



Office of Inspector General

Report of Audit

SUPERFUND

**State Deferrals: Some Progress,
But Concerns For Long-Term
Protectiveness Remain**

E1SFF8-11-0020-8100234

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**Inspector General Division(s)
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**Headquarters Audit Division
Washington, DC**

Region(s) covered

Regions 3, 4, 5, 6, 7, 8, and 10

Program Office(s) Involved

Office of Solid Waste and Emergency Response

MEMORANDUM

SUBJECT: EPA's Management of the State Deferral Program
Audit Report Number E1SFF8-11-0020-8100234

FROM: Michael Simmons
Deputy Assistant Inspector General for Internal Audits

TO: Timothy Fields, Jr.
Acting Assistant Administrator for Solid Waste
and Emergency Response

Attached is our final report entitled "State Deferrals: Some Progress, But Concerns For Long-Term Protectiveness Remain." The report addresses issues regarding EPA's management of the State Deferral program, and includes recommendations to address these issues.

In accordance with EPA Order 2750, please provide this office a written response to the report within 90 days of the report date. For corrective actions planned but not yet completed by your response date, reference to specific milestone dates will assist us in deciding whether to close this report.

This report describes findings and corrective actions the Office of Inspector General recommends to help improve and strengthen the State Deferral program. As such, it represents the opinion of the OIG. Final determinations on matters in the report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this report do not necessarily represent the final EPA position and are not binding upon EPA in any enforcement proceedings brought by EPA or the Department of Justice.

Again, we would like to thank your staff for their cooperation. Should your staff have any questions about this report, please have them contact Norman E. Roth, Divisional Inspector General for Audit, Headquarters Audit Division, on 202-260-5113 or Bill Samuel, Audit Liaison, on 202-260-3189.

Attachment

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PURPOSE, SCOPE, AND METHODOLOGY

The purpose of this audit was to determine whether sites which once warranted Comprehensive Environmental Response Compensation Liability Act (CERCLA) response were being addressed. Our overall objective was to determine how the Agency's implementation of its 1995 Deferral policy affected the number of hazardous waste sites awaiting listing to the National Priorities List (NPL.) The specific objectives were to determine:

- N how the Agency staff could better implement the Deferral program, and
- N whether deferred sites have been cleaned up.

We performed our audit in accordance with the U.S. General Accounting Office's Government Auditing Standards, issued by the Comptroller General of the United States (1994 Revision.) We also reviewed Federal Managers' Financial Integrity Act reports that the Office of Solid Waste and Emergency Response (OSWER) prepared. The reports did not identify any material weaknesses or vulnerabilities related to state deferrals. We did not detect any control weaknesses except for those discussed in this report. Attachment 1 presents additional information on the scope, methodology and prior audit coverage.

Background

Currently, the Comprehensive Environmental Response Compensation Liability Act Information System (CERCLIS) contains about 2,800 sites awaiting an NPL decision. Many of these sites could be proposed to the NPL, but for a variety of reasons, they have not.

During the first round of Superfund reforms in June 1993, EPA initiated the State Deferral program. One of its goals was to reduce the number of sites awaiting listing to the NPL. The program allows states and potentially responsible parties (PRP) to clean up deferred sites under state programs with minimal oversight from EPA. Upon completion of the cleanup and certification from the states, EPA can remove the deferred sites from CERCLIS. The removed sites will be transferred to an archive database which the Agency uses to document sites that require no further Federal action.

Although the guidance allows for the deferral of NPL caliber sites, it does not require strict compliance with the National Contingency Plan (NCP). Among other requirements, the NCP states: a preference for permanent and treatment remedies over containment remedies, a five-year review when remedies result in hazardous contaminants remaining on site, and community involvement at certain points in the cleanup process. The deferral guidance is less specific. It requires CERCLA-protective remedies (no preference for permanent and treatment

remedies over containment remedies) that will be reliable for the long term and community acceptance of deferrals. Thus, the State Deferral program offers states and PRPs the opportunity to (1) clean up CERCLA sites without full compliance with the NCP, (2) avoid listing sites on the NPL, and, (3) reduce EPA's oversight of the cleanups.

Despite these advantages, participation has been limited. As of the completion of our fieldwork, EPA had deferred only 30 sites (see Attachment 2) to eleven states for cleanup. The initiative started in 1993 with 22 sites in 7 states. While some state officials told us they may request future deferrals, the State Deferral program may not grow because of the emergence of state voluntary cleanup programs and the issuance of EPA's policy to obtain governors' concurrence before listing sites on the NPL.

