



Office of Inspector General
Audit Report

SUPERFUND

Superfund Interagency Agreements

Report No. 2001-P-00011

June 22, 2001

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June 22, 2001

MEMORANDUM

SUBJECT: Report No. 2001-P-00011
Superfund Interagency Agreements Audit

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Acting Regional Administrator
Region 5

Attached is our report entitled *Superfund Interagency Agreements*. We discussed our findings with your staff and issued a draft report. We summarized your comments in the final report and included your complete responses in Appendices 1, 2, and 3.

We appreciate the cooperation of your staff and the assistance provided throughout the audit. The staff exhibited a genuine interest in working with us to improve Superfund interagency agreements and helped add value to this audit. The proactive participation and cooperation of officials in OSWER, OARM, and Regions 2, 5, 6 and 7 throughout the audit greatly helped us in completing this national review timely.

ACTION REQUIRED

In accordance with EPA Order 2750, you, as the action official, are required to provide this office a written response to the audit report within 90 days of the final audit report date. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist in deciding whether to close this report. Region 5, in its response, provided

corrective actions and milestone dates. Therefore, no further response is required for Region 5. Region 5 should track any actions planned, but not yet completed, in its management tracking system.

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

We have no objection to the release of this report to the public. If you have any questions, please contact me at (513) 487-2365, or Mike Davis at (513) 487-2363. Please refer to the report number 2001-P-00011.

Attachment

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Abbreviations

EPA	Environmental Protection Agency
IAG	Interagency Agreements
Manual	Project Officer Manual
MOU	Memorandum of Understanding
OARM	Office for Administration and Resources Management
OIG	Office of Inspector General
OSWER	Office of Solid Waste and Emergency Response
RMD	Resource Management Directives
USACE	U.S. Army Corps of Engineers

Introduction

Purpose

The Superfund program had almost \$3.5 billion in active or recently completed Interagency Agreements (IAGs) obligated as of September 2000 for removal and remedial activities. Our overall audit objective was to determine whether the U.S. Environmental Protection Agency (EPA) had effective controls in place to ensure its Superfund IAGs achieve expected environmental results in a timely, cost-effective, and efficient manner. The three specific sub-objectives designed to answer the overall objective were:

- Does EPA (a) determine qualifications of servicing agencies and contractors, and (b) ensure the IAG terms and conditions define the responsibilities of EPA and its servicing agencies?
- Does EPA monitor IAGs in a consistent and effective manner?
- Is the 1991 Office of Solid Waste and Emergency Response (OSWER) Directive regarding assignment of remedial actions between EPA contracts and the U.S. Army Corps of Engineers (USACE) practical for planning Superfund remedial activities?

Background

Congress established the Superfund program by passing the Comprehensive Environmental Response, Compensation, and Liability Act in 1980 to locate, investigate, and clean up the worst uncontrolled or abandoned hazardous waste sites nationwide. To clean up these sites EPA uses a variety of extramural instruments (such as contracts, assistance agreements, and IAGs) to perform specific Superfund remedial and removal activities. An IAG is a written agreement between Federal agencies in which one agency needing supplies or services obtains them from another Federal agency (the servicing agency) on a reimbursable basis. EPA may also sign Memorandums of Understanding (MOUs) with servicing agencies to formally specify responsibilities, as well as establish the policies and set the framework for the funded IAGs.

EPA has two offices that are responsible for administering Superfund IAGs: (1) OSWER, and (2) the Office for Administration and Resources Management (OARM). The OSWER is responsible for overall management of the Superfund

program at EPA. Within each Region, Project Officers and Remedial Program Managers monitor specific Superfund IAGs to ensure goods and services paid for by EPA are received. The OARM is responsible for issuing IAG policy and guidance.

EPA has issued two Resource Management Directives (RMDs) that pertain to EPA's Superfund IAGs. RMD 2550C addresses the policies and procedures that govern the relationship between EPA and its servicing agencies under an IAG. RMD 2550D contains specific information on the use of IAGs in the Superfund program, and provides requirements relating to cost documentation, project specific conditions, and billing conditions.

Summary of Results

EPA generally had effective controls in place to ensure its Superfund IAGs achieve expected environmental results in a timely, cost-effective, and efficient manner. The terms and conditions in the individual IAGs defined the roles and responsibilities of EPA and its servicing agencies, and most Regions reviewed and monitored IAGs in a consistent and effective manner. However, there are areas in which EPA could make enhancements to the IAG process to ensure it receives the products and services paid for. Specifically:

- Regions did not consistently determine the qualifications of servicing agencies and their contractors.
- Region 5 did not include in its IAGs all required terms and conditions, and did not monitor IAGs on a consistent basis.
- The 1991 OSWER Directive was out of date and inconsistently used by Regions to assign Superfund work between EPA contractors and IAGs with the USACE.

Additionally, we noted that three MOUs between EPA and other agencies excluded important terms and conditions needed for safeguarding the Superfund Trust Fund.

**Agency Comments
and OIG Evaluation**

OSWER, OARM, and Region 5 all generally concurred with our findings and recommendations, and their planned corrective actions were responsive to our recommendations. Both OSWER and OARM expressed concern that discussing servicing agency and contractor qualifications could lead to a potential de facto debarment of contractors. We conducted an exit conference on June 20, 2001 to discuss concerns with the draft report. As a result, we revised our findings and recommendations in this final report to mitigate the concern of a potential de facto debarment.

**Scope and
Methodology**

We reviewed a total of 18 active or recently completed IAGs from Regions 2, 5, 6, and 7 to accomplish our objectives. Exhibit A lists environmental accomplishments related to these IAGs; exhibit B provides a cost summary for each IAG; and, exhibit C provides additional details on our audit scope and methodology.

