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Audit Report

SUPERFUND

Update on Brownfields Initiative to Revitalize Urban Areas

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Program Office(s) Involved

**Headquarters Audit Division
Washington, DC**

Regions 1, 4, 5, and 9

**Outreach and Special Projects Staff
Office of Solid Waste and Emergency
Response**

MEMORANDUM

SUBJECT: Update on Brownfields Initiative to Revitalize Urban Areas
Audit Report No. 2000-P-00027

FROM: Frances E. Tafer /s/
Audit Manager
Headquarters Audit Division

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

This report concludes our follow-up audit of EPA's Brownfields Initiative. Generally, we found that Agency efforts to implement our previous recommendations appear to be achieving the desired results. However, we found that: 1.) the cleanup loan fund pilots have been slow to make loans; and 2.) the site assessment pilot selection and reporting processes should be better documented and more timely, respectively.

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

In responding to the draft report and during the exit conference, your staff provided corrective actions, with milestone dates, for each recommendation. Therefore, no further response is required; and we are closing this report in our tracking system upon issuance. Please track all corrective actions in the Management Audit Tracking System (MATS). We have no objections to the further release of this report to the public. Should your staff have any questions, please have them contact Susan Lindenblad on (202) 260-0338.

EXECUTIVE SUMMARY

INTRODUCTION

On March 27, 1998, the EPA Office of Inspector General (OIG) issued a report, *Brownfields: Potential for Urban Revitalization* (E1SHF8-11-0005-8100091). The report provided recommendations to improve the Brownfields Initiative by focusing site assessment grants on environmental assessments that provide adequate quality assurance, and by offering training and seeking legislative changes to improve the Brownfields Cleanup Revolving Loan Fund (BCRLF) grant program. The Office of Solid Waste and Emergency Response (OSWER) agreed to implement these recommendations.

The Agency defines brownfields as abandoned, idled, or underutilized industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. While the Brownfields Initiative does not address sites with the greatest environmental risk, it does address a major Administration goal involving several Federal agencies which is to restore contaminated urban land and buildings to productive use. The Brownfields Initiative has continued to draw interest from cities and other local governmental entities, as well as Congress and the states.

OBJECTIVES

The objectives of our follow-up review were to determine: whether the recommendations of the original audit have been implemented and effective, whether the grantees have instituted adequate quality assurance and quality control procedures for site assessments, and what actions EPA should take to enhance BCRLF pilots' abilities to make loans to clean up brownfields sites.

RESULTS IN BRIEF

The Agency has taken significant steps to implement our previous recommendations. In general, these efforts appear to be achieving the desired results.

Brownfields Assessment Demonstration Pilot proposals are more focused on site assessment than they were before. The selection process, however, would be improved with a few modifications and better documentation. While the strength of regional quality assurance programs varied, all regions reviewed have considered the national guidance that OSWER provided. Site assessment pilots are providing better quarterly reports to EPA, but need to improve on the timeliness of those submissions.

The BCRLF is, still, in need of additional flexibility and time before its success can be fairly evaluated. While many changes have been proposed and made to the program, its pilots have been slow to make cleanup loans. In the BCRLF's limited history, four pilots have issued five loans and only one cleanup has been completed.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Solid Waste and Emergency Response: (1) continue efforts to implement the recommendations from our original audit; (2) revise and better document the results of the assessment pilot selection process; (3) evaluate regional implementation of quality assurance guidelines; (4) seek to add flexibility to and, after gaining additional experience, obtain an independent evaluation of the BCRLF program; and (5) clarify and emphasize pilot reporting requirements.

AGENCY COMMENTS

The Agency agreed with our recommendations and made plans to implement them. The comments also suggested changes to clarify the report which we made as appropriate. When fully implemented, we believe EPA's plans will be responsive to our recommendations. The Agency's comments are included as Appendix I of our report.

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ABBREVIATIONS

AA	Assistant Administrator
BCRLF	Brownfields Cleanup Revolving Loan Fund
BMS	Brownfields Management System
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
EPA	Environmental Protection Agency
GAO	General Accounting Office
GPRA	Government Performance and Results Act of 1993
NCP	National Oil and Hazardous Substances Pollution Contingency Plan
OIG	Office of Inspector General
OSC	On-Scene Coordinator
OSPS	Outreach and Special Projects Staff
OSWER	Office of Solid Waste and Emergency Response
PM	Project Manager
QA	Quality Assurance
QAM	Quality Assurance Manager
QAPP	Quality Assurance Project Plan

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CHAPTER 1

INTRODUCTION

Purpose

To help the nation address environmental concerns associated with the redevelopment and reuse of industrial and commercial properties, EPA launched the Brownfields Economic Redevelopment Initiative in 1993. The Agency defines brownfields as abandoned, idled, or underutilized industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

The EPA Office of Inspector General (OIG) issued a report, *Brownfields: Potential for Urban Revitalization* (E1SHF8-11-0005-8100091), on March 27, 1998. The report provided recommendations to improve the Brownfields Initiative by focusing site assessment grants on environmental assessments that provide adequate quality assurance, and by offering training and seeking legislative changes to improve the Brownfields Cleanup Revolving Loan Fund (BCRLF) grant program. The Office of Solid Waste and Emergency Response (OSWER) agreed to implement these recommendations.

The Brownfields Initiative has continued to draw interest from cities and other local governmental entities, as well as Congress and the states. Therefore, the OIG began a follow-up audit to assess the Agency's progress in implementing the recommendations from the OIG's 1998 report, including instituting quality assurance measures for site assessments, and identification of improvements to the BCRLF program to allow maximum use of funds for brownfields cleanups.

Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) §104(a)

gives EPA broad authority to take response actions, consistent with the National Hazardous Substances Pollution Contingency Plan (NCP), to address releases and threatened releases of hazardous substances, pollutants, and contaminants. CERCLA §104(b) authorizes EPA to undertake a variety of studies and investigations, including monitoring, surveys, testing, planning, and information gathering. CERCLA §104 response actions may be taken at sites at which a release or threatened release occurred, regardless of whether those sites are listed on the National Priority List. EPA's Office of General Counsel has determined that EPA may address brownfields using CERCLA §104 authorities and may, pursuant to CERCLA §104(d) provide funds to states, political subdivisions, and Indian Tribes to address brownfields. While the Brownfields Initiative does not address sites with the greatest environmental risk, it does address a major Administration goal involving several Federal agencies which is to restore contaminated urban land and buildings to productive use. Congress has approved an increasing budget for the Brownfields Initiative to promote economic redevelopment by assessing and cleaning up sites, as described below.

EPA's efforts under the Brownfields Initiative can be grouped into four broad and overlapping categories: (1) providing grants¹ for brownfields pilot projects; (2) clarifying liability and cleanup issues; (3) building partnerships and outreach among federal agencies, states, municipalities, and communities; and (4) fostering local job development and training initiatives.

Brownfields pilot projects include these two categories:

- (1) assessment demonstration pilots, and
- (2) BCRLF pilots.

¹We use the term synonymously with cooperative agreement throughout this report.

Both types of pilots are funded through grants between EPA and any of the following: states, political subdivisions (including cities, counties, or regional governmental organizations), and Indian Tribes. Most pilot projects have been awarded to cities.

Assessment pilots are funded up to \$200,000 each and are designed to assist with environmental activities prior to cleanup, such as site identification, site assessment, and cleanup planning and design. Pilot officials may apply for a follow-on supplemental assessment grant, funded up to \$150,000, for continuing assessment activities. An additional \$50,000 in funding is available for assessing the contamination of a brownfields site that is or will be used for "greenspace" purposes such as parks, playgrounds, trails, gardens, and open space.

The BCRLF pilots, each funded for up to \$500,000, provide funds from which low interest rate loans can be made for the cleanup of brownfields sites. The fund is replenished through repayment of principal and interest, so that future loans can be made for cleanup activities.