Voluntary Cleanup Program

Many states have voluntary cleanup programs (VCPs) to provide more flexibility to private parties that are willing to clean up sites without formal enforcement action. During 1995-1997, EPA worked toward developing a guidance for regions and states to use in framing Superfund memoranda of agreement (SMOA) that would address sites included in State VCPs. On November 14, 1996, EPA issued to the Regions a memorandum entitled "Interim Approaches for Regional Relations with State Voluntary Cleanup Programs." This memorandum did not specify the types of sites (NPL caliber or not) that should be included in the SMOA; rather, the regions and states were to negotiate the types of sites to be included in the SMOA (e.g., whether or not to exclude NPL-caliber sites). If states' VCPs met the criteria specified in the memorandum, EPA would state in the SMOA that it did not anticipate taking removal or remedial action at sites involved in the VCP unless EPA determined that there may be an imminent and substantial endangerment to public health, welfare, or the environment.

In contrast with the State Deferral guidance, which many states considered very prescriptive, the November, 1996 State VCP memorandum anticipated little, if any, oversight by EPA. Draft guidance under discussion at the time stated that EPA would expect the state agency to report the number of sites in the program, the sites added the previous year, and the sites receiving certificates of completion in the previous year. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) officials indicated that the State/EPA SMOA approach became the alternative preferred by many states. However, ASTSWMO officials believe the State Deferral program should continue as an alternative method for site cleanup.

Governors' Concurrence To List Sites On The NPL

One of the prime incentives for participation in the State Deferral program is that states can effectively block NPL listing. The Deferral program also gives states leverage to compel PRP cleanups under state enforcement and voluntary cleanup programs at the states' and PRPs' own

pace. The fiscal 1995 and 1996 Appropriations Acts required the Agency to obtain governors' concurrence before listing a site on the NPL. In November 1996, EPA established a policy to request governors' concurrence before listing any site. This policy effectively reduced one of the prime incentives for states to participate in the Deferral program. In response the draft report, Agency management commented that as of June 1998, no sites have been added to the NPL with governor non-concurrence, and that on July 28, 1998, the Fox River site in Wisconsin became the first site proposed to the NPL over a state's objection.

FINDINGS AND RECOMMENDATIONS

Primarily as a result of the limited participation, the State Deferral program has not achieved its primary goal of reducing the number of sites in CERCLIS awaiting listing to the NPL. The growth of state voluntary cleanup programs has apparently resulted in the State Deferral program becoming a lower priority. If EPA continues to use this program, we believe agency officials should consider adding some requirements to preserve the long-term protectiveness of remedies, establishing a method to ensure community acceptance of the remedy, and establishing internal controls to monitor and record program results.

Long-term Protectiveness Concerns Must Be Considered

While the State Deferral program is a low priority, OSWER officials should be aware of the significant concessions that were being made. The Agency designed the State Deferral program so that states did not have to follow the NCP for deferred sites even though these sites were expected to be NPL caliber sites. Some of the key portions of the NCP establish the preference for permanent remedies and require treatment remedies in some instances, and five-year reviews when remedies result in hazardous contaminants remaining on site. Most of the remedies selected to date have not been permanent or treatment remedies and in a majority of these cases, five-year reviews, or periodic checks on the protectiveness of the remedies, were not required. Thus, remedies may not remain protective over the long term.

Eighteen remedies have been selected at 16 of the 30 deferred sites. Of the 18 remedies selected, 11 containment-type remedies were selected, five treatment remedies were selected (two sites had a containment and a treatment remedy), and 2 "other" remedies (no action and natural attenuation) were selected. For the 11 sites where containment-type remedies were selected, only three sites (Harvey & Harvey Landfill, National Zinc, and Blackwell Zinc) had a requirement for or similar to the five-year review. One of the three sites was in a state where the regulations required five-year reviews. However, the regulations were unclear about how long the five-year reviews would continue to be performed. A second site required one five-year review. The

remedy for the third site was almost identical to CERCLA and required that a five-year review be performed every five years to ensure that the remedy continues to protect human health and the environment. Five-year reviews were not required for the remaining eight sites. One of the eight sites (Bata Shoe) was an NPL caliber site and was an industrial landfill where a residential development was planned on adjacent property. A fence was to be built, other deed restrictions were to be implemented to limit public access to the site, and a risk assessment was to be performed to determine whether the landfill will need to be capped. In this case, neither state regulations nor the consent order require a five-year review to determine whether the remedy will be protective for the long term. Thus, this community and others may not be assured that remedies remain protective of human health and the environment for the long term.

Attachment 3 details the 30 deferrals, the type of remedies selected for all the sites, the status of whether five year reviews have been completed, and the sites' status.