Findings and Recommendations

Finding 1: Regions Could Improve the Process for Reviewing Qualifications of Servicing Agencies and Their Contractors

EPA Regions did not consistently determine and/or document the qualifications of servicing agencies and their contractors in accordance with EPA guidance. Also, the Regions did not check on servicing agency/contractor performance in other Regions to learn if they had incurred any problems. These conditions generally occurred due to a lack of effective processes. Consequently, there was an increased risk that a servicing agency and/or contractor with known performance problems in one Region could be awarded work in other Regions, which could result in EPA paying excessive amounts and/or receiving inadequate service.

Guidance Emphasizes Importance of Qualifications

EPA guidance emphasizes the importance of determining servicing agency qualifications. The Project Officer Manual (Manual) requires every Decision Memorandum to include an explanation as to why the servicing agency was selected. The Manual also states:

Although the relationship under an IAG is with another Federal agency, inadequate performance should be considered in deciding whether to undertake future cooperative efforts with that agency. Project Officers should also report poor performance (in writing) to the Grants Management Office.

Servicing Agency Qualifications Not Consistently Determined or Documented

Regions 6 and 7 formally documented the selection of the servicing agency in the Decision Memorandums, which explain why the servicing agencies were selected. In contrast, Regions 2 and 5 had no information in any of the 10 IAG Decision/Action Memorandums that we reviewed (5 for each Region) that documented the qualifications and reasons for selecting the servicing agency. Specifically:

- Although Region 2 officials conducted reviews, they did not document the reasons for selection in individual IAG Decision/Action Memoranda (based upon such factors as past performance, technical ability, etc.), primarily because they had

been using the same servicing agency for a number of years. Based on a 1983 MOU between EPA and the USACE, as well as a 1991 OSWER Directive¹, they considered that to be sufficient basis for using USACE.

- Region 5 project managers said they were unaware of the requirement to include a justification for selecting a particular servicing agency. Additionally, servicing agency qualifications were not always determined.

Information Needs to Be Shared Among Regions

EPA has no effective process to report and disseminate servicing agency performance information among Regions. Only 4 of the 18 project managers (Project Officers, Remedial Program Managers, and on-scene coordinators) for our review indicated they asked other Regions about qualifications of servicing agencies. The four project managers, however, had no documentation of such discussions in any of their respective IAG files. The absence of an effective process to evaluate servicing agency qualifications beyond regional boundaries could result in poor-performing servicing agencies being awarded additional work in other Regions.

For example, we noted a specific instance in which a servicing agency with a history of contract management and contractor performance problems successfully marketed services that it was not able to deliver. In an EPA Office of Inspector General (OIG) audit report issued January 22, 1996,² we reported contractor management problems with the five IAGs that the Department of Interior's Bureau of Reclamation – the servicing agency – had at EPA Region 8's Summitville site. The OIG identified problems with the Bureau's ability to ensure that the appropriate contracting decisions were made to monitor and control costs. In our report, we indicated that the Department of Interior-OIG had identified \$5.8 million in contractor overpayments, under a separate Department of Interior-OIG audit. The EPA-OIG recommended that EPA reevaluate the suitability of the Bureau to continue managing Region 8 cleanup sites and any future EPA Superfund cleanup activities. However, on September 23, 1996, eight months

¹1991 OSWER Directive encourages EPA to assign remedial activity over \$15 million to USACE.

²EPA Report No. 6400019, "Region 8 Needed to Further Improve Interagency Agreement Oversight to Ensure Efficient Summitville Superfund Site Cleanup." This audit report was the result of a March 1995 Congressional request, in which a Congressman expressed concerns with the Bureau's contractor and the Bureau's oversight of the contractor at the Summitville site.

after the EPA-OIG report was issued, Region 5 officials (without knowledge of the EPA-OIG audit report) awarded an IAG to the Bureau and the same contractor to perform removal activities at the Benton Harbor site, where problems in monitoring and controlling costs were also encountered.

The absence of EPA having a national process for reporting poor performing servicing agencies may have contributed to the Benton Harbor IAG exceeding its estimated cost and time for completion. A better process may have resulted in the selection of another contractor to perform the work at Benton Harbor. The Benton Harbor IAG, which involved radiation cleanup, was expected to cost \$2.7 million and take 2 years to complete. This IAG had a final cost of \$7.08 million, and the cleanup is still not complete. Region 5 let the period of performance for the IAG expire, and plans to finish the site cleanup with an EPA contractor.

Two EPA Councils Could be Used to Share Information Nationally

EPA has two national councils in place that could be used to share information on IAGs and servicing agencies between the Regions:

- ***Superfund Senior Regional Management and Acquisition Council:*** The mission of this council is to provide guidance and direction to Superfund program managers implementing recommended improvements in management processes that promote consistent approaches to managing high quality cleanup projects. One of the council's emphases is to serve as a conduit for information transfer.
- ***Grants Customer Relations Council:*** The mission of this council is to provide a forum for discussing matters relating to the administrative management of assistance agreements. An objective of the council is to continually improve the Agency's assistance agreement processes and systems, emphasizing a preventative approach.

Although the Superfund Senior Regional Management and Acquisition Council concentrates on contracting issues facing Superfund, and the Grants Customer Relations Council focuses on assistance agreements, little time is devoted to IAG issues as part of either workgroup. Since the Superfund program had almost \$3.5 billion awarded in active IAGs as of September 2000, incorporating IAGs and servicing agency qualifications as part of those two

council's missions or another IAG focus group could better ensure that qualification issues are timely and fully resolved.

EPA Participated in Contractor Qualifications Process

The Regions participated in the contractor selection process with USACE, in accordance with RMD 2550D, which encourages Remedial Program Manager participation. For example, Region 2 established a Contract Advisory Panel for the purpose of discussing and selecting contractors that would be working on Superfund IAGs with USACE. The Contract Advisory Panel consisted of the USACE Program Manager and the EPA Remedial Program Manager. The Remedial Program Manager's participation in this process is important to ensuring the IAG is successfully completed. However, this process did not include obtaining easily accessible contract performance data.