To obtain an assessment grant, an applicant must go through a competitive award process administered by EPA. The Agency establishes panels consisting of personnel from a number of federal agencies to review each application in accordance with a predetermined set of criteria. The Assistant Administrator (AA) for Solid Waste and Emergency Response makes the final determination on awards. To obtain a BCRLF grant, the applicant must have previously been the recipient of an assessment grant and submit an application addressing evaluation criteria established by EPA. As of September 1999, EPA had awarded a total of 304 assessment pilots and 68 BCRLF pilots. The Agency's budget for brownfields activities increased from \$10 million in fiscal year 1996 to \$92 million for fiscal year 2000.

Scope and Methodology

In January 2000, the Office of Inspector General began a follow-up to our March 1998 audit report, *Brownfields: Potential for Urban Revitalization*. We obtained information from the Outreach and Special Projects Staff (OSPS) within OSWER on actions taken to implement recommendations included in the prior report. We interviewed EPA Headquarters personnel and reviewed program documentation. We reviewed the brownfields application and evaluation process and the Brownfields Management System at Headquarters using information available in OSPS. For our review of assessment and BCRLF grant implementation, we visited Regions 1, 4, 5, and 9 and interviewed the regional brownfields coordinators and project officers and reviewed grant files. We visited six brownfields assessment pilot cities and seven BCRLF pilot cities and interviewed city/county personnel, reviewed grant files, and visited several brownfields properties.

For our review of assessment pilot awards, we drew a statistical random sample of 42 pilot grants awarded during fiscal year 1999, the first complete application cycle since we issued our prior report in March 1998. We reviewed the grant files to determine if the grant applications contained the information required in response to our previous audit recommendation. We also compared the proposal evaluation criteria currently used by the Agency to determine if they included revisions responsive to the recommendation in our prior report. We used a judgmental sample to determine which brownfields pilots to visit to review grants that had been awarded after we issued the prior report and to focus on pilot projects which involved activities requiring quality assurance procedures.

Our audit fieldwork was conducted from February to April 2000. Except as noted below, the audit was conducted in accordance with Generally Accepted Government Auditing Standards (Government Auditing Standards, 1994 Revision). Since this was a follow-up audit, we did not conduct an in-depth review

of internal controls, except for those specifically mentioned in our prior report. The U.S. General Accounting Office (GAO) recently issued a report on a portion of OSWER's performance measures. The report included some Brownfields measures which were established as required by the Government Performance and Results Act of 1993. Accordingly, we did not review the adequacy of Brownfields performance measures, but we do discuss reported accomplishments in Chapter 5.

Prior Audit Coverage

The OIG issued a report, *Brownfields: Potential for Urban Revitalization*, (E1SHF8-11-0005-8100091) on March 27, 1998. In addition, GAO, in the aforementioned report, *Superfund: Extent to Which Most Reforms Have Improved the Program Is Unknown* (GAO/RCED-00-118, May 12, 2000), noted that brownfields assessment pilots are one of the few Superfund administrative reforms reviewed that had associated performance measures with demonstrated positive outcomes: sites assessed, cleaned up, and redeveloped.

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CHAPTER 2

Assessment Pilot Awards

To address the recommendations from our prior report, the Agency revised its “Proposal Guidelines for Brownfields Assessment Demonstration Pilots” in October 1998. Our statistical sample of proposals selected for review in this audit has shown that prospective grantees are submitting proposals which address the ranking factors contained in these guidelines, and the revised evaluation criteria have contributed to an overall improvement in the quality of proposals. Although there have been substantive revisions to the proposal evaluation criteria, they could be further improved by emphasizing the need for applicants to include project milestones for completing tasks under the grant, and by ensuring that proposals describe plans to use quality sampling and analysis procedures. The integrity of the selection process can be strengthened by documenting the justification for selecting lower ranked proposals over those that were ranked higher during the evaluation process.

Quality of Grant Proposals Has Improved

In our prior report, we recommended that the Agency revise proposal evaluation criteria in order to give credit and higher ranking to those cities whose work plan (a) identified sites, (b) proposed to conduct site assessments, (c) contained the largest number of components of a redevelopment effort, (d) contained specific objectives and milestones, and (e) contained in-house technical expertise or a commitment for obtaining or developing technical expertise. By revising the evaluation criteria used for the selection of pilot demonstration projects, we believed the Agency would be encouraging cities to focus their effort on those activities having the greatest potential for promoting rapid site redevelopment. The Agency

agreed to revise the pilot application evaluation criteria in accordance with our recommendation.

In October 1998, the Agency issued its revised "Proposal Guidelines for Brownfields Assessment Demonstration Pilots." We compared the evaluation criteria included in the proposal guidelines from our prior audit with the 1998 criteria. We found that the Agency made substantive revisions to the guidelines to address almost all of the elements identified in the recommendation from our prior report. The revisions placed greater emphasis on the need for applicants to describe or include project objectives, site identification, site assessments, plans for redevelopment projects, and in-house technical expertise. Applicants are submitting proposals which address these criteria to help improve their chances of being awarded a brownfields site assessment grant.

In our prior report we recommended that proposal criteria be revised to give higher ranking to those cities whose work plan contained specific objectives and milestones. While the Agency has stressed the need for specific objectives, the revised criteria did not clearly emphasize the need for applicants to include project milestones for completing tasks under the grant. Our analysis showed that only 8 of the 42 proposals (19%) contained milestone dates. Another 11 (26%) identified interim accomplishments, but no dates. However, 23 of the 42 proposals (55%) we sampled did not include any type of project milestones for completing tasks under the assessment pilots. Having such information allows both the EPA project officer and the grantee to monitor progress and initiate corrective action when progress is insufficient.

At the time of our first audit, the Agency had not developed quality assurance guidance for brownfields. It has since done so. The Agency's revised guidelines for preparing proposals asks applicants to describe plans to ensure the use of

quality environmental sampling and analysis procedures necessary for sound environmental assessments of brownfields. In fiscal years 1998 and 1999, 27 percent of applicants planning to conduct sampling did not address this factor. We believe it is important that all proposals clearly emphasize plans for quality sampling and analysis procedures to ensure reliable and accurate site assessments. OSWER could better assure that this occurs in several ways. Proposal guidelines could be revised to stress the need for applicants to address this factor. If the proposal does not adequately address quality sampling and analysis when it should, it could be rejected outright or, after preliminary review, it could be returned for further work.

OSWER officials told us that they have noticed a significant improvement in both the proposal presentation and the quality of information provided as a result of the revised guidance. Our analysis of the statistical sample confirms that the proposals are much more focused on site assessment. Our first audit looked at five of the earlier brownfields pilots and found that of the \$1 million dollars granted, less than \$150,000 was spent on actual site assessments. The proposals that we reviewed for this audit indicate that dollars spent on site assessment will be much higher. Of the 42 proposals reviewed, 41 indicated that the applicant planned to conduct site assessments with the grant money and 35 of those either identified specific sites or areas where site assessments would be conducted.

**Better Documentation Needed
to Support Applications
Selected for Award**

EPA's proposal guidelines state that proposals must be clear and decisive, strictly follow the criteria, and provide sufficient detail for review panels to compare the merits of each and decide which application best supports the intent of the brownfields pilot program. Brownfields assessment pilot grants are competitively awarded, based on the evaluation of proposal applications.

Once OSPS receives proposals, they are sent to staff from EPA headquarters, the regions, and representatives from other federal agencies to be reviewed and scored. Brownfields proposal applications can earn a maximum of 20 points during the scoring process based on how effectively the proposals address EPA's evaluation criteria. In fiscal year 1999 there were so many applications that proposals were divided into three groups. Each proposal was reviewed by 7 to 10 panelists. Upon review of the proposals, scores were submitted to OSPS to compute an average score and ranking for the regional review panel(s).

We noted instances where the scoring of individual proposals varied significantly among reviewers using the same criteria. For example, out of the 20-point maximum, we noted proposals which were scored from 0 to 18, from 3 to 17.5, and from 6 to 20. With this much deviation, individual ratings become less meaningful. It could be that scores could become more consistent with something as simple as a handout to reviewers itemizing things that should or should not be in the proposal. It may also be that reviewers need to be chosen a little more carefully, with an eye to their brownfields experience, or that the rating criteria need to be clarified. As scores become more consistent, they will become more reliable and, therefore, there should be less need to drastically deviate from the rankings.

