Document with EPA to cover work for which some costs will be reimbursed. The document specifies the work to be performed, the portion of the cost EPA will reimburse, and the procedures through which the Potentially Responsible Parties can make claims for reimbursement. While we do not audit response claims, we review claims by following the instructions in EPA's claims guidance for the claims adjuster. During 2009, we completed several such reviews, as discussed below.

Contractor Billed Ineligible Costs

Based on Agency concerns related to questionable labor staffing and charging practices of one of its Superfund Technical Assessment and Response Team contractors, we conducted a labor and subcontract cost verification review. We found that:

- The contractor improperly billed for labor costs of employees who did not meet the minimum contract requirements.
- No subcontractor met the minimum contract requirements for education and training.
- The contractor billed for employees who were not approved at the time the labor costs were incurred.
- The contractor improperly billed for employees who did not complete required Basic Incident Command System Level 200 training.

Although this review only covered 1 year of the 5-year contract, we found the Agency was billed \$253,089 in ineligible labor and subcontract costs. The Contracting Officer sustained \$163,328 of the costs questioned, maintaining that this amount reflects an equitable adjustment of the services the contractor provided.

Joint Venture Issues Should Be Considered

We initiated an examination of costs billed under a joint venture for Superfund Technical Assessment and Response Team services in a region. Our examination focused on the joint venture's compliance with federal laws, rules, and regulations under the specific contract. During our examination, we identified information of a time-critical nature that the Agency needed to consider in future contracting decisions concerning the joint venture. We informed the contracting officer, project officer, and other regional contracting personnel of the following information for consideration in deciding whether to exercise the award term options on this contract:

- The joint venture did not maintain any books or records.
- Labor hours billed under the contract did not reconcile with the accounting records of the managing venturer.
- The managing venturer used an employment agency to staff the contract.

- Known billing errors were not corrected and thus represented over-billings to the Agency.
- The nonmanaging venturer appeared to be doing the majority of the work, thus calling into question the joint venture's classification as a Service Disabled Veteran Owned Small Business.
- The nonmanaging venturer appeared to be acting as the project manager, contrary to Small Business Administration regulations.
- The managing venturer has a history of partnering in joint venture agreements and being a member of mentor-protégé programs.
- The managing venturer's ability to contribute staff to all of its joint venture arrangements was questionable.

The Agency concurred with our recommendation, and decided not to award the award term option to the joint venture. The contract expired on June 18, 2009, and the Agency indicated no future work will be awarded to the joint venture.

Response Claim for North Carolina Site Found Acceptable

We reviewed a reimbursement mixed funding claim for \$1,133,543 submitted by the responsible parties for a Superfund site in North Carolina. We performed this review solely to assist the EPA Office of Solid Waste and Emergency Response in evaluating the claimant's mixed funding claim. Our review noted no exceptions to the claimed amount. We recommended that EPA accept the claim and reimburse the claimant \$1,133,543 of the total eligible costs of \$3,675,562.

Performance Reviews

In addition to the reviews required by CERCLA and the Superfund Amendments and Reauthorization Act, we conduct other reviews related to Superfund issues. Following is a summary of several such reviews completed during Fiscal Year 2009.

Regional Public Liaison Program Should Focus on Results and Customers

Office of Solid Waste and Emergency Response's Regional Public Liaison program does not sufficiently focus on or measure specific outputs and outcomes and does not ensure offices consistently take steps to make stakeholders aware of the program.

The Regional Public Liaison program is an important link between concerned stakeholders and EPA. Liaisons help the public and regulated community by providing information, facilitating informal contact with EPA staff, and assisting in resolving problems and concerns related to programs administered by the Office of Solid Waste and Emergency Response. Despite limited resources, Regional Public Liaisons have assisted many stakeholders.

Duties of Regional Public Liaisons

- Provide information and facilitate informal contact with EPA staff.
- Help resolve problems.
- Make recommendations to Agency senior management to improve Office of Solid Waste and Emergency Response programs.

Source: *Office of Solid Waste and Emergency Response Guidance for Regional Public Liaisons*, issued March 2004.