The Regions did not obtain contractor performance data, in part because the Directive does not specify how, or to what extent, the Remedial Program Manager should participate in the contractor selection process. Additionally, the Directive does not identify what sources are available to obtain contractor performance information. There are two sources that Remedial Program Managers could consider:

- contractor performance results from other EPA Regions, and
- contractor information used by the servicing agency as part of its contract management function.

EPA project managers should obtain information on contractor performance so they can: (1) ensure the contractor is capable of performing specific tasks required in the IAGs, and (2) address and resolve any identified performance issues prior to awarding IAGs. Such information, which should be maintained either by EPA or its servicing agency, would include:

- audit reports of the contractor and/or servicing agency contract officials,
- contractor evaluations prepared by the servicing agency, and
- performance problems that are formally reported to Regional Grants Management Offices by EPA project managers.

An additional source of information on prior contractor performance is the National Institutes of Health Contractor Performance System. This is a tool used by Federal agencies for researching qualifications and performance history of contractors. EPA Project Officers and Remedial Program Managers may detect contractors with a prior history of performance problems if they begin using this system.

Conclusion

There is an increased risk that EPA could award IAGs to servicing agencies with a history of poor performance unless Regions begin using more available research tools. As previously noted, Region 5 selected the Bureau of Reclamation and its contractor for work at Benton Harbor without taking into account performance problems experienced with that servicing agency and contractor by another Region. The Benton Harbor IAG was expected to take 2 years and cost \$2.7 million to complete, but the IAG cost \$7.08 million and the project is still not completed. Although we did not determine how much of the overrun was due to legitimate reasons versus poor performance, some of the more than \$4 million in additional costs could have been put to better use if qualifications (of both the servicing agency and contractor) were confirmed prior to awarding the IAG.

Recommendations

We recommend that OARM and OSWER:

- 1-1 Establish processes to: (a) review servicing agency qualifications, (b) discuss IAG issues and servicing agency's ability to monitor and control contractor performance, and (c) report poor performance to the appropriate authorities.
- 1-2 Direct Regions to follow guidance to document selection of servicing agencies under their IAGs.

**Actions Taken
by Region**

As a result of our discussions, Region 2 agreed to document the

justification for selecting a servicing agency in all future Superfund IAGs. The Region 5 Section Chief for Remedial Response also agreed that including such information was reasonable.

Further, Region 5 agreed to standardize their IAG format to include documentation of the rationale used to select an IAG versus a contract. Region 5 also agreed to document the requirement in an internal control memo for distribution and use in training within the Superfund Division. We believe these steps are positive, but additional actions need to be taken to fully implement the recommendations.

**Agency Comments
and OIG Evaluation**

Although OSWER asserted that project officers should closely monitor work under IAGs, they disagreed with the recommendation to discuss contractor performance among Regions because such discussions could lead to a potential de facto debarment situation. OSWER considered evaluating the performance of another Federal agency's contracting operations and the performance of the other agency's contractor to be beyond the scope and authority of project officers. It is OSWER's contention that EPA was only responsible for justifying the selection, not qualifications, of the servicing agency in its decision memorandums.

OARM agreed with the underlying premises of the recommendation that EPA needs to pay greater attention to contractor performance on IAGs. However, OARM was also concerned that such a process, if not properly structured, would result in a de facto debarment of contractors outside of the government-wide debarment and suspension system. OARM warned that de facto debarment could result in contractors filing lawsuits against Agency officials in their individual capacities alleging violations of due process rights.

We modified the report and recommendations after considering the comments from OARM and OSWER, and consultation with our legal counsel. We recognize that: (1) IAGs are agreements EPA directly enters with another agency and not the other agency's contractor, and (2) contractors are entitled to due process of their rights. However, EPA is not prohibited from discussing a servicing agency's ability to monitor and control contractor performance among Regions. If such discussions identify poor performance, it should be shared among the Regions and reported to the

appropriate authorities for resolution without resulting in a de facto debarment. Such discussions among the Regions are important since EPA has the ultimate fiduciary responsibility to safeguard the Superfund trust fund. In addition, there are tools (i.e., audit reports, contractor evaluations prepared by servicing agencies, performance problems reported to Regional Grants Management Offices, etc.) that are available and could be furnished to project officers in order to evaluate another Federal agency's contracting operations and the performance of the other agency's contractor. These evaluations do not exceed the scope and authority of project officers. Also, the EPA's IAG Project Officer manual requires decision memorandums to include an explanation of why the other agency was selected, and we believe it is reasonable and prudent to expect a servicing agency's qualifications to be part of such an explanation.

Finding 2: IAG Terms and Conditions Generally Defined the Responsibilities of EPA and its Servicing Agencies

IAG terms and conditions generally defined the responsibilities of EPA and its servicing agencies for all 18 IAGs reviewed. Also, all of the RMD 2550D-required reporting requirements were included in the IAGs in Regions 2, 6, and 7. However, the Region 5 IAGs did not consistently include the following reporting requirements:

- Weekly status reports
- Upcoming activities
- Budgeting on task-by-task basis
- Key Problems

This resulted in Region 5 not receiving necessary information to manage projects.

RMD 2550D requires that specific project reporting requirements be included in each IAG, including: (1) holding weekly status updates, and, (2) submitting monthly progress reports to EPA with important information on work being accomplished under the IAG (such as scheduled and completed work, cost, problems resolved, key personnel changes, deliverables submitted, upcoming events/activities, and budget data on a task-by-task basis). The information required under RMD 2550D is needed for the Project Officer and Remedial Program Manager to actively plan and manage their projects.

