



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups

Report No. 09-P-0119

March 18, 2009

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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
EPA	U.S. Environmental Protection Agency
GAO	U.S. Government Accountability Office
OCFO	Office of the Chief Financial Officer
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSRTI	Office of Superfund Remediation and Technology Innovation
OSWER	Office of Solid Waste and Emergency Response
PRP	Potentially Responsible Party
SAM Report	Special Accounts Management Report
Trust Fund	Hazardous Substance Superfund Trust Fund



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

In February 2006, the Office of Inspector General recommended that the U.S. Environmental Protection Agency (EPA) timely review Superfund special accounts to ensure funds are used consistent with guidance. We followed up on EPA's progress in implementing this and other recommendations by evaluating EPA's use of special accounts that had high available balances or were at least 10 years old.

Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to retain and use funds received in settlements to address CERCLA response actions contemplated in settlement agreements. EPA retains these funds in site-specific accounts, called "special accounts." As of May 2008, EPA had over \$1.1 billion in 819 Superfund special accounts.

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

To view the full report, click on the following link:
www.epa.gov/oig/reports/2009/20090318-09-P-0119.pdf

Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups

What We Found

EPA had not used about \$65 million in Superfund special accounts that were available because it lacked some management controls. Additionally, EPA was holding more than \$88 million in special account funds in reserve that could be used to support priority Superfund sites, including sites where human exposure was not under control. EPA's fragmented and uncoordinated approaches to account for these funds led to missed opportunities to fund needed Superfund clean-ups. EPA lacked visibility over the amount and use of special account funds. In previous reports, we had recommended that about \$59 million of the \$65 million of idle special account funds be reclassified or transferred to the Hazardous Substance Superfund Trust Fund (Trust Fund). In this report, we recommend that the remaining approximately \$6.6 million be reclassified or transferred to the Trust Fund.

EPA has addressed various aspects of managing special accounts. However, improvements in EPA oversight and management of some accounts are needed to ensure Agency guidance is followed and the significant amount of money in Superfund special accounts is properly managed to support Superfund clean-up needs. EPA has not established the management controls needed to address the challenge of managing the \$1.1 billion it currently has in 819 Superfund special accounts.

What We Recommend

We recommend that EPA implement management controls to improve its use, management, and transparency of special accounts. A central management official is needed, available account data needs to be used, and new policies and public reporting requirements need to be implemented. EPA agreed with and has implemented, or committed to implement, recommendations in earlier reports to reclassify or transfer to the Trust Fund \$59 million in idle special accounts, and it should now act on the remaining \$6.6 million. EPA generally concurred with the Office of Inspector General's recommendations for improving the management of special accounts. However, some of the actions the Agency proposed to take did not meet the intent of OIG Recommendation 1. Therefore portions of Recommendation 1 are undecided with resolution in progress. Regions 1, 2, 4, 6, 7, and 10 generally concurred with the recommendations, and in some cases, had already implemented them or provided updated figures. Several regional recommendations remain open.



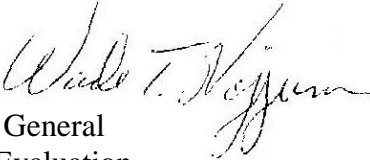
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

March 18, 2009

MEMORANDUM

SUBJECT: Improved Management of Superfund Special Accounts
Will Make More Funds Available for Clean-ups
Report No. 09-P-0119

FROM: Wade T. Najjum 
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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. 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 and the three early warning reports issued to Regions 5, 8, and 9 – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$947,442.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed upon actions, including milestone dates. Your responses for Recommendations 1(a), 1(e), and 1(f) did not meet the intent of the OIG recommendations. Therefore, these responses need to be reevaluated and revised before submitting the 90-day response to this report. The Acting Regional Administrators for Regions 2 and 7 have already taken appropriate corrective actions and thus are not required to respond. We have no objections to the further release of this report to the public. This report will be available at www.epa.gov/oig.

If you or your staff have any questions regarding this report, please contact me at 202-566-0837 or najjum.wade@epa.gov, or Carolyn Copper at 202-566-0829 or copper.carolyn@epa.gov.

Table of Contents

Purpose	1
Background	1
Noteworthy Achievements	2
Scope and Methodology	3
Results of Review	4
EPA Program Managers Did Not Know Whether Special Accounts Were Used Consistent With Guidance	4
EPA Has About \$65 Million in Idle Superfund Money That Could Be Better Used	5
EPA's Lack of Central Management Contributes to Under Utilization of Funds	6
EPA Did Not Use Special Accounts Data It Collected to Manage the Accounts	7
EPA Lacks a Policy to Address Use of Funds Held in Reserve	8
EPA's Lack of Public Reporting on Special Accounts Inhibits Transparency and Oversight	9
Conclusions	9
Recommendations	10
Agency Comments and OIG Evaluation	11
Status of Recommendations and Potential Monetary Benefits	13

Appendices

A Prior Reports	15
B Details on Scope and Methodology	17
C Table of Opportunities for Better Utilization through Reclassification or Transfer to the Fund	19
D Details on Special Accounts with Opportunities for Better Utilization through Reclassification or Transfer	20
E Details on Reserve Accounts	24

F	Sample Aggregate Financial Information EPA Could Report	26
G	Agency Response to OIG Draft Report	27
H	Region 1 Response to OIG Draft Report	42
I	Region 2 Response to OIG Draft Report	45
J	Region 4 Response to OIG Draft Report	46
K	Region 6 Response to OIG Draft Report	47
L	Region 7 Response to OIG Draft Report	50
M	Region 10 Response to OIG Draft Report	52
N	Distribution	54

Purpose

The purpose of this evaluation was to assess the U.S. Environmental Protection Agency's (EPA's) utilization of Superfund special account funds. We used EPA's 2001 guidance¹ on the "General Hierarchy of Special Account Funds Use" to evaluate EPA's utilization of special account funds. We conducted our evaluation in response to an Office of Management and Budget (OMB) request and to follow up on the Agency's implementation of prior EPA Office of Inspector General (OIG) recommendations in this area. Our objective was to evaluate EPA's use of special accounts that had high available balances or were at least 10 years old.

The OIG has issued three early warning reports to Regions 5, 8, and 9 as part of this evaluation. These reports are discussed in Appendix A.

Background

EPA is authorized by section 122(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to retain and use funds received in a settlement to address CERCLA response actions contemplated in a settlement agreement. EPA retains these funds in interest-earning site-specific accounts, called "special accounts." Special accounts are subaccounts within the EPA Hazardous Substance Superfund Trust Fund (Trust Fund). Superfund special account funds remain available for use in site-specific special accounts and should be used according to EPA's "General Hierarchy of Special Account Funds Use" (see Table 1).

Table 1: General Hierarchy of Special Account Funds Use

- | |
|---|
| <ol style="list-style-type: none"> 1. Use as settlement incentive for future work agreements. 2. Fund EPA-lead response actions. 3. Estimate future site costs and risks, reserve estimated amount; if there is a remainder, apply to previous EPA site expenditures. 4. If there are funds remaining after all site work is completed and funds have been applied to previous EPA site expenditures, transfer remaining balance to the Trust Fund. |
|---|

Source: *Special Accounts: Guidance on Key Decision Points in Using Special Account Funds*, September 28, 2001.

Nearly 20 years ago, few Superfund special accounts existed, but their numbers and dollar values have grown considerably since that time (see Charts 1 and 2). Since 1990, the number of special accounts has grown from 5, with available balances totaling about \$1.9 million, to 819, with available balances totaling more than \$1.1 billion as of May 31, 2008. This amount is nearly as much as EPA's Superfund enacted budget of about \$1.2 billion for Fiscal Year 2008.

¹ September 28, 2001, *Special Accounts: Guidance on Key Decision Points in Using Special Account Funds*, Office of Solid Waste and Emergency Response # 9275.1-03.

Chart 1: Total Number of Superfund Special Accounts

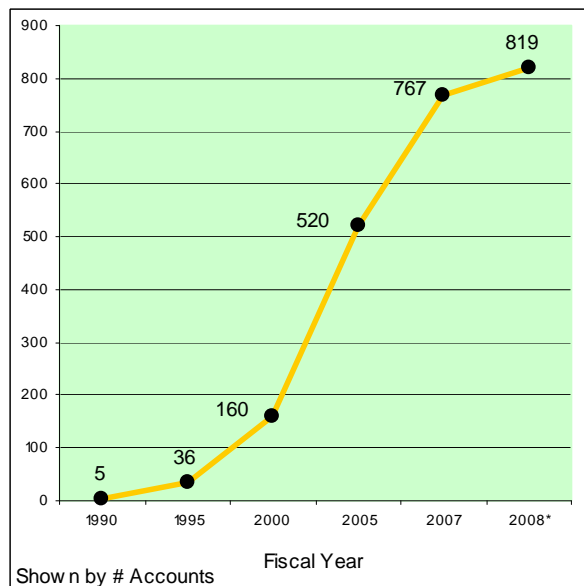
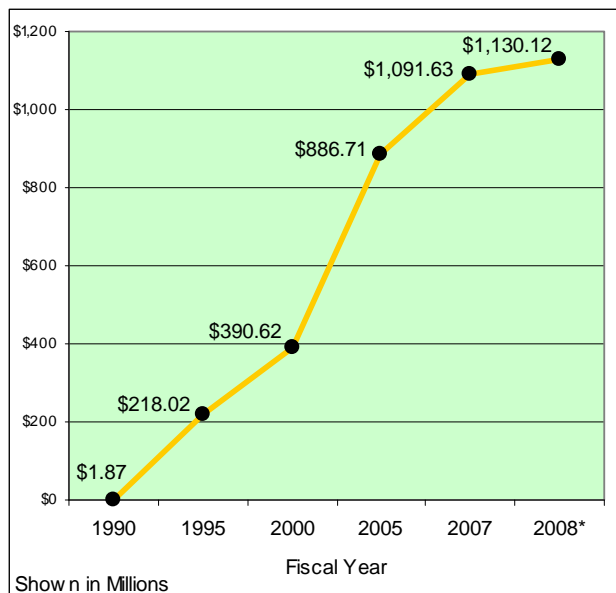


Chart 2: Total Available Dollars in Superfund Special Accounts



* 2008 amounts as of May 31, 2008

Source: OIG analysis of EPA data.

On April 22, 2004, EPA issued a report on an internal study, *SUPERFUND: Building on the Past, Looking to the Superfund Future*, to identify opportunities for program efficiencies that would enable the Agency to begin and ultimately complete more long-term clean-ups with current resources. In response to this study, known as the *120-Day Study*, EPA acknowledged in a directive that it had no systematic approach for capturing and reporting decisions concerning the use of special accounts, or for determining when special account resources may be returned to the Trust Fund.² To address this concern, EPA instructed its regions via the directive to provide interim information to Headquarters on the management of special accounts. By the end of 2005, the regions provided Headquarters this interim information, referred to as the 2005 Special Accounts Management (SAM) report. The SAM report included management data such as available balance; planned uses; remaining balances; and planned reclassifications, transfers, and/or closures. Also in response to the *120-Day Study*, EPA created the Superfund Board of Directors. The Board's role is to prepare, coordinate, and execute action plans to address the report's recommendations. The Assistant Administrators for the Office of Solid Waste and Emergency Response (OSWER) and the Office of Enforcement and Compliance Assurance (OECA) co-chair the Board.

Noteworthy Achievements

EPA has recognized the need to improve its monitoring and management of special accounts. Over the last several years, EPA has issued multiple special account guidance documents. These

² August 4, 2005, *Management of Special Accounts* (OSWER Directive 9275.1-16).

documents included guidance on reclassification and account close-out procedures. EPA Headquarters and regions have also increased their tracking of special accounts data and provided training. Through proper management of site-specific special accounts, the Agency has made available previously appropriated Superfund resources to support other Superfund sites. Specific actions include:

- Using the SAM reports to improve the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) database to track the planned and actual uses of special account resources, and using this data for Fiscal Year 2009 work planning discussions. These CERCLIS improvements allow the regions to plan their response budgets with consideration of special account resources available. CERCLIS improvements also provide Headquarters the ability to routinely monitor and review regional decisions concerning the use of these accounts.
- Holding National Meetings in 2006, 2007, and 2008, and providing all-day training to most regions.
- Improving the Special Accounts Intranet site to provide easy access to EPA policy and guidance on special accounts and training materials. New tools on the site include the Special Account Annotated Bibliography and the Special Accounts Reference Outline for Regional Attorneys.
- Developing a Special Account Management Strategy that outlines activities and areas where EPA will continue to work to improve the management of special account funds and the transparency of special account information.
- Identifying points of contact for special account issues in each of its Headquarters offices and the regions to facilitate coordination on special account issues.
- As of August 27, 2008, reclassifying at least \$91.3 million,³ including about \$29.8 million in response to three prior OIG reports, and transferring more than \$1.3 million to the Trust Fund.

Scope and Methodology

We conducted our review 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 evaluation objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objectives. We performed our review from April 2007 through November 2008. Appendix B contains additional details on our scope and methodology.

Several prior reports by the Agency, the EPA OIG, and the U.S. Government Accountability Office (GAO) have identified weaknesses in EPA's management of special accounts. These reports, including three early warning reports issued as part of this evaluation, are summarized in Appendix A.

³ The amount reclassified includes \$12,736,126 in reclassifications Region 9 completed using the deobligation and reobligation process (as provided by Region 9), and the remainder includes amounts EPA reclassified using transactions using a specific reclassification code ("KV").

