



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Audit Report

EPA Needs to Improve Its Recording and Reporting of Fines and Penalties

Report No. 10-P-0077

March 9, 2010

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Abbreviations

BD	Billing Document
CFC	Cincinnati Finance Center
EPA	U.S. Environmental Protection Agency
FY	Fiscal Year
GAO	Government Accountability Office
ICIS	Integrated Compliance and Information System
IFMS	Integrated Financial Management System
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
RMDS	Resources Management Directive System
SFO	Servicing Finance Office



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We performed this review to determine whether the U.S. Environmental Protection Agency (EPA) (1) billed and collected fines and penalties in a timely manner; (2) took appropriate action to collect fines and penalties; and (3) tracked the assessment, billing, and collection of fines and penalties to measure the impact of the enforcement program and promote accurate and transparent reporting.

Background

EPA's Office of Enforcement and Compliance Assurance (OECA) monitors compliance with environmental laws and takes enforcement action when needed. Assessing penalties as part of an enforcement action provides a deterrent to noncompliance. The Cincinnati Finance Center (CFC) records and tracks the billing and collection of fines and penalties.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2010/20100309-10-P-0077.pdf

EPA Needs to Improve Its Recording and Reporting of Fines and Penalties

What We Found

EPA did not consistently record fines and penalty billings in a timely manner. Regional and program office personnel did not forward copies of source documents timely to CFC, which delayed the recording of accounts receivable. EPA did not record a receivable as required for two disputed stipulated penalties totaling \$2,839,500.

EPA generally took appropriate action to collect fines and penalties. However, it did not monitor the collections on a \$300,000 receivable as required.

EPA tracked the assessment, billing, and collection of fines and penalties. EPA used the assessments, and not the collections, as one of its measures of the enforcement program's impact. OECA's data system contained 7 errors totaling \$139,242 in the penalty assessment amounts out of 156 billings reviewed related to 117 assessments. Due to these data errors and nondisclosure of collections, EPA did not report penalty information with complete accuracy and transparency.

In November 2008, EPA upgraded the Regional Hearing Clerk database to notify CFC of new receivable source documents. The enhancement improved CFC's ability to record receivables more timely.

What We Recommend

We made various recommendations to EPA to address recording fines and penalty billings more timely, monitoring delinquent debt, ensuring greater accuracy in OECA's data system, and disclosing fines and penalties collected as well as assessments when reporting the results of enforcement actions. We revised a recommendation regarding testing internal controls over the forwarding of account receivable source documents to CFC and added a recommendation to develop a policy for recording stipulated penalties. EPA should provide estimated completion dates for recommendations 2-2, 4-2, 4-3, and 5-1. Based on these revisions, EPA agreed with all our recommendations.



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

OFFICE OF
INSPECTOR GENERAL

March 9, 2010

MEMORANDUM

SUBJECT: EPA Needs to Improve Its Recording and Reporting of Fines and Penalties
Report No. 10-P-0077

FROM: Melissa M. Heist
Assistant Inspector General for Audits

Melissa M. Heist

TO: Barbara J. Bennett
Chief Financial Officer

Cynthia Giles
Assistant Administrator for Enforcement and Compliance Assurance

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) conducted this report on the subject audit. This report contains findings that describe problems we identified and corrective actions we recommend. This report represents our opinion and does not necessarily represent the final EPA position. EPA managers will make final determinations on matters in this report in accordance with established audit resolution procedures.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$340,813.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed-upon actions, including milestone dates. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact me at (202) 566-0899 or heist.melissa@epa.gov, or Paul Curtis at (202) 566-2523 or curtis.paul@epa.gov.

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Chapter 1

Introduction

Purpose

We performed this review because Congress showed an interest in determining the effectiveness of the U.S. Environmental Protection Agency's (EPA's) billing and collection of fines and penalties.

The objectives of our review were to determine whether:

- EPA has billed and collected fines and penalties in a timely manner;
- EPA has taken appropriate action to collect fines and penalties; and
- EPA tracks the assessment, billing, and collection of fines and penalties to measure the impact of the enforcement program and promote accurate and transparent reporting.

Background

EPA's Office of Enforcement and Compliance Assurance (OECA) monitors compliance with environmental laws and takes enforcement action when needed. OECA assesses civil and criminal penalties as part of an enforcement action to provide a deterrent effect to noncompliance. Civil penalties may be administrative, judicial, or stipulated. Documents negotiated out of court, such as an administrative order on consent, provide the basis for administrative penalties. Judicial documents derived from court action, such as a consent decree, provide the basis for judicial penalties. A stipulated penalty is a fixed sum of money that a defendant agrees to pay for violating the terms of a consent decree.

Some of the major statutes that grant EPA the authority to assess penalties are the Clean Air Act; Clean Water Act; Safe Drinking Water Act; Comprehensive Environmental Response, Compensation, and Liability Act; Toxic Substances Control Act; Federal Insecticide, Fungicide, and Rodenticide Act; and Resource Conservation and Recovery Act.

OECA tracks civil fines and penalty assessments in its Integrated Compliance and Information System (ICIS) database and reports fines and penalty assessments in its annual Accomplishments Reports. For the 5 fiscal years ended September 30, 2008, EPA reported civil fines and penalty assessments of \$724 million as detailed in Table 1-1.

Table 1-1: EPA Civil Penalties Assessed¹ (in thousands)

	2004	2005	2006	2007	2008	Total
Administrative	\$28,000	\$27,000	\$42,000	\$30,700	\$38,200	\$165,900
Judicial	\$121,000	\$127,000	\$82,000	\$39,800	\$88,400	\$458,200
Stipulated	\$68,000	\$4,000	\$10,000	\$12,400	\$5,500	\$99,900
Total Civil Penalties	\$217,000	\$158,000	\$134,000	\$82,900	\$132,100	\$724,000

Source: OIG analysis of EPA data.

EPA assessed criminal penalties of \$316 million for the 5 fiscal years ended September 30, 2008. Criminal penalties are primarily payable to other entities. Accordingly, the other entities were responsible for those billings and collections.

EPA, the Department of Justice, and the Treasury's Debt Management Services all perform a role in the billing and collection of fines and penalties. EPA bills and collects administrative settlements and penalties. The Department of Justice bills and collects judicial settlements and penalties on behalf of EPA. EPA's Cincinnati Finance Center (CFC) records and tracks the billing and collection for debtors' current payments and issues dunning letters for delinquent accounts as needed. For eligible delinquent receivables, the Treasury's Debt Management Services provide collection services for EPA in accordance with the Debt Collection Act of 1996.

