



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

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MEMORANDUM

SUBJECT: Effective Utilization of Superfund Special Accounts

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TO: Superfund National Policy Managers, Regions I-X
Enforcement Division Directors, Regions I-X
Assistant Regional Administrators, Regions I-X

PURPOSE

Over the past several years, EPA has taken extensive steps to improve the management and use of Superfund special accounts. EPA continues to take steps to improve its management and utilization of special accounts, and, as such, the purpose of this memorandum is to highlight actions which regions and Headquarters offices are expected to take in order to more effectively manage special accounts.

As we implement these changes, there are two areas that we would like for you to pay particular attention to regarding special accounts. The first is focusing efforts to increase the use of available special account funds so that we can clean up Superfund sites more quickly while conserving Congressionally appropriated resources for sites without alternative sources of funds.¹ The second is ensuring that regions take into consideration the time and monetary cost to manage special accounts, particularly for accounts with relatively small dollar amounts available.²

¹ EPA continues to receive Congressional interest and inquiries into its use of special accounts. The conference report with the FY 2012 Omnibus Bill states, "The conferees direct EPA to follow the language in House 112- 151 with respect to managing the unobligated balances in the Superfund special accounts." House report 112-151 states, "The Committee continues to have concerns about the large unobligated balances in the 939 special accounts, which hold site-specific settlement funds from responsible parties. The Committee similarly understands that funds in these accounts may be dedicated to specific sites where remediation strategies may still need to be developed. Nonetheless, the Committee expects EPA will accelerate the obligation of funds within these special accounts in 2012 to address risks posed by contamination at these sites."

BACKGROUND

Special accounts are site-specific, interest bearing sub-accounts within the EPA Hazardous Substance Superfund (Superfund Trust Fund). Special accounts are used to fund response actions conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The legal authority for establishing special accounts is found at section 122(b)(3) of CERCLA, which authorizes the government to retain and use settlement monies received from potentially responsible parties (PRPs) to carry out response actions contemplated by an agreement. This authority enables EPA to use special account funds for EPA-financed cleanup at a site, or to provide those funds to a PRP who agrees to perform a response action at a site under a settlement agreement. Where no further response actions are necessary at a site, or when EPA determines there are more funds in a special account than are needed for remaining response work, those funds may be reclassified or transferred to the general portion of the Superfund Trust Fund to support response work at other sites.

MANAGEMENT CHANGES FOR SUPERFUND SPECIAL ACCOUNTS

The following section outlines the changes EPA will be implementing:

Special accounts with more than \$1 million available or \$0 obligated/disbursed in the past 5 years

- Regional Superfund Division Directors should annually review open special accounts with more than \$1 million available or \$0 obligated or disbursed in the past 5 years to ensure effective utilization of funds available in these accounts. Headquarters will provide a list of accounts that should be reviewed as part of the annual work planning special account data review.³

Long-term use of special account funds

- Regions should plan to retain and use special account funds for not more than 15 years after the associated site achieves construction completion.⁴ This includes using these funds for operation and maintenance (O&M), five-year reviews, and long-term response actions (LTRAs). Any future response costs required at the site beyond this time frame will be funded from Congressionally appropriated resources.
- Funds may be retained for more than 15 years after site construction completion is achieved based on site-specific circumstances and/or specific settlement language. Headquarters will review these accounts as part of the annual work planning and mid-year reviews, and discuss with regions the need for funds to remain in the account.
- The OSRTI Office Director will also be informed of accounts where funds will remain beyond 15 years after site construction completion, and may discuss particular accounts and sites with regional Superfund Division Directors as necessary.

² As part of recent budget discussions, the Office of Management and Budget (OMB) has indicated a concern with the number of accounts EPA is maintaining that have small available balances. As of January 3, 2012 there were 163 open accounts with less than \$25,000 available. Collectively these accounts represent 16% of all open special accounts and less than 0.5% of the national available balance in special accounts.

³ OSRTI is working with OCFO to develop a report(s) to identify accounts with \$0 obligated or disbursed in the past 5 years.

⁴ There are currently 46 open special accounts at sites that achieved construction completion in FY 1997 or prior.

