

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



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***NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION***

*Interagency Agreements with the
Environmental Protection Agency-FY 1995
and FY 1996*

Audit Report No. STL-10140-8-0001 / February 1998

Office of Audits, Seattle Regional Office

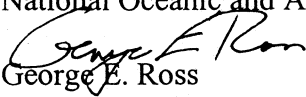




UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

February 23, 1998

MEMORANDUM FOR: Andrew Moxam
Acting Chief Financial Officer/Chief Administrative Officer
National Oceanic and Atmospheric Administration

FROM: 
George E. Ross
Assistant Inspector General for Auditing

SUBJECT: NOAA/EPA Interagency Agreements
for Support of Ongoing Superfund Activities-
FYs 1995 and 1996
Final Audit Report No. STL-10140-8-0001

This memorandum report is in response to your June 17, 1997, request for audits of Superfund Interagency Agreements (IAGs) for FYs 1995 and 1996. Our review of Superfund transactions during the two fiscal years found that NOAA costs billed to EPA under the IAGs were properly recorded and accurately reported, with the exception of indirect costs.

We determined that NOAA is not in compliance with EPA policy regarding allowable indirect costs. Billings to EPA contain charges for general, agency-wide indirect costs, which is in conflict with the terms and conditions of the IAGs and EPA policy guidance. We recommend that NOAA clarify with EPA what are considered allowable indirect charges before the next IAG is effective (see page 6).

We also determined that the audit of the Superfund Interagency Agreements could be incorporated into the scope of NOAA's annual financial statement audit. Past audit requirements under the Superfund statutes were superseded by passage of the Chief Financial Officers Act of 1990 (CFO Act). Current EPA policy is to include tests of Superfund transactions within the scope of the annual audit of financial statements required by the CFO Act.

We issued a draft report on October 28, 1997 and requested that your office provide comments within 30 days for inclusion in the final report, as required by DAO 213-3. Despite numerous requests, we did not receive comments and are therefore issuing the final report for your action in accordance with DAO 213-5, *Audit Resolution and Follow-up*.

Four copies of this report have been sent to the NOAA Audit Liaison. Please inform the Office of Inspector General of the names of the key officials responsible for resolution of this audit. We suggest that NOAA request a meeting with the Office of Inspector General within 30 days of this final report issuance to discuss resolution of the report's findings and recommendations. To arrange such a meeting, please contact our office.

In accordance with DAO 213-5, you have a maximum of 60 days to submit, for our concurrence, an Audit Action Plan for implementation of each of the report's recommendations. Exhibit 7 of the DAO should be used to format the Audit Action Plan. The Audit Action Plan should include specific details and dates as to how and when each recommendation will be implemented. The Audit Action Plan must also include the rationale and/or legal basis for not implementing any of the report's recommendations. Should you have any questions regarding the preparation of the Audit Action Plan, please contact my office.

Introduction

NOAA receives annual allocation transfers of about \$2 million from EPA's Hazardous Substance Response Trust Fund, commonly known as the "Superfund," to provide technical assistance and research on the risk to coastal resources and ecosystems from hazardous waste sites and spills. The annual IAG was supplemented with a continuing reimbursable IAG for the period October 1, 1992, to September 30, 1997. While NOAA reports on the IAGs separately, in practice, NOAA makes no distinction between the IAGs for program funding purposes.

Purpose and Scope of Audit

The financial and compliance audit was performed in response to a request from NOAA, and was limited to Trust Fund transaction testing and evaluation of compliance with the IAGs and EPA policy. The objectives of the audit were to determine whether:

- o costs claimed under the IAGs were properly recorded by NOAA and accurately reported to EPA; and
- o NOAA's administrative and financial controls complied with the terms and conditions of the IAGs and EPA policy.

The audit was conducted at NOAA offices in Seattle (Program Office); Germantown, Maryland (Finance Office); and Silver Spring, Maryland (Budget Office) during July and August 1997.

Criteria for our audit were the applicable statutes, the operative IAGs for FYs 1995 and 1996, and EPA's policy guidance published as *Superfund Financial Management And Recordkeeping - Guidance For Federal Agencies*, 1989 (EPA/220/M-89/001). The audited IAGs were:

<u>Type</u>	<u>Period</u>	<u>IAG Number</u>	<u>Amount</u>
Allocation Transfer	FY 1995	DW13937022-01-0	\$2,205,200
Allocation Transfer	FY 1996	DW13937468-01-1	\$2,000,000
Reimbursement	FYs 1995-96	DW13936229-01-2	\$3,795,000

We evaluated internal controls related to our tests of NOAA transactions. We did not identify any control weaknesses related to our testing. However, internal control deficiencies were cited as primary findings in prior OIG audits of the Superfund activity, and the independent auditors engaged to audit NOAA's 1996 financial statements disclaimed an opinion on those statements due to the inadequacy of NOAA's accounting records and internal controls (see OIG Audit Report No. FSC-8841-7-0001, March 1997, which included the independent auditors' reports dated January 10, 1997). Therefore, we do not represent that NOAA's internal controls are effective beyond the limited scope of our review.