Regions 2, 6, and 7 included the required terms and conditions in their IAGs because they had processes in place to ensure that the terms and conditions were included. For example, these Regions used standard language that incorporated all of the RMD 2550D requirements as an IAG attachment. Region 5, however, has no process to ensure that all requirements are included in the IAG prior to issuance. Region 5 Remedial Program Managers were unaware of RMD 2550D and therefore did not include all of the required terms and conditions in their IAGs. As a result, they do not receive needed information for monitoring assigned projects.

Recommendation

2-1 We recommend that Region 5 implement a process to ensure that all of its IAGs contain the RMD 2550D elements.

Actions Taken

by OSWER

OSWER stated that it also intends to work with the Grants Administration Division to improve IAG and MOU terms and conditions to address performance and oversight issues. We believe OSWER's actions will further strengthen EPA's administration and oversight of IAGs.

**Agency Comments
and OIG Evaluation**

Region 5 concurred with our finding and recommendation. Region 5 plans to make Superfund IAG project officers and technical staff aware of the requirements of RMD 2550D by including the requirements in an internal control memo and training to be developed by a workgroup. The workgroup will be established in the third quarter of Fiscal Year 2001 and the internal control memo and training will be completed by the end of the first quarter of Fiscal Year 2002. We believe Region 5's comments and planned corrective actions are responsive to our recommendation. Therefore, no further response is required for Region 5.

Finding 3: EPA Generally Monitored IAGs in a Consistent and Effective Manner

The Regions monitored their IAGs in a consistent and effective manner, with the exception of Region 5. Three of the five IAGs in Region 5 were not monitored on a consistent basis, due to the lack of a process to ensure that monthly progress reports are sent to the Project Officer by the servicing agency. Without regular reviews, Region 5 is less likely to identify questionable billings and resolve other discrepancies in a timely manner.

RMD 2550C, requires that the servicing agency provide monthly progress and cost reports to the Project Officer. The Project Officer has the responsibility to use this data for monitoring, reviewing cost information, and resolving discrepancies identified in the reports.

For Region 5, Remedial Program Managers were directly receiving monitoring reports instead of Project Officers in some instances, and thus Project Officers could not perform the required reviews. In other instances, neither the Project Officer nor Remedial Program Manager received the required reports. Region 5 had not clearly and formally established a process to ensure that the required reports are sent to Project Officers by the servicing agency.

In 1998 Region 5's Contracts and Assistance Agreement Section recognized that there were problems with receiving monitoring information from USACE. The section chief worked with USACE to correct the problem. However, monitoring reports are still not received on a timely and consistent basis by the Project Officer.

Other Regions have used the monitoring reports to resolve discrepancies. For example, Region 2 identified costs that were inappropriately billed and paid to a servicing agency. A subsequent review determined that the incorrect billings occurred because of a problem with the servicing agency's accounting system, and the incorrect charges were resolved by crediting future billings.

Recommendation

3-1 We recommend that Region 5 establish a process that ensures monitoring reports are received and reviewed by both the Project Officers and Remedial Program Managers.

**Agency Comments
and OIG Evaluation**

Region 5 concurred with our finding and recommendation. Region 5 plans to establish a workgroup in the third quarter of Fiscal Year 2001 that will review how to improve the monitoring process of IAGs in a consistent and effective manner. The workgroup will consider other Regional processes and implement its new process by the end of the first quarter of Fiscal Year 2002. We believe R5's comments and planned corrective actions are responsive to our recommendations. Therefore, no further response is required for Region 5.

Finding 4: The 1991 OSWER Directive Was Inconsistently Implemented

The 1991 OSWER Directive³, which provides policy on assigning remedial work, was out of date and not consistently used by the Regions. This 10-year-old policy was not consistently used due to ambiguities and the implementation of new EPA Superfund procurement strategies.

The purpose of the 1991 OSWER Directive was to provide a policy for the Regions to use when assigning remedial work between EPA's remedial contractors and USACE through IAGs. The policy states that: (1) remedial actions over \$15 million should be assigned to USACE; and, (2) assignment of projects to the Alternative Remedial Contracting Strategy or USACE should not be based solely on remedial action value. Subsequently, OSWER and OARM introduced a new Contracts 2000 strategy that outlined a new menu approach that allowed Regions discretion when selecting a procurement option.

Our review showed the four Regions did not consistently use the Directive. For example:

- Region 6 considered the Directive as a planning option. Nonetheless, they submitted waivers to OSWER that justified why they did not use USACE for projects over \$15 million.
- Region 7 used the Directive as a planning tool, but did not use it as the sole basis for awarding IAGs to USACE.
- Region 2 believed the Contracts 2000 Strategy superseded the Directive's dollar thresholds.
- Region 5 did not find the Directive relevant to its current work, since it did not have active IAGs exceeding the \$15 million threshold.

OSWER officials stated the Contracts 2000 Strategy did not supersede its 1991 Directive. They said the 1991 Directive was intended to provide flexibility in how Superfund remedial work was

³The OSWER Directive is entitled, "Revisions of Policy Regarding Superfund Project Assignment between Alternative Remedial Contracting Strategy Contractors and the U.S. Army Corps of Engineers."

assigned. OSWER explained that its Directive listed factors (such as dollar value) that needed to be considered when assigning Superfund work. However, it did not require work to be assigned to USACE based solely on dollar thresholds.

The ambiguity of the Directive, in conjunction with the new procurement strategies in the Contracts 2000 Strategy, resulted in Regions inconsistently implementing the Directive. It is a good business practice to periodically review issued policies to ensure that such policies will meet the goals and strategies of its organization.

Recommendation

4-1 We recommend that OSWER review and update its 1991 OSWER Directive to ensure its goals and strategies are met.

**Action Taken
by OSWER**

During our monthly meetings with the OSWER and the Regions, OSWER agreed that the Directive should be reviewed and updated.