Required Community Acceptance of Deferrals Not Always Achieved

State Deferral guidance provides for community support of deferrals and the termination of deferrals based on valid community objections. We found that the Agency has no mechanism to monitor or evaluate community support, or the lack of it. In addition, the state officials may or may not inform EPA when communities raise significant concerns about the deferrals. The Deferral guidance states that EPA could terminate a deferral if the community's objections are not addressed by the state. However, EPA may not be aware of a community's concern because it does not closely monitor the activities at the site or the community's concern or objections to a deferral. While the guidance does not suggest them as contacts, EPA has an ombudsman in each region and at Headquarters who could be an appropriate contact for community members to raise their concerns about the deferrals.

Affected communities raised significant concerns at two deferred sites (National Zinc and Healthway) that we visited. The community's concerns at the first site were heard by with an EPA representative when he attended a community meeting with us. However, at the second site, while community members are involved in the remedy selection process, they had serious concerns about the progress of cleanup and they did not know how or who to contact at EPA. We provided the community members with a regional contact to whom they could register their concerns. They formally asked regional officials to reconsider the deferral of the site to the State. In this case, EPA officials decided to more closely monitor the activity at the site.

Monitoring and Evaluation of Program Needed To Ensure Goals Are Achieved

At the beginning of our review, OSWER officials did not know the population of deferral agreements that had been signed, how many sites had been deferred, or how the cleanup of sites was (or was not) progressing. We attributed this, in part to the low priority of the program and the lack of an effective monitoring system and evaluation program.

Monitoring System

Two problems in the management control system also contributed to the lack of knowledge regarding the status of deferrals. The first involved the coding of state deferrals in CERCLIS. The May 1995 Deferral guidance specified that certain codes be entered into CERCLIS to mark the start and completion of the deferrals. While the fiscal 1996, 1997, and 1998 Superfund Program Implementation Manuals (SPIM), the day-to-day guidance used by regional officials to track site progress, indicated that a code should be entered for deferrals, it did not specify a code for state deferrals. Thus, CERCLIS did not include data needed to monitor and manage the program. In response to our finding, OSWER addressed this problem by adding language in the SPIM it issued for fiscal 1999-2000. OSWER also has a code pending to indicate sites are state deferred.

The second problem involved the inconsistent tracking of the status of deferrals in CERCLIS. We found that some regional officials tracked cleanup progress in CERCLIS and others did not. Some regional officials wanted to keep close track of the deferrals while others appeared to take a more "hands-off" approach to the deferrals. Also, one regional official indicated that a difficulty with tracking sites in CERCLIS was that the states do not always follow the Superfund cleanup process and so the accomplishments that the states report would not always be the same as those included in CERCLIS. While this may be true, tracking elements should be sufficient to keep track of the cleanup progress.

According to state certification letters in the state files, cleanup actions have been completed at three sites. Two of the sites were in Region 3 and one in Region 7. However, none of the three sites has been archived from CERCLIS as required by the guidance. The Region 3 official responsible for overseeing deferrals told us that he was unaware that cleanup at the two sites had been completed. No certification had been received from the state. The state official responsible for the deferrals said that he would provide some kind of proof of the cleanup completion if EPA would reimburse the state for the certifications. Otherwise, he indicated that he has little motivation to make sure the site is removed from CERCLIS.

The Region 7 official responsible for tracking deferrals told us that he was aware of the completion and had requested the site be archived from CERCLIS. Region 7 was then in the process of upgrading CERCLIS from version 2 to version 3, and the archival of the site would not occur until the upgrade was completed. While the CERCLIS 3 upgrade was completed by September 1997, another Region 7 official told us that she was currently evaluating the archival of the site based on information we provided and her review of regional documentation. By more closely tracking the status of cleanup at deferred sites, OSWER management will be able to ensure that completed sites will be removed from CERCLIS and that the pool of sites awaiting listing to the NPL will be reduced.

Evaluation of Program

In 1993, a workgroup was established to draft Deferral guidance, performance measures, and evaluate deferrals used to pilot the program. While the workgroup drafted performance measures, they have never been finalized. The workgroup also drafted an evaluation strategy and an evaluation questionnaire, but no action was taken. OSWER officials told us that growth in state voluntary cleanup programs led them to make the State Deferral program a lower priority. Since then, they have made changes to the Superfund Comprehensive Accomplishments Plan (SCAP) 13 report to track deferral starts and completions. They have also added deferrals to a draft Government Performance and Results Act sub-objective so that they can track the percentage of sites that have final assessment decisions. However, neither of these efforts reflects the Deferral program's desired outcome which is the reduction of the sites awaiting listing population.

Because of the low priority, OSWER officials told us that they did not have the resources to gather the data necessary to manage and evaluate the Deferral program. At the end of our review, we provided our data including EPA and state contacts, deferral status and other information that would help in monitoring the program.