We evaluated NOAA's compliance with EPA policy, the IAGs, and basic Superfund statutes, specifically, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA; P.L. 96-510; codified at 42 § 9601), and the Superfund Amendments and Reauthorization Act of 1986 (SARA; P.L. 99-499; op cit). As detailed below, our evaluation found that NOAA is not in compliance with EPA's limitations on allowable indirect costs claimed.

We used computer reports processed by NOAA's Financial Management System (FIMA) and by the National Finance Center during our review. We did not perform a review of either data processing system, but neither reporting system was relied upon for our conclusions and recommendations stated below.

This review was conducted in accordance with generally accepted government auditing standards and was performed under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended.

General Indirect Costs Claimed

NOAA has been claiming general and administrative indirect costs as part of the billings submitted to EPA for both the allocation transfer and reimbursable IAGs. EPA policy is explicit in the 1989 *Guidance For Federal Agencies* that it will not accept general or agency-wide indirect cost allocations as part of allowable IAG cost (see pages 15, 22, and 29 of the guidance and Appendix IV of this report). Moreover, that policy is reiterated in Special Provision 5 to the allocation transfer IAGs, and is also supported by all three IAG budgets, which provide no allowance for indirect costs. EPA will accept general indirect costs if specifically authorized by Congress, or indirect costs related to Superfund expenditures if an acceptable indirect cost allocation plan is developed by the agency. However, neither of these conditions apply to the indirect costs charged by NOAA.

NOAA's accounting system automatically factors various agency-wide overhead rates onto financial obligations as they are recorded in its FIMA accounting system. The overhead rates differ between NOAA offices because of such factors as varying rates of servicing Financial Management Centers, but all rates are applied to a base of direct labor and the resulting percentages are automatically factored into obligations charged against specific line items. Since the overhead amounts are redistributed over selected direct cost line items and reported as direct costs in NOAA's financial reports to EPA, EPA is unaware that the "direct" costs billed by NOAA include the general overhead factors. The overhead amounts are recorded in the 9000 object class series, which showed general overhead applications of about \$229,000 and \$293,000 per year to the allocation transfer IAG accounts for FYs 1995 and 1996, respectively.

Like the allocation transfer IAGs, the reimbursable IAG did not include a budget amount for indirect cost. However, the reimbursable IAG did not include a Special Provision related to indirect costs as did the allocation transfer IAGs. Regardless, EPA Superfund guidance applies to both the reimbursable and allocation transfer IAGs. The allocation transfer IAGs are one-year IAGs with new IAGs entered into each year. The reimbursable IAG has a cumulative, five-year performance period. We identified \$233,360 of indirect costs charged to the reimbursable IAG applicable to the FYs 1995 and 1996 audit period (\$131,820 and \$101,540). The indirect cost issue will apply to all five years of the reimbursable IAG when it is closed out after September 30, 1997.

NOAA's position is to recover all operating costs associated with the IAGs. However, NOAA's practice of charging an agency-wide overhead rate conflicts with the terms and conditions of the IAGs and EPA policy guidance. We contacted several EPA senior managers in our attempts to

clarify the EPA policy. None of the managers had personal knowledge of the policy or its genesis. Some of the same managers were perplexed because they were familiar with other, non-Superfund, IAGs and contracts on which EPA routinely accepted indirect costs as billed.

There are two possible sources for the indirect cost limitations. An EPA Comptroller Policy Announcement No. 87-10 placed restrictions on indirect costs claimed under all IAGs, and was cited in the 1989 Superfund policy guidance. In addition, a CERCLA provision prohibits payment out of the Fund for any administrative costs unless such costs are reasonably necessary for and incidental to implementation of the Trust Fund (see Uses of Fund In General; at 42 § 9611(a)). We were unable to determine whether either of these provisions was considered in formulating the EPA policy and the EPA/NOAA IAG. Therefore, an official EPA position must still be ascertained.

We recommend that NOAA clarify the indirect cost issue with EPA prior to execution of the next IAG. If EPA is unable to provide a waiver of the indirect cost policy, or the IAGs cannot be amended, NOAA will need to decide whether it would be cost effective to develop a separate indirect cost allocation plan for Superfund-specific expenditures or forego recovery of the indirect costs.