There is an additional benefit to bringing consistency to the rating process. If this occurs, it should be possible to eliminate a step in the selection process. Either the regional panels (discussed below) could be eliminated, or the regional panels could collectively assign the ratings, and the individual ratings could be eliminated.

Each regional panel discussed all candidates for their panel, but recommended only those proposals which they believed best met the selection criteria. The regional panels' recommendations were then

reviewed by Headquarters program, grants, legal, and enforcement personnel as necessary. They were summarized and presented to the AA who, with input from OSPS and regional personnel, made the final award selections.

We reviewed the panel evaluations and recommendations for selections made since our last audit--fiscal years 1998 (round 8) and 1999 (round 9). We found that in both years lower ranked proposals were recommended and ultimately selected over higher ones, and there was no documentation showing why this occurred. This was most noticeable in 1999, where proposals' initial ratings earned them a ranking of first, second, and fifth when forwarded to the convening regional panel (Panel C). However, none of these proposals was selected for award after review by OSPS. Additionally, the slate of candidates from Panel C included a proposal ranked 45th (out of 47). We identified similar examples with regional Panels A and B, where lower ranked proposals were selected to go forward in the process while higher ranked proposals dropped off the candidate slate; however, we did not find deviations as extreme as those from Panel C.

We discussed the results of our analysis with OSPS officials. The Director of OSPS stated that the numerical rankings developed for brownfields assessment grant proposals are not really rankings per se, but are designed to identify those proposals which are clearly in the bottom, middle, and upper tiers; and those proposals which are not likely candidates for selection. The Director commented that the regional panels do not generally consider the need for national geographic coverage, a mix of sizes of the cities submitting proposals, and tribal representation, which are factored into the Headquarters evaluation. The Director added that the Headquarters review can involve soliciting advice from grants, legal, and enforcement experts to identify "fatal flaws" in applications. Furthermore, the OSPS review smooths regional variances and adds

an arm's length review removed from the initial evaluation process.

The AA provided us with a valid explanation as to why the number one ranked proposal from Panel C did not receive an award. He stated that it was not accepted because the city already had an existing brownfields assessment pilot. In an effort to involve as many entities as possible, EPA has determined not to award multiple pilots to the same jurisdiction. The AA also explained that the proposal ranked 45th (a tribal candidate) was selected because the Agency made a conscious decision to include a diversified candidate for selection. The AA added that tribes have not had the experience that the cities have had in preparing quality proposals; therefore, the Agency has been meeting and working with them in order to help improve the quality of their applications. Agency officials did not document in the grant or selection files any of their justifications for why these particular grant applications were either awarded or not awarded.

A less compelling case can be made for the other two deviations which we have cited. In the case of the second ranked proposal, the AA indicated that the proposal was not selected because the regional brownfields representative on the Headquarters selection panel did not believe the proposal was a good candidate for selection, despite its high ranking. The AA stated he was not sure why the fifth ranked proposal was not considered for award by the regional panel. He speculated that the regional panel may have detected too many flaws with the application during their review. Our subsequent review of Agency documents pertaining to this application showed that there were several weaknesses identified by the regional panel. This may have contributed to it not being forwarded to Headquarters for consideration of award.

The selection process would be strengthened by more clearly describing the purposes and results of

the various reviews. We recognize that there may be valid reasons for EPA to occasionally pass over a proposal with a higher rank and select a proposal of lower ranking. However, when this does occur, we believe OSPS should document the rationale for the decision. During our fieldwork, we discussed the selection process at length with the Director and her staff. They were willing to refine or modify the process as necessary. If the role of the regional panelists is to separate out the weakest of the proposals, as opposed to ranking each proposal in order of its merit, categorizing the proposals in groups such as high, medium, or low, or even pass/fail would be more representative of what they are trying to accomplish. Additionally, any selection deviating from the categorization; e.g., selecting a medium over a high or including a “fail” would need to be justified in writing. The function of the Headquarters review should be clearly delineated. The AA could still retain final grant approval, if desired, with deviations from the recommended selections also requiring written explanation

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

- 2-1.** Revise the “Proposal Guidelines for Brownfields Assessment Demonstration Pilots” to instruct applicants to include project milestones for completing tasks under pilot demonstration projects.
- 2-2.** Remind applicants and reviewers, prior to the submission of proposals, of the need to recognize in writing that quality sampling and analysis procedures must be followed when site assessment work is proposed, and accordingly apply this criterion during the evaluation process.
- 2-3.** Clarify the responsibilities of all persons involved in the selection process and enumerate those responsibilities in written

guidance made available to the public and the selectors.

- 2-4.** Formalize selection procedures in the written guidance for all steps of the review process. Establish formal procedures for Headquarters review of regionally ranked proposals which ensures that each regionally acceptable proposal is reviewed by a set number of Headquarters experts (individually or collectively) and ranked.
- 2-5.** Provide written justification for deviations from the ranking.

**Agency Response and
OIG Evaluation**

The Agency agreed to revise its proposal guidelines, establish standard operating procedures for the pilot selection process, and replace the numerical scores with a high/medium/low rating of the proposals. These actions will be complete by October 2000, January 2001, and October 2000, respectively. The proposed corrective actions will address the recommendations and no further action is required.

CHAPTER 3

Brownfields Quality Assurance

To implement the recommendations from our March 1998 report relating to quality assurance (QA), EPA issued Brownfields QA guidance to the regions, informed pilot recipients of QA requirements, and reminded project officers and assistance recipients of the need for EPA-approved Quality Assurance Project Plans (QAPPs) prior to conducting field work. While the regions we reviewed appear to have given consideration to the guidance, the extent to which they implemented it varied. Region 4 had not instituted adequate QA policies and procedures and Region 5 was inconsistent in implementing the policies. Consequently, we are uncertain that the data collected during some site assessments is of acceptable quality upon which to base clean-up decisions. We believe significant improvements to Region 4 practices are necessary to provide assurance that environmental data is of acceptable quality.

Prior Recommendations Have Been Implemented by OSWER

In our March 1998 audit, we reported that pilot cities were being awarded grants to conduct site assessment work, but were not required to adhere to a quality assurance program. Additionally, OSWER had not set up a quality assurance framework for the conduct of site assessments as required under EPA Order 5360.1 CHG1. Therefore we recommended that OSWER:

- Remind project officers and assistance recipients of the need for EPA-approved QAPPs prior to conducting field work.

- Issue the Brownfields QA guidance to the regional offices and provide copies of the guidance to pilot recipients.

OSWER has taken both of these actions. In September 1998, they distributed their guidance document entitled "Quality Assurance Guidance for Conducting Brownfields Site Assessments." Then, in February 1999, the Director, OSPS, issued a memorandum to all regional brownfields coordinators informing them of the requirement, under 40 CFR §35, Subpart O, that pilot cities submit QAPPs for brownfields site assessments to EPA for review and approval prior to beginning field work.

We reviewed the national brownfields guidance and concluded that the guidance adheres to EPA policy and requirements under the mandatory quality assurance program for environmental data collection (EPA Order 5360.1 CHG1). Furthermore, the guidance contains an excellent discussion of quality assurance concepts, especially the discussion of data quality objectives. The document also contains illustrative examples to assist the reader with comprehension of complex quality assurance concepts.

Strength of Regional QA Programs Varied

We believe that OSPS, the office responsible for coordinating and implementing the Brownfields Initiative, has now instituted adequate QA policies and procedures for the conduct of brownfields site assessments. To determine whether the regions implemented these procedures, we judgmentally selected three regions, Regions 1, 4, and 5 to conduct QA fieldwork. We reviewed regional guidance as well as QAPPs and Phase II site assessment reports for two pilot cities in each of the selected regions. We interviewed each regional quality assurance contact to gain an understanding of how the quality assurance program is implemented in each region. We also discussed the management

and implementation of quality assurance procedures for sampling activities with pilot representatives.

We found that QA guidance was provided to the three regions we visited. Although not all pilot cities we visited had a copy of the guidance document, city officials were generally aware of the guidance and the need for proper QA procedures during site assessments.