Cleanup at Deferred Sites - Slow but Progressing

While 14 cleanups were behind the schedules agreed to in consent decrees or other enforceable documents, generally they were progressing. Of the 30 deferrals, 15 were in the Remedial Investigation/Feasibility Study (RI/FS) stage, 12 were in Remedial Design/Remedial Action (RD/RA), and 3 had reached the Completion stage. The chart below shows the cleanup phase for the deferred sites. (Note that states did not always use the same cleanup process EPA uses. We categorized the state deferrals' progress according to the most similar stage EPA uses.)

Stages of Progression

Stage of Progress	Number of Sites
Remedial Investigation/ Feasibility Study	15
Remedial Design/ Remedial Action	12
Completion	3

For the three completed sites, relatively simple remedies were performed, including soil disposal and the implementation of institutional controls (groundwater and deed restrictions.)

Based on site visits, and reviews of files and other available documents for 21 sites, we determined that RI/FS activities, including consent orders, proposed plans, and Records of Decision (ROD) had been completed at 13 sites. Some RD/RA activities had been completed at 5 sites, and 3 sites had been completed since the sites were deferred to the states. Attachment 4 charts, by deferral date, the last completed activity (progression) made since the deferral date for the 21 sites.

Recommendations

We recommend that the Acting Assistant Administrator for Solid Waste and Emergency Response implement the following actions:

- (1) Because a majority of the remedies that were selected by states were containment remedies and did not offer assurances of long term protectiveness, establish a mechanism to ensure that five-year reviews or an equivalent process will be performed where hazardous contaminants will remain on sites.
- (2) In order to make sure that communities can raise their concerns to EPA about the deferrals, establish a mechanism to ensure that community concerns relative to deferrals are brought to EPA's attention.
- (3) In order to assist in tracking performance measures for achieving Government Performance and Results Act (GPRA) goals, improve the management of the State Deferral program by:

- a) Reviewing the SPIM to ensure that tracking elements are sufficient to cover differences in state program terminology.
- b) Establishing a mechanism to require regional officials responsible for tracking the deferrals to more closely track the deferrals so that sites can be archived from CERCLIS upon completion of the deferral.
- c) Implementing performance measures that will reflect the desired outcomes of the Deferral program.

Agency Comments and OIG Evaluation

In response to the draft report, the Acting Assistant Administrator for Solid Waste and Emergency Response suggested various editorial changes and modification of the recommendations to make them less specific. We made changes to this report to address the editorial changes for the most part, and we modified the recommendations as discussed with Agency officials during our exit conference. Management's response to the draft report is included in Attachment 5. Additional management comments were documented on a copy of the draft report. These comments are not reflected in the response in Attachment 5.

In their response to our draft report, Agency management also asked for us to report certain data that we collected during our audit that was not a report finding, but was data important to the Agency. Specifically, the Agency requested that we include, where we had data available: (1) expanded discussion of the remedies implemented by states at deferred sites, when compared to remedies at NPL sites for similar periods, (2) characterization of the cleanup standards used by states when compared with Federal standards (i.e., more information on the statements ... that "[M]ost remedies . . . have not been permanent or treatment remedies" and yet "five-year reviews . . . were not required.") and (3) discussion of the average duration of phases for which survey data are available (compared to durations for NPL sites).

Our response to these requests is as follows, respectively:

- ! We did not obtain the date for every ROD or ROD equivalent during our review because we did not review every site file or visit every state deferral. However, assuming that no remedies were selected before the sites were deferred, during the period fiscal years 1993 to 1997, states selected 11 (61%) containment remedies for the 18 total remedies selected. For the same period, according to data that we did not audit and that the Agency provided for the expressed purpose of making this comparison, EPA selected 207 (38%) containment remedies for the 544 total remedies selected.

- ! We gathered limited data regarding the cleanup standards that were to be used by the states. According to the Deferral guidance, the quality of a response action should be CERCLA protective. CERCLA protective is defined as “protective of human health and the environment as defined generally by a 10^{-4} to 10^{-6} risk range and a hazard index of 1 or less. Generally, the state also should consider giving preference to solutions that will be reliable over the long term.”

Six (North Carolina, Michigan, Kansas, Wyoming, Colorado, Washington) of the 14 deferral agreements indicated that the remedies will be CERCLA protective as indicated in the guidance. Three (2 agreements with Oklahoma, 1 with New Mexico) of the agreements indicated that the remedies would be CERCLA quality. CERCLA quality means that the remedial actions must be protective of human health and the environment, utilize “permanent solutions and alternative treatment technologies to the maximum extent practicable,” and be “cost-effective“ and attain applicable and relevant and appropriate requirements. Three more (New Mexico, Iowa, Idaho) of the agreements indicated that the remedies would be consistent with CERCLA and the NCP. A cleanup consistent with CERCLA and the NCP is one where a private party cleaning up the site has substantially complied with potentially applicable requirements and the cleanup resulted in a CERCLA quality cleanup. The final two (Maryland, Delaware) agreements indicated that the remedies would be protective of human health and the environment and comply with all applicable laws and regulations.

