



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA Can Recover More Federal Superfund Money

Report No. 08-P-0116

March 26, 2008

Report Contributors:

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Abbreviations

EPA	U.S. Environmental Protection Agency
NPL	National Priority List
OIG	Office of Inspector General
PRP	Potentially Responsible Party
QA	Quality Assurance
RCRA	Resource Conservation and Recovery Act
RPM	Remedial Project Manager
SCORPIOS	Superfund Cost Recovery Package Imaging and On-Line System
TRI	Toxic Release Inventory



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We evaluated the U.S. Environmental Protection Agency's (EPA's) Superfund cost recovery and billing practices at a sample of National Priority List (NPL) sites. The objectives were to determine: (1) What were the total Superfund expenditures at NPL sites where a viable business is the primary responsible party, and have those expenditures been recovered? (2) Are EPA regional offices effectively billing site costs? (3) Were incorrect costs corrected and billed to the appropriate site?

Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund) authorizes the Federal Government, States, and private parties to recover Superfund cleanup expenses (costs) from potentially responsible parties. When EPA conducts Superfund cleanup and oversight work, it takes actions to recover those costs from responsible parties.

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

To view the full report, click on the following link:

www.epa.gov/oig/reports/2008/20080326-08-P-0116.pdf

EPA Can Recover More Federal Superfund Money

What We Found

We found that EPA regions have recovered \$165 million of \$294 million (56 percent) of the total Superfund costs from the sites we reviewed. Potentially responsible parties (PRPs) at these sites have generally paid what they have been billed. However, EPA has not recovered as much as \$129 million (44 percent) and has determined it will not attempt to recover between \$30 million and \$90 million of this amount. This indicates a potentially significant breakdown in controls over Superfund cost recovery.

Regions generally use similar billing processes to recover their Superfund costs from private parties, but exceptions exist. As a result of this evaluation, two EPA regions discovered they should have billed two sites approximately \$1.8 million. These costs are now being billed.

EPA regions have no formal process or information system controls to ensure staff correct costs assigned to the wrong site. Because of this lack of controls, we could not determine whether all incorrect costs were corrected and billed to the appropriate site. One EPA region did not include approximately \$8 million in a negotiated settlement for a site because the costs were incorrectly assigned to another site.

EPA has limited cost recovery performance measures and does not track the efficiency of cost recovery. Recommendations in this report will assist EPA in implementing improved controls for recovering Superfund costs.

What We Recommend

We recommend that EPA (1) enhance cost recovery guidance for all the regions, (2) implement mechanisms to support calculating how efficiently it is recovering site costs and tracking corrections, and (3) implement performance measures to track how efficiently it is recovering these costs. EPA concurred with our recommendations and has proposed actions to address them.



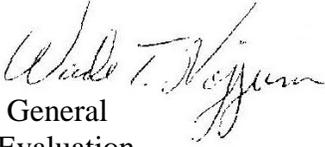
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

March 26, 2008

MEMORANDUM

SUBJECT: EPA Can Recover More Federal Superfund Money
Report No. 08-P-0116

FROM: Wade T. Najjum 
Assistant Inspector General
Office of Program Evaluation

TO: Lyons Gray
Chief Financial Officer
Office of the Chief Financial Officer

Granta Nakayama
Assistant Administrator
Office of Enforcement and Compliance Assurance

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. The OIG responded to the Agency's draft report comments by making changes to the report and providing responses to EPA, as appropriate. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$478,784.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. Your response should include a corrective action plan for agreed

upon actions, including milestone dates. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Carolyn Copper, Director for Program Evaluation, Hazardous Waste Issues, at (202) 566-0829 or copper.carolyn@epa.gov; or Steve Hanna, Project Manager, at (415) 947-4527 or hanna.steve@epa.gov.

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Chapter 1

Introduction

Purpose

The purpose of this evaluation was to examine issues related to recovering Superfund expenditures from the potentially responsible parties (PRPs) at a sample of Superfund national priority list (NPL) sites. We addressed the following questions:

1. What were the total Superfund expenditures at NPL sites where a viable business is the primary responsible party, and have those expenditures been recovered?
2. Are EPA regional offices effectively using the Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) to bill site costs?
3. Were incorrectly allocated¹ site costs corrected and billed to the appropriate site?

Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund) authorizes the Federal Government, States, and private parties to recover Superfund cleanup expenses (costs) from responsible parties. When the U.S. Environmental Protection Agency (EPA) conducts Superfund cleanup and oversight work, it takes actions to recover those costs from responsible parties.

As part of its Superfund cost recovery process, EPA uses an automated system known as the Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS) to calculate Superfund site costs. SCORPIOS is a repository of data from the EPA financial data warehouse and includes both indirect and direct Superfund costs. Direct Superfund costs are those that can be associated with activities at a specific site. Indirect Superfund costs reflect costs for general, administrative, and Superfund programmatic overhead costs not linked to specific sites.