For the 5 fiscal years ended September 30, 2008, EPA recorded fines and penalty billings of \$694 million in the Integrated Financial Management System (IFMS). EPA's civil penalty assessments of \$724 million for the same period exceeded its billings by \$30 million. We could not determine the reasons for the \$30 million difference. Reconciling ICIS to IFMS was difficult because the databases lacked a common link or data field.

Of the \$694 million assessed and billed by EPA, the uncollected receivables – including interest, handling charges, and late payment penalties – totaled \$280 million as of April 14, 2009. Included in the uncollected receivables were three large default judgment civil penalties² totaling \$230 million that EPA considers to be uncollectible.

Noteworthy Achievements

In November 2008, EPA enhanced the Regional Hearing Clerk database with the capability to notify CFC of new administrative documents and make electronic copies of the documents available in the database. The enhancement improved EPA's ability to record receivables more timely by providing timely notification to CFC and eliminating the document mailing time from the regions to CFC.

¹ The amounts EPA reported for stipulated penalties represent the amounts collected, while the administrative and judicial penalties represent the amounts assessed.

² The court may assess a default judgment penalty for the maximum amount provided by law when the defendant fails to appear in court to defend a lawsuit.

Scope and Methodology

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted our audit from January through October 2009. Appendix A contains a more extensive discussion of our scope and methodology.

Chapter 2

Billings and Collections Not Recorded Timely

EPA did not consistently record fines and penalty billings in a timely manner. Regional and program office personnel did not forward copies of source documents timely to CFC as required by EPA’s Resources Management Directive System (RMDS). Also, EPA did not record a receivable for two disputed stipulated penalties totaling \$2,839,500. The Agency was uncertain about recording penalty amounts in dispute and did not follow established guidance for recording these accounts receivable. Untimely receipt of accounts receivable source documentation delays the recording of accounts receivable and the process of collecting delinquent receivables. The unrecorded receivable accounts understated the accounts receivable in the financial statements.

CFC Did Not Consistently Record Fines and Penalty Billings Timely

CFC received the source documents for 7 of 32 billings in our review more than 30 work days after the effective date of the legal document that established a debt to the Agency. Table 2-1 illustrates the billings, number of work days from the effective date to the receipt date, and the reason for the delays.

Table 2-1: Documents Received Over 30 Work Days from the Effective Date

Billing Document Number	Billed Amount	Number of Work Days from Effective Date to Receipt Date	Reason for Delays
1. 2740860A149	\$11,400,000	31	Time off and holiday leave.
2. 2750803A004	\$140,000	40	Regional personnel could not give a reason for the delay.
3. 4CD904312TX	\$122,000	99	Determining a penalty allocation between EPA and State required more time.
4. 2740803A142	\$1,250,000	33	Regional personnel waited for an allocation of funds between regions.
5. 2730842R247	\$3,164,555	70	Misunderstanding over which party would send documents.
6. 6CIVH01097X	\$37,500	90	Regional personnel could not give a reason for the delay.
7. 2750930B093	\$1,259,695	46	Regional personnel could not give a reason for the delay.

Source: OIG analysis of EPA data.

EPA did not consistently record fines and penalty billings in a timely manner. The Office of Regional Counsel and program offices did not forward copies of the

source documents to CFC timely. EPA personnel offered the following reasons for the delays in forwarding source documents: time off and holiday leave, determination of a penalty allocation that required more time, and a misunderstanding over which party would send the documents to CFC. For some documents, EPA could not provide a reason for the delay.

RMDS 2550D, Chapter 14, *Superfund Accounts Receivable and Billings*, requires regional counsel and enforcement offices to forward copies of all entered Superfund consent decrees and judgments to the finance office within 3 work days of receipt from the Department of Justice or the court. RMDS 2540, Chapter 9, *Receivables and Billings*, requires the responsible EPA office to forward a copy of the action document to the finance office within 5 days of determining that a debt is owed to EPA. Although EPA's requirements are 3 and 5 work days, we used a less rigorous standard of 30 work days in our testing.

Other factors also contributed to EPA's untimely recording of fines and penalties. EPA did not:

- Monitor the timely forwarding of documents to CFC,
- Establish performance measures to track the timely forwarding of source documents to CFC and to enforce accountability of Office of Regional Counsel and program office personnel, and
- Test the timeliness of forwarding source documents to CFC as a part of the Office of Management and Budget Circular A-123 review of internal controls.

The untimely receipt of accounts receivable source documents delays the recording of accounts receivable and the process of collecting delinquent receivables. Delayed recording of fines and penalties understates the accounts receivable in the financial statements.

EPA Did Not Record a Receivable for Two Stipulated Penalties

CFC did not record a receivable from a debtor corporation for two disputed stipulated penalties totaling \$2,839,500. EPA established a valid claim when it issued stipulated penalty demand letters based on the company's violation of provisions in a consent decree. Federal accounting standards require a federal entity to recognize a receivable when it establishes a claim against another entity. EPA's guidance requires a Servicing Finance Office (SFO) to carry any receivable amount that is under appeal or in litigation as an open receivable. The Agency was uncertain about recording penalty amounts in dispute and did not follow established guidance for recording these accounts receivable.

The consent decree provided for stipulated penalties under the Clean Air Act if the debtor did not comply with the terms of the agreement. When the debtor did not comply, EPA had a valid legal claim to the penalties and issued stipulated penalty demand letters. The consent decree requires the debtor to pay the penalties within 30 days of receiving EPA's written demand. If the debtor disputed the stipulated penalties, the consent decree stated that stipulated penalties shall continue to accrue during the dispute resolution, but need not be paid until the dispute was resolved.

Through inquiry of CFC personnel, we determined that CFC was unsure about recording the receivable. The Agency questioned the appropriateness of recording the disputed penalties because the judge's final order might change the penalty amount. CFC was looking into the matter and trying to determine what should be recorded.