We gathered no other information regarding the cleanup standards during the audit.

- ! During the audit, we gathered information regarding the status of 21 of the 30 deferrals. In Attachment 6, we have detailed the sites’ status and the earliest dates we were able to document where EPA or the states became aware of the sites.

We observe that for 9 of the 21 sites, it appears that states became aware of the sites before EPA did. While we made this observation, we offer no conclusions about the durations of specific phases or overall because we either did not gather the data because it was outside of the scope of this audit, or because we believe there are too many factors that can affect the data, such as changes in policy and potentially responsible party willingness to clean sites up.

SCOPE, METHODOLOGY, AND PRIOR AUDIT COVERAGE**Scope**

This report summarizes the management and results of all of the sites deferred to states as pilots or formal state deferrals as of the end of our fieldwork. The audit work was performed at the Headquarters Office of Solid Waste and Emergency Response (OSWER) and at regional and state offices. We conducted our survey and audit fieldwork from July 31, 1997 to January 16, 1998.

Methodology

Our overall objective, as discussed with Agency management during our survey, was to determine how the implementation of the 1995 Deferral policy affected the number of sites awaiting listing. To accomplish this objective, we obtained data from the agency regarding the number of sites awaiting listing. We also evaluated the Deferral policy to assess its potential effect on the number of sites awaiting listing. We considered other factors that may have affected the participation in the Deferral program and thus, the impact on the number of sites awaiting listing. We also considered the data collected during the achievement of the second specific objective as discussed below.

Our first specific objective was to determine how Agency staff could better implement the Deferral program. We reviewed background material, including a prior audit report and OSWER's Superfund Administrative Reforms Manual. We interviewed Headquarters, regional and state officials to obtain the lessons learned in handling the responses at the deferred sites, the factors of success for the deferrals, improvements to the deferral program, and EPA value added at deferred sites. We examined several management controls including whether performance measures were established and how the deferral data is obtained and monitored. We also identified factors affecting the participation in the Deferral program.

Our second specific objective was to determine whether deferred sites have been cleaned up. To accomplish this objective, we interviewed EPA regional and state officials responsible for overseeing the deferrals. We also performed file reviews and/or conducted site visits to observe site conditions for deferrals in Delaware, Idaho, Kansas,

Maryland, New Mexico, and Oklahoma. We received assistance from the OIG's Engineering and Science Staff to assist us during some of the site visits and to review selected documentation.

We also met with the Association of State and Territorial Solid Waste Management Officials to discuss how the Deferral program could be improved and what the factors of success for the deferrals were.

Prior Audit Coverage

The Office of Inspector General issued an audit report in January 1994, entitled, "Program Enhancements Would Accelerate Superfund Site Assessments and Cleanup" (E1SFF3-08-0021-4100180). This report evaluated many of the sites then awaiting listing to the National Priorities List and potential actions for addressing the backlog. One of the recommendations was that the Agency implement a well defined deferral policy to significantly reduce the backlog of sites awaiting listing. The Agency agreed with the recommendation and had already begun to draft guidance by the time the audit report was issued.

We also performed an audit of five-year reviews entitled, "Backlog Warrants Higher Priority For Five-Year Reviews," (E1SFF4-11-0029-5100229.) CERCLA 121(c) required that the Agency review any site where pollutants remain after remedial action no less often than every 5 years. We found that, while there was a backlog of five-year reviews to be performed, the reviews performed to date were valuable tools to identify successful remedies or those remedies that have developed problems or have failed.

Some of the five-year review reports indicated that corrective action was necessary. Five year reviews were also useful as a check of operations and maintenance. For example during one of the five-year reviews, the Remedial Project Manager discovered the remains of a dead animal inside a monitoring well. The remains made the well no longer viable. An effective operation and maintenance activity may have prevented this condition. However, in this case, the five-year review detected this condition.