¹ “Incorrectly allocated costs” refers to costs for a site incorrectly attributed to another site.

Noteworthy Achievements

EPA's noteworthy cost recovery achievements include the following:

- In 2000, to bring the Agency into compliance with cost accounting standards issued by the Federal Accounting Standards Advisory Board, EPA revised its Superfund indirect cost rate methodology for all fiscal years after 1989.
- The Agency recently updated its Superfund cost recovery billing policies, *Superfund Accounts Receivable and Billings*, Chapter 14 of the *Resources Management Directive Systems 2550D*, to reflect the statutory requirements needed to properly manage delinquent Superfund bills.
- The Agency developed and issued the following policy and guidance documents related to Superfund account receivable and debts:
 - *Superfund Accounts Receivable: Collection Actions for Delinquent Accounts*, August 20, 2002.
 - *Compromise of, and Termination of Collection Activity on, Post-Settlement and Post Judgment Superfund Debts*, October 2, 2001.
 - Amendment to the October 2, 2001, memorandum entitled *Compromise of, and Termination of Collection Activity on, Post-Settlement and Post Judgment Superfund Debts*, November 25, 2002.
- The Agency developed new overdue accounts receivable status codes to help the Agency better track and manage the status of its outstanding accounts receivable.
- The Agency participates in quarterly meetings for all offices involved in the Superfund accounts receivable and debts management process: Cincinnati Finance Center, Office of Financial Management, the Department of Justice, Regional Program Offices, Office of Regional Counsel, and the Office of Site Remediation Enforcement.

Scope and Methodology

We completed our work from January through August 2007, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives. We assessed internal controls over the cost recovery process for NPL Superfund sites.

We reviewed 58 NPL sites associated with viable businesses that had recently filed reports for the Toxics Release Inventory (TRI). Businesses that meet certain criteria are required to submit annual TRI reports (TRI filing) to EPA and States

detailing the volume of specific chemicals they release to the air, water, and land. We selected these 58 sites because their recent history of TRI filing suggested that a viable business was operating at those sites. We determined that viable businesses were associated with the 58 sites, and that the businesses are responsible parties for the Superfund contamination at the sites. Where EPA had spent Superfund money at these sites, we determined if EPA had recovered, or was attempting to recover, its expenses from those responsible parties. The 58 sites were in Regions 2 through 10. No Region 1 sites met the selection criteria.

To evaluate the recovery of Superfund expenditures at these sites (question 1), we obtained the total site-specific Superfund costs and cost recovery data for each site, we made information requests to each region, and we interviewed knowledgeable staff in each region and EPA headquarters.

To determine total site-specific costs, and EPA's recovered costs (question 1), we accessed the regions' SCORPIOS database and extracted data from two reports -- the Superfund Total Cost Report and the Site Collection Report. We provided each region totals of their respective Total Cost and Site Collection reports for all years. We asked questions about their billing and cost recovery process, including how they used SCORPIOS in the billing process (question 2). We asked specific questions related to each site, including questions about unrecovered costs and evidence for billing activity. We relied on the knowledge of site staff in the selected regions to provide explanations for unrecovered costs or lack of evidence of billing activity (question 3). We did not review regional site files, as we requested and received site-specific information from knowledgeable staff in each region.

For the purposes of this report, we use the following definitions:

Total costs – The total of all costs in the SCORPIOS Total Cost Report, including direct and indirect costs.

Recovered costs – The cash receipts total from the SCORPIOS Site Collection Report.

Unrecovered costs – The difference between total costs and recovered costs.

Incomplete cost recovery – Recovered costs less than total costs.

Cost recovery efficiency – Recovered costs as a percentage of total costs.

Billing – The process used by EPA to recover all costs identified as total costs in SCORPIOS reports, including settlement agreements and oversight costs.

Limitations

The following limitations prevent a complete reconstruction of all site costs using SCORPIOS:

- Because of revisions to the Superfund indirect rate methodology, applying the revised indirect rates for fiscal years between 1989 and 2001 may overstate or understate the indirect cost portion for those years.

- Depending upon when EPA issues bills, a provisional (i.e., draft) or final indirect rate is applied to the total direct costs. Because provisional and final rates may be different, if EPA calculates sites costs using a provisional rate, future attempts to reconstruct past costs may not show the same results. SCORPIOS maintains only one indirect rate per region for each year. After EPA finalizes the final rate, SCORPIOS overwrites the provisional rate with the final one.
- Because cash receipts prior to 1989 may not be stored in SCORPIOS, regions' costs recovered may be understated.

Prior Evaluation Coverage

The following OIG reports addressed regional Superfund cost recovery issues. Findings from these reports included erroneous bills and delays in issuing the bills.

- *Region 2's Billing of Superfund Oversight Costs*, Report number E1SFF8-02-0007-8100206, August 13, 1998.
- *Report of Audit on Region 3's Billing of Superfund Oversight Costs*, Report number E5FFL7-03-0008-7100292, September 22, 1997.
- *Audit of Region 9's Controls Over Superfund Oversight Cost Billings*, Report number E1SFF8-09-0022-8100259, September 30, 1998.