**Agency Comments
and OIG Evaluation**

OSWER concurred with our finding and recommendation. OSWER established a subgroup under the Design/Construction Phase II workgroup to revise the 1991 OSWER directive entitled "Revisions of Policy Regarding Superfund Project Assignment between Alternative Remedial Contracting Strategy Contractors and U.S. Army Corps of Engineers." We believe OSWER's comments and planned corrective actions are responsive to our recommendations. However, we believe a date for when such action will be completed is needed to ensure its successful implementation.

Finding 5: Memorandums of Understanding

with Federal Agencies Need Improvement

The Memorandums of Understanding (MOUs) that EPA entered into with three servicing agencies to establish terms and conditions for the management of Superfund IAGs did not include some terms and conditions that would be useful for safeguarding the Superfund Trust Fund. This condition occurred because EPA has no applicable guidance governing MOUs for Superfund IAGs. As a result of these omissions, the EPA Superfund Trust Fund is at risk of not being reimbursed when a servicing agency or contractor performs poorly.

For example, there were no terms and conditions that required:

- Audits of the servicing agency's contractor upon completion of the Superfund IAG.
- Regular meetings between EPA and the servicing agency on a national level to discuss IAG performance issues.
- The servicing agency to identify recent reviews and audits of its contracting practices, and a contractor performance system used to evaluate contractors.

Since the ultimate fiduciary responsibility of safeguarding the Superfund Trust Fund remains with EPA, a condition of recourse for poor performance should be included in all MOUs entered with servicing agencies performing under a Superfund IAG.

Currently, the MOU with the U.S. Coast Guard is the only MOU that included a condition for recourse when a servicing agency poorly performed its duties. For example, the MOU with the U.S. Coast Guard stated that:

If, based on an audit by the Department of Transportation Inspector General, the U.S. Coast Guard determines that any direct or indirect costs charged to Superfund are unallowable, the U.S. Coast Guard will immediately notify the EPA and promptly reimburse Superfund.

During our review, we also noted that the Assistant Administrator for OSWER signed MOUs with the USACE in 1983, the Bureau of Reclamation in 1987, and the U.S. Coast Guard in 1994. Since the

Assistant Administrator for OARM issues IAG policy, we believe the MOU process could be strengthened by also having that Assistant Administrator review and approve the MOUs.

Recommendations

We recommend that OARM and OSWER:

- 5-1 Update all MOUs for Superfund IAGs to ensure that the language is consistent.
- 5-2 Require the signature of both the OSWER and OARM Assistant Administrators on all MOUs.
- 5-3 Develop terms and conditions to be included in all MOUs that ensure: (a) final contractor audits will be performed of all individual IAGs, and unallowable costs are reimbursed to EPA; (b) periodic meetings are held by national servicing agency officials to address any IAG performance issues; and, (c) servicing agencies will provide audit and other pertinent contract information to EPA, upon request, including contractor information from its contractor performance system.

Agency Comments and OIG Evaluation

OSWER concurred with our finding and recommendations. OSWER initiated a plan to revise the MOUs between EPA and other Federal Agencies. OARM, however, did not respond to the finding and recommendations. We believe OSWER's comments and planned corrective actions meet the intent of our recommendations. However, OSWER should establish milestones that designate when the corrective action will be completed. In addition, these corrective actions should be coordinated as a joint effort between OSWER and OARM to ensure the revised MOUs incorporate critical elements of both Superfund cleanup activities and prudent IAG management practices.

Exhibit A: Environmental Accomplishments

Part of our activity during this audit focused on identifying the environmental benefits that occurred with each IAG. We defined “environmental accomplishments” as the specific activities that were included as part of each site’s remedial action, as defined under the Record of Decision. Generally, these were output events. If possible, we included expected environmental outcomes as part of site remediation. All 18 IAGs accomplished improvements to the environment according to EPA records. Below, in matrix form, is a summary of accomplishments that were recorded in each Region:

Region 2

IAG Name	
U.S. Radium	<ul style="list-style-type: none"> • 34,000 cubic yards of radium contaminated material was removed.
Lipari Landfill	<ul style="list-style-type: none"> • Extracted and treated approximately 100 million gallons of on-site landfill leachate. • Treated approximately 105 million gallons of off-site ground water. • Excavated 128,000 tons of contaminated soils for the Chestnut Branch Marsh and backfilled the excavated area with clean fill. • Dredged and removed more than 85,000 tons of sediments from Alcyon Lake. • Reduced the landfill leachate migration to off-site areas by 95%.
GCL Tire & Treat	<ul style="list-style-type: none"> • Excavated and treated over 82,000 cubic yards of contaminated soil and debris. • Decontaminated and disposed of two 30,000 gallon steel treatment tanks. • Decontaminated and disposed of 5,800 gallons of free product. • Decontaminated and disposed of asbestos containing material. • Decontaminated and disposed of 1,900 tons of creosote treated wood chips. • Decontaminated and disposed of recycled 85 used tires.
Grand Street	<ul style="list-style-type: none"> • Relocation of all residents
Latex Industries	<ul style="list-style-type: none"> • Recycled or treated over 130,000 gallons of contaminated liquids (including flammable organic liquids and PCB liquid wastes). • Removed over 1,200 drums and 22 underground tanks. • Destroyed 1,525 shock-sensitive materials. • Removed 37 truckloads of non-hazardous combustible trash. • Incinerated 12,048 gallons of flammable PCB solids. • Sent 113,050 gallons of non-flammable PCB solids to an off-site landfill. • Demolished 2 contaminated buildings (39,400 square feet) and disposed of the debris off-site. • Removed and disposed of 30 processing vats.