LIST OF 30 DEFERRED SITES

State	Site Name
Maryland	Anne Arundel County Landfill
Maryland	Bata Shoe
Maryland	Bausch & Lomb
Maryland	Black & Decker
Maryland	North Carroll Shopping Plaza
Maryland	Scarboro Landfill
Delaware	Harvey & Harvey Landfill
Delaware	Healthways
Delaware	Chicago Bridge and Iron
Michigan	Willow Run
Oklahoma	National Zinc
Oklahoma	Blackwell Zinc
New Mexico	Terrero Mine
New Mexico	Chino Mine
Iowa	GM (AC Rochester)
Kansas	Gilbert & Mosley
Kansas	4th and Carey
Kansas	Lakeside Hills
Kansas	Deluxe Specialties
Kansas	Scouler Grain
Kansas	Mid-Kansas C. (Moundridge PWS)
Kansas	Hallmark-Select Products
Kansas	13th and Washington (part of the North Industrial Corridor Site)
Kansas	29th and Mead (part of the North Industrial Corridor Site)
Kansas	Farmland-South Hutchinson
Kansas	Neosho #2
Wyoming	Ferris Haggerty
Colorado	Larimer County Landfill
Washington	Washington Natural Gas
Idaho	Triumph Mine

LIST OF 30 DEFERRED SITES, REMEDY, FIVE YEAR REVIEW AND STATUS

Site	State	Type of Remedy Selected	Five Year Review Completed?	Status per Remedial Project Managers or File Reviews
Anne Arundel County Landfill	Maryland	Containment		Remedial Design
Bata Shoe	Maryland	Containment		Remedial Design
Bausch & Lomb	Maryland	Not Yet Selected		Remedial Investigation
Black & Decker	Maryland	Treatment, other areas not yet selected		Remedial Action
North Carroll Shopping Plaza	Maryland	Treatment		Remedial Action
Scarboro Landfill	Maryland	Containment and Treatment		Remedial Investigation/Feasibility Study
Harvey & Harvey Landfill	Delaware	Containment	Not yet required - due by 2/02	Completed 3/97
Healthways	Delaware	Not Yet Selected		Remedial Investigation/Feasibility Study
Chicago Bridge and Iron	Delaware	Treatment		Completed 1/96
Willow Run	Michigan	Containment		Remedial Action
National Zinc	Oklahoma	Containment and Treatment	Not yet required - due by 8/00	Remedial Action
Blackwell Zinc	Oklahoma	Containment	Not yet required - due no earlier than 4/01	Negotiating Remedial Action, Remedial Design Complete ¹
Terrero Mine	New Mexico	Not Yet Selected		Remedial Investigation/Feasibility Study

¹ Not confirmed with file review or site visit. We obtained this data from EPA Remedial Project Managers who completed our questionnaires.

Site	State	Type of Remedy Selected	Five Year Review Completed?	Status per Remedial Project Managers or File Reviews
Chino Mine	New Mexico	Not Yet Selected		Remedial Investigation Fieldwork ¹
GM (AC Rochester)	Iowa	Not Yet Selected		Remedial Investigation/Feasibility Study ¹
Gilbert & Mosley	Kansas	Containment		Remedial Design, Treatability Study
4th and Carey	Kansas	Not Yet Selected		Remedial Investigation/Feasibility Study
Lakeside Hills	Kansas	Containment		Remedial Design/ Remedial Action ²
Deluxe Specialties	Kansas	Other - No remedy performed		Completed 11/96
Scoular Grain	Kansas	Not Yet Selected		Remedial Investigation/Feasibility Study
Mid-Kansas C. (Moundridge PWS)	Kansas	Not Yet Selected		Remedial Investigation/Feasibility Study
Hallmark-Select Products	Kansas	Other - Natural Attenuation		Remedial Action
13th and Washington (part of the North Industrial Corridor Site)	Kansas	Not Yet Selected		Remedial Investigation/Feasibility Study

¹ Not confirmed with file review or site visit. We obtained this data from EPA Remedial Project Managers who completed our questionnaires.

² File review only confirmed proposed plan as having been completed which would then categorize this site as being in the Remedial Investigation/Feasibility Study Stage.

Site	State	Type of Remedy Selected	Five Year Review Completed?	Status per Remedial Project Managers or File Reviews
29th and Mead (part of the North Industrial Corridor Site)	Kansas	Not Yet Selected		Remedial Investigation/Feasibility Study
Farmland-South Hutchinson	Kansas	Not Yet Selected		Remedial Investigation/Feasibility Study
Neosho #2	Kansas	Containment		Remedial Design/ Remedial Action ¹
Ferris Haggerty	Wyoming	Not Yet Selected		Feasibility Study ¹
Larimer County Landfill	Colorado	Containment		Remedial Design/ Remedial Action ¹
Washington Natural Gas	Washington	Not Yet Selected		Remedial Investigation/Feasibility Study ¹
Triumph Mine	Idaho	Not Yet Selected		Remedial Investigation/Feasibility Study

¹ Not confirmed with file review or site visit. We obtained this data from EPA Remedial Project Managers who completed our questionnaires