Although the consent decree did not require payment of the penalties during dispute resolution, accounting standards and guidance requires EPA to record a receivable when established and carry it as an open receivable during the dispute resolution process. If the dispute resolution changed the penalty amount, EPA could then adjust the receivable. EPA, the Federal Accounting Standards Advisory Board, and the Government Accountability Office (GAO) have established guidance for recording accounts receivable when a claim is established and for recording transactions timely:

- RMDS 2540, Chapter 9, *Receivables and Billings*, states that the SFO must ensure that a debt is recorded in IFMS no later than 3 work days after receipt of the documents or other information informing them of the debt. SFOs must carry any amount that is under appeal or in litigation as open until the government changes its position regarding the amount that is due and payable, either as a result of a court decision or as a result of an administrative settlement directed by a responsible government official.
- The Federal Accounting Standards Advisory Board's Statement of Federal Accounting Standards Number 1, *Accounting for Selected Assets and Liabilities*, states that a receivable should be recognized when a federal entity establishes a claim to cash or other assets against other entities, either based on legal provisions or goods or services provided.
- GAO's *Standards for Internal Control in the Federal Government*, dated November 1999, defines the five standards for the minimum level of quality acceptable for internal control in government. The standard for control activities requires accurate and timely recording of transactions and events.

The unrecorded receivable understated the accounts receivable in the financial statements.

Conclusion

EPA did not consistently record fines and penalty billings in a timely manner because regional and program office personnel did not forward copies of source documents timely to CFC. EPA also did not monitor whether documents were forwarded timely to CFC, establish performance measures for timeliness, or test the related internal controls. If EPA implemented those control activities, it could become more timely in forwarding source documents to CFC, recording accounts receivable, and collecting receivables.

EPA did not initially record a receivable for two disputed stipulated penalties. The Agency was uncertain about recording penalty amounts in dispute and did not follow established guidance for recording these accounts receivable. Accounting standards and guidance required CFC to record the receivable when it was established. By recording receivables timely, EPA would properly state the accounts receivable in the financial statements.

Recommendations

We recommend that the Chief Financial Officer:

- 2-1 Work with the Agency program offices to implement performance measures to track the timeliness of forwarding accounts receivable source documents to CFC and issue performance reports to the Agency program offices and regions for accountability.
- 2-2 Analyze and document the current process of forwarding accounts receivable source documents to CFC and review it for effectiveness. Upon completion, develop a plan for testing key internal controls and correcting any deficiencies as part of the Office of Management and Budget Circular A-123 review of internal controls.
- 2-3 Record the billings in IFMS for the two stipulated penalties.
- 2-4 Develop a policy on fines and penalties to clarify when a stipulated penalty becomes an account receivable.

Preliminary Agency Actions

Subsequent to our audit field work, EPA established a receivable for the two stipulated penalties. CFC recorded the first penalty for \$1,682,500 because EPA received a judge's verbal ruling and the second penalty for \$1,157,000 because EPA received a judge's written opinion and order. EPA's corrective action has satisfied our Recommendation 2-3 to record the billings in IFMS for the two stipulated penalties.

Agency Comments and OIG Evaluation

The OIG made changes to the report based on the Agency's comments where appropriate. Appendix B provides the full text of the Agency comments.

EPA agreed with recommendations 2-1 and 2-3. We revised recommendation 2-2 to provide for analysis and documentation of the current process of forwarding accounts receivable source documentation to CFC before testing the effectiveness of the internal controls. We also added recommendation 2-4 to develop a policy for recording stipulated penalties. Based on these revisions, EPA agreed with all four recommendations.

EPA believes it generally recorded fines and penalties in a timely manner, and OIG's findings were only exceptions. We believe our statement that EPA did not consistently record fines and penalty billings in a timely manner is fair and our review results support it. We reported that CFC received the source documents for 7 of 32 billings in our review more than 30 work days after the effective date of the legal document that established a debt to the Agency. The rate of untimely receipt of documents is significant. In fact, if we had used EPA's requirements of 3 or 5 days, the error rate would have been 18 of 32 received late.

OECA does not believe that the initial demand letter for payment of stipulated penalties is always a basis for creating an account receivable. Accordingly, EPA plans to develop a policy for recording accounts receivable for stipulated penalties. We do not object to EPA developing a policy if it complies with the standards of the Federal Accounting Standards Advisory Board. Therefore, we added a recommendation for EPA to develop a policy. Federal Accounting Standards Advisory Board number 1, *Accounting for Selected Assets and Liabilities*, states that a receivable should be recognized when a federal entity establishes a claim to cash or other assets against other entities, either based on legal provisions, such as a payment due date (e.g., taxes not received by the date they are due), or goods or services provided. If the exact amount is unknown, a reasonable estimate should be made. We believe that an initial demand letter for stipulated penalties based on a legal document, such as a consent decree, is a basis for creating an account receivable. RMDS 2540, Chapter 9, requires EPA to carry any amount that is under appeal or in litigation as open until the government changes its position regarding the amount that is due and payable, either as a result of a court decision or as a result of an administrative settlement directed by a responsible government official. We believe the RMDS 2540 standard should apply to a stipulated penalty.

Chapter 3

Improvements Needed in Monitoring EPA's Accounts Receivable

EPA generally took appropriate action to collect fines and penalties. However, EPA did not monitor the collections on a Region 10 Superfund receivable as required by EPA's guidance. CFC did not request the regional staff to resolve the outstanding delinquent debt, which at the time of our review was \$298,851, and regional staff did not assign the responsibility for collecting the outstanding debt. Due to the lack of monitoring, EPA was not collecting payments on the debt.

EPA Did Not Monitor the Collection Activity on a Receivable

We reviewed EPA's collection efforts on 30 delinquent penalties totaling \$19,215,096, or 56 percent of the testing universe totaling \$34,353,418. EPA performed its collection efforts satisfactorily on 29 of the 30 samples reviewed. However, EPA did not monitor the collections on a Region 10 Superfund receivable for a criminal restitution penalty, billing document (BD) #2700630B058. The local county government court required the debtor to serve a jail sentence and make \$300,000 restitution to EPA, payable monthly based on a percent of his income during and after his jail term. At the time of our review, the account balance was \$298,851. CFC identified the receivable as delinquent and requested an EPA attorney to provide an estimate of collectibility. However, no one at EPA monitored the debtor's release from jail and subsequent employment or investigated the reason why periodic collections were not received.

RMDS 2550D, Chapter 14, *Superfund Accounts Receivable and Billings*, states that the SFO provides general accounting and financial management services in the regions and field offices and for Headquarters. The SFO's responsibilities include:

- Monitoring the status of accounts receivable until paid or liquidated;
- Advising the legal and program offices when a receivable becomes delinquent; and
- Requesting that the assigned regional Legal Enforcement Office/Office of Regional Counsel staff initiate the appropriate enforcement action to resolve the outstanding debt.