Region 5

IAG Name	
Ott Story/Cordova	<ul style="list-style-type: none"> • 1,397,220 pounds of contaminants removed from 1,524,240,000 gallons treated.
Arcanum Iron & Metal	<ul style="list-style-type: none"> • 30,000 tons of battery casings removed from the site. • Lead levels at the start of project were 20,000 ppb - 72,000 ppb and now are under 400 ppb (which is the maximum level for residential use). • Farmers grow soybeans on the backfilled soil.
Benton Harbor	<ul style="list-style-type: none"> • 200 5-gal containers of laquer and other organics removed. • 56 drums of radium-painted gauges removed. • 82 roll-offs of shredded material below 5 picoCuries/gm for radium shipped for disposal. • 24 roll-offs of shredded debris exceeding 5 picoCuries/gram (Ra-226) that were hazardous waste (cadmium) shipped for disposal.
Allied Paper	<ul style="list-style-type: none"> • 150,000 cubic yards of PCB-contaminated residual pulp waste, soil and sediment was removed from the 22 acre site. • Approximately 8 million gallons of contaminated water were treated and discharged. • 271,000 tons of clean backfill material were imported and placed within the excavation limits.
Rapid Response	<ul style="list-style-type: none"> • 44,836 tons of contaminated soil and sediment were excavated from Pettibone Creek, plus 38,094 tons of contaminated soil were stabilized. • A water pipeline to a nearby community was completed. • 1,200 cubic yards of soil were excavated and sent to a landfill. Pollutant levels in water samples were lowered, which resulted in not needing municipal water hookups at well water homes.

Region 6

IAG Name	Environmental Accomplishments
Ouachita-Nevada Wood Treaters	<ul style="list-style-type: none"> • Contaminated soils were excavated, removed, and disposed of properly. • Contents of drum waste were mixed with the excavated site soils and disposed of properly. • Ground storage tanks were also emptied, decontaminated, and scrapped.
Bayou Bonfouca	<ul style="list-style-type: none"> • Excavation and onsite incineration of creosote waste piles and heavily contaminated bayou sediment. • A Resource Conservation and Recovery Act cap was placed over residues from the incinerator and residual surface soils. • Pump/ treatment/re-injection of contaminated groundwater.
Agriculture Street Landfill	<ul style="list-style-type: none"> • The latest Pollution Report prepared by the On-Scene Coordinator, for the week of September 18, 2000, noted that Operable Units 1 and 3 were completed in Phase I. Operable Unit 2, residential area, had 42 homes remaining for cleanup. Of the 42 homes, 27 had been given recent access for cleanup. Construction/cleanup of these 27 homes was expected to take 14 weeks. The latest USACE Project Report, dated December 2000, noted that 31 access agreements had been secured, with 25 homes completed by Christmas.
Southern Shipbuilding	<ul style="list-style-type: none"> • The incineration for Southern Shipbuilding was completed and all equipment associated with the remedial action was demobilized in December 1996.
American Creosote Works	<ul style="list-style-type: none"> • 56,544 tons of PCB and creosote-contaminated soil incinerated. • In-situ biological treatment of contaminated soil, and 26.7 million gallons of contaminated groundwater. • Remedy will reduce groundwater contamination to an acceptable level.

Region 7

IAG Name	
Oronogo-Duenweg	<ul style="list-style-type: none"> • 1,998 properties have been excavated for lead-contaminated soil.
Cherokee County	<ul style="list-style-type: none"> • A total of 602 residential homes had been remediated, thereby reducing public exposure to soils with elevated lead and cadmium concentrations, thus reducing public exposure to soils with elevated lead and cadmium concentrations.
Omaha Lead	<ul style="list-style-type: none"> • 135 properties have been excavated and backfilled, and have been planted with sod. • Lead impacted soils have been removed from thirty properties. • Preliminary screening by EPA indicated that some 211 properties out of the 348 tested had elevated lead concentrations.

Exhibit B: IAG Cost Summary

Region	IAG Name	Project Number	
Region 2			
	U.S. Radium	DW 96941732-01	\$ 85.12
	Lipari Landfill	DW 96941594-01	40.94
	GCL Tire & Treat	DW 96941783-01	17.00
	Grand Street	DW 96941785-01	12.48
	Latex Industries	DW 96941781-01	27.00
Region 5			
	Ott Story/Cordova	DW 96947932-01	6.00
	Arcanum Iron & Metal	DW 96947813-01	.08
	Benton Harbor	DW 96947782-01	7.08
	Allied Paper	DW 96947885-01	9.50
	Rapid Response	DW 96947840-01	6.05
Region 6			
	Ouachita-Nevada Wood Treaters	DW 14950232-01	2.20
	Bayou Bonfouca	DW 96934070-01	133.00
	Agriculture Street Landfill	DW 96950261-01	23.00
	Southern Shipbuilding	DW 96950210-01	22.67
	American Creosote Works	DW 96950151-01	19.10
Region 7			
	Oronogo-Duenweg	DW 96952114-01	27.31
	Cherokee County	DW 96952111-01	12.48
	Omaha Lead	DW 96952155-01	3.59

Exhibit C:

Details on Scope and Methodology

Fieldwork was conducted by EPA-OIG's Central and Northern Divisions in Regions 2, 5, 6, and 7 from October 2000 to February 2001, and consisted of the following:

Documentation review and analysis

- EPA Resource Management Directive 2550C
- EPA Resource Management Directive 2550D
- EPA Interagency Agreement Policy and Procedures Compendium
- Agency Government Performance and Results Act Goals 5 and 10
- Regions 2 and 5 Federal Managers' Financial Integrity Act Reports for 1998 and 1999
- Region 6 Fiscal Year 2000 Mid-Year Report, and Region 7 Fiscal Year 2000 Report
- IAG file documentation: Records of Decision, progress reports, Action Memoranda, and correspondence
- Regional Superfund Division organization charts

Personnel Interviewed

- *EPA personnel:* On-Scene Coordinators, Remedial Program Managers, Project Officers, and supervisors located in the Regions and at Headquarters.
- *Other personnel:* Servicing agency personnel.