Accounts with less than \$25,000 available

- As part of annual work planning and mid-year reviews, regions and Headquarters should evaluate special accounts with less than \$25,000 available to determine whether they can be closed. Where future deposits into the account are expected, Headquarters may periodically check on the status of deposits if the account continues to have a low available balance over several consecutive planning cycles. In some instances, it may be more appropriate to fund future work from Congressionally appropriated resources.

Use of special account resources before appropriated funds

- Regions and Headquarters will review, as part of annual work planning and mid-year reviews, any sites with unliquidated obligations of appropriated funds where special account funds may be available to replace those appropriated funds.⁵
- As OSRTI reviews requests for appropriated funding from the remedial action (RA) site allowance, it will consider whether available special account resources should be used instead. The general expectation is that all available special account funds will be used for the remedial action so that appropriated resources are conserved for other sites.
- Likewise, regions are expected to use all available special account funds for activities funded from the pipeline site allowance before using appropriated funds.
- Prior to submitting a notification for additional funds to pay invoices where funds may have been deobligated or that may be required as a result of audit adjustments or other issues that require tapping the fiduciary reserve account, a region should determine if special account resources are available to pay the invoice. The general expectation is that all available special account funds will be used so that appropriated resources are conserved for other sites.

Establishing special accounts for sites deleted from the National Priorities List (NPL)

- Prior to establishing a special account for sites deleted from the NPL, regions should contact staff in OSRTI and OSRE regarding the need to establish an account for the site. EPA's costs at sites deleted from the NPL are generally low, and our general expectation is that Congressionally appropriated resources can cover those costs.

Deposits into special accounts

- When deposits are being made into a special account, the region should review the special account balance at that time, estimated future work at the site, and EPA costs remaining at the site to determine if the funds should be placed into the special account or in the Superfund Trust Fund.^{6,7}

⁵ OSRTI is working with OCFO to develop a report to identify those special accounts where sites have unliquidated obligations of appropriated funds.

⁶ The model RD/RA settlement language allows funds to be deposited into a special account or into the Superfund Trust Fund. Deposits do not automatically need to be deposited into a special account, unless there is specific language in the agreement directing deposits only into the special account.

⁷ A fact sheet is being developed on best practices for managing deposits to special accounts.

Special account balances at any given time should reflect remaining EPA costs expected to be incurred (and/or amounts to be offered to PRPs to conduct remaining work at the site); if an account has more funds than are estimated to be needed for future response work, those excess funds should be reclassified and/or transferred to the Superfund Trust Fund as soon as possible, and future deposits into the account should be minimal unless site conditions change.

Annual work planning and mid-year reviews

- Regions will update annual work planning data in October of each year. Headquarters will review the planning data and discuss planned uses of the accounts with regions, as appropriate.
- Regions will update annual mid-year planning data in March of each year. Headquarters will review the planning data and discuss planned uses of the accounts with regions, as appropriate.
- For work planning and mid-year reviews, regions may schedule conference calls with Headquarters to discuss any questions Headquarters may have, or provide written responses in lieu of a conference call. Instructions and time frames will be provided by Headquarters prior to each review.

CONCLUSION

Our goal by instituting these practices is to improve EPA's utilization of these critical Superfund resources, while balancing workload and maintenance associated with managing more than 1,000 open special accounts. The changes discussed here have been incorporated into the Data Monitoring Plan for Special Account Planning Data (Attachment 1). The Special Accounts Senior Management Committee will monitor implementation of these changes and will continue discussions regarding EPA's ability to utilize more funds from special accounts so that Superfund cleanups are conducted as quickly and efficiently as possible.

If you have any questions regarding this memorandum, please feel free to contact Jim Woolford, chair of the Superfund Special Accounts Senior Management Committee, at (703) 603-8960 or woolford.james@epa.gov.

Attachment

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Superfund Removal Branch Chiefs, Regions I-X

Superfund Enforcement Branch Chiefs, Regions I-X
Regional Comptrollers, Regions I-X
Special Accounts National Contacts, Regions I-X

Attachment 1

Regions are responsible for ensuring special account planning data is entered into CERCLIS. The regions Environmental Response Corporation, and existing information systems (EIS). The regions update special account planning data in CERCLIS on a continuous basis as warranted by site activity and as a minimum twice a year in preparation for annual work planning and mid-year review. The Office of Superfund Remediation and Technology Innovation (OSRTI) and the Office of Superfund Enforcement (OSE) are responsible for ensuring the data entry systems and ensuring the special account planning information entered into CERCLIS by the regions.