CFC did not request the regional staff to resolve the outstanding delinquent debt and regional staff did not assign the responsibility for collecting the outstanding debt. EPA employees from the regional counsel, regional program office,

Criminal Investigation Division, and CFC who were familiar with the case stated that they were not responsible for tracking the collections on the receivable. Region 10 relied on the U.S. Attorney's Office in the region to monitor the receivable and relied on the probation officer to monitor the debtor's activities. However, the Department of Justice did not get involved with the case because the local county court assessed the receivable. Region 10 could improve its collection experience by assigning responsibility for monitoring the receivable and for resolving the debt.

The local county government's office stated that the debtor was making payments from his paycheck to the county, which in turn paid EPA. The county office could not forward the November 12, 2008, and April 28, 2009, payments of \$24 each to EPA because the post office returned the November payment due to an incorrect mailing address. EPA was not aware of the debtor's current ability to pay or the local county government's undelivered payments to EPA. Due to the lack of monitoring, EPA was not collecting payments on the debt.

Conclusion

Based on our testing, we found one unusual instance in Region 10 involving a local court order that required payments from a criminal defendant. EPA did not monitor collections on this receivable as required by EPA's guidance. Our testing otherwise indicated that EPA generally took appropriate action to collect fines and penalties. Region 10 could improve its collection experience by assigning responsibility for monitoring the Superfund receivable and resolving the debt. OECA is responsible for Superfund enforcement efforts.

Recommendations

We recommend that the Chief Financial Officer:

- 3-1 Notify the regional assignee that the debt for BD #2700630B058 is delinquent and request they work to resolve it.

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

- 3-2 Ensure that Region 10 assigns the responsibility for monitoring the outstanding debt for BD #2700630B058 and provides the name of the assignee to CFC.

Preliminary Agency Actions

Subsequent to our audit field work, CFC notified Region 10 that the debt for BD #2700630B058 is delinquent and requested they work to resolve it. Region 10 assigned the responsibility for monitoring the outstanding debt and provided the

name of the assignee to CFC. EPA's corrective actions have satisfied recommendations 3-1 and 3-2.

Agency Comments and OIG Evaluation

EPA agreed with our recommendations. The OIG made changes to the report based on the Agency's comments where appropriate. Appendix B provides the full text of the Agency's comments.

Chapter 4

Enforcement Penalty Data Not Completely Accurate

We found seven errors totaling \$139,242 in OECA's ICIS database during our review of Fiscal Year (FY) 2008 civil penalty assessments of \$100,000 or higher. OECA's reporting and certification process did not detect the errors. OECA requires regions and OECA offices to certify that the data entered in the national database are complete and correct. OECA did not reconcile the penalty assessment amounts to billings recorded in IFMS, a control activity that would have helped EPA detect the errors, because it was not involved with penalty billings. As a result, OECA reported some inaccurate penalty data.

Errors in Penalty Data in ICIS Identified

We found seven incorrect penalty amounts that overstated the annual penalty assessment by \$139,242. We reviewed 156 FY 2008 civil penalty billings of \$100,000 or higher related to 117 assessments. EPA personnel in the regions and OECA offices enter penalty assessment data into ICIS. OECA's Enforcement and Compliance FY 2008 Reporting Plan requires regions and OECA offices to certify that the data entered in the national database are complete and correct

Table 4-1 provides the details of the penalty misstatements in ICIS.

Table 4-1: Penalty Misstatements in ICIS

Enforcement Action Identifier	Final Order Date	Federal Penalty Assessed (in ICIS)	Billing Document Number	Billed Amount (in IFMS)	Overstated (Understated) in ICIS
01-2007-5000	06/30/08	\$125,311	2710842R106	\$31,724	\$93,587
03-2008-0103	09/18/08	\$122,982	2730875Z356	\$50,000	\$72,982
04-2006-9037	04/09/08	\$6,700,000	2740843W296	\$6,719,598	\$(19,598)
05-2003-0255	01/29/08	\$750,000	2750803A199	\$760,000	\$(10,000)
08-2003-0244	05/14/08	\$211,593	2780843W130	\$181,124	\$30,469
08-2006-0080	03/26/08	\$150,000	2780803A101	\$176,000	\$(26,000)
09-2008-7002	08/21/08	\$2,640,000	2790847X313	\$2,642,198	\$(2,198)
Totals		\$10,699,886		\$10,560,644	\$139,242

Source: OIG analysis of EPA data.

OECA's reporting and certification process did not detect all the penalty errors in the ICIS database. Reconciling the assessment amounts in ICIS to the billings recorded in IFMS is a control activity that would have helped EPA to detect the errors. OECA did not perform the reconciliation because it was not involved with penalty billings. CFC records and tracks all EPA penalty billings and collections. Since EPA tracked penalty assessments and billings through separate program offices, the ICIS and IFMS databases did not have a common data field, or

common link, that would facilitate a reconciliation of penalties recorded in the databases. We attempted to reconcile the penalty amounts in ICIS and IFMS and found the reconciliation to be difficult without a common link. We were not able to reconcile the \$30-million difference between OECA's penalty assessments and CFC's billings for the 5 fiscal years ended September 30, 2008.

Reconciliations are a control activity to verify the completeness and accuracy of data. GAO's *Standards for Internal Control in the Federal Government*, dated November 1999, states that control activities, including reconciliations, are an integral part of an entity's planning, implementing, reviewing, and accountability for stewardship of government resources and achieving effective results.

As a result of the errors in ICIS, OECA reported some inaccurate data in its annual Accomplishments Report. Without performing a reconciliation, management assumes a greater risk that financial data may not be complete and accurate.

Conclusion

OECA's ICIS database contained errors in the FY 2008 penalty assessment amounts that OECA's reporting and certification process did not detect. EPA could implement a control activity to detect penalty data errors by reconciling the penalty amounts in ICIS and IFMS. The reconciliation would reduce the risk of errors and promote more accurate reporting.

Recommendations

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

4-1 Correct the fines and penalty errors identified in this report in ICIS.

We recommend that the Chief Financial Officer and the Assistant Administrator for Enforcement and Compliance Assurance work together to:

4-2 Develop a common link between ICIS and IFMS to facilitate the reconciliation of the penalty-assessed amounts in ICIS to the penalty-billed amounts in IFMS.

4-3 Perform an annual reconciliation of the penalty-assessed amounts in ICIS to the penalty-billed amounts in IFMS.