Changes In Audit Guidelines are Needed

EPA does not require blanket audits of all Superfund transactions. EPA policy contained in the EPA *Guidance For Federal Agencies* issued in 1989 (page 28) required annual audits of agencies with specific designated authorities under Superfund (e.g., EPA, HHS, FEMA), but then stipulated that other agencies operating under IAGs and without designated responsibilities *may* receive annual audits of Trust Fund transactions. The Department of Commerce and NOAA were specifically identified by EPA under the latter discretionary authority.

Previously, EPA provided funds to selected agencies with designated authorities (e.g., HHS) to perform annual audits of Superfund transactions under SARA requirements. The Department of Commerce was not one of these agencies. However, as the audit requirements of the CFO Act became operative, EPA determined that Superfund audit requirements could be met under the scope of the annual financial statement audits required under the Act. EPA, therefore, discontinued the IAGs to selected agencies to fund Superfund audits, and now relies on the agencies' own financial statement audits to satisfy the SARA requirements.

The EPA policy is reasonable. The audit requirements of the CFO Act and SARA overlap and would result in duplicative efforts if performed separately. In addition, the EPA Superfund was authorized at a funding level of nearly \$2 billion per year between FYs 1987 and 1994, and NOAA's expenditures of less than \$3 million per year in support of some Superfund site work is not material for program or audit purposes. We therefore recommend that routine transaction testing of Superfund disbursements be included in the scope of NOAA's annual financial statement audits.

No Discrepancies Found In Superfund Transactions

Trust Fund transaction testing was limited to personnel, contract, and indirect costs recorded, since those categories represented over 90 percent of costs billed to EPA under the allocation transfer IAGs. Our tests of records in Seattle and Germantown disclosed no discrepancies in the data reviewed, with minor exceptions.

Recommendations

We recommend that the NOAA Chief Financial Officer:

- o Clarify EPA's current policy regarding claimed indirect costs under the Superfund IAGs, and modify either the IAGs or the billing practices to be in full accordance with continuing agreements between NOAA and EPA; and
- o Request that future audits of NOAA's financial statements be modified to include sufficient testing of the NOAA/EPA Superfund IAG transactions to satisfy the SARA audit requirements.

Attachments

EPA/NOAA Interagency Agreement
Allocation Transfer IAG No. DW13937022-01-0
Schedule of Obligations Reported and Accepted
Fiscal Year Ending September 30, 1995

<u>Budget Categories/ Report Categories</u>	<u>Approved Budget</u>	<u>Reported To EPA</u>	<u>Accepted Per Audit</u> (Note 1)
Personnel	\$ 1,290,000		
Personnel compensation		\$ 730,000	\$ 626,000
Fringe Benefits	-0-		
Personnel benefits		150,000	139,000
Travel	180,000		
Travel and transportation of persons		98,000	91,000
Transportation of things		39,000	34,000
Equipment	25,000	10,000	10,000
Supplies	20,000	15,000	15,000
Procurement/Assistance	675,000		
Other services		1,097,000	1,000,000
Other	15,200		
Rent, communications, and utilities		64,000	59,000
Printing and reproduction		<u>2,000</u>	<u>2,000</u>
Total Direct Charges	\$ 2,205,200	\$ 2,205,000	\$ 1,976,000
Indirect Costs: Rate <u>0.00%</u> Base \$ _____	-0-		
Indirect costs allocated among select direct cost categories and reported to EPA as direct charges			<u>229,000</u> Note 2
Total	<u>\$ 2,205,200</u>	<u>\$ 2,205,000</u>	<u>\$ 2,205,000</u>

Note 1 Amounts were reported to EPA on SF 225, Report on Obligations.

Note 2 The approved IAG award budget did not include an amount for indirect cost. However, NOAA allocated \$229,000 in agency-wide indirect costs to obligation totals reported for select direct charge categories on the SF225 (shown in center column) and in the obligation totals included on the SF133, Report on Budget Execution. Both reports were submitted to EPA. EPA Superfund guidance and allocation transfer IAG award provisions prohibit charging agency-wide indirect cost against the Superfund IAG (see page 4 of the audit report for further information).

EPA/NOAA Interagency Agreement
Allocation Transfer IAG No. DW13937468-01-1
Schedule of Obligations Reported and Accepted
Fiscal Year Ending September 30, 1996

Budget Categories/ Report Categories	Approved Budget	Reported To EPA	Accepted Per Audit (Note 1)
Personnel	\$ 1,200,000		
Personnel compensation		\$ 759,000	\$ 647,000
Fringe Benefits	-0-		
Personnel benefits		178,000	152,000
Travel	65,000		
Travel and transportation of persons		48,000	41,000
Transportation of things		8,000	7,000
Equipment	5,000	23,000	20,000
Supplies	10,000	15,000	13,000
Procurement/Assistance	700,000		
Other services		888,000	758,000
Other	20,000		
Rent, communications, and utilities		80,000	68,000
Interest and dividends		1,000	1,000
Total Direct Charges	2,000,000	\$ 2,000,000	\$ 1,707,000
Indirect Costs: Rate <u>0.00%</u> Base \$ _____	-0-		Note 2
Indirect costs allocated among select direct cost categories and reported to EPA as direct charges			293,000 Note 2
Total	\$ 2,000,000	\$ 2,000,000	\$ 2,000,000

Note 1 Amounts were reported to EPA on SF 225, Report on Obligations.