One of the three regions (Region 4) in our sample had prepared and issued its own QA guidance in December 1998 which communicates to its pilot cities the minimum information to be included in a brownfields site assessment QAPP. It also references the national guidance for more detailed information and a discussion of QA concepts. We found this document to be redundant when compared to the national guidance, but with far less discussion of QA concepts.

Because the three regions in our sample varied significantly in implementing their regional QA programs, we will discuss each region separately.

Region 1 Implementation

Region 1 has instituted adequate basic QA policies and procedures for the conduct of brownfields site assessments. QAPPs were prepared and approved by EPA prior to sampling for both of the pilot cities we reviewed. Discussions with the Project Managers (PMs) and the QA Manager (QAM) revealed that the Region meets with its pilot cities prior to development of the QAPP to explain the Region's requirements for conducting brownfields site assessments, including requirements and expectations for QAPPs. In addition, the EPA QAM recommends that the city and contractor personnel conduct a preliminary site visit to better visualize the site conditions prior to assembling the QAPP. Regional involvement with cities and their contractors early in the process helps to ensure that the project objectives are well thought

out and agreed upon by all involved parties. In addition, the region's early involvement speeds the review and approval process, thereby leading to earlier implementation.

Region 1 does not review the site assessment reports for adherence to the approved site-specific QAPPs. (This was also true for Regions 4 and 5). However, our review of the site assessment reports for the two Region 1 pilot cities we selected revealed that the site sampling and analysis correlated with the approved, planned work. That is, the number, type and location of environmental and quality control samples collected were commensurate with that specified in the QAPP.

Region 4 Implementation

We found that Region 4 had not instituted adequate QA policies and procedures for the conduct of brownfields site assessments. The Regional QAM told us that PMs and pilot cities have been instructed on the requirement that QAPPs be in place prior to beginning field work. For the two pilot cities selected, however, we found that four of seven QAPPs were prepared and submitted to EPA for review after sampling was conducted; and five of seven QAPPs did not contain any indication that EPA had reviewed and approved the QAPP. The Regional QAM explained that the PMs tend to invite QA staff to review and comment on QAPPs only when they are uncomfortable or inexperienced with scientific or technical issues. Otherwise, some PMs elect to review QAPPs themselves. In addition to these concerns, one QAPP did not include sample collection locations; one QAPP did not include specific information, such as number and type of samples to be collected; and one QAPP referenced outdated guidance. These problems indicate that regional managers and staff do not fully understand the importance of, nor are committed to, sound QA practices.

Region 5 Implementation

Region 5, like Region 1, has instituted adequate basic QA policies and procedures for the conduct of brownfields site assessments, but is somewhat inconsistent in the implementation of those policies. QAPPs had been prepared prior to sampling for both of the pilot cities we reviewed; however, we could not verify that the QAPP and/or sampling and analysis plans were reviewed and approved by EPA for one of the two cities in our sample. Discussions with the PMs and the QAM revealed that Region 5, like Region 1, meets with its pilot cities prior to development of the QAPP. The purpose of this meeting is to go over the Region's requirements for conducting brownfields site assessments, including requirements and expectations for QAPPs, as well as site-specific and development issues. In addition, the EPA PMs and the QAM recommend options for sample analyses, including use of the EPA Contract Laboratory Program and the Region 5 Laboratory. Regional personnel also provide their cities with a copy of the national brownfields QA guidance.

The QAM, however, does not provide written comments to the city or its contractor after reviewing the QAPP. Typically, the QAM will discuss concerns directly with the contractor via the telephone. When asked why comments were not documented, the QAM replied that it is too time consuming and introduces a formality into the relationship among the three parties. As with Region 1, Region 5 does not review the site assessment reports for adherence to the approved site-specific QAPP. Our review of the site assessment reports for the two cities selected revealed that sampling and analysis conducted during the assessments correlated with the planned work outlined in the QAPP.

QAPPs Are Key to Valid and Useful Assessments

QAPPs are considered to be the blueprint of assessment work to be conducted. They contain essential information on key decisions to be made, as well as the number and type of samples to be

collected to arrive at these decisions. They also contain information on what happens if the right data is not collected. Evidence of an EPA-approved QAPP documents a well thought out process to achieve the assessment's intended objective. In addition, the QAPP serves as an assessment tool which EPA can use to evaluate the progress of the grantee and the effectiveness of chosen actions.

The primary goal of the Brownfields Initiative is to put idle or underutilized properties into productive reuse. It would be a great threat to the success of the program to discover properties returned to use where employees or residents were becoming seriously ill due to toxic pollutants not having been adequately identified or cleaned up. One of the most effective ways to minimize this threat is to insist on effective quality assurance measures during site assessment and cleanup.

While OSWER has done a commendable job since our last audit in providing QA guidance for conducting brownfields site assessments, regions have not been consistent in implementing the guidance. Although guidance is not mandatory, given the widely recognized value of a sound QA program, the varying degree of adherence to the national guidance was cause for concern. We are unable to state with any degree of assurance that the environmental data collection for all brownfields site assessments is of acceptable quality upon which to base clean-up decisions. Our review of five of the earliest site assessment grants for our 1998 report showed that very little of the grant activities focused on actual site assessments. The absence of an adequate QA program, while troubling, certainly was not devastating given the relatively small number of grants and the even smaller number of site assessments. As a result of our recommendation, the Agency has now focused its site assessment grants on site assessments. Ninety-eight percent of grants awarded in 1998 and 1999 involve some site assessment work. Furthermore, the number of site

assessment grants awarded increased from 23 in 1998 to 57 in 1999. As the program matures, the need for clean-up decisions to be based on sound science grows exponentially.

OSWER should evaluate the implementation of its QA process in the regions. If problems are identified, then it should take corrective action to ensure that quality assurance is built into all brownfields site assessments and cleanups.

**Site Visits and Increased
Communication Can Enhance
the Quality of Assessments**

During the course of our review, we found that project officers and/or QA staff of some EPA regions periodically visit brownfields sites during site assessment sampling and analysis activities. Such visits serve to ensure that QAPP procedures are appropriately followed and can help to ensure high quality assessments. We learned that the project officers and/or QA staff in Regions 1, 5, and 9 conduct periodic site visits. Project officers who conduct such visits explained that the visits were a very useful way to prevent or minimize potential problems with sampling activities and ensure the quality and consistency of sampling data for site decision-making.

Communicating with grant recipients at the very outset of projects is also a desirable practice to ensure everyone is familiar with the purpose and requirements of the grants. Project officers in Regions 1 and 5 meet with grantees shortly after the award of grants to explain grant requirements and address grantees' questions or concerns. Region 1 invites all recent grant recipients in at one time for an informational briefing and conference. Regional staff discuss relevant issues and restrictions regarding the grants. The regional staff address any questions the grantees may have and clarify areas of uncertainty. The QA staff in Region 1 sometimes participate in these meetings to explain QA for site assessments. Region 5 conducts a pre-QAPP meeting with the city and its contractors for each project. During this

meeting, the region and the grant recipient will discuss the purpose of the assessment and the scope.

Other EPA regions should consider conducting such meetings with grant recipients at the very beginning of brownfields projects to discuss goals and objectives, clear up questions, and ensure that grantees are proceeding in the right direction.

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

- 3-1.** Conduct an initial evaluation of how effectively Regions 2, 3, 6, 7, 8, 9, and 10 are implementing QA guidelines for brownfields site assessments and follow up with periodic national oversight.
- 3-2.** Work with Region 4 brownfields managers to implement adequate QA procedures and to ensure that site assessment grant recipients prepare and submit QAPPs to EPA prior to field sampling.
- 3-3.** Remind Region 5 that review and approval of QAPPs and/or sampling and analysis plans prior to field sampling activities is expected practice.
- 3-4.** Share desirable practices, such as pre-QAPP meetings, with all regions and encourage regional brownfields coordinators to communicate up front with grantees to address questions and concerns about QAPPs. The regions should invite QA staff to participate in these initial conferences.
- 3-5.** Encourage the project officers and/or QA staff to communicate frequently with pilot cities and conduct periodic site visits to ensure the quality of site sampling and overall site assessments.