Results of Review

Based on our review of a sample,⁴ we found that although EPA is generally using special account funds consistent with its hierarchy, EPA lost opportunities to use about \$65 million in Superfund special accounts. As a result of our early warning reports, EPA implemented or agreed to implement actions to reclassify or transfer to the Trust Fund about \$59 million, and it now needs to do the same for about \$6.6 million more. Additionally, we identified more than \$88 million in special account funds being held as reserves (or holdbacks). If the reserves were reclassified, appropriated dollars made available from the reclassification could be used to support other priority Superfund sites, including sites where human exposure is not under control. The opportunities were lost because EPA lacked some fundamental management controls, including:

- central management (including appropriate “tone at the top”) and oversight to ensure special accounts were used consistent with Agency special accounts guidance and OMB guidance on internal control,⁵
- use of special accounts data that EPA collects,
- a policy to address the use of funds held in reserve, and
- public reporting on special accounts.

EPA lacked these controls primarily because EPA management had not recognized a need for them. EPA managers have the responsibility for establishing and maintaining internal controls to achieve effective and efficient operations and reliable financial reporting. Without these controls, EPA was not aware of and could not demonstrate whether Superfund special account funds were being used consistent with the hierarchy, or the Agency’s actions to improve use of special accounts have produced results.

In addition, senior managers cannot make informed decisions about the significant available balance of approximately \$1.1 billion in special accounts, nor ensure stewardship of these resources. EPA’s oversight organizations are also prevented from clearly understanding how special accounts are being used. Implementing needed controls could help EPA improve management and transparency of special accounts and better use special account funds to ensure idle funds are used to fund other projects that could help protect public health and the environment.

EPA Program Managers Did Not Know Whether Special Accounts Were Used Consistent With Guidance

EPA did not know, and could not demonstrate, that special account funds had been used consistent with a hierarchy of priorities for spending these funds and as detailed in its guidance. As a result, oversight bodies, including Congress and OMB, were not able to clearly know how special accounts funds were being used or the results the special accounts program was getting. Also, EPA itself did not know whether these large sums of money were being properly managed.

⁴ As of May 2007, the accounts reviewed in our sample represented 11 percent of the total number of all Superfund special accounts and 47 percent of the total value of all accounts. We do not project our results beyond this sample.

⁵ December 21, 2004, OMB Circular A-123, revisions to *Management’s Responsibility for Internal Control*.

In September 2001, EPA OSWER and OECA jointly issued Directive #9275.1-03 to provide general guidelines for regions regarding when and how special account funds should be used throughout the remedial process. It detailed a “General Hierarchy of Special Account Funds Use” that established priorities for different uses of the funds (see Table 1).

As Table 2 shows, we found that EPA was using or planned to use (at the time we collected the data) about \$51.7 million of the sampled available balances as an incentive to Potentially Responsible Parties (PRPs) to settle with EPA for clean-up. EPA was using or planned to use \$265.6 million of the sampled available balances for EPA activities (lead-response), involving oversight of PRPs’ clean-up work or cleaning up a site itself. EPA also reserved (held back) approximately \$114.7 million of the sampled special accounts available balances to address future site costs and risks. This included approximately \$88.4 million EPA was not required to hold and about \$26.3 million it was required to hold due to settlement agreements. The subject of reserves is discussed later in this report.

Table 2: Planned Uses per General Hierarchy of Special Account Funds

Region	Available Balances	Settlement Incentive (Priority 1)	EPA Lead-Response (Priority 2)	Future Site Costs (Priority 3)	Risk Reserves (Priority 3)	Reclassify (Priority 3)	Transfer to Trust Fund (Priority 4)	Unplanned Amounts
1	\$65,589,228	\$12,251,554	\$35,601,938	\$1,100,000	\$16,776,000	\$0	\$99,614	\$1,122
2	64,154,161	0	63,565,175	0	0	573,000	0	15,986
3	3,248,811	0	3,248,811	0	0	0	0	0
4	1,507,946	0	25,000	840,663	0	0	642,283	0
5	19,304,991	0	6,346,183	7,834,778	1,675,029	3,324,000	0	125,001
6	8,329,059	0	6,913,850	0	0	1,250,377	164,832	0
7	1,788,465	184,709	123,266	0	0	1,480,490	0	0
8	63,713,312	0	55,805,468	801,007	0	7,106,837	0	0
9	261,662,276	39,299,625	91,814,533	12,748,118	70,000,000	20,000,000	0	27,800,000
10	7,829,661	0	2,439,629	3,000,000	0	2,390,032	0	0
Total	\$497,127,910	\$51,735,888	\$265,642,853	\$26,324,566	\$88,451,029	\$36,124,736	\$906,729	\$27,942,109

Source: EPA OIG analysis of a sample of Superfund special accounts. Figures are approximate due to rounding, and are updated since our May 2007 sample selection.

EPA Has About \$65 Million in Idle Superfund Money That Could Be Better Used

While EPA had generally followed its special accounts guidance for the sample of accounts reviewed, about \$65 million in 20 accounts had not yet been reclassified or transferred and could be put to better use. Of the 20 accounts, 16 of the accounts were from the portion of our sample of accounts that were at least 10 years old. As shown in Table 2, the amount of funds that could be better used includes more than \$36 million identified for reclassification, more than \$900,000 identified for transfer to the Trust Fund, and nearly \$28 million that had no planned uses. Some of these funds could have been used earlier. About 3 years ago, EPA identified approximately \$6.9 million of these funds as available for reclassification or transfer, but these actions did not occur. Breakdowns of these funds by region are in Appendices C and D. EPA could have potentially used some of these funds for sites that did not receive funding for new construction in 2005 and 2006, or to address other clean-up priorities, such as uncontrolled human health exposures.

In previous reports, we recommended about \$59 million of the \$65 million of idle special account funds in Regions 5, 8, and 9 be reclassified or transferred to the Trust Fund. EPA agreed with and has implemented, or committed to implement, those previous recommendations. We also found that other regions can reclassify or transfer to the Trust Fund, as appropriate, approximately \$6.6 million more, as detailed in Table 3 and Appendix D.

EPA's Lack of Central Management Contributes to Under Utilization of Funds

EPA lacks an effective control structure⁶ to address accountability and related issues pertaining to the management of special accounts. EPA has a decentralized management control structure that impedes management's visibility and oversight of special accounts. This has resulted in approximately \$65 million of planned reclassifications, transfers, and account closures not occurring or being delayed, and funds remaining idle. By not completing these planned actions, EPA's ability to make the best use of appropriated Superfund dollars is impeded. More specifically, because EPA did not apply special account funds to previous site expenditures (reclassify the funds), EPA did not use those funds to address other needed Superfund clean-ups. EPA's special accounts management is fragmented among 4 Headquarters offices and 10 regional offices. Each of these offices has separate roles and responsibilities, and no one office or managing body is centrally responsible for managing, overseeing, and coordinating special accounts work for these various offices.

According to the Agency, management of special accounts is a team effort. Enforcement staff (in OECA and the regions) secure settlements and collections, use funds to encourage PRPs to negotiate, and ensure EPA uses the funds consistent with settlements. Finance staff (in the Office of the Chief Financial Officer [OCFO] and the regions) track and account for the funds. Program staff (in OSWER and the regions) use funds to achieve the clean-ups. Office of General Counsel provides legal advice on EPA's authorities under CERCLA to establish, manage, and use special accounts. Regional offices manage the day-to-day special accounts work.

Headquarters managers believe the regional management of the accounts, in addition to the multiple management guidance documents issued by Headquarters offices, is sufficient for managing EPA special accounts. In the past, they questioned the need for a central management structure. Though Headquarters offices have jointly issued special accounts guidance, none of the offices has taken the lead or been designated as the central management official to ensure proper management, oversight, and coordination of special accounts work by Headquarters and regional offices. Consequently, no single Headquarters entity is responsible for the management or oversight of special accounts.

For example, the lack of central management of special accounts resulted in Region 5's missed opportunity to use special account funds to address an unfunded Region 5 clean-up in 2005. In August 2007, we reported that Region 5 staff had recommended reclassifying approximately \$2.8 million from the Thermo Chem Superfund site special account in April 2004. These funds were not reclassified then because Region 5 finance staff did not confirm receipt of the

⁶ OMB requires an effective control environment. The control environment is the organizational structure and culture created by management and employees to sustain organizational support for effective internal control.

reclassification memo to complete the reclassification because the site managers were unaware that action was needed or required. Controls such as the verification of finance's receipt of the memo, a milestone in the reclassification memo for completing reclassification, and certification that the reclassification occurred would have helped Region 5 accomplish the \$2.8-million reclassification. As we reported in August 2007, had Region 5 reclassified the \$2.8 million in 2004 as planned, it could have supported other clean-up needs. This included Region 5's Ottawa Radiation site (Areas 1, 4, 9, and 11, and Illinois Power), which at the time had uncontrolled human health exposures.

EPA Did Not Use Special Accounts Data It Collected to Manage the Accounts

EPA Headquarters did not use interim special accounts data it collected in 2005 (SAM report) to address an internal Agency recommendation (Recommendation 97 from EPA's *120-Day Study*) to review the oldest special accounts. Further, EPA Headquarters did not provide any analysis or follow-up with the regions on their proposed actions at the time to better use special accounts funds. In addition, although EPA is developing a Special Account Management Strategy, EPA has no comprehensive plan to use the current data being entered into CERCLIS to manage special accounts, nor has it identified a management official to be responsible for managing the data at the national level. As a result, EPA lost and may continue to lose opportunities to use some of these funds to address priority Superfund sites earlier, including those with uncontrolled human health exposures.

Recommendation 97 in the Agency's *120-Day Study* directed OECA to identify the oldest special accounts and then meet with the regions to discuss uses of those dollars and progress toward using them. In July 2008, EPA reported in a status update that its work on this recommendation was complete, with action ongoing. However, our interviews with the Agency disclosed that EPA has not performed an analysis of the older accounts as stated. Rather EPA planned to look at all accounts once CERCLIS updates are complete, in early November 2008.

The Agency's 2005 special account data (SAM report) identified about \$6.9 million from nine accounts (eight were 10 years old or older) that could have been better and earlier utilized (see Appendix C). Although the SAM report was submitted by the regions to EPA Headquarters, Headquarters did not follow up to ensure regions used the funds. As a result, regions' plans to reclassify or transfer special accounts funds to the Trust Fund in 2005 remained unexecuted for several years. Details on the special accounts with opportunities for better utilization are in Appendices C and D. EPA continues to collect special account data and create special account CERCLIS reports, but does not have a comprehensive plan to use the data to manage or oversee the special accounts.

Had EPA addressed the internal Agency recommendation and followed up with the regions on the actions it proposed in the 2005 SAM report, funds identified as available could have been put to better use before 2008. Specifically, in 2005 and 2006, EPA could have potentially used some of these funds for sites that did not receive new construction funding and/or where the human health exposures were uncontrolled. Further, EPA's lack of a comprehensive plan for using special accounts data, as well as a lack of a central management official to manage and oversee the special accounts data it collects, are impediments to using special account funds. A

comprehensive plan, along with the designation of central management to monitor the data, will help prevent the loss of future opportunities to better use special account funds.

EPA Lacks a Policy to Address Use of Funds Held in Reserve

In three of the accounts we sampled, we identified more than \$88 million in special account funds being held as reserves (or holdbacks) for potential future EPA-lead clean-up work. The three sites with reserve amounts are shown in Table 4.

Table 4: Sites with Reserve Accounts

Site	Region	Amount
Stringfellow	Region 9	\$70.0 million
Beede Waste Oil	Region 1	\$16.8 million
Thermo Chem	Region 5	\$1.6 million
Total		\$88.4 million

Source: EPA OIG analysis.

Reserves, in this context, are defined as special account funds that the regions maintain in accounts after EPA settles with the PRP (lodges and/or enters a consent decree in court), or EPA holds as “insurance” in the event that a PRP defaults. EPA has not established a policy or developed guidance for use in establishing, maintaining, and releasing these reserves. If the reserves were reclassified, appropriated dollars made available from the reclassification could be used to support other priority Superfund sites in the region or across the nation, including sites where human exposure is not under control.

For the three sampled accounts, there were no legal requirements for EPA to hold funds in reserve; rather EPA regions used “best professional judgment” in determining the amount of reserves to hold. As a result of holding these reserves, EPA was potentially withholding funds that could be reclassified and/or returned to the Trust Fund. In addition, as the amount of reserve funds increases, it can create obstacles in the region’s ability to actually use the funds. For example, there may be instances where a region may not be able to absorb all appropriated funds made available as a result of the reclassification of large amounts of special accounts funds in a given fiscal year. We found this to be the case for the Stringfellow account, where Region 9 told us it would have a difficult time using the \$20 million during Fiscal Year 2008 because Headquarters was already allocating money to the Region from the national pool.

According to the Agency, where an agreement is not specific about funds to withhold, it applies “best professional judgment” to determine the proper amount to retain for potential future work by EPA. For example, in two of the three reserve cases where an agreement did not specify holding of reserves, the OIG concluded that EPA regions held either 100 percent of the estimated amount of remaining clean-up or as much as they had in the account to cover it. The amount reserved for the third site was based on “30 percent of the account balance.” See Appendix E for details on the reserve amounts. A reserve policy, which details the factors that should be considered and documented when establishing, maintaining, or releasing any reserves, as well as central management to oversee the reserves, will improve controls to better utilize special accounts.