Chapter 2

EPA Has Recovered About Half Its Superfund Costs

EPA regions have recovered \$165 million of \$294 million (56 percent) of the total Superfund costs, from the sites we reviewed. PRPs at these sites have generally paid what they have been billed. However, EPA has not recovered as much as \$129 million (44 percent) and has determined it will not attempt to recover between \$30 million and \$90 million of this amount. This indicates a potentially significant breakdown in controlling Superfund cost recovery.

Regions have recovered 95 percent or more of their site costs at 11 of the 58 sites we reviewed. The potentially responsible parties (PRPs) at these sites have generally paid the amount billed. Regions generally use similar billing processes to recover their Superfund costs from private parties, but exceptions exist.

Regions Generally Use Similar Billing Practices, But Exceptions Impede Some Cost Recovery

The regions included in our review all use a similar process to track and bill annual Superfund site costs to private parties. The general steps are to:

- Annually track sites for billing in lists or systems by a designated anniversary date.
- Prepare, prior to the billing date, a report using SCORPIOS data (SCORPIOS report), summarizing the billable costs.
- Review and verify the costs in the SCORPIOS report, in accordance with legal strategies and provisions of the site's settlement agreement. The Agency is required to bill according to terms of the site's settlement agreement. The regional staff involved include the site attorney, the site Remedial Project Manager (RPM), and fiscal staff.
- Prepare a bill, after concurrence among the staff reviewing the SCORPIOS report, and send it to the PRP.

Exceptions to the typical billing approach can impede some cost recovery. These exceptions include the following.

Regions do not always bill sites annually

Regions may not bill some sites annually: (1) the site's established billing cycle may be every 2 years or periodic; (2) EPA has no agreement with the PRP to recover oversight costs; (3) the region may not find it cost-effective to bill for a small amount.

Under the above conditions, regions told us they sometimes postpone an annual detailed review of site costs. When the regional staff finally review the site costs to prepare a bill, the memories or availability of the appropriate regional staff may impair completely recollecting or documenting all costs.

One region defines the billing anniversary date differently

With the exception of one region, all regions we interviewed recognize the anniversary date as the effective date of settlement between the EPA and the PRP. Regions attempt to bill within 120 days of that date every year. EPA has recognized this as a measure of billing timeliness. For example, if the settlement agreement defined the effective date as January 1, 2000, the anniversary date of the following year would be January 1, 2001. However, one region redefines the anniversary date each year as the date of the last bill. This definition creates a 16-month billing cycle instead of 12 months. Using the initial anniversary date in the prior example, January 1, 2000, one would derive the anniversary date the following year as May 1, 2001, and that date would increase by up to 4 months each year. This potentially reduces the costs recovered per year and provides the PRP with an extra interest-free 120 days per billing cycle.

EPA cannot recover interest until it demands payment in writing

In some instances, regions do not issue a written demand for payment unless they have a cost recovery agreement with the PRP. For example, one region stated it might not issue such a demand when it does not expect the PRP to pay. However, EPA regulations specify that calculating interest cannot begin until EPA issues a written demand for payment. Therefore, until this demand for payment occurs, no one is obligated to pay anything; consequently, no interest accrues. Thus, EPA in actuality is granting the PRP a zero-interest loan from Superfund, which may amount to significant amounts of money. For example, if a site incurs \$100,000 each year for 10 years, the total costs incurred would be \$1,000,000. At an average interest rate of only 2.5 percent, the simple interest accrued during this time exceeds \$100,000. The unrecovered costs at some of the sites we examined meet or exceed this example.

Regions Provide Multiple Reasons for Incomplete Cost Recovery

EPA regions have recovered \$165 million of \$294 million (56 percent) of the total Superfund costs, from the sites we reviewed. However, EPA has not recovered as much as \$129 million (44 percent) and has determined it will not attempt to recover between \$30 million and \$90 million of this amount.

Two general reasons cited for incomplete cost recovery

The unrecovered costs do not represent costs that were billed but not paid, as the PRPs at these sites have generally paid the amount billed. The remainder of this

section documents reasons cited by the regions for incomplete cost recovery. Regions have billed and recovered 95 percent or more of their site costs at 11 of the 58 sites we reviewed. Where cost recovery was less complete, regional staff sometimes provided general explanations. These general explanations did not indicate specific costs excluded from bills, or reasons why the regions did not bill these costs. This indicates a potentially significant breakdown in controls over Superfund cost recovery. Regional staff often cited one or both of the following reasons for incomplete cost recovery, without supporting documentation.