The program could be a key internal control for reducing the risk that significant stakeholder concerns might go unaddressed. However, the program lacks clearly stated program logic, which would include outputs and outcomes and provide a results-oriented approach to implementation. As a result, regional offices implement the program differently and report results in varied formats. There is no consolidated report to show what the program achieves.

Inconsistent implementation has led some liaisons to take specific steps to ensure stakeholders are aware of the program and others to adopt a more passive, reactive approach.

We recommended that the Office of Solid Waste and Emergency Response use a logic model approach to revise the Regional Public Liaison program, focusing on outputs and outcomes. We also recommended consolidated reporting, consistent implementation, minimum requirements for stakeholder awareness activities, and a national Website. The Agency concurred with our recommendations.

We issued our report (09-P-0176) on June 24, 2009.

Great Lakes Clean-up May Take More than 77 Years to Complete

EPA is challenged by the overall extent of the contaminated sediment problem in the Great Lakes Areas of Concern and has not developed or implemented a coordinated approach to manage clean-ups. At the current rate of progress, it may take more than 77 years to complete all the clean-ups.

Thirty-one Areas of Concern have been identified around the U.S. border of the Great Lakes. All but one are polluted with contaminated sediments. EPA is responsible for working with States, localities, and other stakeholders to remove this contaminated sediment. Since 2004, EPA has completed five Great Lakes Legacy Act-funded contaminated sediment clean-ups and remediated approximately 800,000 cubic yards of contaminated sediment.

Without improved management, coordination, and accountability, EPA will not succeed in achieving the results intended for the Areas of Concern program. Although EPA is the designated lead for the clean-ups, it does not have a system for coordinating remediation activities across its program offices, or with States, localities, and other stakeholders. Complexities related to the overlapping statutes include Superfund jurisdiction over numerous sites within the Areas of Concern, Resource Conservation and Recovery Act contamination removal, and statutory limitation of Legacy Act funds to remediate a site that is being cleaned up using Superfund money.

Potential clean-up sites have an estimated federal cost of \$2.25 billion. Local partners will have to come up with \$1.21 billion in nonfederal matching funds before assistance is provided. Moreover, remediation will be conducted in the order that local governments and stakeholders can afford rather than with regard to the risks posed to human health or the environment.

We recommended that the Great Lakes National Program Manager establish a management plan with written designations of authority and responsibility for each EPA program office, as well as other actions. EPA's Corrective Action Plan adequately addressed each of the recommendations.

We issued our report (09-P-0231) on September 14, 2009.

Better Procedures Needed to Manage Tracking System Development

Lack of compliance with established project management procedures resulted in transitional problems in 2005 that delayed developing the Institutional Controls Tracking System (ICTS) and negatively affected contractor performance.

In 2003, EPA's Superfund program entered into a contract to develop ICTS to make information available via the Internet. In 2005, EPA entered into a task order under a different contractor to continue ICTS development.

We performed this review in response to an anonymous OIG Hotline complaint alleging mismanagement of the ICTS project. Although we could not substantiate the alleged claims, the absence of key decision documents and significant turnover of key ICTS personnel could have contributed to the complainant's perception that ICTS project

decisions were made in a haphazard manner. In April 2006, EPA assigned a certified project manager to oversee ICTS development. In 2007, EPA merged ICTS with the Superfund Document Management System, and EPA has taken steps to develop a System Management Plan. We made three recommendations for EPA to better manage system development and the Agency agreed with our recommendations.

We issued our report (09-P-0128) on March 25, 2009.

EPA Should Stop Providing Labor Hour Estimates to Contractors

For 6 of 22 contracts reviewed, EPA provided contractors with the government's estimate for total labor hours prior to receiving contractor proposals. Consequently, EPA may be diminishing its ability to obtain a fair and reasonable price on such contracts.

An independent government cost estimate is a detailed estimate of what a reasonable person should pay to obtain the best value for a product or service. EPA contract management and program staff indicated that providing the contractor with total labor hours is common practice under level-of-effort contracts. Some staff informed us they provide contractors with estimated labor prior to receiving the proposal to indicate to the contractor the level of effort EPA anticipates will be needed.