Sample Selection

We reviewed a total of 18 active or recently completed IAGs as part of this audit. The IAGs in each Region were selected based upon the following criteria:

1. High dollar value of the IAGs
2. Variety of servicing agencies

We initially selected 20 IAGs from EPA's Grants Information Control System data base, which listed a total of 915 IAGs with a combined value of about \$3.5 billion. We discussed our sample selection with each Region's management, and adjusted our sample to ensure the IAGs we selected met our criteria and provided results that would answer our objectives. To help us address our objectives, we reviewed three MOUs, between EPA and the USACE, Bureau of Reclamation, and U.S. Coast Guard, as they pertained to IAGs.

We conducted our audit work at OSWER and OARM, and at Regions 2, 5, 6, and 7. We also made a site visit to the Benton Harbor Superfund site in Michigan.

The audit was performed in accordance with the Government Auditing Standards issued by the Comptroller General of the United States as they relate to economy and efficiency and program results audits. We reviewed internal controls as required by the Government Auditing Standards.

Prior Audit Coverage

EPA OIG Report No. 6400019, “Region 8 Needed to Further Improve Interagency Agreement Oversight to Ensure Efficient Summitville Superfund Site Cleanup,” was the result of a March 1995 Congressional request, in which a Colorado Congressman expressed concerns with the Bureau’s contractor and the Bureau’s oversight of the contractor at the Summitville site. While Region 8 had reduced the hazardous waste risks to the environment and the public, EPA did not adequately oversee and monitor its servicing agency (the Bureau) to control costs and ensure efficient cleanup. The report recommendations included that EPA evaluate the suitability of the Bureau’s Upper Colorado Regional Office to manage the Summitville site and any other future EPA Superfund cleanup activities.

EPA OIG Report No. 2000-P-000004, entitled “Timely Deobligation of Interagency Agreement Funds,” reviewed the Agency’s ability to timely deobligate unliquidated IAG balances for reprogramming for use by other EPA programs. While EPA had policies and procedures in place to timely deobligate funds, the program offices and the cognizant grant offices did not consistently follow the procedures. This resulted in IAG funds remaining obligated to projects that were either completed or cancelled.

EPA OIG Report No. 2000-P-000029, entitled “Follow-Up on Headquarters Interagency Agreements,” reported that project officers were adequately monitoring work under their IAGs. However, the Project Officers needed to: (1) ensure they adequately documented goods and services received, and (2) obtain more detailed payment information under disbursement IAGs. Also, OIG observed that the Agency’s directives needed to be updated and/or consolidated, and that training related to managing IAGs needed to be expanded to adequately cover the material in IAG-related directives.

Appendix 1: OSWER Response to Draft

Page 1 of 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

MAY 31 2001

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

MEMORANDUM

SUBJECT: Response to OIG Draft Audit Report
"Superfund Interagency Agreements Audit"

FROM: Michael H. Shapiro
Acting Assistant Administrator

TO: Leah L. Nikaidoh, Audit Manager
Northern Audit Division

The Office of Solid Waste and Emergency Response appreciates the opportunity to comment on the subject draft report. The monthly conference calls were very helpful in keeping us informed of the status of the audit, and we appreciated seeing an advanced copy of the draft report for review and comment. The Grants Administration Division, Office of Administration and Resources Management, will be forwarding their comments separately.

We are pleased that your summary of audit findings state that we have effective controls in place to ensure that Superfund Interagency Agreements (IAGs) achieve expected environmental results in a timely, cost-effective, and efficient manner. We do, however, continue to have concerns about your suggested enhancements to our IAG process, specifically the recommendation to determine the qualifications of servicing agencies and their contractors and to discuss IAG issues and servicing agency/contractor performance information among regions. While monitoring the performance of work performed is crucial to good project management, barring contractors from work based on informal discussions could lead a project officer into a defacto debarment situation. In addition, the report is asking IAG project officers to exceed the scope of their authority in both evaluating the performance of another federal agency's contracting operations and the performance of the other agency's contractors.

EPA uses other agencies to perform work because of their expertise and the cost savings of using their established infrastructure. We expect that the other agency is capable of performing the work. We only justify our selection, not the qualifications, of the other agency in our decision memorandum. This is in line with EPA guidance. Every Federal Agency has responsibilities delegated to them under Law and Executive Order 12580. EPA cannot mandate how another agency performs its work, including how it awards and manages contracts. Even though we cannot tell another agency how to do its work, there is no doubt that our project

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officers should be monitoring the performance of the work under their IAGs closely and reporting any issues and concerns to their IAG specialist and the Federal agency involved. What we can, and will do, is ensure that at our meetings with other Federal agencies, including the U.S. Corps of Engineers, we will review the performance of ongoing work and raise any performance issues to the other Federal Agency's management. Also, we intend to work with the Grants Administration Division to improve IAG and memorandums of understanding (MOU) terms and conditions to address performance and oversight issues.

We agree that the 1991 OSWER Directive entitled "Revisions of Policy Regarding Superfund Project Assignment between Alternative Remedial Contracting Strategy Contractors and the U.S. Army Corps of Engineers" needs to be revised, and we established a subgroup under the Design/Construct Phase II workgroup to do so. We also agree that the memorandums of understandings between EPA and other Federal Agencies should be revised, and we will begin establishing a plan to revise them.

I am attaching the comments we submitted on the preliminary draft report for your reference. The following two corrections should be made to the final report: 1) it should be noted in the background section that the project officers and remedial program managers are within the regions, not OSWER; and 2) the workgroups referenced in the first finding are not workgroups, but councils. I am also attaching comments we received from the Bureau of Reclamation.