- Limitations in negotiated settlements –EPA does not recover some costs because the private party and EPA agreed to exclude certain costs in reaching a settlement. Regional staff cited this as a reason for incomplete cost recovery at 12 sites.
- Total costs overestimated by SCORPIOS – SCORPIOS’ total cost reports for past years may not accurately reconstruct the indirect costs. Regional staff said that this SCORPIOS limitation is another reason that SCORPIOS reports show costs recovered as less than actual costs for seven sites. However, regions did not provide actual cost figures to document this reason.

Many specific reasons cited for incomplete cost recovery

Regional staff also had other explanations for incomplete cost recovery. Some of these reflect a misunderstanding of policies and procedures or a lack of oversight in the billing process. In several cases, our review caused regions to become aware of oversight lapses on some site bills.

- One region did not include a site on the billing list – While preparing its response to our information request for this project, one region discovered that one of the sites in question had inadvertently been left off its annual oversight billing inventory. SCORPIOS indicates the region last billed the site in 1996, and approximately \$1.3 million of the total costs have not been recovered. Since this discovery, regional staff have added the site to their oversight billing inventory and have scheduled the next bill for the site in April 2008.
- One region did not bill one site for years due to a misunderstanding on using a special account – While preparing its response to our information request for this project, one region discovered that it had not billed one site due to a misunderstanding about using funds in the site’s special account. The special account contained money recovered from the site for past EPA costs. Regional staff incorrectly thought the money in the special account was for future costs, so they did not bill the site for these costs. The site was last billed in 2001, and total costs since 2001 have been approximately \$500,000. Since this discovery, regional staff have generated a bill to address these costs.

- One region may not be able to recover oversight costs from State-lead sites – One region has never billed two State-lead sites, and the total SCORPIOS costs are approximately \$1.4 million. Some of the costs were not billed due to a past settlement agreement, and some costs cannot be recovered because the statute of limitations has expired. Regional staff stated that they could not bill the site for oversight costs, as the PRPs have cost recovery agreements only with the States. The region continues to incur oversight costs – slightly over \$95,000 total for both sites since 2000. EPA has no existing settlement agreement to recover oversight costs.

Other explanations for incomplete cost recovery include the following.

- Superfund remediation work for one site was performed under the Resource Conservation and Recovery Act (RCRA) permit. Regional staff incorrectly thought oversight costs were recoverable through work performed under the RCRA permit, but RCRA has no legal authority to allow recovering oversight costs.
- Document imaging costs for one site's files were attributed as direct costs to the site, when these costs should have been included as regional indirect costs. The region therefore did not bill for these costs. These document imaging costs were not used to calculate the region's indirect rate(s).
- Costs should have been attributed to a different site.
- Costs represented a litigation risk (in the opinion of EPA attorneys, if the PRP challenged the costs in court, EPA would lose).
- Cost invoices were not received or processed in time for billing.
- The statute of limitations for cost recovery has expired.
- Some of the identified costs were RCRA costs and therefore were not recoverable.
- A circuit court ruling prevented the recovery of oversight costs from sites in two regions for several years. This ruling has recently been reversed, and the regions are taking steps to recover these costs.
- Cost recovery negotiations are ongoing.
- Costs will not be billed until the PRP completes its remedial actions under an EPA Administrative Order.

SCORPIOS Does Not Track Cost Recovery Efficiency or Corrections

While SCORPIOS provides detailed cost information for regions to produce site bills, the system design does not include enough information to determine cost recovery efficiency or track corrections. These functions are not available because SCORPIOS does not allow the input of cost categories that would allow reports to calculate efficiency and track corrections. This makes program performance difficult to quantify and can impede cost recovery.

Each region uses a similar process to review SCORPIOS site costs and determine which costs to include or exclude from the bills. Regions exclude costs for various reasons, such as costs incorrectly billed to the site, costs excluded by terms of the settlement agreement, costs with inadequate documentation, and costs to be billed in the future. Although regions identify site costs as billed or excluded with a specific reason, this identification is not associated with the costs in SCORPIOS. This lack of data prevents the simple calculation of cost recovery efficiency from SCORPIOS. The lack of data also makes a thorough reconstruction of total costs incurred and billed for a site difficult.

When EPA regional staff identify costs assigned to the wrong site, these costs should be corrected to ensure the correct site is billed. However, SCORPIOS does not track these corrections, and regions do not have a formal process to ensure staff correct these errors. Two examples illustrate this problem. The total costs at one site were approximately \$8 million. These costs were coded incorrectly and should have been attributed to a different site. By the time the region realized the error, it was too late to bill the costs to the correct site because a settlement agreement for past costs had been finalized. At another site, the region recognized approximately \$73,000 in laboratory costs incorrectly charged to the wrong site. The charges were excluded from the bill. However, regional staff did not know if the accounts had ever been corrected and billed to the correct site.