We found that for most of the Superfund contracts reviewed, EPA did not routinely provide total labor hours to the contractor before receiving the proposal. Some EPA staff informed us they did not provide the total labor hours because doing so would undermine the negotiation process. When EPA provides its estimate of total labor hours before receiving the proposal, the contractor does not have an incentive to seek a more efficient or innovative approach to meet the government's requirement.

EPA agreed with our recommendations to modify EPA acquisition regulations and will communicate new guidance to contracting staff and those who prepare independent government cost estimates. On January 13, 2010, EPA issued guidance limiting the situations in which providing government cost estimates is permissible and requiring the Contracting Officer to document his/her reasons for doing so.

We issued our report (09-P-0229) on September 9, 2009.

Investigative Activity

The OIG Office of Investigations continued to focus its investigative resources on allegations of fraud, waste, and abuse in high risk and high dollar areas, including in the Superfund program. During Fiscal Year 2009, our Superfund investigative efforts resulted in:

- \$3.3 million in monetary fines, settlements, and restitutions
- 9 indictments
- 5 convictions
- 5 sentencing
- 4 administrative actions
- 2 allegations disproved

Following are instances of Superfund investigative activity with results in Fiscal Year 2009.

Sentence Imposed, Criminal Charges Continue in Bid-rigging Case at New Jersey Superfund Site

A sentence was imposed in connection with a bid rigging case at the Federal Creosote Superfund site in Manville, New Jersey. Further, a firm entered into a compliance agreement, several guilty pleas were entered into, and an indictment was unsealed.

On December 15, 2008, in U.S. District Court of New Jersey, Bennett Environmental, Inc. (BEI), a Canadian company, was sentenced to 5 years probation and ordered to pay a \$1,000,00 fine and \$1,662,000 in restitution to EPA. The restitution order applies jointly to BEI and several co-conspirators. This sentencing is a result of BEI's guilty plea in a bid-rigging scheme in connection with awarding subcontracts at Federal Creosote.

In addition to the criminal sentence, BEI entered into a compliance agreement with EPA. As part of this agreement, BEI will establish a corporate responsibility program, which includes establishing ethical standards and a business code of conduct, as well as training its employees in these areas.

BEI previously pled guilty to conspiracy to defraud EPA at the Federal Creosote site by inflating the prices it charged to a prime contractor and paying kickbacks to employees of that contractor from approximately May 2002 until spring 2004. BEI was given confidential bid information that it used to inflate invoices to cover almost \$1.3 million in kickbacks to employees of the prime contractor in exchange for their assistance in steering subcontracts to BEI. The kickbacks were in the form of money wire transfers, cruises for senior officials, various entertainment tickets, and home entertainment electronics. As part of the fraudulent scheme, BEI and its co-conspirators also included amounts they kept for themselves in the inflated invoices.

Also, on June 25, 2009, Frederick Landgraber, co-owner of a Martinsville, New Jersey, landscaping company, pled guilty in the U.S. District Court of New Jersey to conspiracy to defraud EPA. As part of the conspiracy, Landgraber provided more than \$30,000 in kickbacks to an employee of the prime contractor at Federal Creosote in exchange for landscaping subcontracts. Landgraber and his co-conspirator subverted the competitive

bidding process by submitting intentionally high bids on behalf of fictitious companies. In total, Landgraber's company received approximately \$1.5 million in subcontracts at Federal Creosote.

On July 6, 2009, Robert P. Griffiths, a former executive of BEI, pled guilty to charges that he conspired to defraud EPA by inflating the prices he charged to a prime contractor and providing kickbacks to employees of that contractor. Griffiths and his co-conspirators were given the bid prices of BEI's competitors, which allowed BEI to submit the highest possible bid prices and still be awarded the subcontracts. On one occasion, Griffiths and his co-conspirators inflated the bid prices to cover approximately \$1.3 million in kickbacks and amounts BEI kept for itself. The kickbacks were in the form of money transferred by wire to a co-conspirator's shell company, lavish cruises for senior officials of the prime contractor, various entertainment tickets, pharmaceuticals, and home entertainment electronics. The co-conspirators were able to allocate at least \$43 million in fraudulently awarded subcontracts to BEI for the removal, treatment, and disposal of contaminated soil at the Federal Creosote site and fraudulently concealed that BEI had submitted false invoices for the disposal of approximately 20,000 tons of soil.