EPA's Lack of Public Reporting on Special Accounts Inhibits Transparency and Oversight

EPA lacks transparency in its public reporting of special accounts. Such transparency is needed to understand how special account funds are being utilized. EPA did not detail special accounts receipts, interest earned, obligations, disbursements, or available balances in its Superfund Annual Report for Fiscal Year 2007. Special account dollars were also not clearly and separately reported in EPA's Fiscal Years 2006 and 2007 financial statements. Rather, for reporting purposes, they were combined with EPA's annually appropriated dollars. For example, past costs (earned revenue) were reported in the Statement of Net Cost, and interest and cash-outs (unearned revenue) were reported in the Balance Sheet as assets and liabilities, respectively.

The OIG has rendered an unqualified opinion on EPA's financial statements for 8 consecutive years, and under current reporting requirements combining funds for reporting purposes is allowed. However, these requirements make it unclear and more difficult for oversight bodies (Congress and OMB) to understand the significant cumulative amounts of Superfund special accounts and how these accounts' funds are being used. As previously shown in Charts 1 and 2, as of the end of May 2008, there were 819 special accounts with available balances totaling about \$1.1 billion.

Without specific requirements to provide transparency in the reporting of the use of special accounts, it is unclear to EPA and oversight bodies how funds are being utilized, as well as the results the special accounts program is getting for its investment. The amount and use of these funds has grown significantly in recent years, thereby increasing the need for more accountability and transparency. Appendix F contains a suggestion for financial information that could be publicly reported on Superfund special accounts.

Conclusions

EPA has taken important steps toward managing Superfund special accounts and putting some controls in place, including CERCLIS improvements, policy development, and inter-office coordination. However, more needs to be done to ensure idle Superfund resources are put to better use. The lack of management controls, such as accountability and transparency in the use and reporting of special accounts, impedes use and proper management of special accounts. Given the significant growth in the number and value of Superfund special accounts, EPA must recognize the need for central management, accountability, and transparency, and make managing special accounts an Agency priority. The designation of a central management and action official will facilitate communication, coordination, and informed decision-making on Superfund special accounts given the various EPA Headquarters and regional offices involved.

Recommendations

1. We recommend that the EPA Deputy Administrator designate a central management and action official for Superfund special accounts (and document this delegation) with responsibility for developing an action plan to ensure that management accountability and related issues regarding special accounts are addressed. This should include:
 - (a) Requirements for clear and separate financial reporting of special account funds in a publicly available report.
 - (b) An annual planning process that includes a determination that special account funds will be used consistent with the hierarchy, to aid in the monitoring of special account funds.
 - (c) Development of regional and Headquarters controls that include follow-up to make sure planned and/or requested uses (e.g., reclassifications, transfers) of special accounts funds occur, and document these controls in appropriate guidance.
 - (d) Development of a plan that includes completed CERCLIS reports with accurate special accounts data, and that identifies how EPA will use the special accounts data it collects to manage the program and improve performance.
 - (e) Establishment of guidance and/or policy that addresses the proper application and amount of the holdback or reserve of special account funds for future use. The guidance and/or policy should include a listing of factors to assess in establishing, maintaining, and releasing reserves, both before and after an agreement for clean-up is achieved with PRPs.
 - (f) Reevaluation of whether the current amount of about \$88.4 million being held in reserve is still appropriate under the new policy (developed in response to Recommendation 1(e)), and, if not, reclassify or transfer it to the Trust Fund, as appropriate.
 - (g) Regularly aging and analyzing the “oldest accounts” for opportunities to better use special accounts funds.
2. We recommend that the Region 1 Administrator reclassify or transfer to the Trust Fund, as appropriate, \$100,736 in idle special account funds.
3. We recommend that the Region 2 Administrator reclassify or transfer to the Trust Fund, as appropriate, \$588,986 in idle special account funds.
4. We recommend that the Region 4 Administrator reclassify or transfer to the Trust Fund, as appropriate, \$642,283 in idle special account funds.

5. We recommend that the Region 6 Administrator reclassify or transfer to the Trust Fund, as appropriate, \$1,415,209 in idle special account funds.
6. We recommend that the Region 7 Administrator reclassify or transfer to the Trust Fund, as appropriate, \$1,480,490 in idle special account funds.
7. We recommend that the Region 10 Administrator reclassify or transfer to the Trust Fund, as appropriate, \$2,390,032 in idle special account funds. We also recommend that the Region 10 Administrator reclassify interest from the Tulalip account on a regular basis (see Appendix D).
8. We recommend that the Assistant Administrator for the Office of Solid Waste and Emergency Response and the Assistant Administrator for the Office of Enforcement and Compliance Assurance, as co-chairs of the Superfund Board of Directors, correct the Action Status for reviewing the oldest special accounts (under Recommendation 97 of EPA's *120-Day Study*) to state that EPA has not yet completed analysis work on all of its special accounts, including the "oldest special accounts," and provide an updated milestone for completion.

Agency Comments and OIG Evaluation

We received separate comments from Agency Headquarters offices and regions. In its December 2008 comments, the Agency (Headquarters) generally concurred with the OIG's recommendations for improving the management of special accounts. However, in most areas, the corrective actions the Agency proposed did not meet the intent of the OIG's recommendations. For example, although we recommended that the Agency designate a central management official for special accounts, the Agency proposed to establish a senior management committee which would operate under a charter. We had a subsequent meeting and communications with the Agency to resolve differences and reach agreements. Some issues were resolved and proposed corrective actions have been accepted. However, several recommendations remain unresolved and resolution will be required. Appendix G provides the full text of the Agency's comments and the OIG's response. Recommendations 1, 1b, 1c, 1d, 1g, and 8 are open with agreed-to corrective actions pending. In the Agency's 90-day response to this report, it should provide estimated milestone completion dates or actual completion dates for these open recommendations. The Agency's response to Recommendations 1a, 1e, and 1f still do not meet the intent of the OIG's recommendations. These recommendations are unresolved. As appropriate, the OIG will continue to work with the Agency to satisfactorily resolve differences.

The regions generally concurred with their respective recommendations for reclassification, had already implemented them, and/or provided updated figures or made additional technical clarifications in their official comments. The full text of the regions' comments and OIG's response are in Appendices H through M. Regions 2 and 7 have completed corrective actions for their respective recommendations (Recommendations 3 and 6). Therefore, the OIG has closed these recommendations and the regions should close them in Agency's tracking systems. Regions 1, 4, 6, and 10 provided acceptable corrective actions for the recommendations they are

responsible for (respectively, OIG Recommendations 2, 4, 5, and 7). These recommendations are open with agreed-to actions pending. The regions' 90-day response to this report should provide estimated or actual milestone completion dates for these 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	10	Designate a central management and action official for Superfund special accounts (and document this delegation) with responsibility for developing an action plan to ensure that management accountability and related issues regarding special accounts are addressed. This should include:	O	EPA Deputy Administrator			
		(a) Requirements for clear and separate financial reporting of special account funds in a publicly available report.	U				
		(b) An annual planning process that includes a determination that special account funds will be used consistent with the hierarchy, to aid in the monitoring of special account funds.	O				
		(c) Development of regional and Headquarters controls that include follow-up to make sure planned and/or requested uses (e.g., reclassifications, transfers) of special accounts funds occur, and document these controls in appropriate guidance.	O				
		(d) Development of a plan that includes completed CERCLIS reports with accurate special accounts data, and that identifies how EPA will use the special accounts data it collects to manage the program and improve performance.	O				
		(e) Establishment of guidance and/or policy that addresses the proper application and amount of the holdback or reserve of special account funds for future use. The guidance and/or policy should include a listing of factors to assess in establishing, maintaining, and releasing reserves, both before and after an agreement for clean-up is achieved with PRPs.	U				
		(f) Reevaluation of whether the current amount of about \$88.4 million being held in reserve is still appropriate under the new policy (developed in response to Recommendation 1(e)), and, if not, reclassify or transfer it to the Trust Fund, as appropriate.	U				

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
		(g) Regularly aging and analyzing the "oldest accounts" for opportunities to better use special accounts funds.	O		March 2009		
2	10	Reclassify or transfer to the Trust Fund, as appropriate, \$100,736 in idle special account funds.	O	Region 1 Administrator	March 2009	\$100.7	\$100.7
3	10	Reclassify or transfer to the Trust Fund, as appropriate, \$588,986 in idle special account funds.	C	Region 2 Administrator	02/10/2009	\$589.0	\$600.0
4	10	Reclassify or transfer to the Trust Fund, as appropriate, \$642,283 in idle special account funds.	O	Region 4 Administrator	09/30/2009	\$642.3	\$642.3
5	11	Reclassify or transfer to the Trust Fund, as appropriate, \$1,415,209 in idle special account funds.	O	Region 6 Administrator	09/30/2009	\$1,415.2	\$1,415.6
6	11	Reclassify or transfer to the Trust Fund, as appropriate, \$1,480,490 in idle special account funds.	C	Region 7 Administrator	09/30/2008	\$1,480.5	\$1,544.4
7	11	Reclassify or transfer to the Trust Fund, as appropriate, \$2,390,032 in idle special account funds. Also, reclassify interest from the Tulalip account on a regular basis (see Appendix D).	O	Region 10 Administrator	09/30/2009	\$2,390.0	\$2,390.0
8	11	As co-chairs of the Superfund Board of Directors, correct the Action Status for reviewing the oldest special accounts (under Recommendation 97 of EPA's <i>120-Day Study</i>) to state that EPA has not yet completed analysis work on all of its special accounts, including the "oldest special accounts," and provide an updated milestone for completion.	O	Assistant Administrator for the Office of Solid Waste and Emergency Response and Assistant Administrator for the Office of Enforcement and Compliance Assurance	March 2009		

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

Appendix A

Prior Reports

In completing our work, we issued three early warning reports to Regions 5, 8, and 9. These reports recommended that a total of approximately \$59 million in special account funds be reclassified or transferred to the Trust Fund and made available to fund other regional or national Superfund priorities. The three reports were as follows:

- **EPA OIG Report No. 08-P-0196, *Making Better Use of Stringfellow Superfund Special Accounts, July 9, 2008***: We found that by Fiscal Year 2011, EPA Region 9 could reclassify, or transfer to the Trust Fund, up to \$47.8 million in special account funds for the Stringfellow Superfund site, located near Glen Avon, California. In response to our draft report, Region 9 agreed to and completed reclassifying \$20 million of the \$47.8 million by the end of Fiscal Year 2008. It also stated it would review the remaining amount (\$27.8 million) in annual reviews and when it achieves a record of decision in Fiscal Year 2011, as well as in Fiscal Year 2012 when it plans to reach a settlement for the remaining site work. [In response to this draft report, the Agency updated the record of decision date to Fiscal Year 2011.]
- **EPA OIG Report No. 08-P-0102, *Making Better Use of Superfund Special Account Funds in Region 8, March 17, 2008***: We found that Region 8 could reclassify, or transfer to the Trust Fund, nearly \$8 million from the special accounts for the Portland Cement site in Salt Lake City, Utah. Construction had been completed at the site in September 2006 and minimal future costs were anticipated. In response to our report, Region 8 reclassified \$3,027,087 in February 2008 and another \$4,091,034 in July 2008.
- **EPA OIG Report No. 2007-S-00002, *Making Better Use of Superfund Special Account Funds for Thermo Chem, August 20, 2007***: EPA Region 5 missed an opportunity in 2005 to make timely and better use of \$2.8 million in the special account for the Thermo Chem Superfund site. The Region could have funded other priority response activities by reclassifying funds no longer needed at the Thermo Chem site. Region 5 could also make use of an additional \$524,000 that had no current planned use. In March 2008, as a result of our report, Region 5 reclassified \$2,741,743, and it plans to reclassify additional funds in Fiscal Year 2009. On January 30, 2009, Region 5 reclassified \$529,328.

Other prior reports related to issues covered in this review include:

- **EPA OIG Report No. 2006-P-00013, *EPA Can Better Manage Superfund Resources, February 28, 2006***: Recommendation 2-7 stated “EPA should timely review special account dollars and set up a formal process and schedule to ensure special account funds are used consistently according to the hierarchy specified in its guidance.” Recommendation 2-2, which pertained to Superfund in general, stated: “EPA offices should more closely align themselves in support of an accountable entity (e.g., a Board, a National Program Manager) to effectively allocate and manage Superfund resources

across the Agency according to the program's demonstrated needs and goals." Further EPA actions are still needed in response to these recommendations.

- ***SUPERFUND: Building on the Past, Looking to the Superfund Future, April 22, 2004 (known as the 120-Day Study)***: This report, prepared by EPA, included several recommendations regarding special accounts that we considered relevant to our current review, including:
 - ✓ ***Recommendation 95***: "OCFO should develop fact sheets on setting up special accounts, utilizing special account dollars, and closing out the accounts. (Near term)"
 - ✓ ***Recommendation 96***: "OECA and OCFO should design reports that clearly describe the use and status of special accounts, and should provide them to managers in the Regions and Headquarters on a regular basis. (Long term)"
 - ✓ ***Recommendation 97***: "OECA should identify the oldest special accounts and then meet with the Regions to discuss uses of those dollars and progress toward using them. (Near term)"
 - ✓ ***Recommendation 102***: "EPA's management and support offices should meet with their Superfund response and enforcement clients to review current measures and possibly establish new performance measures specific to the Superfund program, such as on special accounts and cost recovery in order to increase the Superfund program's integration and efficiency."

- ***GAO Report No. GAO/RCED-00-118, SUPERFUND: Extent to Which Most Reforms Have Improved the Program Is Unknown, May 12, 2000***: This report included one reform pertaining to special accounts – promote the greater use of site-specific accounts that hold funds obtained through settlements with parties at a site for clean-up actions at that site. EPA's performance measures included measuring outputs – number of accounts and amounts of funds available (133 accounts contained \$570 million available for site-specific clean-up); and the number of settlements disbursing funds from accounts and amounts disbursed (beginning in Fiscal Year 2000). The measures did not include any outcomes.