**Agency Response and
OIG Evaluation**

OSWER agreed to evaluate QA implementation in the remaining regions over the next three or four fiscal years. The Agency will be addressing the remaining recommendations on an on-going basis during regularly scheduled contact with the regions. The proposed corrective actions will address the recommendations and no further action is required.

CHAPTER 4

The Brownfields Cleanup Revolving Loan Fund

The Brownfields Cleanup Revolving Loan Fund (BCRLF) pilots have been slow to make cleanup loans. Since 1997, EPA has awarded \$43.1 million to 68 pilots; an additional 30 pilots have been selected to receive funding in fiscal year 2000. As of June 30, 2000, approximately \$1 million had been loaned, and only one cleanup had been completed. The primary reasons for delay are the barriers imposed by Superfund legislation (CERCLA and the associated NCP requirements), the grantees' lack of understanding about how to overcome some of the barriers, and the availability of commercial loans at about the same interest rate without the BCRLF restrictions and administrative requirements. OSPA has been working hard to overcome these impediments. EPA supports the bipartisan brownfields legislation introduced in the Senate in June². OSPA has issued guidance, offered training, and is trying to increase the flexibility of the program to attract loan applicants. These efforts may produce results. In fact, four of the five loans made came from the 1999 awards. However, the first pilots have not yet completed their project period, the second group has not completed their first year, and the most recent selectees have not received their awards. Given the limited history of the program, along with the number of changes being proposed and made, now is not the most appropriate time to determine the success of the BCRLF. We recommend that EPA obtain a comprehensive evaluation of the costs and

²The Brownfields Revitalization and Environmental Restoration Act of 2000, S. 2700, was introduced on June 8, 2000, by four members of the Environment and Public Works Committee, including the Chair of the Subcommittee on Superfund, Waste Control and Risk Assessment.

benefits of this program after gaining more experience, perhaps at the end of fiscal year 2003.

Status of the BCRLF Awards

The BCRLF was created to enable states, political subdivisions, and Indian tribes to make loans to facilitate the cleanup and redevelopment of brownfields properties. Grantees (pilots) were authorized to spend up to 15% of the award on administrative expenses. Only entities that had been Site Assessment pilots or had Targeted Brownfields Assessments performed in their jurisdiction were eligible to apply for the BCRLF which was intended to be the next phase in the logical progression of the Brownfields Initiative. In 1997, EPA awarded 23 cooperative agreements for \$350,000 each to capitalize the initial BCRLF pilots.

When we conducted our original review, no loans had been made and Congress had questioned the Agency's authority to use Superfund dollars to fund such a program. The 1998 appropriation legislation prohibited the use of Superfund money for the BCRLF. There was no restriction in the following year's appropriation; so in 1999, EPA awarded 45 new cooperative agreements for up to \$500,000 per eligible entity. Additionally the Agency provided supplemental funding of \$150,000 to seven of the 1997 pilots that had demonstrated substantial progress toward making loans. The supplement amount provided parity for the selected 1997 pilots with the newly awarded 1999 pilots.

Four pilots have issued the only five loans made as of June 30, 2000. The two loans, made by the city of Stamford, CT, had consumed the bulk of the "seed money" provided by EPA, and the city contributed additional resources to its fund. The first BCRLF loan was for \$250,000 to a private developer to clean up a former shipyard site with multiple contaminants to build waterfront condominiums. The second loan by Stamford was for \$160,000 to business owners who wanted to clean up an industrial site with multiple contaminants in order to expand and relocate their

motorcycle dealership. The first loan, however, was recently “rescinded” as the developer transferred the property to another owner and will not be building the condominiums. The cleanup on the second loan is in progress.

The first and only completed cleanup was funded by a \$50,000 loan from the city of Las Vegas, NV, to a public entity to create a small-business incubation and community center on the site of a former National Guard Armory with contaminated soil. EPA awarded a cooperative agreement to Las Vegas in September 1999, and in November this loan was approved. Before the end of December 1999, the cleanup was complete.

Trenton, NJ, a 1997 pilot, and Shreveport, LA, a 1999 pilot, have recently signed “loans to themselves” in which the cities are each responsible for the cleanup and redevelopment of their properties. The loans were for \$275,000 and \$400,000, respectively. [Trenton, on July 6, 2000, approved its second loan for \$150,000.]

Impediments to Loan Issuance CERCLA and NCP requirements have provided the most significant impediments to the success of the BCRLF. CERCLA restrictions prohibit the use of Superfund dollars to clean up sites contaminated solely with petroleum products. BCRLF pilot funds also may not be used to clean up products that are part of the building structure and result in exposure within residential buildings or business or community structures. For example interior lead-based paint contamination or asbestos that results in indoor exposure only may not be cleaned up with BCRLF pilot funds. Additionally, BCRLF pilot funds are generally not permitted to be expended on building demolition, unless demolition is necessary for the cleanup. Further, the CERCLA requirement that borrowers pay Davis Bacon Act wages may discourage businesses from borrowing from the BCRLFs. Other “cross cutting” social policy requirements that apply by their own terms may

similarly discourage borrowers. Once cleanup has begun, it must be completed in 12 months, and it must be supervised by an On-Scene Coordinator (OSC). The OSC is a government employee who manages the site and must have experience with coordinating environmental responses and knowledge of the associated requirements. These restrictions severely limit some cities' abilities to make loans from their BCRLFs.

At the time of our previous report, these barriers had been identified and suggestions made for overcoming them. We recommended that the then-Acting Assistant Administrator: (1) explore alternatives to help recipients overcome CERCLA- and NCP-related barriers and (2) provide them with training on applicable CERCLA requirements.

EPA's activities to implement our recommendations were as follows: Agency officials met with Congressional staff to discuss options to enhance the program and commented on various proposed legislative changes. OSPA has provided clarifications to existing requirements, highlighting areas of flexibility of which pilots may not have been aware. For instance, Agency officials suggested that BCRLF pilots enter into agreements with the Army Corps of Engineers or their state government to provide OSC services if they do not have that capability in-house.

As recently as May of this year, EPA took the position that existing regulations were adequate and workable. Rather than pursue the lengthy process of regulatory change, Agency officials chose to focus their efforts on identifying areas where policy guidance could be developed or clarified in interpreting how to apply the NCP requirements to brownfields. However, it appears that this position is changing. On June 29, 2000, the AA testified before a Senate Subcommittee that EPA supported the bipartisan brownfields legislation proposed by the Subcommittee. If Congress passes the bill, that may

provide legislative relief from CERCLA and NCP-related barriers.

Since our last report, OSPS has issued guidance and conducted training. In May 1998, OSPS issued the Administrative Manual to provide guidance to regions and pilots as to how the program should be run. OSPS also conducted a training session for the regions in February 1999. Many pilot and regional representatives attended the one-day BCRLF seminar offered prior to the Brownfields '99 conference and found it useful. The regions we visited have provided formal training to pilots at least once since our prior report was issued. One of the regions even offered applicants a series of sessions to better understand the program before they became participants. In June 2000, OSPS held another one-day workshop on the BCRLF program to help the regions help their pilots.

**Increasing Flexibility May
Increase Loans From
the BCRLF**

We were told by municipal officials at the time of our first audit that the constraints imposed by Superfund legislation, the small dollar amount of the loan, and the increased administrative requirements and the inflexibility associated with the BCRLFs would not make these loans highly sought after. Furthermore, with interest rates low and the economy doing well, commercial loans at about the same interest rate were available and without all the requirements of the BCRLFs.

Most of the municipal officials we met with during our follow-up also believed that changes were needed to make the program more successful. They told us that the program, as it exists, is too narrow and inflexible to meet the needs of many local governments. They believed that even beyond the legislative/regulatory changes, EPA could and should open the program to more localities and more borrowers. They stated that less restrictive funds are available in commercial loans and other government grant programs. Some

of the changes they suggested were: open BCRLF eligibility to any jurisdiction having completed qualified assessments (not just EPA-paid assessments); expand the pool of eligible borrowers to include Potentially Responsible Parties; offer clean-up grants; and increase the amount awarded to pilots to allow them to address more complex cleanups.