Cost Recovery Performance Measures Are Limited

EPA has identified cost recovery performance measures in planning and policy documents, but has not implemented and tracked performance. EPA currently reports on the total number of sites (NPL and non-NPL) addressed by cost recovery, and reports a dollar value for private party commitments for clean-up and cost recovery. The reporting does not address dollars actually recovered compared to dollars potentially recoverable, or timeliness of billings. Until cost recovery performance measures are implemented, EPA will have no ongoing indication of how efficiently their cost recovery efforts are.

We identified two efforts by EPA to define cost recovery performance measures. The first is EPA's report, *SUPERFUND: Building on the Past, Looking to the Future*, April 22, 2004, which identified opportunities for program efficiencies. This report stated "...at sites with viable PRPs, the Agency should compare dollars actually recovered to dollars potentially recoverable. Without such a comparison, the program is relying upon an incomplete measure of success. As responsible parties continually press the Agency to write off past costs, EPA needs some way of ensuring that it is not compromising too much on past cost claims."

This report listed 102 recommendations in 6 key areas. One of the performance measure recommendations is Recommendation 57, which says that to improve

individual regional performance, the Office of Enforcement Compliance and Assurance and the lead region should evaluate current enforcement measures and develop additional regional site-specific measures that provide a more accurate picture of the program's success and provide an incentive to improve performance. EPA appears to have stopped pursuing this recommendation, as stated in a June 2007 action plan: "...due to the dynamic and complexity of the cost recovery program, it was unable to develop a new cost recovery performance measure."

The second effort is the *Superfund Program Implementation Manual FY 08/09 - Appendix C: Enforcement*, which identifies two performance measures: (1) The total value of cost recovery settlements and judicial actions achieved, and past costs considered recoverable; and (2) the amount of money EPA has recovered from PRPs compared to the total amount achieved in cost recovery settlements and judicial actions. Regional staff we interviewed gave no indication these reporting measures exist.

In recent years, EPA has collected regional data on billing timeliness, based on billing sites within 120 days of the billing anniversary date. The information reported includes the number of sites billed during the year and the number of these that met the timeliness performance measure. This measure addresses timeliness issues identified in past OIG reports. However, staff of the Office of the Chief Financial Officer stated that this measure would not be tracked in future years, but they are assessing the feasibility of adding this process to EPA's Quality Assurance Program.

As part of the final response, the Agency provided additional information on what is required from each region. First, as part of EPA's FY 2008 Management Integrity/A-123 process, each Regional Administrator is required to develop a Quality Assurance (QA) work plan which includes Superfund cost recovery to ensure that: (1) Superfund costs presented for billing are appropriately reconciled to the Agency's accounting system, and (2) unbilled Superfund costs are appropriately documented to substantiate why costs were not billed. Second, the Regional Administrators are required to document these reviews and certify their compliance in their annual assurance letter to the Administrator. Third, Servicing Finance Centers are required to meet the requirements of Resources Management Directive System 2550D, Chapter 14, "Superfund Accounts Receivable and Billings."

Conclusions

EPA does not have sufficient management control over the process for the recovery of Superfund expenses. Regions have pursued recovery of some EPA's Superfund expenditures for most sites, and sites have generally paid the amount billed. However, based on EPA's information systems, EPA has not recovered approximately \$129 million out of \$294 million in total costs, or 44 percent, of

the total costs at these sites. Regions are using some billing practices that impede Superfund cost recovery and regions did not recover costs because they misunderstood procedures or did not generate bills. Enhancing guidance and tracking Superfund costs can help EPA avoid unnecessary financial losses through better recovery of its Superfund costs.

Recommendations

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

1. Enhance cost recovery guidance for use by all regions. At minimum, this guidance should include:
 - Procedures for annually reviewing Superfund site costs for all sites where EPA is recovering or expects to recover costs, to ensure costs are adequately identified and documented. This guidance should include procedures for ensuring that costs are reviewed while involved staff are available and can remember cost details.
 - A standard definition of anniversary date for timeliness of billing.
 - A definition of the minimum costs required for billing.
2. Implement mechanisms to:
 - Support calculation of site cost recovery efficiency - Track the resolution of each cost as determined in the annual billing process. Resolutions could include billed, not billed for a specified reason, and pending.
 - Track corrections – Identify incorrect costs until they are corrected.Both of these mechanisms could be implemented through enhancements to SCORPIOS.
3. Implement performance measures to track cost recovery efficiency.