- ***EPA OIG Report No. 99P0214, Administration of Superfund Special Accounts Needs Improvement, September 28, 1999***: This report disclosed that reconciliations of special account transactions and balances were not sufficient to ensure identification and correction of errors in these accounts; that regional personnel were not always sufficiently aware of the existence and intended use of these accounts; and that reviews were not made to determine if accounts should be closed.

Appendix B***Details on Scope and Methodology***

To address our objectives, we selected and analyzed an initial judgmental sample of 79 special accounts with available balances that totaled at least \$10 million in value or were at least 10 years old. These accounts totaled \$485,174,896⁷ as of May 31, 2007. This represented about 47 percent of the available balances of all special accounts nationally (\$485,174,896 out of \$1,032,652,234), and about 11 percent of the total number of accounts nationally (79 out of 697). In addition, our sample included six other accounts totaling \$10,828,354 that were identified by the regions as of the dates we interviewed the relevant regional officials.

We identified whether EPA Headquarters had developed and provided guidance to the regions on managing the “General Hierarchy of Special Account Funds Use.” We obtained and reviewed other guidance applicable to special accounts. We determined the extent to which special account funds are used as a settlement incentive and used for EPA-lead clean-ups. We evaluated the extent to which EPA planned funds for reclassification, and identified how much money has been transferred to the Trust Fund. The opportunities we identified for better utilization in Appendix C were generally identified at about the time of our interviews with regional officials.

In conjunction with our analysis, we visited Regions 1, 2, and 9 to conduct interviews with regional project staff and program managers regarding the sample accounts. For Regions 3, 4, 5, 6, 7, 8, and 10, we conducted phone interviews with project staff and program managers. OIG staff co-located in Regions 4 and 5 attended the phone calls in person with regional staff. In April 2008, we interviewed the State of California’s Department of Toxic Substances Control staff responsible for developing the clean-up estimates for the Stringfellow site.

We reviewed many documents, including:

- Agreements or other documentation establishing the special accounts and/or limiting the use of the special accounts funds.
- Agency financial statements, and the Fiscal Year 2007 Superfund Annual Report, to determine how special accounts information was publicly reported.
- Regional documentation supporting their management of special accounts, and regional reclassification memos.
- Corroborating documentation for regions’ planned future uses of special accounts funds.
- The Agency’s annual performance plan for Fiscal Year 2007; Fiscal Year 2007 assurance letters for OSWER, OECA, and OCFO; and Goal 3 in EPA’s 2006-2011 strategic plan, to gain an understanding of reported internal controls and EPA’s reporting of its accomplishments achieved with special accounts funding.

⁷The total for the 79 accounts as of May 31, 2007, excludes 3 accounts from the initial sample. If these accounts were included, the total would decrease by \$9,745 as two of the accounts totaled \$0 and one had a balance of negative \$9,745.

To gain a current understanding of how special account funds might be used at the sampled accounts' sites, we researched the site clean-up status for the sites in the Agency's Superfund Information System. We reviewed corroborating documents such as records of decision and 5-year review reports when available. To gain an understanding of the Agency's progress in planning and using special accounts funds, we obtained and analyzed special accounts management reports submitted by the regions to Headquarters. These 2005 reports described details on the past and planned future use of special accounts.

To gain an understanding of information systems controls and weaknesses, we reviewed prior audit reports on the relevant information systems. However, because we had not evaluated the controls over the details of specific site accounts before, and because of the concerns found in prior reports, we attempted to verify information in these systems. We obtained available documentation that supported the establishment of sampled accounts. We also obtained available documentation supporting clean-up estimates and planned uses of funds. We obtained documentation supporting reclassification requests. We reviewed ORBIT (OCFO Reporting and Business Intelligence Tool) information for obvious errors. We relied on work performed by OIG financial statement auditors regarding financial statement transactions, which included tests involving special accounts.

We reviewed draft CERCLIS reports that the Agency planned to use to track and manage special accounts. We asked about plans EPA had to assure data accuracy once the reports are completed.

We interviewed staff in three Headquarters offices (OSWER, OECA, and OCFO) that have a role in managing special accounts, to gain an understanding of the roles and responsibilities for each. We also asked them about the actions they took in managing and reporting on special account funds. We asked about oversight conducted by Headquarters of regional use of special account funds consistent with the guidance, and Headquarters use and follow-up of the 2005 special accounts data they collected.

We interviewed Headquarters and Region 9 officials regarding policies on holding reserves in special accounts, particularly when EPA has an agreement with PRPs for clean-up. We interviewed EPA Headquarters and regional staff and managers regarding the management and utilization of special account funds.

We interviewed regional officials – generally the remedial project manager, the site attorney, and financial management staff for each account – to determine how regions were using the special accounts funds consistent with the hierarchy of special accounts use. Regional officials discussed the current clean-up status of the sampled accounts' sites, and the planned use of funds to address any remaining site work. We interviewed regional staff regarding regional reclassifications, and, in the case of Region 9, the accounting of its reclassified funds.

We followed up with Headquarters officials about whether they had analyzed the “older” special accounts pursuant to a recommendation from an internal Agency report.

Details on prior reports reviewed are in Appendix A.

Appendix C

Table of Opportunities for Better Utilization through Reclassification or Transfer to the Fund

Region	Special Account	Action Identified in 2005 SAM	Amount of Action Identified in 2005 SAM	Action Completed Before OIG Review Initiated April 2007	OIG Recommended Action-Reclassify or Transfer to Trust Fund
1	Keefe Environmental	-		-	\$1,122
	Land & Resource Recovery	Remove ⁸	\$60,000	No	\$99,614
	Subtotal		\$60,000		\$100,736
2	Love Canal	-		-	\$588,986
	Subtotal				\$588,986
4	City Industries, Inc.	-		-	\$642,283
	Subtotal				\$642,283
5	Thermo Chem	-		-	\$3,449,001
	Subtotal				\$3,449,001
6	Gulf Coast Vacuum	-		-	\$218,388
	Odessa Drum Company	No Future Use of Account	\$1,069,379	No	\$1,196,821
	Subtotal		\$1,069,379		\$1,415,209
7	Ralston	Reclassify/ Transfer	\$251,015	No	\$274,535
	Fenton Creek Dump	Reclassify/ Transfer	\$1,155,759	No	\$1,164,054
	Three D Investments	-		-	\$41,901
	Subtotal		\$1,406,774		\$1,480,490
8	Portland Cement	Close - Fiscal Year 2007	\$3,623,798	No	\$7,101,411
	California Gulch	Close - Fiscal Year 2006	\$11	No	\$102
	Petrochem Recycling	Close - Fiscal Year 2006	\$1,672	No	\$2,025
	Central City/ Clear Creek	Close - Fiscal Year 2008		No	\$3,299
	Subtotal		\$3,625,481		\$ 7,106,837
9	Stringfellow	-		-	\$47,800,000
	Subtotal				\$47,800,000
10	Pacific Wood Treating	Work Complete	\$15,981	No	\$17,479
	Arctic Surplus	Close	\$703,951	No	\$769,912
	Bunker Hill-NIPC	-		-	\$28,097
	Tulalip	-		-	\$1,574,544
	Subtotal		\$7019,932		\$ 2,390,032
TOTAL All Regions			\$6,881,566		\$64,973,574

Source: EPA OIG analysis of EPA data and OIG reports.

⁸ Remove \$60,000 + Accumulated Interest to Trust Fund.

Appendix D

Details on Special Accounts with Opportunities for Better Utilization through Reclassification or Transfer

Region 1

We identified two special accounts with a total of \$100,736 that could be better utilized. This included \$1,122 for Keefe Environmental Services and \$99,614 for Land and Resource Recovery.

Keefe Environmental Services: Region 1 initially identified the opportunity to reclassify an estimated \$100,135 of unplanned costs from this special account in Fiscal Year 2008. More recently, the Region updated its future cost estimate, reducing unplanned costs from \$100,135 to \$1,122. The Region stated that if the unplanned amount is not needed for continuation of the long-term response action (scheduled to begin in the second quarter of Fiscal Year 2009), it would again consider reclassification.

Land and Resource Recovery: The \$99,614 identified for this special account represents \$60,000 plus \$39,614 of accumulated interest that can be transferred to the Trust Fund. The Region, in its 2005 SAM report, noted that \$60,000 from the initial consent decree, used to set up the special account, was incorrectly put into the special account. The \$60,000 should have been put into the Trust Fund. The funds were subsequently removed from the special account in May 2007. In addition, the removal of accumulated interest should have followed the removal of \$60,000 that occurred in May 2007. We suggested to the Region that all accumulated interest associated with the \$60,000 should be removed. The Region agreed. In December 2007, the Region corrected the account to remove the interest. No further action is needed from Region 1 on this issue.

Region 2

We identified \$588,986 in the Love Canal special account that could be better utilized. Subsequent information provided by the Region showed \$573,000 planned for reclassification. The remaining balance of 15,986 is unplanned. Per the Region, it will most likely recommend a partial reclassification of \$500,000, pending completion of an on-going health study. The Region believes that the study could require more money based on upcoming findings and associated public hearings. The Region also believes it may not be appropriate to reclassify any of the funds until the study is completed and communicated to the public. On February 10, 2009, Region 2 reclassified \$600,000.

Region 3

We found no opportunities for reclassification or transfer to the Trust Fund in Region 3.

Region 4

We identified \$642,283 in the City Industries, Inc., special account that could be better utilized. Region 4 intends to close out the special account and transfer the remaining funds to the Trust Fund. During our interview in July 2007, Region 4 had stated that, in 2004, the PRPs took over operation and maintenance at the site and have been operating the plant for 3 years. The Region has no concern at this point that the PRPs cannot adequately do the work at the site. The Region agreed to reclassify the \$642,283 and close the account during Fiscal Year 2009.

Region 5

The utilization of special account funds in Region 5 has been addressed in an early warning report already issued by the OIG (see Appendix A). We identified \$3,449,001 in the Thermo Chem special account that could be better utilized. This amount includes \$3,324,000 (\$2.8 million plus \$524,000) of costs planned for reclassification and an additional unplanned amount of \$125,001. The utilization of these funds has been addressed in an early warning report already issued by the OIG (see Appendix A). This report recommended reclassification of approximately \$2.8 million (plus additional accrued costs) to fund other priority response activities. It also recommended reclassification, or transfer to the Trust Fund (as appropriate), of approximately \$524,000 in unplanned costs. In March 2008, Region 5 reclassified \$2,741,743, and on January 30, 2009, reclassified another \$529,328.

Region 6

We identified two special accounts with a total of \$1,415,209 that could be better utilized. This amount included \$218,388 for Gulf Coast Vacuum and \$1,196,821 for Odessa Drum Company. The Region also planned to reclassify \$660,000 from the Pab Oil account, but the OIG is not making a recommendation on this amount until further OIG work is completed.

Gulf Coast Vacuum: The \$218,388 for this account includes \$53,556 identified by the Region for reclassification and \$164,832 identified for transfer to the Trust Fund in Fiscal Year 2009. The PRP is currently the lead for performing and funding site operation and maintenance. EPA provides oversight, conducts some monitoring, and performs the required 5-year reviews. Special account funds have been planned to support these activities.

Odessa Drum Company: We identified \$1,196,821 that could be better utilized. Based on discussion and correspondence from the Region, it planned to reclassify \$1,121,075 and close out the special account. Per the Region, this account was identified for closure in 2005, but due to workload issues had not been addressed. In January 2008, the Region reclassified \$1,121,075. As of September 2, 2008, the available balance was about \$75,445. The Region plans to transfer these funds to the Trust Fund and close the account in Fiscal Year 2009.

Pab Oil: The Region plans to reclassify \$660,000. Per the Region, the site was deleted from the National Priorities List in 2000 and is currently in operation and maintenance with on-going monitoring being conducted by the PRP. The remaining special account funds will be used to fund EPA oversight and required 5-year reviews. However, the OIG does not plan to

recommend reclassification of these funds until the OIG concludes its work associated with its evaluation of site sampling. When that work is completed, the OIG will revisit the need for recommending reclassification of these funds.

Region 7

We identified three special accounts with a total of \$1,480,490 that could be better utilized. This amount includes \$274,535 for Ralston, \$1,164,054 for Fenton Creek Dump, and \$41,901 for Three D Investments.

Ralston: EPA has a formal deferral agreement with the State of Iowa and there is no future work at the site. Under the deferral agreement, the State assumed responsibility for overseeing the response action at the Ralston site in accordance with the September 1999 record of decision. Region 7 planned to reclassify the balance of \$274,535 from the Ralston special account by September 30, 2008, and in fact reclassified \$286,284 in September 2008. The Region also closed the account.

Fenton Creek Dump: The Region agreed it can reclassify \$1,164,054 for this site by September 30, 2008, and did reclassify \$369,942 in September 2008. The Region also plans to close the account by September 30, 2009.

Three D Investments: The Region agreed it can reclassify \$41,901 for this site by September 30, 2008, and did reclassify \$16,761 in September 2008. The Region also closed the account.

Region 8

The utilization of special account funds in Region 8 has been addressed in an early warning report already issued by the OIG (see Appendix A). This report recommended reclassification of \$7,974,141 from five special accounts to fund other priority response activities or transfer these funds to the Trust Fund, as appropriate. The five accounts included Portland Cement, California Gulch, Petrochem Recycling, Lowry, and Central City/Clear Creek. In response to the recommendations, Region 8 has agreed with the reclassification of approximately \$7,106,837, and has taken or planned the following actions:

- reclassified approximately \$3 million in February 2008, and \$4,091,034 in July 2008, from the Portland Cement special account; and
- planned reclassification or transfer of funds from three accounts to the Trust Fund and close the accounts as follows: California Gulch \$102, Petrochem \$2,025, and Central City/Clear Creek \$3,299. Region 8 will leave the Lowry account open as the Region now expects another deposit to the account.