In June, we discussed the BCRLF with the OSPS and its Director, all of whom were convinced that the program would be successful despite its slow start. They pointed out that the loans that have been made have come from the newer awards. They believe this has occurred because the municipalities now have an understanding of the CERCLA and NCP constraints, as well as the knowledge of how to overcome some of them. They were excited by the fact that a new loan was to be announced the next day. Further, municipalities were discussing joining together for BCRLF purposes. At least one 1997 recipient, thus far having not made a loan, was discussing this approach with neighboring counties, and OSPS staff were optimistic that it would occur.

The Future of the BCRLFs

The proposed legislation, if it passes Congress, and its attendant regulations, may be years in the making. In the interim, the Agency should continue to clarify existing requirements, train grantees, and infuse the current program with as much flexibility as possible. Additionally it must make some difficult decisions about its initial BCRLF awards. As the 1997 awards are approaching the end of the three-year project period, EPA is faced with the prospect of reclaiming the more than \$7 million not loaned by those pilots. The Director, OSPS, acknowledged that the grants' closeout criteria allows them to begin this process as early as 18 months into the project period when less than 50% of the funds have been loaned. They also indicated that they will not include that language in future grants.

We discussed the possibility of returning unused funds to EPA. Neither the Agency nor pilot representatives were anxious for the funds to be de-obligated, yet this was acknowledged to be a probable outcome for at least a few pilots. In a June 2000 meeting with the audit team, the Assistant Administrator affirmed his willingness to reclaim as many of the awards as necessary.

Finally, the Agency needs to commit to an independent evaluation of the success of the program. While now is not the most appropriate time to do this, after two sets of pilots have completed their project periods, there should be enough information upon which to base an assessment of program accomplishments. When the BCRLF was developed and funded in 1997, neither EPA, nor the initial pilots, had a clear understanding of the problems to be faced and the means to overcome them. Thus, judging the program by the number of loans to this point, or the number of cleanups to date, is premature. However, at the five year point EPA should obtain an independent, comprehensive evaluation of this program.

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

- 4-1.** Continue efforts to promote and support legislative changes for the Brownfields Initiative.
- 4-2.** Continue to expand available guidance to foster success under current legislation.
- 4-3.** Continue to provide training to current and prospective BCRLF recipients.
- 4-4.** Seek to add flexibility to future BCRLFs by considering:
 - a. Increasing grant award amounts; and

- b. Expanding the eligible pool of applicants beyond those having participated in EPA assessment programs.
- 4-5. De-obligate funds awarded to pilots that do not demonstrate substantial progress toward making a loan by the end of their project period.
- 4-6. Obtain an independent analysis of the success of the BCRLF at the five year anniversary of the program.

**Agency Response and
OIG Evaluation**

The Agency agreed to continue implementing our original recommendations on an ongoing basis. OSWER described its plans to increase flexibility in the BCRLF by increasing funding, expanding eligibility, and making cleanup grant money available in FY2001, by modifying the proposal guidelines which will be issued by October 2000. The Agency agreed to take action regarding the 1997 pilots, completing the process by January 2001. An independent evaluation of the BCRLF will be obtained at the program's five-year anniversary. The proposed corrective actions will address the recommendations and no further action is required.

CHAPTER 5

Brownfields Initiative Reporting

Quarterly reporting by brownfields site assessment grant recipients has improved since our previous audit. The reports now specify the activities performed with EPA funding and contain data which are useful to the regions and headquarters brownfields officials. Not all quarterly reports were submitted timely, however. In addition, some clarification may be needed for information required of grant recipients in the quarterly reports. We found that the Agency has initiated steps to improve the accuracy of achievements reported through the Brownfields Management System (BMS).

Reporting Brownfields Accomplishments Needs to be Timely

Quarterly reports are required from the recipients of EPA brownfields site assessment grants. These reports are used by headquarters and regional brownfields officials to manage the site assessment program. The quarterly reports also assist EPA project officers in staying abreast of property assessment, cleanup and redevelopment activities on individual projects. Our March 1998 report recommended that EPA instruct grantees to clearly delineate in quarterly reports those activities which were undertaken with EPA funds during the reporting period. The reports that we reviewed for our current audit indicated how EPA funds were being spent. However, not all reports that we reviewed were submitted within 30 days after the end of each quarter, as the grant conditions require. A few reports were submitted more than two months late. One report was submitted more than four months late.

Receipt of timely quarterly reports assists the Agency in staying up to date and informed of the progress of various brownfields projects. Data contained within the quarterly reports are input into BMS. BMS assists the Agency in fulfilling Agency reporting requirements for the Brownfields Initiative under the Government Performance and Results Act (GPRA). The ability to accurately track and report on the activities and progress of the pilot projects is vital for achieving the goals of the Brownfields Initiative. Consequently, it is critical that quarterly reports are timely and accurate. As an example of a useful practice, Region 1 sends out a reminder letter to recipients about two weeks before the quarterly reports are due. If reports are overdue for 10 days or more, the Region sends out a second reminder notice. This seemed to be an effective method for ensuring the timely receipt of quarterly reports.

EPA is Working to Improve the Reliability of BMS Data

During the course of our review, congressional committee staff expressed concerns regarding the reliability of BMS data because of fluctuations in certain accomplishment data reported in various quarterly reporting periods, especially regarding the number of site assessments completed. The committee staff believed that some accomplishment data may have been overstated.

We performed a limited analysis of selected accomplishments included in the National Brownfields Management Summary reports for the 18-month period July 1998 through December 1999. We examined the data for the quarterly reporting periods ending September 30, 1998, and September 30 and December 31, 1999. The categories we evaluated included:

- assessment demonstration pilots awarded,
- properties with site assessments started with pilot funding,
- properties with site assessments completed with pilot funding, and

- properties with redevelopment activities underway.

We found that the totals contained in the national summary reports for the above categories had not generally fluctuated, but steadily increased over time, which would be expected in a growing program. The increases can be seen in Table 1 below.

Table 1

Selected Brownfields Accomplishments Reported in BMS
July 1, 1998 - December 31, 1999

Category	Qtr. ending 9/30/98	Qtr. ending 9/30/99	Qtr. ending 12/31/99
Pilots awarded	225	304	305
Properties with assessments started with pilot funding	893	1,844	1,883
Properties with assessments completed with pilot funding	704	1,665	1,674
Properties w/ redevelop. activities underway	85	173	184

Source: Brownfields Management Summaries [National]

According to OSPS representatives, EPA typically only receives about 75 percent of the quarterly reports at the time that the National Brownfields Summary report is issued, since many quarterly reports are not submitted timely to EPA. Consequently, the numbers included in the BMS summary reports are more likely to be conservative and understated rather than overstated. In our review of this data, we did observe fluctuations in the individual data points for the time periods selected as OSPS issued revisions to the reports in keeping with efforts to improve the accuracy of BMS reports.

Clarification of Terms Desired

Some city officials indicated that they had difficulty in providing EPA with the information the Agency needs

for BMS input. Some officials said that they often had to reconfigure the numbers in their own data bases to meet EPA information needs. City officials added that some questions were unclear and difficult to answer. For example, some officials said that it was difficult to:

- (1) Provide a hard and fast figure on the number of Brownfields sites in a particular city (e.g., should a site with multiple adjacent tracts be counted as one site or several?); and
- (2) Calculate the remediation and/or redevelopment jobs and dollars leveraged which can be attributed to EPA's grant.

Agency staff acknowledged that there has been some confusion regarding definitions of properties and parcels among some cities. EPA has had many discussions with pilot city representatives on this issue. Much discretion is left to the cities to decide how properties are defined. In some cases, the numbers of properties to be reported relate to the intended uses of the property once sites have been declared clean. If several different businesses will be occupying the property, several properties may ultimately be counted instead of just the one that was declared for the pilot initially. In other cases, a large property may still be counted as one property, even though it is later broken into separate parcels and multiple assessments and cleanups are conducted.