Agency Comments and OIG Evaluation

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

EPA concurred with all recommendations. We agree that the proposed actions, when implemented, will meet the intent of the recommendations.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	11	Enhance cost recovery guidance for use by all regions. At minimum, this guidance should include: <ul style="list-style-type: none"> - Procedures for annually reviewing Superfund site costs for all sites where EPA is recovering or expects to recover costs, to ensure costs are adequately identified and documented. This guidance should include procedures for ensuring that costs are reviewed while involved staff are available and can remember cost details. - A standard definition of anniversary date for timeliness of billing. - A definition of the minimum costs required for billing. 	O	Chief Financial Officer, in cooperation with the Assistant Administrator for the Office of Enforcement and Compliance Assurance			
2	11	Implement mechanisms to: <ul style="list-style-type: none"> - Support calculation of site cost recovery efficiency - Track the resolution of each cost as determined in the annual billing process. Resolutions could include billed, not billed for a specified reason, and pending. - Track corrections – Identify incorrect costs until they are corrected. Both of these mechanisms could be implemented through enhancements to SCORPIOS.	O	Chief Financial Officer, in cooperation with the Assistant Administrator for the Office of Enforcement and Compliance Assurance			
3	11	Implement performance measures to track cost recovery efficiency.	O	Chief Financial Officer, in cooperation with the Assistant Administrator for the Office of Enforcement and Compliance Assurance			

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

Agency Response to Draft Report and OIG Evaluation

March 7, 2008

MEMORANDUM

SUBJECT: Response to Draft Evaluation Report:
EPA Can Recover More Federal Superfund Money
Assignment No. 2007-000491

FROM: Lyons Gray/s/
Chief Financial Officer
Office of the Chief Financial Officer

Granta Nakayama/s/
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Carolyn Cooper
Director for Program Evaluation
Office of Program Evaluation
Office of Inspector General

We appreciate the opportunity to respond to the preliminary findings and recommendations addressed in the subject Office of Inspector General (OIG) draft Evaluation Report. As well, we appreciate the opportunity to address the factual accuracy of the draft report. In compliance with the extended OIG deadline of March 7, 2008, attached is the consolidated Agency response.

If you have any questions concerning our response to the draft Evaluation Report, please contact Thomas DeHoff of OCFO's Office of Financial Management at 202-564-4946.

Attachment

cc: Catherine McCabe, OECA
Lynn Buhl, OECA
Marcia Mulkey, OECA
Monica Gardner, OECA
Barry Breen, OSWER
Scott Sherman, OSWER
James Woolford, OSWER
Maryann Froehlich, OCFO
Joshua Baylson, OCFO
Lorna McAllister, OCFO
Susan Dax, OCFO
Krista Mainess, OCFO
Milton Brown, OCFO
Raffael Stein, OCFO
David Bloom, OCFO
ARAs
Wade Najjum, OIG
Elizabeth Grossman, OIG
Mark Bialek, OIG
Eileen McMahon, OIG
Melissa Heist, OIG
Stephen Nesbitt, OIG
Bill Roderick, OIG
Bill Ross, OSWER
Gwendolyn Spriggs, OECA
Vince Velez, OECA
Johnsie Webster, OSWER

**Agency Response to
Draft Evaluation Report:
EPA Can Recover More Federal Superfund Money
Assignment No. 2007-000491**

Part 1 – Factual Accuracy of the Draft Report

Provided below are consolidated Agency comments, by section, regarding the subject draft.

General Comment

It is not always clear that the OIG’s use of certain terms in the draft agrees with our definition of the terms. It would be helpful if the OIG would clarify or define the following terms, so that we can properly address the issues cited in the final report when issued:

Bill Site Costs	Collections	Incomplete Cost Recovery
Total Site Costs	Recovered Costs	Oversight Bill/Billings
Allocated Costs	Uncollected Costs	Past and Future Costs

OIG Note:

The page numbers reference in the Agency response refer to pages of the Draft Report, and may not be accurate references to pages in this final report.

OIG Response

As stated in the Scope and Methodology section of the report, we analyzed cost recovery by obtaining site total costs and costs recovered from two reports of EPA’s SCORPIOS information system. To clarify this approach and the relation to the terms in question, we inserted the following text in the Scope and Methodology section:

“For the purposes of this report, we use the following definitions:

Total costs – The total of all costs in the SCORPIOS Total Cost Report, including direct and indirect costs.

Recovered costs – The cash receipts total from the SCORPIOS Site Collection Report.

Unrecovered costs – The difference between total costs and recovered costs.

Incomplete costs recovery – Recovered costs less than total costs.

Cost recovery efficiency – Recovered costs as a percentage of total costs.

Billing – The process used by EPA to recover all costs identified as total costs in SCORPIOS reports, including settlement agreements and oversight costs.”

Additionally:

The term “Bill Site Cost” is explained by the “Billing” definition.

The term “Allocated Costs” is explained in a footnote on page 1.

The term “Uncollected Costs” is not used.

The term “Oversight Bill/Billings” is not defined, as this term is used only in reference to regional responses to information requests.

The term “Past and Future Costs” indicates if the costs were incurred in the past or may be incurred in the future.

Text in the report has been modified to use “cost recovery” instead of “collections” in all instances referring to the recovery of site costs, except when referencing report titles.

Chapter 1, Introduction, Pages 1-3:

Purpose (Page 1)

- Please provide consistency in terminology (e.g., costs recovered or collections) in referring to cost recovery. The cost recovery process has two primary components: 1) Cost Recovery Program Enforcement (seeking recovery of costs incurred through billing) and 2) the debt management process of collecting the billed costs. The former is dependent on EPA's program enforcement through seeking costs incurred in relation to the terms of the settlement agreement and enforcement strategy. The latter is dependent on external factors such as responsible parties' ability/willingness to pay, etc.