PROGRESS OF 21 SITES SINCE DEFERRAL

Site Name	State	Deferral Date	Last Completed Activity	Last Activity Completion Date
Terrero Mine	New Mexico	Mar-93	Proposed Plan	Dec-97
Black & Decker	Maryland	Feb-94	RD/RA Consent Order	Apr-95
North Carroll Shopping	Maryland	Feb-94	RD/RA Consent Order	Nov-94
Bata Shoe	Maryland	Feb-94	RD/RA Consent Order	May-97
Bausch & Lomb	Maryland	Feb-94	RI/FS	Jan-97
Anne Arundel Landfill	Maryland	Feb-94	RD/RA Consent Order	Mar-97
National Zinc	Oklahoma	Mar-94	RD/RA Consent Order	Feb-97
Farmland S. Hutchinson	Kansas	May-94	RI/FS Consent Order	Apr-96
Gilbert & Mosley	Kansas	May-94	ROD ¹	Sep-94
Fourth & Carey	Kansas	May-94	RI/FS Consent Order	Apr-94 ²
Lakeside Hills Golf	Kansas	May-94	Proposed Plan ³	Sep-96
Scoular Grain	Kansas	May-94	Proposed Plan	Oct-97
Hallmark-Select Products	Kansas	May-94	ROD ⁴	Jul-97
Deluxe Specialties	Kansas	May-94	Completion	Nov-96
Chicago Bridge & Iron	Delaware	Jun-94	Completion	Aug-96
Harvey & Harvey Landfill	Delaware	Jun-94	Completion	Mar-97

¹ The site is undergoing remedial design and a treatability study is being performed.

² As of the end of our fieldwork in Kansas in December 1997, the RI/FS was not yet completed.

³ Though we found no evidence in the files, Region 7 officials indicated that the remedy had been selected; thus the site would be in the RD/RA phase.

⁴ The remediation (natural attenuation of the groundwater) is ongoing.

Site Name	State	Deferral Date	Last Completed Activity	Last Activity Completion Date
Healthways	Delaware	Jun-94	ROD ⁵	Mar-97
Triumph	Idaho	Aug-94	Proposed Plan	Nov-97
Scarboro Landfill	Maryland	Mar-95	RI/FS	Nov-97
29 th and Meade (part of the North Industrial Corridor)	Kansas	Oct-96	RI/FS Workplan	Nov-97
13 th and Washington (part of the North Industrial Corridor)	Kansas	Oct-96	RI/FS Workplan	Nov-97

⁵ The ROD equivalent is being reconsidered and the site is in the RI/FS stage.

MEMORANDUM

SUBJECT: Draft Audit Report on EPA's Management of the State Deferral Program
(Audit Report No. E1SFF8-11-0020)

FROM: Timothy Fields, Jr. ⁷
Acting Assistant Administrator

TO: Michael Simmons
Deputy Assistant Inspector General for Internal Audits
Office of the Inspector General

As requested, the Office of Solid Waste and Emergency Response (OSWER) has reviewed the draft audit report entitled EPA's Management of the State Deferral Program, dated July 9, 1998. The stated objectives of the audit were to determine how EPA could better implement the State Deferral program and whether deferred sites have been cleaned up.

I offer the following comments on the draft report. In addition, I have attached a copy of the draft report with comments noted in the margins.

- Page 4: The "Voluntary Cleanup Program" section should be re-written as follows:

Many States have Voluntary Cleanup programs (VCPs) to provide more flexibility to private parties that are willing to clean up sites without formal enforcement action. During 1995-1997, EPA worked toward developing a guidance for Regions and States to use in framing Superfund memoranda of agreement (SMOAs) that would address sites included in State VCPs. On

⁷This is an electronic file of the management response memorandum which was signed and dated 8/20/98.

November 14, 1996, EPA issued to the Regions a memorandum entitled "Interim Approaches for Regional Relations with State Voluntary Cleanup Programs." This memorandum did not specify the types of sites (NPL caliber or not) that should be included in the SMOA; rather, the Regions and States were to negotiate the types of sites to be included in the SMOA (e.g., whether or not to exclude NPL-caliber sites). If states' VCPs met the criteria specified in the memorandum, EPA would state in the SMOA that it did not anticipate taking removal or remedial action at sites involved in the VCP unless EPA determined that there may be an imminent and substantial endangerment to public health, welfare, or the environment.

In contrast with the State Deferral guidance, which many States considered very prescriptive, the November, 1996 State VCP memorandum anticipated little, if any, oversight by EPA. Draft guidance under discussion at the time stated that EPA would expect the state agency to report the number of sites in the program, the sites added the previous year, and the sites receiving certificates of completion in the previous year. The Association of State and Territorial Solid Waste Management Officials (ASTSWMO) officials indicated that the State/EPA SMOA approach became the alternative preferred by many states. However, ASTSWMO officials believe the State Deferral program should continue as an alternative method for site cleanup.