EPA recently initiated efforts to help clarify some brownfields terminology. In September 1999, OSPA issued a memorandum to the Regional Superfund Policy Managers transmitting Model New Terms and Conditions related to the minimum reporting requirements for Brownfields cooperative agreements. To supplement this clarification of reporting standards, the Agency issued a "Data Primer" for users of brownfields information in February 2000. This document provides definitions of key measures, terms and conditions, and reporting

guidelines and the procedures for quality control for brownfields data. The Minimum Reporting Requirements and Data Primer should provide the Agency, its contractors, and pilots a common understanding of brownfields information needs. These documents will be updated periodically, as needed.

We were informed by OSPS representatives that they have taken steps to improve the accuracy and reliability of BMS data being reported by revising the data input process. In the past, data were extracted from the quarterly reports and entered directly into BMS. The regions were provided summary reports after the data had been input into BMS. Now data are extracted and entered into a preliminary data base and the regions are given one month to verify the data or resolve problem data before information is entered into BMS.

We believe the Agency should continue its current efforts to improve the quality of data collected and reported in BMS. Accurate information about the number of assessments started and completed is a key performance measure for evaluating the success of the Brownfields Initiative.

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

- 5-1.** Instruct regional brownfields coordinators and/or project officers to identify and notify delinquent quarterly reporters of the need for timely submissions. The coordinators and/or project officers should consider sending reminder notices to grant recipients shortly before the quarterly reports are due.

- 5-2.** Continue to work with regional brownfields coordinators, project officers, and grant recipients to clarify information requirements and establish a common understanding of

terms and definitions included in quarterly reports.

**Agency Response and
OIG Evaluation**

OSWER agreed to include these issues in discussions with the regions and continue such efforts. A model late notice will be developed by March 2001. The proposed corrective actions are responsive to the recommendations. No further actions are required.

APPENDIX I

AGENCY RESPONSE

August 29, 2000

MEMORANDUM

SUBJECT: Comments on Draft Office of Inspector General Follow Up Audit of Brownfields Initiative

FROM: Timothy Fields, Jr. /s/ Michael Shapiro for
Assistant Administrator

TO: Nikki L. Tinsley
Inspector General

Attached are our comments on the above-referenced draft Office of Inspector General (OIG) report. Input from the Office of General Counsel (OGC) as well as our Regional Brownfields coordinators has been incorporated into this response. We appreciate the OIG's coordination on the development of this report and also appreciate that many of our previously suggested changes were in fact made and are reflected in this current draft report. Our comments also reflect input received from several EPA regions.

We continue to believe, however, that the OIG has not recognized the differences between the competitive processes utilized for direct procurement of Federal contracts and those used for awarding assistance agreements. Competition for assistance agreements is not legally required, and certain preferences and judgments of a nonpolitical nature are not only permitted, but are likely to continue to play a part in the selection process for a small percentage of applicants. Not every single factor that is utilized in the selection process can be reduced to objective criteria, and this may be a basic point of disagreement. Our recommendation is that OIG personnel may wish to further discuss this issue with Jim Drummond of OGC, and we would of course be glad to answer any further OIG questions with respect to our comments. We appreciate the opportunity to respond to this report.

If you have any questions, please contact Linda Garczynski, Director of the Outreach and Special Projects Staff, at 202-260-4039.

Attachment

OSPS Comments on Draft OIG Brownfields Audit Report

Chapter 1 - Introduction (Background)

General Comments

- Add to first sentence (under “Background), “consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), to address releases . . .”
- Next (second) sentence, delete the words in “connection with response actions taken under CERCLA Sec 104(a).”
- The third sentence should be replaced with “CERCLA Sec 104 response actions may be taken at sites at which there is a release or substantial threat of release into the environment of a hazardous substance regardless of whether those sites are listed on the National Priorities List (NPL).”
- The fourth sentence should be replaced with “EPA’s Office of General counsel has determined that EPA may address brownfields using CERCLA Sec 104 authorities and may, pursuant to CERCLA 104(d), provide funds to states, political subdivisions and Indian Tribes to address brownfields.”
- In the third paragraph, the last sentence should be replaced with “Both types of pilots are funded through grants between EPA and any of the following: states, political subdivisions (including cities, counties, and regional governmental entities), and Indian Tribes.”

Chapter 2

General Comments

- In the second to last sentence of the second paragraph under the section “Quality of Grant Proposals Has Improved,” the word “in-house” should be placed before “technical expertise,” to be consistent with the paragraph above.
- Under this same section, it is stated that “If the proposal does not adequately address quality sampling and analysis when it should, it could be rejected outright or, after preliminary review, it could be returned for further work.” We disagree that the proposal should be returned to the recipient for further work, since this could impact the integrity of the competitive process if some applicants were allowed to change their application after the due date.
- We take issue with the statements on page 8 of the report which state that the selection process needs to be more objective in order to “protect the integrity” of the assessment

pilot award process. In particular, the statement that “the current process leaves the Agency vulnerable to claims of partiality” should be revised or removed, since competition for grants is not legally required and statements such as these may inadvertently encourage unwanted litigation.

Response to Recommendations

- 2-1** Revise the “Proposal Guidelines for Brownfields Assessment Demonstration Pilots” to instruct applicants to include project milestones for completing tasks under pilot demonstration projects.

The “Proposal Guidelines for Brownfields Assessment Demonstration Pilots” dated October 1999 requires that applicants “describe project milestones and project schedule” in the Evaluation Criteria Part II - Optional (greenspace) section. However, this is not clearly stated in the Evaluation Criteria Part I. OSWER will ensure that a request for projected milestones and dates be incorporated in the FY01 guidelines, which are currently be developed.

Issue revised assessment pilot guidelines

September/October 2000

- 2-2** Remind applicants and reviewers of the requirement for proposals to acknowledge the need for quality sampling and analysis procedures if site assessment work is proposed and, accordingly, downgrade those proposals not properly addressing this factor.

The report should acknowledge that submission of a QA plan is not required by the assistance agreement regulations at Subpart O, and that any decision to downgrade proposals not adequately addressing quality sampling and analysis procedures would be a program policy call. This area will continue to be addressed at the work plan negotiation stage, and we do not believe that downgrading proposals for this reason is appropriate.

- 2-3** Clarify the responsibilities of all persons involved in the selection process and enumerate those responsibilities in written guidance made available to the public and the selectors.

OSWER will develop standard operating procedures (SOPs) for the assessment pilot selection process prior to convening the review panels for FY01.

Develop standard operating procedures for the assessment pilot selection process January 2001

- 2-4** Determine the cause for the large deviation in individual proposal ratings, and take steps to make ratings more consistent.
- 2-5** Formalize selection procedures in the written guidance for all steps of the review process. Establish formal procedures for Headquarters review of regionally ranked proposals which

ensures that each regionally acceptable proposal is reviewed by a set number of Headquarters experts (individually or collectively) and ranked numerically.

In response to the above two recommendations, OSWER will develop standard operating procedures (SOPs) for the assessment pilot selection process prior to convening the review panels for FY01. We will revise the “Proposal Guidelines for Brownfields Assessment Demonstration Pilots” to eliminate numerical scores. A high/medium/low rating will be used instead for ranking purposes.

Develop standard operating procedures for the assessment pilot selection process January 2001

2-6 Provide written justification for deviations from the numerical ranking.

The “Proposal Guidelines for Brownfields Assessment Demonstration Pilots” for FY01 will be revised to eliminate numerical scores. A high/medium/low rating will be used instead for ranking purposes.