OIG Response

See previous OIG Response text box. The following text has been changed to clarify "Billing" versus "Cost Recovery":

- Text added to At a Glance, first paragraph in *What We Found* and Chapter 2, top of page 5: "PRPs at these sites have generally paid what they have been billed."
- Text modified at the bottom of page 6: "The unrecovered costs do not represent costs that were billed but not paid, as PRPs at these sites have generally paid what they have been billed."

- Please clearly define "Billing" (e.g., oversight and/or amounts resulting from settlement agreements). Settlement agreements can refer to two kinds of costs: Oversight costs (future costs) and past costs which are sum certain amounts resulting from settlement agreements for expenditures previously incurred. If the OIG's focus is on oversight billing, this should be clearly stated or referenced and should be applied consistently throughout the document. This clarification is needed for a better understanding of the issues.

OIG Response

"Billing" has been included in the definitions in the Scope and Methodology section of the report.

Scope and Methodology (Pages 2 & 3)

- Site files contain important and relevant site/case information (e.g., OECA's Ten-Point Settlement document) that may not be available in SCORPIOS or other Agency information systems. We strongly encourage the OIG to include a review of the site files.

OIG Response

As indicated in the report, we did not review site files because we requested and received information from knowledgeable staff in each region. These staff had access to the relevant site files as well as additional knowledge and experience with the sites.

Limitations (Page 3)

- It is imperative to review both the site files and SCORPIOS to obtain past site cost comparison information on a full cost basis. We strongly recommend OIG discuss the indirect rate setting process, and historical indirect cost methodologies with OCFO's Program Costing Staff for further clarification.

OIG Response

The Limitations section was included to address the fact that a historical reconstruction of total costs based entirely on SCORPIOS data could lead to differences in total costs compared to amounts actually billed at the time. We discussed indirect rate issues with OCFO staff during the course of the project. As suggested, we also followed up with OCFO staff to clarify any issues.

Chapter 2, EPA Has Recovered About Half Its Superfund Costs, Pages 4-10:

Regions Generally Use Similar Billing Practices, But Expectations Impede Some Cost Recovery (Pages 4 & 5)

- Please add a reference to the Agency requirement to bill in accordance with the provisions of the settlement agreement.

OIG Response

The third bullet at the beginning of the section *Regions Generally Use Similar Billing Practices, But Exceptions Impede Some Cost Recovery* indicates the costs are verified in accordance with the provisions of the site's settlement agreement. The following text was added to emphasize this point: "The Agency is required to bill according to terms of the site's settlement agreement."

Regions Provide Multiple Reasons for Incomplete Cost Recovery (Pages 5, 6 & 7)

- Please identify the specific office(s) responsible for providing general explanations as to why these costs were not billed.

OIG Response

These responses were based on written responses to OIG information requests and interviews with regional staff. We will provide the Agency with a list of regions and staff associated with the responses in a separate communication.

- With regard to the second bullet, it is untrue that the referenced costs were not used in the rate calculation. The calculation of indirect cost rates includes document imaging costs. We ask that you revise this section accordingly.

OIG Response

No change.

The statement is based on statements provided directly by regional staff, and is therefore correct. Regional staff explicitly stated that the costs were charged as direct costs to a site, and should have been considered indirect costs. The Region did not bill the site for the costs, and did not reverse the coding of the charges to allow them to be used in the indirect rate calculation.

- With regard to the fifth bullet, we are unclear as to why not receiving or processing invoices in time for billing is a valid explanation for “incomplete cost recovery”. Bills include billable site expenditures entered into IFMS that have been paid at the time the bill is prepared and issued. Invoices received and paid subsequently are included in the next billing cycle and will be included in the subsequent bill.

OIG Response

This explanation was provided by regional staff in response to an information request. The OIG did not state this was a valid reason. In the section where OIG presents this reason, the OIG states: “Regional staff also had other explanations for incomplete cost recovery. Some of these reflect a misunderstanding of policies and procedures or a lack of oversight in the billing process. In several cases, our review caused regions to become aware of oversight lapses on some site bills.” In addition, the OIG has made a recommendation to improve guidance in this area.

- With regard to the seventh bullet, this bullet should be subsumed into the first bullet related to non-recovery pursuant to RCRA.

OIG Response

While both bullets refer to RCRA, these represent different conditions for separate sites. The first is based on the incorrect assumption that remediation costs could be recovered through the RCRA permit. The second represents a regional conclusion during the billing process that some costs were not recoverable because they represented RCRA activities.