If you have any questions concerning this response, please contact Barbara McDonough of the Acquisition Resources Management Staff at 202-260-6674 or Johnsie Webster, OSWER Audit Liaison, at 202-260-4475.

Attachments

cc:
David O'Connor
Barbara McDonough
Ken Skahn
John Riley
Rich Troast
Scott McMoran
David Ullrich
Joe Rauscher

Appendix 2: OARM Response to Draft

Page 1 of 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

JUN 16 2001

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Comments on Draft Report-Superfund Interagency Agreements Audit

FROM: David J. O'Connor
Acting Assistant Administrator
Office of Administration and Resources Management

TO: Leah L. Nikaidoh
Audit Manager
Northern Audit Division

Thank you for the opportunity to comment on the Superfund Interagency Agreements (IAGs) draft audit report issued on April 27, 2001. I understand that the Office of Solid and Hazardous Waste has provided separate comments on the report.

I am very encouraged by the report's finding that the Agency is generally managing Superfund IAGs in an effective manner. I have one comment on Recommendation 1-1, which proposes, in part, that EPA establish a process to review Superfund contractors' performance and qualifications and share the information among Regions.

I agree with the premise underlying Recommendation 1-1 that EPA needs to pay greater attention to contractor performance to ensure that it receives the goods and services it orders through IAGs. At the same time, I am concerned that the proposed process, if not properly structured, would result in the "de facto" debarment of contractors outside of the government-wide debarment and suspension system. This could prompt contractors to file lawsuits against Agency officials in their individual capacities alleging violations of due process rights.

Under these circumstances, I believe that the process proposed under Recommendation 1-1 should be revised to address potential "de facto" debarment issues, including integrating the process with EPA's debarment and suspension program. Staff from the Office of Grants and Debarment are available to work with you to develop the necessary changes.

If you have any questions about these comments, please contact Howard Corcoran on (202) 564-1903, Scott McMoran on (202) 564-5376, or Robert Meunier, EPA's Debarring and Suspending Official, on (202) 564-5399.

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Note: The original was signed by David J. O'Connor.

cc: Jane Moore
Marty Monell
Sandy Womack-Butler
Paige Peck
Judy Davis
Barbara McDonough
Mike Shapiro
Mark Bialek
Howard Corcoran
Scott McMoran
Robert Meunier
John Showman
David Osterman

Appendix 3: Region 5 Response to Draft

Page 1 of 2



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

30 MAY 2001

REPLY TO THE ATTENTION OF

MEMORANDUM

SUBJECT: Response to Draft Audit Report on
Superfund Interagency Agreements

FROM: David A. Ullrich
Acting Regional Administrator

TO: Leah L. Nikaidoh, Audit Manager
Northern Audit Division

Thank you for the opportunity to review and comment on the subject draft audit report. Our response to the specific audit recommendations pertaining to Region 5 is attached. I would also like to thank you for the opportunity for my staff to meet regularly with your audit team in person or on conference calls as the audit progressed.

If you have any questions about this response, please contact Cindy Wakat at (312) 886-7338.

David A. Ullrich

Attachment

cc: Michael Shapiro, Acting Assistant Administrator (OSWER)
David O'Connor, Acting Assistant Administrator (OARM)

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Note: The original was signed by Norman Niedergang for David A. Ullrich.

REGION 5 RESPONSE TO DRAFT AUDIT
REPORT ON SUPERFUND INTERAGENCY AGREEMENTS (IAGs)

Recommendation 1-2: Direct Regions to follow guidance to document selection of servicing agencies under the IAGs.

Planned Corrective Actions:

We plan to standardize our format to include documentation of the rationale used to select an IAG versus a contract. We will also document the requirement in an internal control memo for distribution and use in training within the Superfund Division. We will establish a workgroup during the third quarter of Fiscal Year (FY) 2001 that will include these tasks and complete the revised format and internal control memo by the end of the first quarter of FY 2002.

Recommendation 2-1: We recommend that Region 5 implement a process to ensure that all of its IAGs contain the RMD 2550D elements.

Planned Corrective Actions:

Region 5 will make Superfund IAG project officers and technical staff aware of the requirements of RMD 2550D by including the requirements in an internal control memo and training to be developed by the workgroup referred to in our response to Recommendation 1-2. As stated above, the workgroup will be established in the third quarter of FY 2001 and the internal control memo and training will be completed by the end of the first quarter of FY 2002.

Recommendation 3-1: We recommend that Region 5 establish a process that ensures monitoring reports are received and reviewed by both the project officers and remedial program managers.

Planned Corrective Actions:

The same workgroup referred to in the planned corrective actions above will also be directed to review how to improve Region 5's monitoring of IAGs in a more consistent and effective manner.

The workgroup will consider other regions' processes and develop a process that will work within the structure and context of Region 5. The expected time frame for completion is the same as stated in our responses above.

Appendix 4: Report Distribution

Office of Inspector General

Inspector General

Headquarters Office

Assistant Administrator for Office of Solid Waste and Emergency Response (5101)

Assistant Administrator for Office of Administration and Resources

Management (3101)

Agency Followup Official (2710A)

Agency Audit Followup Coordinator (2724A)

Audit Followup Coordinator for Office of Solid Waste and Emergency Response (5103)

Audit Followup Coordinator for Office of Administration and Resources

Management (3102)

Associate Administrator for Congressional and Intergovernmental Relations (1301A)

Director, Office of Regional Operations (1108A)

Associate Administrator for Communications, Education, and Media Relations (1101A)

Director, Grants Administration Division (3903A)

EPA Region 5

Director, Resources Management Division

Director, Superfund Division

Regional Offices

Regional Administrators

Regional Public Affairs Offices

Audit Followup Coordinator for Regions 2, 5, 6, and 7

Note: Report distribution was done electronically. Each action official was also provided with a hard copy of this report. Additional hard copies are available, upon request.