Agency Comments and OIG Evaluation

EPA agreed with our recommendations. The OIG made changes to the report based on the Agency's comments where appropriate. Appendix B provides the full text of the Agency's comments.

Chapter 5

EPA Reported Penalty Assessments but Not Collections

EPA tracked the assessment, billing, and collection of fines and penalties but used the assessments, and not the collections, as one of the measures of the enforcement program's impact. OECA publicly reported in its annual Accomplishments Report the penalty assessments but not the collections. OECA believes that assessments are the key measure for reporting to the public. However, OECA's report without collection data did not promote transparency and open government. A January 2009 Presidential memorandum called for a commitment to open government and transparency, which promotes accountability and provides information for citizens about what their government is doing. Since EPA did not collect a significant amount of penalty assessments, EPA's reporting of penalty information was not completely accurate and transparent and may have overstated the impact of the enforcement program.

EPA Disclosed Penalty Assessments but Not Collections for Enforcement Accomplishments

OECA publicly reported in the annual Accomplishment Report the amount of fines and penalties assessed but not the amount of collections. For the 5 fiscal years ended September 30, 2008, OECA reported civil fines and penalties assessed of \$724 million. As of April 14, 2009, EPA had not collected \$279,644,975 of the penalties, a significant portion of the assessed amount. The uncollected penalties include three large default judgment penalties from civil judicial cases totaling \$229,706,860. The Agency believes these three penalties are unlikely ever to be collected, and the removal of these penalties would result in a significant reduction in the overall level of penalties that EPA reports.

The President's Memorandum on Transparency and Open Government, dated January 21, 2009, states that the Administration is committed to creating an unprecedented level of openness in government. According to the memo, "Government should be transparent. Transparency promotes accountability and provides information for citizens about what their government is doing." By disclosing penalty collections along with assessments, EPA would help support the Administration's commitment to openness and transparency in government.

GAO recommended that EPA report its penalty collections. The GAO report, *Environmental Enforcement: EPA Needs to Improve the Accuracy and Transparency of Measures Used to Report on Program Effectiveness*, dated September 18, 2008, stated that EPA is overstating the impact of the enforcement programs by reporting penalties assessed against violators rather than actual

penalties that the U.S. Treasury received. This situation may overstate the impact of the enforcement programs by reflecting penalties that have not or will not be collected. GAO recommended that when reporting the amount and nature of penalties stemming from enforcement actions, the EPA Administrator should disclose federal penalties collected as well as assessed. OECA responded to GAO that it did not report penalty collections because it believes that reporting penalties assessed is the key measure for reporting to the public.

Since EPA did not collect a significant amount of assessments, OECA may have overstated the impact of the enforcement program by reporting penalty assessments but not the collections. OECA's reporting may undermine the transparency and accuracy of EPA's reported outcomes, cause EPA to overstate its enforcement achievements, and create the potential for Congress and the public to misunderstand the Agency's enforcement outcomes.

Conclusion

EPA used penalty assessments as one of the measures of the enforcement program's impact. OECA publicly reported the penalty assessments but not the collections. Since EPA did not collect a significant amount of the penalty assessments, OECA's reports might have overstated the impact of the enforcement program. EPA could support the Administration's commitment to openness and transparency in government by reporting penalty collections as well as the assessments.

Recommendation

We recommend that the Assistant Administrator for Enforcement and Compliance Assurance:

- 5-1 Disclose fines and penalties collected as well as assessed when reporting the amount and nature of fines and penalties based on enforcement actions. Since EPA does not collect all penalties in the year assessed, reporting total assessments and collections for a combined group of years may be a reasonable approach to disclosure.

Agency Comments and OIG Evaluation

EPA agreed with our recommendation. The OIG made changes to the report based on the Agency's comments where appropriate. Appendix B provides the full text of the Agency's comments.

EPA emphasized that if it provided public information on its penalty collections, the report would need to consider the important timing differences between penalty assessments, billings, and collections. We agree there are timing differences between the assessment and collection of penalties. However, timing

differences accounted for only a small portion of the uncollected penalties in our review. For the 5 fiscal years ended September 30, 2008, EPA recorded penalties totaling \$694 million, with \$280 million of that amount uncollected as of April 14, 2009. Of the \$280 million, \$264 million was delinquent and only \$16 million was not yet due. We believe that when EPA provides public information on its penalty collections, EPA should develop the report considering the reasons for delinquencies as well as timing differences. The OIG recommendation provides EPA considerable discretion in determining how it will report penalty collections.

OECA stated that the billing and collection of penalties are not an enforcement function. We disagree because billings and collections both represent accomplishments and serve as a deterrent to noncompliance with environmental statutes. EPA could increase its transparency by reporting penalty collections to the public as well as assessments.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
2-1	7	Work with the Agency program offices to implement performance measures to track the timeliness of forwarding accounts receivable source documents to CFC and issue performance reports to Agency program offices and regions for accountability.	O	Chief Financial Officer	December 2010		
2-2	7	Analyze and document the current process of forwarding accounts receivable source documents to CFC and review it for effectiveness. Upon completion, develop a plan for testing key internal controls and correcting any deficiencies as part of the Office of Management and Budget Circular A-123 review of internal controls.	O	Chief Financial Officer			
2-3	7	Record the billings in IFMS for the two stipulated penalties.	C	Chief Financial Officer	08/18/09	\$2,840	\$2,840
2-4	7	Develop a policy on fines and penalties to clarify when a stipulated penalty becomes an account receivable.	O	Chief Financial Officer	12/31/10		
3-1	10	Notify the regional assignee that the debt for BD #2700630B058 is delinquent and request they work to resolve it.	C	Chief Financial Officer	05/04/09	\$299	\$299
3-2	10	Ensure that Region 10 assigns the responsibility for monitoring the outstanding debt for BD #2700630B058 and provides the name of the assignee to CFC.	C	Assistant Administrator for Enforcement and Compliance Assurance	07/30/09		
4-1	13	Correct the fines and penalty errors identified in this report in ICIS.	C	Assistant Administrator for Enforcement and Compliance Assurance	01/06/10		
4-2	13	Develop a common link between ICIS and IFMS to facilitate the reconciliation of the penalty-assessed amounts in ICIS to the penalty-billed amounts in IFMS.	O	Chief Financial Officer and Assistant Administrator for Enforcement and Compliance Assurance			
4-3	13	Perform an annual reconciliation of the penalty-assessed amounts in ICIS to the penalty-billed amounts in IFMS.	O	Chief Financial Officer and Assistant Administrator for Enforcement and Compliance Assurance			
5-1	16	Disclose fines and penalties collected as well as assessed when reporting the amount and nature of fines and penalties based on enforcement actions. Since EPA does not collect all penalties in the year assessed, reporting total assessments and collections for a combined group of years may be a reasonable approach to disclosure.	O	Assistant Administrator for Enforcement and Compliance Assurance			

¹ O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is undecided with resolution efforts in progress

Appendix A***Details on Scope and Methodology***

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We conducted our audit from January through October 2009. We reviewed EPA's processes for billing and collection of fines and penalties. To gain an understanding of the processes, we interviewed personnel in CFC and OECA. We reviewed OECA's Accomplishments Reports and obtained data reports of fines and penalty assessments, billings, and collections for FYs 2004 through 2008.