Cost Recovery Performance Measures Are Limited (Page 9)

- With regard to the fourth paragraph concerning two performance measures identified in the *Superfund Program Implementation Manual (SPIM) FY 08/09*, we are in compliance with the first performance measure stating: “Total value of cost recovery settlements and judicial actions achieved, and past costs considered recoverable.” However, concerning the second measure which states: “The amount of money EPA has collected from PRPs compared to the total amount achieved in cost recovery settlements and judicial actions,” we could not locate this definition in the SPIM.

OIG Response

The second measure is the last entry in the Table on page C-5 of the Manual.

- Please amend the last paragraph to include the following: As part of EPA’s FY 2008 Management Integrity/A-123 process, each Regional Administrator is required to develop

a Quality Assurance (QA) work plan which includes Superfund cost recovery to: 1) ensure Superfund costs presented for billing are appropriately reconciled to the Agency's accounting system; and 2) ensure that unbilled Superfund costs are appropriately documented to substantiate why costs were not billed. In addition, the Regional Administrators are required to document these reviews and certify their compliance in their annual assurance letter to the Administrator. Servicing Finance Centers are required to meet the requirements of Resources Management Directive System 2550D, Chapter 14, "*Superfund Accounts Receivable and Billings.*"

OIG Response

Text inserted as suggested.

**Agency Response to
Draft Evaluation Report:
EPA Can Recover More Federal Superfund Money
Assignment No. 2007-000491**

Part 2 – Agency Comments on Draft Report Recommendations

Provided below are consolidated Agency comments on the draft's recommendations.

OIG Recommendation #1

We recommend the EPA Assistant Administrator for Enforcement and Compliance Assurance, the Chief Financial Officer, and the Assistant Administrator for Solid Waste and Emergency Response, work collaboratively to:

- 1. Enhance cost recovery guidance for use by all regions. At minimum, this guidance should include:
 - Procedures for annually reviewing Superfund site costs for all sites where EPA is recovering or expects to recover costs, to ensure costs are adequately identified and documented. This guidance should include procedures for ensuring that costs are reviewed while involved staff are available and can remember cost details.*
 - A standard definition of anniversary date for timeliness of billing.*
 - A definition of the minimum costs required for billing.**

Response to Recommendation #1

The Agency will issue new guidance for reviewing Superfund site costs where EPA is recovering or expects to recover costs to ensure these costs are adequately identified/documented. This guidance will include the requirement to identify costs that are not billed and to document the rationale and explanation for not billing.

The Agency will provide training in upcoming FY 2008 Superfund cost recovery conferences, meetings, and program evaluations with regional cost recovery staffs. This training will reemphasize and reinforce existing policies, procedures, and guidance related to cost recovery such as: 1) the Resource Management Directive System, 2550D, The Financial Management of the Superfund Program; and 2) the Superfund Cost Recovery Procedures Manual.

The Agency currently reviews site costs at the time the costs are processed for site cost billing. Even in cases where viable PRPs have not yet been identified, we have internal controls in place for correctly recording these costs. These costs are not reviewed for billing purposes until such time as a viable PRP is identified.

As part of EPA's FY 2008 Management Integrity/A-123 process, each Regional Administrator is required to develop a Quality Assurance (QA) work plan which includes Superfund cost

recovery to: 1) ensure Superfund costs presented for billings are appropriately reconciled to the Agency's accounting system; and 2) ensure that unbilled Superfund costs are appropriately documented to substantiate why costs were not billed. In addition, the Regional Administrators are required to document these reviews and certify their compliance in their annual assurance letter to the Administrator.

OCFO is proposing a limited study to review the financial operations (i.e., from assembling the cost recovery bills to the collection process) and any related systems. The purpose is to: 1) ensure processes are documented and that adequate controls are in place; 2) determine if the existing business practices could be improved and; 3) determine if additional financial performance metrics would be beneficial to the administration of the program.

OIG Recommendation #2

2. Implement mechanisms to:

- *Support calculation of site cost recovery efficiency – Track the resolution of each cost as determined in the annual billing process. Resolutions could include billed, not billed for a specified reason, and pending.*
 - *Track corrections – Identify incorrect costs until they are corrected.*
- Both of these mechanisms could be implemented through enhancements to SCORPIOS.*

Response to Recommendation #2

Under the new guidance, each region will be required to track and document any unbilled and/or incorrect site costs (including the resolution of any such corrections).

Using the limited study referenced in the Response to Recommendation #1, the Agency will analyze the billing trends against site costs incurred and establish a baseline for developing appropriate standards for performance measurement.

Currently, the Agency maintains procedures for appropriate transaction adjustments to enable corrections to site cost transactions. However, the Agency will explore possibilities to enhance SCORPIOS and other information systems to develop a more global mechanism to support: 1) calculating cost recovery efficiency and 2) tracking error corrections from the point errors are identified until resolution.

OIG Recommendation #3

3. Implement performance measures to track cost recovery efficiency.

Response to Recommendation #3

Based on the trends and baselines developed for tracking cost recovery efficiency, the Agency will work to implement appropriate performance measures.

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