Note 2 The approved IAG award budget did not include an amount for indirect cost. However, NOAA allocated \$293,000 in agency-wide indirect costs to obligation totals reported for select direct charge categories on the SF225 (shown in center column) and in the obligation totals included on the SF133, Report on Budget Execution. Both reports were submitted to EPA. EPA Superfund guidance and allocation transfer IAG award provisions prohibit charging agency-wide indirect cost against the Superfund IAG (see page 4 of the audit report for further information).

EPA/NOAA Interagency Agreement
Reimbursable IAG No. DW13936229-01-2
Schedule of Costs Billed and Accepted
October 1, 1992 through September 30, 1996

Budget Categories	Approved BUDGET (Note 1)	Billed To EPA Through 9/30/96 and Accepted PER AUDIT (Note 2)
Personnel	\$ 1,945,000	
Travel	250,000	
Equipment	80,000	
Supplies	20,000	
Procurement/Assistance	<u>1,500,000</u>	
Total Direct Charges	\$ 3,795,000	
Indirect Costs: Rate <u>0.00%</u> Base \$ _____	-0-	
Total	<u>\$ 3,795,000</u>	<u>\$ 2,654,273</u>

Note 1 The reimbursable IAG was awarded September 13, 1993 in the amount of \$3,445,000 and has since been amended twice to increase available funding to a total of \$3,795,000 and to adjust the project period to October 1, 1992 through September 30, 1997.

Note 2 NOAA prepares lump sum billings to EPA for effort under the reimbursable IAG. The amount appearing in this column represents cumulative reimbursable billings to EPA under the IAG for the project period from October 1, 1992 through September 30, 1996 consisting of:

Fiscal Year 1993	\$ -0-
Fiscal Year 1994	981,457
Fiscal Year 1995	689,242
Fiscal Year 1996	<u>983,574</u>
Cumulative Billing through 9/30/96	<u>\$ 2,654,273</u>

Billings for Fiscal Years 1993 through 1994 were addressed by prior audit report No. STL-8450-6-0001; \$2,658 of those billings were questioned as unsupported and are still in the audit resolution process. Billings for Fiscal Years 1995 and 1996 are the subject of this current audit and include a total of \$233,360 in indirect cost billings. We have accepted the total of Fiscal Year 1995 and 1996 billings subject to the resolution of the indirect cost issue.

EPA/NOAA Interagency Agreements
Criteria Citations for Indirect Costs
October 1, 1995 through September 30, 1996

The EPA Comptroller Policy Announcement No. 87-10 required certification of indirect costs by Federal agencies performing services for EPA under IAGs. The policy was based on a Comptroller General's decision on the Economy Act of 1932, and resulted in:

...EPA policy that a performing agency may only bill EPA for direct costs and for marginal indirect costs associated with providing the goods and services.

That EPA policy resulted in the following certification statements included in the allocation transfer IAGs for FYs 1995 and 1996; in Attachment A, Special Provision 5):

Indirect Cost Documentation Standards - The NOAA certifies: 1) that any indirect costs included in billings to EPA represent, in accordance with GAO principles, indirect costs that would not have been otherwise incurred by the NOAA, or 2) that explicit congressional authority exists for charging other than the incremental costs of performance. If an audit determines that any direct or indirect costs charged to EPA (are) unallowable, EPA will be notified immediately following the resolution of the audit and EPA will be credited with those costs.

The 1989 EPA Guidance For Federal Agencies contained the following instructions pertaining to indirect costs:

Section II.B.3, Accounting For Indirect Costs, page 15:

...Agency-wide indirect costs are not allowable under IAGs unless specific Congressional authorization for such charges exists. Superfund-related indirect costs are allowable and recoverable....(however) a method for allocating expenses to individual sites is necessary. EPA's policy is that Agencies develop rational, defensible allocation methods for claimed Superfund indirect costs....Developing a method of allocating Superfund indirect costs to individual sites is particularly critical for those Agencies receiving funding through allocation transfer IAGs.

Appendix C Audits; Section D Indirect Costs, page 29:

Charges for indirect costs billed to EPA under IAGs will be reviewed for compliance with the Economy Act of 1932...and EPA Comptroller's Policy Announcement 87-10, which state that only indirect costs specifically arising from performance of the IAG are billable.