We conducted field work for billing and collections in CFC where the accounts receivable and collection processing occurs. For billings, we tested a sample of fines and penalties to determine whether EPA recorded them timely. We used the monetary unit method of statistical sampling to select 32 billings totaling \$63,198,005 out of 2,453 billings totaling \$133,087,641 from FY 2008 and the first quarter of FY 2009. For collections, we tested a sample of uncollected fines and penalties to determine whether EPA took appropriate action to collect them. We used judgmental sampling to select a diversified sample of penalty accounts with different status codes, aging, and amounts. We selected 30 fines and penalties totaling \$19,215,096 out of 385 totaling \$264,060,278 from the 5 fiscal years ended September 30, 2008. We separately reviewed three large default judgment civil penalties totaling \$229,706,860 that EPA considered uncollectible.

We assessed EPA's internal controls related to the tracking and reporting of assessments and the billing and collection of fines and penalties. We gained an understanding of the internal controls through interviews of finance office and OECA personnel, examination of supporting documentation for selected billing and collection transactions, and comparison of assessment data in ICIS to billing data in IFMS. We did not review the internal controls over IFMS from which we obtained data reports, but relied on the review conducted during the audit of EPA's FY 2008 financial statements.

We reviewed the following prior EPA OIG and GAO reports that had findings and recommendations related to billing and collections and to accurate and transparent reporting of OECA's program effectiveness.

Table A-1: Prior Reports Reviewed

Report Title	Report No.	Date
Environmental Enforcement: EPA Needs to Improve the Accuracy and Transparency of Measures Used to Report on Program Effectiveness	GAO-08-1111R	September 18, 2008
Audit of EPA's Fiscal Year 2007 and 2006 (Restated) Consolidated Financial Statements	08-1-0032	November 15, 2007
Region 5's Billing and Collection of Accounts Receivable	E1AMB6-05-0079-7100139	March 26, 1997

Source: OIG analysis.

Both OIG reports disclosed internal control weaknesses in establishing receivables timely because the regional offices did not timely forward accounts receivable source documents to the finance office. Our current review found that these internal control weaknesses still exist. According to the GAO report, EPA overstated the impact of the enforcement program by reporting penalties assessed against violators rather than actual penalties that the Treasury received. EPA disagreed with GAO's recommendation to report penalties collected as well as assessments. EPA stated that reporting penalties assessed is the key measure for reporting to the public. While EPA agreed that penalties collected is a useful internal management measure, EPA did not believe that penalties collected should be publicly reported when EPA announces individual case settlements or in its Annual Results.

Appendix B***Agency Response to Draft Report***

December 23, 2009

MEMORANDUM

SUBJECT: Response to the Office of Inspector General Draft Audit Report: EPA Needs to Improve Its Recording and Reporting of Fines and Penalties.

FROM: Barbara J. Bennett
Chief Financial Officer

TO: Bill A. Roderick
Acting Inspector General

Thank you for providing us with the opportunity to comment on and respond to the findings and recommendations made in the “Draft Audit Report: EPA Needs to Improve Its Recording and Reporting of Fines and Penalties.” On behalf of the Agency, attached is our response to the specific audit findings and recommendations made in the report.

If you have any questions concerning the audit response, please contact Stefan Silzer, Acting Director, Office of Financial Management, at 564-5389 or Jeanne Conklin, Staff Director, Financial Policy and Planning Staff, at 564-5342.

Attachments

cc: Paul Curtis
Arthur Budelier
Cynthia Giles
Mathy Stanislaus
Maryann Froehlich
Joshua Baylson
Stefan Silzer
Raffael Stein

OCFO's Response to OIG Draft Report

"EPA Needs to Improve its Recording and Reporting of Fines and Penalties" Assignment No. 2009 – 0803

This document is comprised of the following sections:

1. Table of Response to OIG's nine recommendations
2. General comments regarding the recommendations
3. OCFO/OECA Specific Joint Comments by page number
4. OECA Specific Comments by page number

1. Table of Response to OIG's nine recommendations

Rec. No.	Subject	Action Official (s)	Recommendation	Planned Completion Date
2-1	Work with the Agency program offices to implement performance measures to track the timeliness of forwarding accounts receivable source documents to CFC and issue performance reports to Agency program offices and regions for accountability.	OCFO/OFM	OCFO agrees with this recommendation. OCFO Office of Financial Management will establish an Agency-wide workgroup to develop and implement performance measures and performance reports.	Dec. 2010
2-2	Test the timeliness of forwarding accounts receivable source documents to CFC as part of the Office of Management and Budget Circular A-123 review of internal controls.	OCFO/OFS	In accordance with A-123 guidance, tests of operating effectiveness will not be developed for ineffectively designed controls. Rather, we recommend this recommendation be changed to: "Analyze and document the current process and review it for effectiveness. Upon completion thereof, management will develop a plan for testing key internal controls and correcting any deficiencies." In support of OCFO, OECA and the EPA regions will take steps to assure that penalty assessments are timely forwarded to OCFO.	Ongoing
2-3	Record the billings in IFMS for the two stipulated penalties.	OCFO/OFS	EPA established a receivable for the two stipulated penalties	Completed
3-1	Notify the regional assignee that the debt for BD# 2700630B058 is delinquent and request they resolve it.	OCFO/OFS/CFC	CFC has contacted the regional office through 'Collection Estimate' emails, which indicate a debt is outstanding and request information regarding the debt. Since this is a restitution case, there is no additional work they can do to 'resolve' the debt. However, CFC will work with Region 10 to maintain a current status of this debtor through the Court system.	Ongoing
3-2	Ensure that the Region 10 Office of Regional Counsel assigns the responsibility for monitoring the outstanding debts for BD# 2700630B058 and provides the name of the assignee to CFC.	Re-assign to OECA	Region 10 has assigned the responsibility for monitoring the outstanding debt and provided the name of the assignee to CFC.	Completed