Region 9

The utilization of special account funds in Region 9 has been addressed in an early warning report already issued by the OIG (see Appendix A). This report recommended the

reclassification or transfer to the Trust Fund, as appropriate, \$47.8 million of the Stringfellow special accounts. In response to our report, EPA agreed and completed reclassification of \$20 million of the \$47.8 million in July 2008. The remaining \$27.8 million reclassification was identified by EPA as a “buffer for unknowns.” Per the Region, as much as the remaining amount of the \$27.8 million could be reclassified or transferred to the Superfund Trust Fund (plus any earned interest, less oversight costs) by the end of Fiscal Year 2011. [In response to this draft report, the Agency updated the date for the record of decision to Fiscal Year 2011.]

Region 10

We identified five special accounts with a total of \$2,390,032 that could be better utilized. This amount includes \$1,574,544 for Tulalip, \$769,912 for Arctic Surplus, \$28,097 for Bunker Hill-NIPC, and \$17,479 for Pacific Wood Treating.

Tulalip: The purpose of the special account is to maintain \$3 million for remedy failure contingencies and for 27 years of operation and maintenance. In 2006 and 2007, the Region reclassified \$1.5 million in interest earned from the account. The staff stated that this amount could be reclassified because interest was not covered by the Consent Decree and that only the principal needs to be maintained in the account. Accordingly, the OIG recommended and Region 10 agreed to continue to reclassify interest amounts from the account on a regular basis. The Region plans to maintain \$300,000 in the account for 5-year reviews. We have identified \$1,574,544 of interest for reclassification. The Region agreed to the regular reclassification of interest, but provided no milestone for either.

Arctic Surplus: Reclassification of \$769,912 can occur at the Arctic Surplus site because the Site has been deleted from the National Priorities List and there is no future work remaining. The Region plans to keep the account open because it may receive another payment from another agency. The Region agreed to the reclassification in Fiscal Year 2009.

Bunker Hill-NIPC: The Region plans to close out the \$28,097 interest-only special account because there is no more planned work under the special account. However, the Region has not yet provided a milestone date.

Pacific Wood Treating: The remaining \$17,479 of funds in this special account were reclassified in December 2007 following our interview with the Region. No further action is needed from Region 10 on this issue.

Appendix E**Details on Reserve Accounts****Stringfellow (General)**

Region 9 maintains approximately \$70 million of funds in the Stringfellow special accounts as a reserve to fund potential future response work. The Region plans to maintain the reserve for potential future work in the event the State of California is not required or is financially unable to complete the work. The reserve funds may never be used if the State continues its historical practice of funding its agreed-to clean-up costs.

In 2001, EPA and the State negotiated a consent decree wherein the State assumed the responsibility for future response activities and payment of federal costs at the site. The State reimbursed EPA approximately \$99 million for response costs expended at the site through December 2000. The State also agreed to perform all future response actions that have or will be selected for the site and to pay for EPA's future response costs. Per the agreement, the funds were to be deposited into the Stringfellow special account and used to conduct or finance response actions at or in connection with the site or transferred to the Trust Fund.

The State has been performing and funding the work since the agreement, in 2001. In 2005, the State settled with its insurers and collected approximately \$121 million for site clean-up. The funds were put into the State's general fund to reimburse it for the work it funded at the Stringfellow site. Despite the agreement and the insurance proceeds collected by the State, EPA continues to maintain the funds as reserve with concern that at some point the State may not implement the final response.

The Region's primary rationale for retaining funds in the Stringfellow Special Account is to fund potential future work, which EPA perceives as a risk due to unique uncertainties at the site. These uncertainties stem from the fact that a final remedy has not been chosen and a consent decree for performance of work is not in place. The Region maintains that until agreement is reached on the final remedy and a consent decree is negotiated, it cannot be *fully* assured of the future costs to EPA.

The final operable unit is in the remedial investigation/feasibility study phase with planned completion in 2008. EPA expects to issue a final record of decision for the site in Fiscal Year 2011. The State, in July 2007, estimated the final remedy at approximately \$70 million (including addressing perchlorate). Discussions with the State in April 2008 confirmed the \$70 million as a valid estimate, pending an update based on a final remedy, which is over a year away.

Beede Waste Oil

As of about the date of our regional interview (June 14, 2007), Region 1 was holding approximately \$16.8 million in the special account as reserve for use as leverage in settlement

with the PRP. In addition, despite the entrance of an agreement with the PRP, the Region plans to continue to maintain the reserve until the site is at least construction complete. The Region expressed concerns about a remedy failure or changes and proposed to keep the funds available as backup. The remedy, selected in 2004, includes a groundwater pump-and-treat system with an estimated 15 years of treatment to achieve the stated groundwater clean-up levels. Design was initiated by the PRP in December 2006 and is still on-going. Although the consent decree is entered, the Region continues to maintain the funds in the Special Account in the event that a remedy change or failure necessitates work beyond that required by the Consent Decree; that EPA takes over the work because the PRPs are deficient in their clean-up; or that oversight costs exceed the amount the PRPs are required to pay. The Region notes that the financial assurance provided under the settlement, although meeting the settlement requirements, does not provide liquid funds to EPA. Currently, the special account funds are being used to support enforcement and records center activities.

Thermo Chem

As of about the time of our regional interview (June 26, 2007), Region 5 was holding approximately \$1.6 million in special account funds as financial insurance in the event the PRP defaults and cannot successfully achieve the remedy clean-up goals. The PRPs, under a 1992 Unilateral Administrative Order, conducted remedial design/remedial action for a groundwater extraction treatment system. The system was placed into operation in 1999. Treatment will continue until groundwater clean-up standards are met (estimated completion in 2015). The PRPs are meeting the obligations and are conducting operation and maintenance activities.

Appendix F

Sample Aggregate Financial Information EPA Could Report

Previous Year's End Special Accounts' Aggregate Available Balance:

- + Deposits
- + Interest Earned
- + Deobligations
- Obligations
- Expenditures
 - For EPA Lead Work
 - For Reimbursement/Payment to PRPs
 - For Reclassifications
- Transfers to the Trust Fund
- Aggregate Available Balance at Year End

Amount of Year End Aggregate Available Balance:

- Planned for Settlement Incentives
- Planned for EPA-Lead Work
- Planned for Reserves Based on Agreement Requirements
- Planned for Reserves Based on EPA Decision
- Planned for Reclassification
- Planned for Transfer
- As Yet Unplanned

Total Cumulative Reclassifications at Year End

Total Transfers as of Year End

Appendix G

Agency Response to OIG Draft Report

December 22, 2008

MEMORANDUM

SUBJECT: Response to the Draft Report, “Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups” (Project No. 2007-000727)

FROM: Susan Parker Bodine /s/
Assistant Administrator

TO: Bill A. Roderick
Deputy Inspector General
Office of Inspector General

On behalf of Lyons Gray, the Chief Financial Officer for the Office of the Chief Financial Officer (OCFO), Granta Nakayama, Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), and the Office of Solid Waste and Emergency Response (OSWER), I am providing this response to the draft report entitled, *Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups*. Following the Office of Inspector General (OIG) transmittal dated November 19, 2008, both Headquarters and the regions have reviewed the draft report. Regional offices will provide you with their individual responses under separate cover. Thank you for the opportunity to review the draft report. We appreciate your consideration of the comments made in the September 22, 2008 memorandum to your staff from our offices and the revisions you made based on those comments.

The Agency has undertaken considerable efforts to improve the management of special accounts, many of which implement recommendations received during the process of this OIG investigation and report. At the same time, we embrace the commitment to pursue further improvements to the management of this important Superfund resource.

EPA generally concurs with the OIG’s recommendations for improving the management of special accounts. Attachment 1 describes the Agency’s approach to implementing each recommendation. However, we do have concerns with how the draft report characterizes some aspects of special accounts, which are described below. We believe the accuracy of the report could be further improved by consideration and incorporation of these comments.

OIG Response 1

The OIG reviewed the Agency's response and made changes to the report as appropriate, and as discussed specifically below.

Sample of Special Accounts Reviewed in the Report are not Representative of the Universe of Special Accounts

We appreciate the draft report statements in footnote 4 that “we do not project our results beyond this sample [of special accounts]” and that “EPA is generally using special account funds consistent with its hierarchy” (page 4). EPA nevertheless feels that the report as a whole leaves the impression that EPA is not managing special account resources well overall.

We generally support the draft report's recommendations based on our collective experience regarding special accounts, but have concerns with some of the specific findings based on the special accounts that were the subject of this study.

Therefore, we recommend the OIG expand its discussion regarding some of the ways the accounts that were the subject of this study are not typical of the overall special account universe. EPA maintains over 800 special accounts, 79 of which were reviewed by the OIG. The evaluated accounts had available balances greater than \$10 million and were more than 10 years old. While we agree that such accounts merit additional oversight, it is noteworthy that only 3 percent of special accounts have available balances greater than \$10 million and only 12 percent are more than 10 years old. A majority of accounts, more than 500, have less than \$500,000 available.

More specifically, the accounts for one National Priorities List (NPL) site, the Stringfellow site, comprise 24% of the total available balance analyzed by the OIG in this study. The special accounts associated with Stringfellow are used to support 77% of the dollar amount the OIG has cited in its report as being both held in “reserve” (\$70 million of the \$88.4 million) and as “idle” and available for reclassification or transfer to the general portion of the Superfund Trust Fund (\$47.8 million of the \$65 million).

Stringfellow is an extremely complicated site from both an enforcement and cleanup perspective. Future work and costs at the site are uncertain due to the State of California's status as the main potentially responsible party (PRP) and because a final remedy has not been selected. Furthermore, the special accounts associated with Stringfellow are not representative of the majority of special accounts, as the account had the highest available balance amount of all special accounts at the time of the OIG's study. Given these circumstances, it is unreasonable to make general findings on the Agency's overall management of special accounts based on this site.

OIG Response 2

As of May 2007, the accounts in our sample represent 47 percent of the total value of all Superfund special accounts. Identifying and correcting management weakness over this portion of special account funds should not be minimized or dismissed because this represents only a small portion of the number of special accounts.

According to EPA Guidance, Appropriate Special Account Funds May Be Retained until Future Site Work and Risks are Addressed

The draft report defines “reserves” as “special account funds that the regions maintain in accounts after EPA settles with the PRP (lodges and/or enters a consent decree in court), or EPA holds as “insurance” in the event that a PRP defaults.” The first half of this definition (“funds that the regions maintain in accounts after EPA settles with the PRP (lodges and/or enters a consent decree in court)”) does not fit a number of situations where there is both a settlement special account and a work settlement with PRPs.⁹ The fact that there is a PRP settlement for work does not mean that there is not other, sometimes very significant and costly work required at the site. Therefore, EPA believes this first phrase should be deleted.

OIG Response 3

The OIG disagrees that it should change any part of its definition, as the lodging and entering of a consent decree indicates that the PRP has committed to paying for or conducting clean-up.

The second portion of the definition (“EPA holds as “insurance” in the event that a PRP defaults”) appears to reflect an OIG perspective that it is not appropriate to retain special account funds for settlements with PRPs where there may be a risk that the settlement will not accomplish the desired cleanup. While we generally agree that funds should not routinely be retained in accounts purely as a “safety net” for future uncertainties, there are site-specific situations where such retention is appropriate. These may include situations where the PRPs’ viability and financial assurance mechanisms are not sufficient. Similarly, unusually uncertain remedy technologies or approaches could warrant such retention.

CERCLA authorizes EPA to retain funds in special accounts for all future response actions contemplated by the agreement under which the funds were received. According to the guidance document, *Special Accounts: Guidance on Key Decision Points in Using Special Account Funds* (September 28, 2001) (Timing and Use Guidance), funds are retained in a special account for “future site costs and risks;” and any excess funds are reclassified or transferred to the Superfund Trust Fund. This guidance document addresses the appropriate timing of fund use and identifies general principles for the regions to follow in making a determination as to

⁹ The definition used in this first phrase apparently does not distinguish “settlements for work” from “settlements for cash”, which are also negotiated through consent decrees and provides funds for EPA itself to perform response work or provide as an incentive to other PRPs to perform response work.

whether there will be future expenditures at a site. Those principles include: evaluate independently the use of funds throughout the remedial process; consider changes in site conditions (e.g., the need for an emergency removal, remedy not performing as expected); and determine whether the circumstances of the PRP have changed (e.g., recalcitrance, insolvency).

Consistent with EPA guidance and the agreement under which EPA received the funds, regions may retain funds in special accounts to address site-specific risks that otherwise might require EPA to expend appropriated funds in the future. When there are no longer unaddressed site risks, EPA will then reclassify or transfer funds as appropriate.¹⁰

The OIG's recommendation for the development of guidance regarding reserves is based on only 3 sites. EPA now has an annual process for reviewing planned uses for special accounts to determine the nature of funds retained for future site costs and risks. A preliminary review of November 2008 data suggests that less than 6% of accounts retain some funds that would qualify as "reserves." A majority of these funds are in special accounts associated with just 2 sites (Stringfellow and Beede Waste Oil), for reasons discussed in the OIG draft report. The Headquarters program and enforcement offices have reviewed with the regions the circumstances at these sites, and our conclusion is that the regions are appropriately holding the funds in the special account in accordance with current guidance.