Griffiths also pled guilty to conspiracy to commit international money laundering. Griffiths, along with a co-conspirator who received more than \$1 million in kickbacks, laundered approximately \$207,000 of the kickback proceeds from the co-conspirator's bank account to Griffiths' bank account in Canada. Griffiths also pled guilty to obstructing an official proceeding before the Securities and Exchange Commission, which was investigating whether Griffiths and others had obtained information not available to the public and relied upon that information to conduct certain improper securities transactions.

Further, on September 11, 2009, a 12-count indictment was unsealed in the U.S. District Court of New Jersey. The indictment charged Gordon D. McDonald, a former project manager for a prime contractor, with engaging in separate kickback and fraud conspiracies with subcontractors John A. Bennett and James E. Haas, Jr. Bennett is the former chief executive officer of subcontractor BEI. Haas is a former representative of a subcontractor that provides common backfill, a type of soil material used to refill an excavation. McDonald, Bennett, and Haas were charged with committing fraud against the United States. McDonald is also charged with engaging in a bid-rigging conspiracy and separate kickback and fraud conspiracy with two other subcontractors at the Federal Creosote and Diamond Alkali Superfund sites. He is also charged with international money laundering, tax violations, and obstruction of justice.

In February 2009, Christopher Tranchina, an employee of a Sewell, New Jersey, company that provided temporary electrical utilities, pled guilty to participating in a separate kickback and fraud conspiracy at Federal Creosote. Tranchina was sentenced on July 13, 2009, to 20 months in prison, to be followed by 3 years' probation. He was ordered to pay \$154,594 in restitution.

To date, seven individuals and three companies have pled guilty as part of this investigation. This case is being conducted with the Internal Revenue Service Criminal Investigation Division.

New York Businessmen Sentenced in Hazardous Waste Case

On November 4, 2008, Moshe Rubaskin of Brooklyn, New York, was sentenced in U.S. District Court for the Eastern District of Pennsylvania to 16 months in prison to be followed by 3 years of supervised release, and was ordered to pay \$450,000 in restitution and a \$7,500 fine. Rubaskin previously pled guilty to storing hazardous waste at a textile factory in Allentown, Pennsylvania. His son, Sholom Rubaskin, also pled guilty to making a materially false claim to EPA. On March 24, 2009, his son was sentenced to 4 months in prison to be followed by 3 years of supervised release, and was ordered to perform 250 hours of community service and pay a \$5,000 fine. In addition, the son will be held jointly liable, along with his father, for the \$450,000 in restitution.

The convictions stem from the Rubaskins' ownership and operation of Montext Textiles, a textile dyeing, bleaching, and weaving business. When the business ceased operations in 2001, numerous containers of hazardous waste were stored at the site without the necessary environmental permits. After local authorities responded to two fires at the site, EPA and the City of Allentown initiated a clean-up at the facility to dispose of numerous containers of hazardous waste and hazardous substances. The Rubaskins are jointly liable for the restitution, which will be paid to EPA and the City of Allentown to cover the clean-up cost.

This case is being conducted with the EPA Criminal Investigation Division.