Issue revised assessment pilot guidelines September/October 2000

Chapter 3

General Comments

- The second sentence in the first paragraph should read, “While the regions we reviewed appear to have given consideration to the guidance, the extent to which they implemented the recommendations in the guidance varied.”
- The discussion in the section entitled “*QAPPs are key to valid and useful assessments*” incorrectly assumes that deviating from guidance is improper. Variations in implementing guidance do not necessarily warrant a conclusion that a QA program was not sound. The report states that the regions’ varying degrees of adherence to the guidance is cause for concern, but does not identify the specific concern. Accordingly, the first two sentences of the third paragraph under this heading should be replaced with, “While OSWER has done a commendable job since our last audit in providing QA guidance for conducting brownfields site assessments, regions have not been consistent in implementing the recommendations in the guidance. We believe the guidance provides a good basis for developing an effective QA program and would like to know under what circumstances the regions are deciding that the recommendations in the guidance should not be followed.”
- We believe that the recommendations for improved communication and site visits have merit, but must be weighed relative to their resource utilization. The Brownfields Program is now specifically allocated 87 FTE but actually uses 127 FTE, and we estimate

it would require 268 FTE to support our workload. With this disparity between needed and allocated resources, management must select process improvements that deliver the highest benefit to cost ratio. Improved communication seems to be superior to site visits in improving QA performance by brownfields grant recipients, and site visits are clearly more resource intensive. This suggests we should place emphasis on improved communication over site visits.

Response to Recommendations

- 3-1** Conduct an initial evaluation of how effectively Regions 2, 3, 6, 7, 8, 9, and 10 are implementing QA guidelines for brownfields site assessments and follow up with periodic national oversight.

Beginning in Fiscal Year 2001, we will evaluate the Brownfields Program management performance in two or three regions per year. The effectiveness of regional QA/QC practices will be included in these program reviews.

- 3-2** Work with Region 4 brownfields managers to implement adequate QA procedures and to ensure that site assessment grant recipients prepare and submit QAPPs to EPA prior to field sampling.

It is not clear who is the “Regional QAM” referenced in the report, but the cited statements are not consistent with the region’s brownfields QA review policies. Only qualified brownfields project managers may review and approve QAPPs. Not all region 4 brownfields project managers are qualified to do such reviews. Therefore, unless they are technically qualified, they must submit them to the EPA Athens SESD staff for review and approval. All brownfields project managers know this. The regional management and staff are committed to implementing sound QA practices.

Region 4 has taken a number of steps to ensure compliance with the QA requirements by the pilot cities, including: sending letters and visiting to review and reinforce the requirements; adding an Army Corp of Engineers chemist with expertise in Laboratory QA/QC to the brownfields staff; reviewing all Pilot Phase I & IIs for compliance with requirements; conducting a pilots familiarization visit to an EPA Laboratory to reinforce importance of QA/QC; and providing a session on QA/QC requirements as part of a regional pilots workshop.

OSPS will continue to work with all regions during our monthly conference calls to ensure they use sound QA/QC policy.

- 3-3** Encourage Region 5 to review and approve QAPPs and/or sampling and analysis plans prior to field sampling activities.

Region 5 can document that the QAPP for the project in question (Wayne County) was reviewed and approved prior to pilot field activity. The site-specific sampling plan for the same project was also reviewed and approved, but the project manager did not document this. The value of documenting reviews and approvals will be reviewed with regional brownfields coordinators during our monthly conference calls over the next six months.

- 3-4** Encourage regional brownfields coordinators to communicate up front with grantees to address questions and concerns about QAPPs. The regions should encourage the participation of their QA staff in these initial conferences.

These recommendations will be shared with regional brownfields coordinators during our monthly conference calls over the next six months.

- 3-5** Encourage the project officers and/or QA staff to communicate frequently with pilot cities and conduct periodic site visits to ensure the quality of site sampling and overall site assessments.

This recommendation will be shared with regional brownfields coordinators during our monthly conference calls over the next six months. Although sensible, this may be difficult to implement as a greater number of pilots are awarded. It may not be appropriate to provide the same level of oversight as is required under a regulatory program..

Chapter 4

General Comments

- In the section entitled “Impediments to Loan Issuance,” the sixth sentence under the first paragraph should be replaced with “Further, the CERCLA requirement that borrowers pay Davis Bacon Act wages may discourage businesses from borrowing from BCRLFs. Other cross-cutting social policy requirements that apply by their own terms may similarly discourage borrowers.”
- In the fourth paragraph of that same section, the word “onerous” (in reference to the process of regulatory change) may be a bit overstated. We recommend either deleting this word or replacing it with “lengthy.”
- Under the section entitled “Increasing Flexibility May Increase Loans from the BCRLF,” we had previously recommended addition of the following language: “EPA has addressed expansion of eligibility for BCRLF pilots from States, political subdivisions, and Indian tribes that have received Brownfields Assessment Demonstration Pilots, or political subdivisions with jurisdiction over sites that have been the subject of a targeted brownfields assessment. In the most recent round of seven pilots announced in July of 2000, eligible applicants included **those political subdivisions or tribes that were part**

of a collaborative assessment pilot partnership, or otherwise directly benefitted from a Brownfields Assessment Demonstration Pilot.”

- The Agency has also demonstrated flexibility through consideration of BCRLF proposals submitted by coalitions formed among two or more otherwise eligible entities. In this situation, one of the eligible entities serves as the cooperative agreement recipient for the coalition, and depending upon the entities in the coalition, may include a State serving as the cooperative agreement recipient on behalf of and for the benefit of the coalition members. Also, as noted below under the response to recommendation 4-4, flexibility has clearly been demonstrated by the recent decision to increase grant award amounts and expand the eligible pool of BCRLF applicants. We believe that these demonstrations of flexibility should be evidenced in the report, or at least be accommodated by a footnote.

Response to Recommendations

4-1 Continue efforts to promote and support legislative changes for the Brownfields initiative.

We agree, and will continue such efforts on an ongoing basis.

4-2 Continue to expand available guidance to foster success under current legislation.

We agree, and will do this on a continuing basis.

4-3 Continue to provide training to current and prospective BCRLF recipients.

We agree, and will provide such training on a continuing basis.

4-4 Seek to add flexibility to future BCRLFs by considering: a) increasing grant award amounts, and b) expanding the eligible pool of applicants beyond those having participated in EPA assessment programs.

We agree. On August 17, the Assistant Administrator for OSWER approved a proposal by the Office of Outreach and Special Projects that would extend eligibility to all governmental entities evidencing successful brownfields programs; provide funding up to \$1 million per pilot; provide funding for both loans and grants to pilots; and extend the combination of loan/grant funding to existing pilots. These changes will be incorporated into the guidelines for pilot proposals in September of 2000, for selection of pilots in FY 2001.

4-5 Deobligate funds awarded to pilots that do not demonstrate substantial progress toward making a loan by the end of their project period.

We agree. Actions are anticipated in the September/October 2000 time frame.

- 4-6** Obtain an independent analysis of the success of the BCRLF at the five year anniversary of the program.

We agree, and this will be addressed as the program approaches the five year mark.

Chapter 5

General Comments

Minor editorial additions/changes are recommended to this chapter as follows:

- The third sentence of the first paragraph under the section entitled “Reporting Brownfields Accomplishments Needs to be Timely” should read as follows: “The quarterly reports also assist EPA project officers in staying abreast of property assessment cleanup and redevelopment activities on individual projects.”
- The last sentence in the first paragraph of the next section (Reliability of BMS Data) should refer to the committee staff. (i.e. the committee staff believed that some . . . data may have been overstated.)
- Under the section entitled “Clarification of Terms Desired,” the second sentence of the third paragraph should read “In September of 1999, OSPS issued a memorandum to the Regional Superfund Policy Managers transmitting Model New Terms and Conditions related to the minimum reporting requirements for Brownfields cooperative agreements.”

Response to Recommendations

- 5-1** Instruct regional brownfields coordinators and/or project officers to identify and notify delinquent quarterly reporters of the need for timely submissions. The coordinators and/or project officers should consider sending reminder notices to grant recipients shortly before the quarterly reports are due.

We will discuss this recommendation with our brownfields coordinators on our next conference call, and will also discuss it with our OGC attorney to assure that there are no legal issues involved. Also, we would point out that one region (Region 7) has already adopted this reminder notice procedure.

- 5-2** Continue to work with regional brownfields coordinators, project officers, and grant recipients to clarify information requirements and establish a common understanding of terms and definitions included in quarterly reports.

Agree, and we will continue to do this on an ongoing basis.

APPENDIX II

REPORT DISTRIBUTION

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