In particular, the Region's primary rationale for retaining funds in the Stringfellow special accounts is to fund potential future work, which EPA perceives as addressing a legitimate risk due to unique uncertainties at the site and in the State. These uncertainties stem from the fact that a final remedy has not been chosen and a final consent decree for performance of remaining work is not in place. The Region maintains that until agreement is reached on the final remedy and a consent decree is negotiated, it cannot be fully assured of the future costs to EPA. Furthermore, budget concerns in the State of California in 2008 caused the State to stay several of its contracts, which included the contracts to continue work related to the development of the remedy decisions (i.e., the remedial investigation/feasibility study) at the Stringfellow site. As a result, a final remedy is now anticipated in early 2011, rather than in 2010 as stated in Appendix A (page 14, first bullet) of the draft report. As recently as December 1, 2008, the State of California declared a fiscal emergency due to an anticipated revenue gap that is expected to be as much as \$28 billion over the next 19 months. As a result of the continued fiscal uncertainties in the State, EPA continues to maintain the funds in the accounts for Stringfellow due to concerns that at some point the State may not implement the final response required.

EPA believes that proper application of the *Timing and Use Guidance*, along with assistance from Headquarters to ensure consistent application, is appropriate for the overall management of special accounts, including whether and when to retain funds for future work and risks. In order to address the OIG's concern, the Office of Superfund Remediation and Technology Innovation (OSRTI) and Office of Site Remediation Enforcement (OSRE) will implement a policy to review accounts on a semi-annual basis as part of the FY 2009 and FY 2010 regional work planning and mid-year review process, or when a response milestone is reached, to ensure that funds are used in accordance with current guidance. Where unusual site-

¹⁰ See also, Consolidated Guidance on the Establishment, Management and Use of CERCLA Special Accounts, October 4, 2002 (p. 4).

specific situations occur, such as Stringfellow, EPA agrees that additional Headquarters program and enforcement office involvement is appropriate, and these offices will work with the EPA Region responsible for the special account, as appropriate, throughout the life cycle of the special account. The Special Accounts Senior Management Committee will evaluate the effectiveness of this approach at the conclusion of FY 2010 mid-year regional reviews.

OIG Response 4

The OIG agrees with the Agency that it may be appropriate for the Agency to retain funds where there may be risk that the settlement will not accomplish the desired clean-up. However, the OIG believes that doing so on the basis of “best professional judgment” is not appropriate. The Agency should document in a policy or guidance the circumstances under which *retaining the reserves* is appropriate to make it more transparent, and the current guidance does not do so. Further, the Agency uses the example that financial assurance mechanisms may not be sufficient as a reason to retain special account funds as reserves; doing so demonstrates the weaknesses in some forms of financial assurance EPA requires.

EPA is Currently Using the Data Captured in CERCLIS

As noted in the draft report, OSRTI and OSRE used the initial data collected in the 2005 Special Accounts Management (SAM) Report to inform development of the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) data entry screens. To manage and monitor special accounts effectively, EPA has spent a considerable amount of time and resources to ensure the proper data are captured in CERCLIS. The new CERCLIS data entry screens will not only improve Headquarters ability to oversee and manage special accounts, but now that the data fields have been finalized, the regions are able to plan their use of special account resources in a systematic way.

Since the OIG investigation, EPA used the regional CERCLIS planning data for available special account funds in its FY 2009 work planning discussions with the regions. Work planning discussions are used to review planning data with the regions and ensure that plans are consistent with EPA guidance. Headquarters reviews the special account planning data entered into CERCLIS by the regions prior to work planning discussions to ensure the available special account funds have an appropriate planned use, identifies accounts where additional information is needed, and follows-up with the regions on the accounts in question.

EPA will continue to use the data in CERCLIS as part of the mid-year and annual regional work planning review processes for the Superfund program, as well as on an ad-hoc basis to monitor special account use and ensure the appropriate use of special account funds. The Agency has outlined these activities in the Special Account Management Strategy (Strategy) under development, which will be issued in January 2009.

EPA is also using these data to identify priority areas for additional oversight and management. Using the data entered in Fall 2008, OSRE and OSRTI identified data concerns for accounts in each region and requested the regions review these accounts to ensure all funds

are planned appropriately. EPA has been using, and will continue to use, these data to report to both internal and external stakeholders. EPA will also use these data to ensure planned actions are carried out, that funds are further planned as risks are addressed, and to identify issues for annual meetings, conferences, or additional guidance. As identified in the Strategy, we continue to refine our data analysis to further improve the management of special accounts.

OIG Response 5

The OIG acknowledges EPA's progress in improving CERCLIS to enable better management of special account funds.

Improvement in Overseeing and Managing Special Accounts will Continue

EPA agrees with the OIG that Headquarters management and oversight of special accounts is increasingly important given the growth in special account resources in recent years. EPA appreciates that the draft report acknowledges the efforts taken recently to improve the management of special accounts. EPA has taken additional measures in consideration of the OIG's recommendation for a central management approach of one designated office for special accounts to provide clarity, accountability, and clear channels of communication.

The complexity of Superfund sites along with the complexity of special accounts requires unique legal, programmatic, and financial expertise across three Headquarters offices as well as regional offices to ensure effective management. No one office in the Agency has all the expertise necessary to oversee special accounts in its entirety.

Furthermore, regions have the delegated authority to request and use special account resources, and are in the best position to make decisions regarding the use of funds. The responsibility for day-to-day planning and management of special accounts will remain in the regions, with close coordination and management oversight from Headquarters. At the same time, we acknowledge that improved inter-office coordination and greater Headquarters attention could have prevented several of the issues stemming from 2005 that are described by the OIG, and since 2005, such inter-office coordination efforts have taken and continue to take place.

Since management of special accounts is a joint responsibility for which no one office can be solely responsible, OCFO, OSWER, and OECA have agreed to establish a Superfund Special Accounts Senior Management Committee (Committee) that will be comprised of the directors for the offices responsible for special account management and oversight, as well as the lead regions for Superfund and Management.¹¹ The objective of the Committee is to further strengthen leadership and improve coordination and transparency among the offices in

¹¹ The Committee will be comprised of the Directors for the Office of Superfund Remediation and Technology Innovation (OSRTI), Office of Site Remediation Enforcement (OSRE), Office of Budget (OB), Office of Financial Management (OFM), and the Office of Financial Services (OFS), as well as the Division Director for Superfund in EPA Region 7, Lead Region for Superfund, and the Associate Regional Administrator for Management in EPA Region 8, Lead Region for Management. Lead Regions rotate every two years.

Headquarters and the regions involved in the management and oversight of special accounts. OSRTI will serve as the Lead Coordinator for the Committee, and, as a whole, the Committee will monitor the status of special accounts, ensure that each member office is fulfilling its responsibilities under the Special Accounts Management Strategy, and be responsible for overall oversight and management of special accounts. The Committee will elevate issues, as needed, to the Superfund Board of Directors for resolution.

OIG Response 6

Since the Agency's response to the OIG draft report, the Agency provided drafts of its Committee Charter. Because the most current version of the Charter states that the Deputy Administrator is the only one who can terminate the Charter, and the Charter includes the requirement for the Chairman of the Committee to raise unresolved issues to senior management or above, the proposed alternative is accepted. However, until the most current version of the Charter is signed, the related recommendation is open with agreed to actions pending.

Settlement Agreements Do Not Allow for Special Account Funds to Be Used at Other Sites

While we appreciate the OIG's efforts to clarify how reclassification of special account resources can make available previously appropriated resources for use at other Superfund sites, there continue to be areas of the report (e.g., page 4, page 8) where the phrasing suggests that special account funds may be better used at "other" sites. **In accordance with CERCLA Section 122(b)(3), special account funds must only be used for the purposes of carrying out the agreement through which EPA received the funds, which means they must be used only at the site(s) for which the funds were received.** Special account funds themselves are never used at "other" sites. This is a sensitive and important point during negotiations with PRPs and it is vital to clarify the language throughout the report.

Through reclassification, special account resources are used to reimburse EPA for response work at the site which was previously paid for with appropriated dollars. The appropriated resources freed up from the reclassification are then made available for EPA to use at other sites. In an effort to ensure the concept of reclassification is clear and reduce the potential for misunderstanding by the public when this report is published, we request that footnote 5 on page 4 be placed in the body of the document rather than as a footnote. It is also important the draft report clarify in every instance that **appropriated funds** are to be used to fund work at "other" sites, not special account funds.

OIG Response 7

The OIG made appropriate changes to the text.

EPA Agrees Public Reporting is Advantageous but Wishes to Clarify that Resources Are Not Improperly Commingled

Given the growth in special account resources in recent years, EPA generally agrees with the OIG that public reporting would provide transparency and increase the Agency's accountability to our oversight agencies to manage these resources effectively. The Superfund Special Accounts Senior Management Committee will consider venue options for annual reporting as well as the level of detail appropriate in providing public access to special account data. In FY 2009, the Agency will begin to report the appropriate detail in the selected venue(s) annually.

However, the OIG's statements on page 9 that reporting for special account funds were "...commingled with EPA's appropriated dollars" incorrectly implies that both these resources are not accounted for properly. The information recommended by the OIG to be reported publicly is at a more detailed level than appropriate for the Agency's Financial Statements and supporting footnotes. The Statements are prepared in accordance with OMB Circular A-136 and provide Agency-level information, including a Cashout footnote. The Superfund supplemental statements also follow the requirements of A-136. The OIG recognizes in the draft report that it has rendered an unqualified opinion on EPA's financial statements for 8 consecutive years.

To avoid the misperception that EPA improperly accounts for both appropriated and special account Superfund resources, EPA recommends that the term "commingled" be deleted from this section, and specifically recommends the following on page 9:

- Revise fifth sentence in the first full paragraph from, "Rather, they were commingled with EPA's annually appropriated dollars, and reported in many places" to "Rather, for reporting purposes, they were combined with EPA's annually appropriated dollars."
- Revise first sentence in the second full paragraph from, "The OIG has rendered an unqualified opinion on EPA's financial statements for 8 consecutive years, and under current reporting requirements the commingling of funds is allowed" to "The OIG has rendered an unqualified opinion on EPA's financial statements for 8 consecutive years, and under current requirements combining funds for reporting purposes is allowed."

OIG Response 8

The OIG made appropriate changes to the text.

High Special Account Available Balances Do Not Impede Spending

On Page 8, 3rd full paragraph, 4th sentence, the report states, "For example, once a significant amount of funds are available for release, high fund balances may prevent the region from spending large amounts of money at a given time." In the case of Region 9 cited in the report, current year funding for projects at other sites in Region 9 had already been issued by Headquarters, according to the program's standard work planning and funds allocation process, prior to the Stringfellow reclassification. As a result, a portion of the funds that were reclassified

at the Stringfellow site were used by Region 9 and the remaining amount was used to fund work at other sites across the nation.

This approach is entirely consistent with the message throughout the draft report where the OIG states that previously appropriated funds resulting from special account reclassification “could be used to support other priority Superfund sites”. The funds freed up due to reclassification are incorporated into well-established Agency work planning and fund allocation processes, and the Agency ensures funds are used for the highest national and regional priorities. Therefore, while there may be instances where a region may not be able to absorb all appropriated funds made available as a result of the reclassification of large amounts of special account funds in a given fiscal year, the overall program can do so, and in a way that focuses on priority sites. For these reasons, the balance available in a special account, whether high or low, does not impede spending.

OIG Response 9

The OIG did not state that high available balances impede spending. However, we made appropriate changes to the text.

Characterization of Certain Aspects of the Stringfellow Special Accounts are Incorrect

Of the \$65 million cited in the report as “idle” and available for reclassification or transfer to the general portion of the Superfund Trust Fund, \$47.8 million is associated with the Stringfellow site that has previously been addressed by an Early Warning Report. Of the \$47.8 million, the OIG recommended in the Early Warning Report \$20 million be reclassified, which has occurred. Appendix D of the draft report implies that the Region will reclassify the additional \$27.8 million in 2010 when in fact the Region committed to reviewing the potential for reclassification of the additional \$27.8 million identified by the OIG, as well as any additional amounts, on completion of certain milestones, including the final remedy decision and final consent decree. Completion of the final remedy is now expected in early 2011, rather than 2010 as stated in the draft report. The Region has always planned a phased approach that is consistent with the level of uncertainty regarding site cleanup requirements.

OIG Response 10

The OIG made appropriate changes to the text.

In addition, Appendix E (page 23, third paragraph) states, “The funds were put into the State’s general fund to reimburse it for work it funded at the Stringfellow site”. Please clarify in the draft report that the insurance settlement of \$121 million was placed in the State’s general fund where it is being used to fund general State operations; the funds are not being held by the State to fund Stringfellow site work.

Concerns have also been expressed previously over the enforceability of the consent decree commitment for the State to “clean up the site” and “pay future costs.” The OIG’s paraphrase in Appendix E (page 23, third paragraph) of Region 9’s justification of the “reserve” that the State “may not have the funds needed for the clean up” fails to recognize that other concerns exist. As a result, we suggest that the last sentence in the third paragraph on page 23 read, “EPA continues to maintain the funds as reserve with concern that at some point the State may not implement the final response.”

OIG Response 11

The OIG made appropriate changes to the text.

As noted previously, the draft report should reflect the revised anticipated dates for the final remedy and implementing consent decree. Please include a footnote or other reference to the State budget effects on the schedule, or the present anticipated date of early 2011 for the final remedy decision.

OIG Response 12

The OIG made appropriate changes to the text.