OIG Superfund Financial Statements

Analysis of OIG's Fiscal Year 2009 Funds Available and Usage

Superfund Budget Object Class	FY 08 Carryover Avail. in 09	FY 08 Carryover Used in 09	FY 08 Lapsed Funds	FY 09 Approp.	FY 09 Funds Used in 08	FY 09 Carryover	Total Cost of FY 09 Operations	Total cost as Percent of FY 09 Approp.
PC&B	\$1,162,764	\$1,140,485	\$22,279	\$7,921,000	\$7,233,080	\$687,920	\$8,373,565	106%
Travel	289,655	287,674	1,981	422,000	151,983	270,017	439,657	104%
Expenses	47,437	45,893	1,544	272,000	200,954	71,046	246,847	91%
Contracts	47,326	45,028	2,298	582,000	537,236	44,764	582,264	100%
WCF	110,000	108,204	1,796	762,000	762,000	0	870,204	114%
Grants	<u>269</u>	<u>0</u>	<u>269</u>	<u>16,000</u>	<u>15,000</u>	<u>1,000</u>	<u>15,000</u>	<u>94%</u>
Total SF	\$1,657,451	\$1,627,284	\$30,167	\$9,975,000	\$8,900,253	\$1,074,747	\$10,527,537	106%

Source: EPA Integrated Financial Management System.

FY 2009 OIG Superfund FTE Usage

FY 2009 Available	70.0
FY 2009 FTEs Used	60.1
% of FTEs Used	85.9%

FTE Full-Time Equivalent
 FY Fiscal Year
 PC&B Personnel Compensation and Benefits
 SF Superfund
 WCF Working Capital Fund

Listing of Fiscal Year 2009 Superfund Reports

<u>Report No.</u>	<u>Description</u>	<u>Date</u>
09-2-0009	CDM Federal Program Corp. - FY 2006 RAC - 68-W9-8210	16-OCT-08
09-2-0023	CDM Federal Programs Corp. - FY 2005 RAC - 68-S7-3003	10-NOV-08
09-P-0029	EPA's Safety Determination for Delatte Metals Superfund Site Unsupported	19-NOV-08
09-2-0031	CH2M Hill, Inc. - FY 2004 RAC 68-W6-0036	20-NOV-08
09-2-0033	URS Corporation - FY 2003 RAC Annual Close-Out 68-W9-8228	20-NOV-08
09-2-0037	CH2M Hill, Inc. - FY 2005 RAC 68-W6-0025	21-NOV-08
09-2-0048	Tetra Tech, Inc./BVSPC Joint Venture - FY 2002 RAC 68-S7-3002	03-DEC-08
09-2-0067	CDM Federal Programs Corp. - FY 2006 RAC - 68-S7-3003	22-DEC-08
09-2-0069	Tetra Tech NUS, Inc. - FY 2004 RAC 68-W6-0045	22-DEC-08
09-P-0110	Independent Groundwater Sampling at Neal's Dump Superfund Site	04-MAR-09
09-P-0119	Improved Management of Superfund Special Accounts Needed	18-MAR-09
09-P-0128	Institutional Controls Tracking System Transition Problems Noted	25-MAR-09
09-P-0131	Results of Hotline Complaint Review for California Superfund Site	31-MAR-09
09-4-0133	STN Environmental Contract Review	03-APR-09
09-4-0135	Tetra Tech EM Inc. Base Year Labor Verification Review	03-APR-09
09-3-0140	Anaconda-Deer Lodge County - FY 2007	20-APR-09
09-P-0144	EPA Needs to Improve Internal Controls to Improve Cost Recovery	27-APR-09
09-N-0146	"Rumple Report" on Investigation of Asbestos Clean-up in Libby, Montana	28-APR-09
09-P-0176	Regional Public Liaison Program Needs Greater Focus	24-JUN-09
09-R-0196	Open Recommendations Impacting Recovery Act Funds Reviewed	14-JUL-09
09-4-0225	CERCLA Credit Claim - Concord, North Carolina	31-AUG-09
09-P-0229	EPA Should Stop Providing Estimates of Labor Hours to Contractors	09-SEP-09
09-P-0241	EPA Needs Uniform Policy for Superfund Unliquidated Obligations	22-SEP-09
09-P-0243	Independent Sampling Confirms Data at Jones Sanitation Superfund Site	23-SEP-09
10-1-0029 *	EPA's Fiscal 2009 and 2008 (Restated) Consolidated Financial Statements	16-NOV-09

* Report issued in Fiscal Year 2010

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