4-1	Correct the fines and penalty errors identified in this report in ICIS.	OECA	OECA will correct the errors.	March 31, 2010
4-2	Develop a common link between ICIS and IFMS to facilitate the reconciliation of the penalty-assessed amounts in ICIS to the penalty-billed amounts in IFMS.	OECA/OCFO (CFC)	OECA and OCFO will jointly explore potential methods and their costs for reconciling penalty data. We anticipate selecting an appropriate method for reconciliation by March 31, 2010, with the intention of performing a first reconciliation in FY 2010.	Ongoing
4-3	Perform an annual reconciliation of the penalty- assessed amounts in ICIS to the penalty-billed amounts in IFMS.	OECA/OCFO (CFC)	See response to 4-2 above.	Ongoing
5-1	Disclose fines and penalties collected as well as assessed when reporting the amount and nature of fines and penalties based on enforcement actions. Since EPA does not collect all penalties in the year assessed, reporting total assessments and collections for a combined group of years may be a reasonable approach to disclosure.	OECA	OECA and OCFO will jointly undertake a feasibility assessment to examine approaches to public disclosure of penalties collected data. This feasibility assessment will be completed by the end of the first quarter of FY 2011. OECA and OCFO believe their first priority is to address IG recommendations 4-2 and 4-3 in an effort to gain better understanding of the recommendations once implemented.	Ongoing

2. General comments regarding the recommendations

A) OECA and OCFO appreciate the work performed on this audit and will use this opportunity to further improve procedures. It is our belief with a few exceptions as reported in this audit that EPA records all penalty assessments, as well as billings and collections in a timely and accurate manner. In our opinion this report treats these exceptions as if they are the rule not exceptions to the rule.

Overall, the report demonstrates the level of success that OECA has had in the accuracy of its recording and reporting of penalty data. Although the IG makes very little mention of this, it is a fact established by the IG's findings that the errors found were a small percentage of the numbers of reports and the total dollar values involved. For example, on page 10 of the draft report, the IG states EPA's penalty assessments announced for FY 2008 "overstated" the actual amount by \$139,242. The errors found represent only 0.1% of the total penalties assessed. OECA considers this a success, and would like the IG to consider recognizing it as such.

OECA will continue to strive to identify and amend all data errors. OECA agrees that there must be reconciliation between their penalty assessment numbers and our billing and collection numbers.

Below we suggest a number of edits to the report that reflect the overall quality of the work that OCFO and OECA are performing today. Both OCFO and OECA continue to remain open to implement the recommendations of the IG in order to make further improvements.

B) There are important timing differences the IG should recognize that require differential treatment of penalty assessments and penalty billing and collections. Not all penalty assessments are due immediately. The time period can range from one to two months, and in some cases, may extend for years. Accordingly, this time must be factored in for billings and collections

purposes. This means that when EPA determines a civil penalty during a fiscal year, that does not mean that all of that amount is legally due and should have been billed and collected in that same fiscal year. Thus, to the extent the Agency decides to provide public information on its penalty collections, this report will need to be developed considering these factors.

3. OCFO/OECA Specific Joint Comments by page number

A) OECA disagrees with the statement on page 12 of the draft report, "Since EPA did not collect a significant amount of penalty assessments, OECA did not promote accurate and transparent reporting and may have overstated the impact of the enforcement program." The billing and collection of penalties are not an enforcement function. Therefore, if some penalties are not collected or deemed not collectable this does not represent an overstatement of the accomplishments of EPA's enforcement program. While recognizing that billing and collection information is important, penalty assessments are an equally important measure of the deterrent value of EPA enforcement actions. Penalty assessments serve to notify the regulated community and the public concerning the important consequences for noncompliance.

Contrary to the IG's statement, OECA has accurately and transparently reported penalties assessed. Given the circumstances of the uncollectible penalties identified, (i.e., assessed via default judgment), it should be noted that uncollectible penalties in no way represent a shortcoming of any EPA program. OECA's role is to obtain penalty assessments.

Nevertheless, OECA and OCFO recognize there is an opportunity to provide the public with information on penalty collections and thus are committed to exploring the feasibility of doing so. OECA and the regions recognize that it is necessary to convey assessment information to OCFO in a timely manner so that OCFO can carry out its function.

B) The IG indicates on page 10 that it reviewed 156 FY 2008 civil penalty assessments of \$100,000 or higher. OECA's list of the \$100,000 or higher FY 2008 civil penalty assessments shows only 117 such assessments. Attachment 1 is OECA's list. Since OECA has not seen the IG's list of 156 assessments, we do not know why there is a difference in our counts. We believe the IG is counting a penalty assessment in a single case that was internally split among the regions, as a separate penalty assessment for each region that received a split of the penalty. In contrast, OECA only counts one penalty assessment for such cases and ignores the internal allocations of the penalty amounts among the regional offices that participated in the case. OECA increases its count to 167 if all the regions pieces of these cases are counted. The IG and OECA should confirm this is correct before the final report is published.

C) OECA does not believe that the initial demand letter concerning payment of stipulated penalties is necessarily or always a basis for creating an accounts receivable. The initial demand letter often is just the beginning of the process for obtaining the facts and analysis that lead to a specific penalty amount that would support creating an accounts receivable. The stipulated penalty amount that is finally agreed upon is based on additional information received from the defendant about the purported violations that underlie the initial demand, including factual issues and mitigating circumstances.

OECA and OCFO believe that a policy must be issued that would assist the EPA regions in making the determination whether stipulated penalty requests constitute a penalty assessment, thus requiring an accounts receivable to be opened. To remedy this situation, OCFO's Office of Financial Management will be establishing a workgroup in January 2010 with the objective of writing a policy on fines and penalties.

OECA and OCFO, with assistance from the Office of General Counsel, and in conformance with the FASAB standards, will draft this policy. One portion of this policy will be to clarify when a stipulated penalty becomes an account receivable, thus prompting OECA to notify OCFO. This policy will be completed and issued by the end of CY 2010. The IG is welcome to add this commitment to the Report as an additional recommendation.