Attachment 1 provides a list of the recommendations that apply to Headquarters, and our response. We look forward to working with you on this and other matters in the future. If you have any questions regarding the Agency’s response to the draft report, please contact Jim Woolford at (703) 603-8960 or woolford.james@epa.gov.

Attachment

cc: Marcus Peacock, OA
 Lyons Gray, OCFO
 Granta Nakayama, OECA
 James Woolford, OSWER/OSRTI
 Marcia E. Mulkey, OECA/OSRE
 Lorna McAllister, OCFO/OFM
 Carol Terris, OCFO/OB
 Raffael Stein, OCFO/OFS

Attachment 1

Agency Response to OIG Recommendations for Project No. 2007-000727

OIG Recommendation	Agency Comments
<p>1. Designate a central management and action official for Superfund special accounts (and document this delegation) with responsibility for developing an action plan to ensure that management accountability and related issues regarding special accounts are addressed.</p>	<p>Concur (in Principle): The Agency concurs in principle with this recommendation. EPA proposes to address this recommendation in an alternative fashion given varied areas of expertise across the Agency that no one office or program can be responsible for.</p> <p>Rather than designating a single central management and action official, the Agency is establishing a Superfund Special Accounts Senior Management Committee comprised of the directors of the offices and regions that have responsibility for managing special accounts. OSRTI will act as Lead Coordinator for the Committee, including managing the operational aspects of the Committee and organizing Committee meetings. The Committee will elevate issues for resolution to the Superfund Board of Directors as needed. A “charter” for this Committee will be completed in January 2009.</p> <p>We believe this approach addresses the OIG’s concerns of clarity and accountability, along with creating clear channels of communication, while reflecting the reality that critical special account functions occur across offices.</p>
<p><u>OIG Analysis:</u></p> <p>1. Since the Agency’s response to the OIG draft report, the Agency provided drafts of its Committee Charter. Because the most current version of the Charter states that the Deputy Administrator is the only one who can terminate the Charter, and the Charter includes the requirement for the Chairman of the Committee to raise unresolved issues to senior management or above, the proposed alternative is accepted. However, until the most current version of the Charter is signed, the recommendation is open with agreed to actions pending.</p>	
<p>1(a). Requirements for clear and separate financial reporting of special account funds in a publicly available report.</p>	<p>Concur: The Superfund Special Accounts Senior Management Committee will address this recommendation.</p> <p>Clear and separate financial reporting of special account funds will be publicly available annually beginning in FY 2009.</p>

<u>OIG Analysis:</u>	
1(a). The Agency's most current draft of its Committee Charter stated that the Office of Budget will be the official responsible for publicly reporting the end of year summary special account resource collection and expenditure data. It appears that the special account information OSRTI suggested it would report is similar to the information already reported and which we believe prevents sufficient oversight. The Director, OSRTI, and the proposed Chairman for the Special Accounts Management Committee stated that OSRTI will be the office responsible for national public reporting of special account planning information. However, the Agency is not specific about which information it will report, and does not specify the venue for reporting. The Agency does say that by August 2009 it will meet and resolve internally which information will be reported and which venues, and that it will notify the OIG of this resolution. Until then, this recommendation is undecided with resolution in progress.	
1(b). An annual planning process that includes a determination that special account funds will be used consistent with the hierarchy, to aid in the monitoring of special account funds.	<p>Concur: Regional plans for using special account funds are incorporated as part of the Superfund program's annual work planning process for the Superfund Remedial and Superfund Enforcement programs. Regional plans are also discussed as part of mid-year reviews conducted by the programs. The Agency does not focus only on the hierarchy, but on the overall management of special accounts and the appropriate timing and use of funds.</p> <p>The Agency addressed this recommendation as part of its FY 2009 regional work planning activities. A review of the use and plans for special account funds will continue as part of the mid-year and annual regional work planning process conducted by the Superfund program. The Agency believes this recommendation will also be addressed in the Special Accounts Management Strategy under development, which will be issued in January 2009.</p>
<u>OIG Analysis:</u>	
1(b). According to the Agency, it has implemented some actions through use of CERCLIS screens and review during the annual planning and mid-year review process. However, the most current version of the Charter, which includes the details on how management will ensure special account funds are used consistent with the guidance, is not signed. The OIG believes a signed Charter with the agreed-to elements is key to assuming oversight of the consistent use of the funds with the hierarchy. Until the Charter is signed, the recommendation is open with agreed to actions pending.	
1(c). Development of regional and Headquarters controls that include follow-up to make sure planned and/or requested uses (e.g., reclassifications, transfers) of special	Concur: Special account uses will be monitored through the annual regional work planning and mid-year review process, and on an ad hoc basis if warranted by unusual site circumstances.

accounts funds occur, and document these controls in appropriate guidance.	The Superfund Special Accounts Senior Management Committee will determine if additional documentation of appropriate controls is needed by November 2009.
<p>OIG Analysis: 1(c). The Agency's most current draft of its Committee Charter stated that the Committee would ensure that regions' planned actions occur. However, until the Charter is signed, the recommendation is open with agreed to actions pending.</p>	
<p>1(d). Development of a plan that includes completed CERCLIS reports with accurate special accounts data, and that identifies how EPA will use the special accounts data it collects to manage [special accounts] the program and improve performance.</p>	<p>Concur: The CERCLIS data entry screens were finalized and released to the regions for data entry on July 21, 2008. CERCLIS reports have been created and were used in each of the 10 regional FY 2009 work planning sessions, as well as for follow-up conducted with the regions.</p> <p>The Agency believes this recommendation will be addressed through the Special Accounts Management Strategy, which will be issued in January 2009.</p>
<p>OIG Analysis: 1(d). The Agency has committed in its most current version of the Committee Charter to oversee special account planning data in CERCLIS. This and other information provided in the Charter meets the intent of the recommendation. However, until the Charter is signed, the recommendation is open with agreed to actions pending.</p>	
<p>1(e). Establishment of guidance and/or policy that addresses the proper application and amount of the holdback or reserve of special account funds for future use. The guidance and/or policy should include a listing of factors to assess in establishing, maintaining, and releasing reserves, both before and after an agreement for clean-up is achieved with PRPs.</p>	<p>Concur (in Principle): EPA agrees that only those funds that are needed to address future work and risks should be placed into a special account. EPA believes that the guidance contained in <i>Special Accounts: Guidance on Key Decision Points in Using Special Account Funds</i> (September 28, 2001) (Timing and Use Guidance), is sufficient for the regions, with Headquarters oversight, to manage the use of special account funds overall.</p> <p>EPA agrees that additional Headquarters program and enforcement office oversight is also appropriate. OSRTI and OSRE will implement a policy to review and oversee that the use of special account funds is in accordance with current EPA guidance through the FY 2009 and FY 2010 regional work planning and mid-year review of special accounts, or when a response milestone is reached. For sites with</p>

	<p>unusual circumstances, Headquarters program and enforcement offices will work more closely with the region responsible for the special account, as appropriate, throughout the life cycle of the special account. The Special Accounts Senior Management Committee will evaluate the effectiveness of this approach at the conclusion of FY 2010 mid-year regional reviews.</p>
<p><u>OIG Analysis:</u></p> <p>1(e). The Agency has not agreed to develop a reserve policy and believes that its current guidance is sufficient. The OIG continues to believe that documenting the specific criteria that EPA uses to hold funds in accounts when agreements have been reached with PRPs is necessary. In these instances, the special accounts are essentially being held as financial assurance. This documentation is necessary to justify not (1) reclassifying these funds and using them to reimburse the Trust Fund, thereby making available appropriated funds to clean up other sites; or, (2) transferring these funds, thereby reducing the taxpayer burden since the Trust Fund is funded by the General Fund.</p> <p>Based on the OIG comments, the Agency has added language to the Charter specifying that the Committee will ensure special account funds are used consistent with EPA special account guidance, and OSRTI and the Office of Site Remediation Enforcement will have the primary responsibility for this action. It will use the work planning and mid-year review process to ensure that regions' planned uses for these funds are appropriate, and when site uncertainties are resolved the funds are planned for more specific response action use or reclassified/transferred to the Trust Fund. In light of OIG concerns, however, OSRTI will work with the Office of Site Remediation Enforcement and the other offices and regions to evaluate existing guidance and identify where our concerns could be more fully addressed. The Committee will evaluate this analysis in October 2009 and decide how best to address gaps in current guidance related to the issues we have identified.</p> <p>This recommendation is undecided with resolution in progress.</p>	
<p>1(f). Reevaluation of whether the current amount of about \$88.4 million being held in reserve is still appropriate under the new policy (developed in response to Recommendation 1(e)), and, if not, reclassify or transfer it to the Trust Fund, as appropriate.</p>	<p>Concur: EPA will review these accounts as part of the annual regional work planning and mid-year review process to ensure account funds are used in accordance with EPA guidance.</p>
<p><u>OIG Analysis:</u></p> <p>1(f). The Agency has agreed to review these accounts as part of the annual regional work planning and mid-year review process to ensure account funds are used in accordance with EPA guidance. However, until such time the Agency develops a policy on special account funds held in reserve, the Agency should document in writing the decisions and outcomes reached at the twice yearly regional work planning meetings regarding maintaining or reclassifying reserve balances, to include the criterion used in making final decisions. Based on the explanation above related to 1e, this recommendation is undecided with resolution in progress.</p>	

<p>1(g). Regularly aging and analyzing the “oldest accounts” for opportunities to better use special account funds.</p>	<p>Concur: The Agency will use CERCLIS data to analyze the “oldest accounts” as part of the mid-year regional reviews in March 2009.</p> <p>This analysis will be incorporated as part of the annual regional work planning and mid-year review process with the regions.</p>
<p><u>OIG Analysis:</u> 1(g). The Agency agreed to use CERCLIS data to analyze the “oldest accounts” as part of the mid-year regional reviews in March 2009. This analysis will be incorporated as part of the annual regional work planning and mid-year review process with the regions. Until the action is completed, the recommendation is open with agreed to actions pending.</p>	
<p>8. We recommend that the Assistant Administrator for the Office of Solid Waste and Emergency Response and the Assistant Administrator for the Office of Enforcement and Compliance Assurance, as co-chairs of the Superfund Board of Directors, correct the Action Status for reviewing the oldest special accounts (under Recommendation 97 of EPA’s <i>120-Day Study</i>) to state that EPA has not yet completed analysis work on all of its special accounts, including the “oldest special accounts,” and provide an updated milestone for completion.</p>	<p>Concur: The Agency will use CERCLIS data to review the “oldest special accounts” as part of the mid-year regional reviews in March 2009. The Agency will update the Action Status of the 120-Day Study to reflect this plan.</p>
<p><u>OIG Analysis:</u> 8. The Agency concurred with this recommendation. As previously stated in response to Recommendation 1(g), the Agency will use CERCLIS data to analyze the “oldest accounts” as part of the mid-year regional reviews in March 2009. The Agency will update the Action Status of the <i>120-Day Study</i> to reflect this plan. The OIG would also expect that any subsequent updates to the 120-Day Action Status will include current status of its work on the “oldest accounts.” This recommendation is open with agreed-to actions pending.</p>	

Appendix H

Region 1 Response to OIG Draft Report**MEMORANDUM**

DATE: December 18, 2008

SUBJECT: Region I Comments on OIG Draft Report: Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups

FROM: James T. Owens, III, Director /s/ for
Office of Site Remediation and Restoration

TO: Tina Lovingood
Office of the Inspector General

Carolyn Copper
Office of the Inspector General

As requested, Region I is providing the following comments on the above draft report. We do not concur with the draft report's recommendations specifically for Region I.

The OIG draft report recommends that the Region I administrator reclassify or transfer \$100,736 to the Trust Fund, as appropriate. For accuracy, Region I believes the recommendation should be updated to reflect the most current data and Regional actions by reducing the actual amount available for reclassification or transfer by \$99,614. Our position is supported by Appendix D (page 19) of the draft report.

Appendix D, Details on Special Accounts with Opportunities for Better Utilization through Reclassification or Transfer

This appendix shows that the amount OIG has identified as available for reclassification or transfer relates to two sites: Landfill and Resource Recovery, Inc. (L&RR, \$99,614) and Keefe Environmental Services (\$1,122). Note that the report refers to L&RR as *Land and Resource Recovery*.

L&RR - As the OIG suggested and the draft report states, Region I moved the principal (\$60,000) to the Trust Fund in May 2007 and subsequently moved the associated interest (\$39,614) to the Trust Fund in December 2007. The draft report further states that: *No further action is needed from Region I on this issue*. Therefore, Region I believes the region specific recommendations should clearly state that no amount remains available for reclassification or transfer with respect to the L&RR special account.

Keefe - As the OIG draft report states, Region I will begin a long-term response action in the second quarter of FY '09. At the time that Region I determines no further funding is needed for this activity, Region I concurs that it will again consider reclassifying or transferring to the Trust Fund any remaining funds, as appropriate.

We also disagree with the language in Appendix E concerning the Beede Waste Oil site in Region I.

OIG Response

Although Region 1 stated it did not concur with the recommendation, it did take action that was responsive to it. Region 1 believes that the recommendation should be updated to reflect the most current data and regional actions by reducing the actual amount available for reclassification. The Region's comment pertains to the removal of \$99,614 from the Land and Resource Recovery special account in 2007. OIG recognizes the most current data, and acknowledges the Region's removal of funds, as stated in Appendix D, *no further action is needed from Region 1 on this issue*. Because the Regions' actions were initiated subsequent to the start of our field work in April 2007, the recommendation will remain as stated. Region 1 also agreed to review the remaining \$1,122 in the second quarter of Fiscal Year 2009. See Appendix G for OIG Response to the Region's comments on Appendices D and E. This recommendation is open with agreed-to actions pending.