- Page 5: As written, the Report does not address several aspects of State programs. The following information should be included in the report, if it is available from the OIG survey: (1) expanded discussion of the remedies implemented by States at deferred sites, when compared to remedies at NPL sites for similar periods, (2) characterization of the cleanup standards used by States when compared with Federal standards (i.e., more information on the statements contained on page 5 that "[M]ost remedies . . . have not been permanent or treatment remedies" and yet "five-year reviews . . . were not required.") and (3) discussion of the average duration of phases for which survey data are available (compared to durations for NPL sites).
- Page 5: As used in the text, "trade-offs" does not convey the "significant differences" between the Federal cleanup program and State Deferral programs referenced elsewhere.

- Pages 9 and 10: The recommendations are too specific. The report should offer general recommendations so that OSWER and the Regions could evaluate the issues in consultation with the States and the OIG before deciding the specific actions necessary, including changes to the guidance and the process. If the OIG retains the specific recommendations, it should provide reasons for its recommendations (e.g., how the recommended increase in Federal oversight might affect the use of the State Deferral program by States) and the expected benefits in terms of program performance or efficiency.

Thank you for the opportunity to provide comments on the Draft Audit Report. If you have any questions, please contact Dave Evans of the State, Tribal and Site Identification Center (STSI) at (703)603-8885, or Marti Otto of STSI at (703)603-8853, or Elizabeth Harris, OSWER audit liaison, at (202)260-7323.

TIME SPAN FOR 21 DEFERRALS

Site	Earliest Date	Activity	Latest Date	Last Known Completed Activity	Time Span at Last Known Completed Activity	Time Span Thru 1/30/98
National Zinc	Nov-79	EPA Discovery	Feb-97	RD/RA Consent Order/ Agreement (CO)	17 Years 3 Months	18 Years 2 Months
Anne Arundel LF	Nov-79	EPA Discovery	Mar-97	RD/RA CO	17 Years 4 Months	18 Years 2 Months
CBI	Oct-80	EPA Discovery	Aug-96	Completion	15 Years 9 Months	
Bata Shoe	Oct-80	EPA Discovery	May-97	RD/RA CO	16 Years 7 Months	17 Years 3 Months
Harvey & Harvey LF	May-81	EPA Discovery	Mar-97	Completion	15 Years 10 Months	
13 th and Wash'gton (part of the North Industrial Corridor)	Feb-91	EPA Discovery	Nov-97	RI/FS Workplan	7 Years 9 Months	7 Years 11 Months
29 th and Meade (part of the North Industrial Corridor)	Oct-81	EPA Discovery	Nov-97	RI/FS Workplan	16 Years 1 Month	16 Years 3 Months
Bausch & Lomb	Feb-83	EPA Discovery	Jan-97	RI	13 Years 11 Months	14 Years 11 Months
Tererro Mine	Dec-89	EPA Discovery	Dec-97	Proposed Plan	8 Years	8 Years 1 Month

Site	Earliest Date	Activity	Latest Date	Last Known Completed Activity	Time Span at Last Known Completed Activity	Time Span Thru 1/30/98
Black & Decker	Oct-89	EPA Discovery	Apr-95	RD/RA CO	5 Years 6 Months	8 Years 3 Months
Scarboro LF	Jun-87	PA-Done by State	Nov-97	RI	10 Years 5 Months	10 Years 8 Months
Deluxe Specialties	Aug-88	PA-Done by State	Nov-96	Completion	8 Years 3 Months	
Hallmark-Select	1983	State Discovery	Jul-97	ROD equivalent	* 14 Years	* 15 Years
Healthway	1984	State Discovery	Mar-97	ROD equivalent	* 13 Years	* 14 Years
Gilbert & Mosley	1986	State Discovery	Sep-94	ROD equivalent	* 8 Years	* 12 Years
Lakeside Hills Golf	1991	State Discovery	Sep-96	Proposed Plan	* 5 Years	* 7 Years
Fourth & Carey	Apr-85	State Discovery	Apr-94	RI/FS CO	9 Years	12 Years 9 Months
North Carroll Shopping	Jun-87	State Discovery	Nov-94	RD/RA CO	7 Years 5 Months	10 Years 8 Months
Triumph Mine	Nov-87	State Discovery	Nov-97	Proposed Plan	10 Years	10 Years 2 Months
Scoular Elevator	Jun-88	State Discovery	Oct-97	Proposed Plan	9 Years 4 Months	9 Years 7 Months
Farmland S. Hutchinson	Mar-92	State Discovery	Apr-96	RI/FS CO	4 Years 1 Month	5 Years 10 Months

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