4. OECA-specific comments by page number

A) In the summary section of the report, titled, "At A Glance: What We Found":

1. The language used by the IG in this summary paragraph is overly harsh. EPA generally does a very good job tracking penalty assessments, billings, and collections despite some obstacles. OECA does not believe that the IG's findings support the use of the harsh language in this section or elsewhere in the report.

2. The IG makes the statement, "EPA tracked the assessment, billing, and collection of fines and penalties. However, it used only the assessments, and not the collections, to measure the impact of the enforcement program." OECA wants to assure that the IG understands that EPA uses measures in addition to penalty assessments to measure the impact of our enforcement program (e.g., pollutant reduction, value of injunctive relief, health benefits). The way this sentence is drafted implies that EPA only uses penalty assessments as a measure.

3. To acknowledge the general success of EPA in tracking penalty assessments, EPA proposes that the IG change the first and third paragraphs to read,

EPA generally recorded fines and penalty billings in a timely manner, though we found a few exceptions. Regional and program office personnel generally forwarded copies of source documents timely to CFC, though again there were a few exceptions which delayed the recording of accounts receivable. EPA did not record a receivable as required for two disputed stipulated penalties totaling \$2,839,500.

EPA tracked the assessment, billing, and collection of fines and penalties. EPA used the assessments, and not the collections, to measure the impact of the enforcement program. OECA's data system for tracking EPA enforcement actions contained seven errors totaling \$139,242 in the penalty assessment amounts out of 156 assessments reviewed. These seven errors constituted 0.13 percentage of the total amount from these 117 assessments. Due to these data errors, information released by EPA on its enforcement actions was not

completely accurate. Assuring more accurate reporting would increase the transparency of EPA's penalty data.

B) Regarding the data table at the top of page 2 of the report and the text related to this table, the stipulated penalty amounts that EPA measures are stipulated penalty paid amounts, not assessed amounts. EPA adds judicial and administrative penalties together for an annual civil penalty assessed total but we do not add in stipulated penalties. We report stipulated penalties separately. The administrative and judicial penalties that we count are the penalty amounts assessed by the court or administrative law judge. The stipulated penalty amounts are penalty amounts that have been paid. We don't add them together to avoid combining unlike figures.

C) Again, to recognize EPA's generally strong performance, OECA suggests that the first paragraph on page 4 be changed to read,

EPA generally recorded fines and penalty billings in a timely manner, though there were some exceptions. Regional and program office personnel generally forwarded copies of source documents timely to CFC as required by EPA's Resources Management Directive System, though again there were exceptions. Also, EPA did not record a receivable for two disputed stipulated penalties totaling \$2,839,500. The Agency was uncertain about whether to record penalty amounts in dispute and did not follow established guidance for recording these accounts receivable. Untimely receipt of accounts receivable source documentation delays the recording of accounts receivable and the process of collecting delinquent receivables. The unrecorded receivable understated the accounts receivable in the financial statements.

For the same reasons, OECA also proposes that the paragraph that begins at the bottom of page 4 be revised to read,

Though EPA generally recorded fines and penalty billings in a timely manner there were seven exceptions identified. Where these exceptions occurred, the Office of Regional Counsel and program offices had not forwarded copies of the source documents to CFC timely. EPA personnel offered the following reasons for the delays in forwarding the source documents in these instances: time off and holiday leave, determination of a penalty allocation that required more time, and a misunderstanding over which party would send the documents to CFC. For three of the seven documents, EPA could not provide a reason for the delay.

OECA also proposes that the associated section titles be changed to match the more positive tone of this revised paragraph.

D) Again, to recognize the generally strong job that EPA does in recording penalty billings, we request that the first sentence of the conclusion on Page 7 be changed to read,

EPA generally recorded fines and penalty billings in a timely manner though there were exceptions that occurred because regional and program office personnel had not timely forwarded copies of source documents timely to CFC.

E) Concerning the Chapter 3 conclusion on page 9 of the report, to clearly note the very unusual circumstance surrounding the problem uncovered, we propose that it be changed to read,

Based on our testing, we concluded that EPA generally took appropriate action to collect fines and penalties. We did find one instance, in a very unusual case involving a local court order that required a criminal defendant to make payments to EPA, that EPA did not monitor the collections on a Region 10 receivable as required by EPA's guidance. Region 10 could improve its collection experience by assigning responsibility for monitoring the Superfund receivable and resolving the debt. The Office of Enforcement and Compliance Assurance is responsible for Superfund enforcement efforts.

Also, EPA criminal enforcement matters, Superfund and otherwise, are an OECA responsibility, not a responsibility of the Office of Solid Waste and Emergency Response. This necessitates a change to the language of recommendation 3-2 as well.

F) On page 10, EPA proposes that the subtitle be changed to, "EPA Maintained Highly Accurate Penalty Data in ICIS, though Several Errors were Identified." This again is to reflect EPA's generally strong performance. For the same reason, we suggest the language of the paragraph that follows this subtitle be changed to read,

EPA personnel in the regions and OECA offices enter penalty assessment data into ICIS. OECA's Enforcement and Compliance FY 2008 Reporting Plan requires regions and OECA offices to certify that the data entered in the national database is complete and correct. However, OECA's FY 2008 ICIS penalty assessments data was not completely accurate. We reviewed 156 FY 2008 civil penalty assessments of \$100,000 or higher and found seven incorrect penalty amounts that overstated the annual penalty assessment total by \$139,242 which was only 0.13 percent of the penalty amounts we reviewed. Table 4-1 provides the details of the seven penalty misstatements in ICIS.

F) Concerning the last sentence of the paragraph that carries over to the top of page 13, "OECA believes it should not publicly report collections when EPA announces individual case settlements or publishes its Accomplishment Reports," we wish to assure that it is understood that it would not be possible to announce collections at the time we announce settlements in that penalties are not due to be paid at the time that EPA issues its individual case press releases, at the point of lodging of the judicial consent decree or approval of the administrative consent agreement. The penalties are due some time later, usually 30 or 60 days later.

H) To acknowledge the impact of the time lag between assessment and payment of penalties, OECA proposed revisions of recommendation 5-1 to read as follows:

Disclose total fines and penalties collected as well as assessed when publicly reporting the amount of fines and penalties. Since there are legitimate time lags between when a penalty is assessed, when it becomes legally due and the billing and collection process, EPA may need to develop a separate way to report penalty collections from its existing annual penalty assessment reports.

I) OECA has additional minor, editorial comments on the report that they would like to share with OIG at OIG's convenience.

Appendix C

Distribution

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Assistant Administrator for Enforcement and Compliance Assurance
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