Appendix E, Details on Reserve Accounts

With regard to the Beede Waste Oil site, the draft report states:

Since the consent decree is entered, there should be no basis for the Region to continue to maintain the funds, especially if adequate financial assurance is provided. However, the Agency is concerned about the potential of a remedy change or failure, PRPs potentially being deficient in their clean-up, exceedence of recovery of oversight costs over a negotiated limit, and the fact that the Region did not negotiate liquid financial assurance in its settlement with the PRPs. Currently, the special account funds are being used to support enforcement and records center activities.

The Region disagrees that there is "no basis" to maintain the funds in the special account. The OIG's statement fails to recognize the future work and risks that may continue to exist at a site even after a consent decree is entered. Therefore, Region I respectfully requests that this statement be clarified to state, more accurately, the following:

Although the consent decree is entered, the Region continues to maintain the funds in the Special Account in the event that a remedy change or failure necessitates work beyond that required by the Consent Decree; that EPA takes over the work because the PRPs are deficient in their clean-up; or that oversight costs exceed the amount the PRPs are required to pay. The Region notes that the financial assurance provided under the settlement, although meeting the settlement requirements, does not provide liquid funds to EPA.

If you have any questions, please contact Stanley Chin of my staff at (617) 918-1401.

cc: J. Owens
R. Cavagnero
OSRR Branch Chiefs
M. Bosworth
J. Buonopane
M. Cassidy
S. Walter
B. Haslett
J. Jerison
L. Murphy
J. Doucette
P. O'Leary

Appendix I***Region 2 Response to OIG Draft Report***

From 12/4/08 Email From Leslie Petersen, Chief, Resource Management Cost Recovery Section, Program Support Branch, to Carolyn Copper, Product Line Director, OIG, Office of Program Evaluation, and Tina Lovingood, Project Manager, OIG, Office of Program Evaluation

“This is in response to the draft report below. The regions were instructed to respond directly to your office regarding the region specific recommendations. For Region 2 the recommendation (#3) was to reclassify or return to the trust, \$588,986 in Love Canal special account funds. The Region concurs with the recommendation and intends to process a reclassification of approximately \$600,000 in special account funds by January 31, 2009. Please call me at 212-637-4298 if you need any additional information.”

OIG Response

Region 2 concurs with the recommendation and completed reclassification of \$600,000 on February 10, 2009. The recommendation is closed

Appendix J***Region 4 Response to OIG Draft Report***

12/5/08

MEMORANDUM

SUBJECT: Response to OIG Draft Report issued by the Office of Inspector General (OIG) regarding Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups

TO: Wendy Hopkins Lubbe
Region 7

Tracey Stewart
Office of Superfund Remediation & Technology Innovation

FROM: Franklin E. Hill, Director /s/
Superfund Division

This memorandum is in response to the pre-dated January 2009 release of the Draft Report issued by the Office of Inspector General (OIG) regarding Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups. This response is specific to Region 4 only.

The OIG recommends in this report that the Region 4 Administrator reclassify or transfer to the Trust Fund as appropriate \$642,283 in idle special account funds. Region 4 concurs with the recommendation of the OIG and will take the appropriate steps to reclassify or transfer these funds during FY09. Region 4 does not have any comments on the programmatic/policy issues and non-region specific recommendations.

OIG Response

Region 4 concurs with the recommendation and will take the appropriate steps to reclassify or transfer these funds during Fiscal Year 2009. The recommendation is open with agreed-to actions pending.

If you have any additional questions or concerns please contact Carolyn McCall at 404/562-8874.

cc: Terry Dempsey, Regional Grants Disputes Officer/Audit Liaison

Appendix K

Region 6 Response to OIG Draft Report

12/4/08

MEMORANDUM

SUBJECT: Comments on the Draft Evaluation Report:
Improved Management of Superfund Special Accounts
Will Make More Funds Available for Clean-ups
Project No. 2007-000727

FROM: Lydia Johnson, Chief /s/ Cynthia K. Brown for
Enforcement Assessment Section (6SF-TE)

TO: Tina Lovingood, Project Manager
Office of Inspector General

Thank you for the opportunity to provide comments to the Office of Inspector General (OIG) Draft Evaluation Report: Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups. The following is a summary of comments from the Superfund Division, which manages and oversees the Region 6 special accounts. An additional response will be submitted by HQ.

General Comments

Since the OIG draft report reflects findings based on planning information reviewed and collected over the past year and a half, we recognize the region's special accounts have changed; therefore, this report is not totally reflective of current plans for the identified sites. Our comments are based on more recent management of special account plans and data pulled as of November 3, 2008. The following recommendations reflect special account information as of November 3, 2008.

Recommendations

- No. 1 Please replace the draft language on page 11 to read:
 5. We recommend that the Region 6 Administrator reclassify or transfer to the Trust Fund, as appropriate, \$954,511 in idle special account funds.

- No. 2 Please replace the narrative draft language on page 20 for Odessa Drum Company and Pab Oil with the following language. The narrative for Gulf Coast Vacuum is correct as drafted and requires no corrections.

Region 6

We identified two special accounts with a total of \$294,476 that could be better utilized. This amount includes \$218,388 for Gulf Coast Vacuum and \$76,088 for Odessa Drum Company. The Region also planned to reclassify \$660,035 from the Pab Oil account in Fiscal Year 2009, but the OIG is not making a recommendation on this amount until further work is completed.

Odessa Drum Company: We identified \$76,088 remaining in the account that could be better utilized. Based on discussion and correspondence from the Region, it planned to reclassify \$1,121,076 and close out the special account. Per the Region, this account was identified for closure in 2005, but due to workload issues had not been addressed. In January 2008, the Region reclassified \$1,121,076. As of November 3, 2008, the available balance was about \$76,088. The Region plans to transfer these funds to the Trust Fund and close the account in Fiscal Year 2009.

Pab Oil: The Region plans to reclassify \$660,035. Per the Region, the site was deleted from the National Priorities List in 2000 and is currently in operation and maintenance with on-going monitoring being conducted by the PRP. The remaining special account funds will be used to fund EPA oversight and required 5-year reviews. However, the OIG does not plan to recommend reclassification of these funds until the OIG concludes its work associated with its evaluation of site sampling. When that work is completed, the OIG will revisit the need for recommending reclassification of these funds.

OIG Response

Region 6 generally concurred with the recommendation for reclassification of funds and requested that the recommended amounts be updated to reflect special account balances as of November 3, 2008. The Region's comments are based on more recent management of special account plans, including a reclassification of \$1,121,076 from the Odessa Drum Company special account in January 2008. OIG recognizes the most current data and, as stated in Appendix D, *The Region plans to transfer remaining funds to the Trust Fund and close the account in Fiscal Year 2009.* Because the Regions' actions were initiated subsequent to the start of our field work in April 2007, the recommendation will remain as stated. See Appendix G for OIG Response to the Region's comments on Appendix D. This recommendation is open with agreed-to actions pending.

Thank you for the opportunity to review the draft report. If you have any questions regarding this memo, please direct them to Doretha Christian at (214) 665-6734.

Appendix L

Region 7 Response to OIG Draft Report

12/8/08

MEMORANDUM

SUBJECT: Improved Management of Superfund Special Accounts
Will Make More Funds Available for Clean-ups
Project No. 2007-000727

FROM: John B. Askew /s/ for
Regional Administrator, Region 7

TO: Wade Najjum
Assistant Inspector General
Office of Program Evaluation

On November 19, 2008, the Office of Inspector General (OIG) issued the draft evaluation report "Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups." OIG directed Recommendation 6 to Region 7 in the draft report. We are providing our response to Recommendation 6.

Recommendation 6: We recommend that the Region 7 Administrator reclassify or transfer to the Trust Fund as appropriate, \$1,603,756 in our Special Accounts (SAs.)

Region 7 Response: There were four SAs mentioned in the OIG's report. Following is the current status of these four SAs:

Superior Solvents: It was determined additional work at this site is necessary, and the SA should not be closed at this time. Therefore, the SA funds are currently planned to cover EPA's intramural costs for the oversight of a removal action.

Ralston: In September 2008, the region reclassified the remaining balance of \$286,284 in this SA, thus closing the SA. No further actions are needed.

Fenton Creek Dump: Region 7 reduced this SA in September 2008 by a transfer of \$1,150,718.90 to the Superfund Trust Fund and a reclassification of \$66,896. The region retained \$100,000 in this SA for the sampling and closure of site wells. This SA is currently planned in CERCLIS to be closed March 30, 2010.

Three D Investment: Region 7 reclassified \$17,761 and transferred the remaining balance of \$22,749.14 to the Superfund Trust Fund. This SA was closed in September 2008. No further actions are needed.

In summary, the region transferred and/or reclassified a total of \$1,544,409.04 from three of the SAs cited in the OIG report. The difference between the \$1,603,756 in the OIG's recommendation and the \$1,544,409, which the region has transferred and reclassified, is due to the amount remaining in the Superior Solvents SA, a portion of the \$100,000 retained in the Fenton Creek SA, and obviously accrued interest.

OIG Response

The OIG's draft report recommendation to Region 7 was to reclassify \$1,480,490. The Region's comments say that our recommendation directed them to reclassify \$1,603,756. Region 7 transferred and/or reclassified a total of \$1,544,409 in September 2008 from the special accounts cited in the OIG report. This recommendation is closed.

If you have any questions concerning this response, please contact me or Kathy Finazzo, Regional Audit Follow-up Coordinator, at 913.551.7833.

cc: Cecilia Tapia, SUPR
Robert Jackson, SUPR
Ann Keener, SUPR
Wendy Lubbe, SUPR
Teri Hankins, SUPR
Martha Cuppy, PLMG
Carla Kohler, RFMB
Kathy Finazzo, RFMB

Appendix M

Region 10 Response to OIG Draft Report

December 17, 2008

Reply To: ECL-110

MEMORANDUM

SUBJECT: Region 10 Response to Office of Inspector General (OIG) Draft Evaluation Report, Project No. 2007-000727: Improved Management of Superfund Special Accounts

FROM: Daniel D. Opalski, Director /s/ for Office of Environmental Cleanup

THRU: Bob Phillips, OIG Audit Liaison /s/ Office of Management Programs

TO: Wade Najjum, Assistant Inspector General Office of Program Evaluation

Region 10 concurs on the recommendations made in the subject report regarding reclassification of funds in five different Region 10 special accounts. The total amount to be reclassified, however, may differ due to interest that has accrued since OIG first looked at these accounts. Barring any unforeseen circumstances, these actions will be completed by September 30, 2009.

The specific status of the accounts named in the report is as follows:

Tulalip (10B3): Region 10 will pursue reclassification of the interest, currently at \$2,156,195.74, in this account. Since the account continues to accrue interest (nearly \$9,000 in October 2008 alone), we will continue to reclassify funds in excess of the \$3 million required by the Consent Decree approximately every two years.

Arctic Surplus (10E8): The account balance is currently \$807,432, and Region 10 will reclassify these funds in FY09. As is recognized in the subject report, we cannot close out this special account due to potential future payments from another federal agency.

Bunker Hill-UPRR Trails (103D): Contrary to our previous plan, Region 10 will not be closing this special account. We are currently in negotiations for additional work with the Potentially Responsible Parties (PRPs) involved in the initial settlement that created this account. This account will remain open and available balances (along with potential additional payments) will be used for future work at this site.

Bunker Hill-NIPC (10Y5): Region 10 is working with the Cincinnati Finance Center to resolve some accounting issues related to this special account and once those are resolved, Region 10 will realign the funds in this account to account 1020 for other Bunker Hill work and then close this account.

Pacific Wood Treating (101A): As noted in the report, Region 10 has already reclassified these funds and closed this account.

OIG Response

Region 10 concurs with the recommendation regarding reclassification of funds in five different special accounts and noted that, barring any unforeseen circumstances, the actions will be completed by September 30, 2009. However, the Region also indicated that one of the accounts will remain open to receive other expected settlement funds, and the funds that are currently in the account will be used to pay for future clean-up. We have adjusted the tables in the report and the recommendation accordingly. The recommendation is open with agreed-to actions pending.

As stated above, Region 10 will make every effort to complete these actions by September 30, 2009. If you have further questions, please call Beth Sheldrake, of my staff, at (206) 553-0220.

cc: Carolyn Copper, EPA OIG
Tina Lovingood, EPA OIG
Beth Sheldrake, EPA ECL
Lynne Kershner, EPA ECL
Russell Harmon, EPA OMP
Cyndy Mackey, EPA ORC
Bob Phillips, EPA OMP
Tracey Stewart, EPA OSRTI
Hollis Luzecky, EPA OSRE

Appendix N***Distribution***

Office of the Administrator
Acting Deputy Administrator
Acting Assistant Administrator, Office of Solid Waste and Emergency Response
Acting Assistant Administrator, Office of Enforcement and Compliance Assurance
Acting Chief Financial Officer
Acting Regional Administrators, Regions 1-10
Acting Agency Follow-up Official (the CFO)
Agency Follow-up Coordinator
Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response
Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
Acting General Counsel
Acting Associate Administrator for Congressional and Intergovernmental Relations
Acting Associate Administrator for Public Affairs
Director, Office of Superfund Remediation and Technology Innovation
Acting Director, Office of Site Remediation Enforcement
Director, Office of Administration and Policy
Audit Follow-up Coordinators, Regions 1-10
Audit Follow-up Coordinator, Office of Enforcement and Compliance Assurance
Audit Follow-up Coordinator, Office of Solid Waste and Emergency Response
Audit Follow-up Coordinator, Office of the Chief Financial Officer
Acting Inspector General