Outlined below is the process OSRTI and OSE will undertake with the regions to monitor special account planning data in CERCLIS. The regions in which the special account planning data will change based on the annual work planning and mid-year review activities established by the Superfund program. In addition to the process outlined here for the regions, the regions are responsible for ensuring the data entry systems are updated with the latest process. If this is necessary, OSRTI and OSE will coordinate with the appropriate regions before any planning data for special accounts are entered into the process described here.

1. WORK PLANNING REVIEW

Regions update special account planning data in CERCLIS at the beginning of the fiscal year (October).

This data will be the official EPA record on the management and use of special accounts in federal and state parties, as well as provide a baseline for fiscal work planning data.

OSRTI and OSE review special account planning data to ensure compliance with EPA guidance. (November/December)

OSRTI and OSE review special account planning data using reports in Report 10 to ensure that regions are entering accurate data, complying with special account guidance, and effectively managing special accounts. EPA will monitor accounts to ensure that, among other things, all funds are being appropriately planned for in accordance with guidance. Funds are offered to other parties through settlement negotiations as appropriate, and settlements and transfers are occurring in a timely manner. OSRTI and OSE will review special account planning data in accordance with a checklist (Attachment 2) with particular areas of focus to include, but not limited to, accounts that have not obtained or distributed funds in the past 3 years, accounts 10 years old or more, and accounts with available balances of \$1 million or greater. The checklist used by OSRTI and OSE review special account planning data may be updated by field as warranted and does not replace the management of the Data Management Plan. Analysis of special account data will also identify areas of needed improvement in the management of special accounts.

Dialogue with regions on special account planning data. (November/December)
Annual work planning dialogues will take place in November and December to review the data entered for the year. OSRTI and OSE will develop materials in advance of these dialogues for regions to review, including a list of special accounts. Regions may choose to request additional meetings rather than holding a conference call or discussion.

2. ANNUAL REVIEW AND DIVISION DIRECTOR REVIEW

Annual review by regional Superfund Division Directors. (November/December)

Monitoring Plan for Special Account Planning Data

Regions are responsible for entering special account planning data into the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS). The regions update special account planning data in CERCLIS on a continual basis as warranted by site activity and at a minimum twice a year in preparation for annual work planning and mid-year review processes outlined below. The Office of Superfund Remediation and Technology Innovation (OSRTI) and the Office of Site Remediation Enforcement (OSRE) are responsible for maintaining the data entry screens and monitoring the special account planning information entered into CERCLIS by the regions.

Outlined below is the process OSRTI and OSRE will undertake with the regions to monitor special account planning data in CERCLIS. The months in *italics* represent the general timeframes these actions will occur, but may change based on the annual work planning and mid-year review timeframes established by the Superfund program. In addition to the process outlined here for routine updates, in response to stakeholder inquiries (i.e., OIG, OMB, Congress, FOIA), information may need to be gathered outside of these processes. If this is necessary, OSRTI and OSRE will coordinate with the appropriate regions before using any planning data for special accounts outside of the process described here.

1. WORK PLANNING REVIEWS

Regions update special account planning data in CERCLIS at the beginning of the fiscal year. (*October*)

This data will be the official data EPA uses to report on the management and use of special accounts to internal and external parties, as well as provide a baseline for fiscal year planning data.

OSRTI and OSRE review special account planning data to ensure compliance with EPA guidance. (*October-November*)

OSRTI and OSRE review special account planning data using reports in ReportLink to ensure that regions are entering quality data, complying with special account guidance, and effectively managing special accounts. EPA will monitor accounts to ensure that, among other things, use of funds are being appropriately planned for in accordance with guidance, funds are offered to work parties during settlement negotiations as appropriate, and reclassifications and transfers are occurring in a timely manner. OSRTI and OSRE will review special account planning data in accordance with a checklist (Attachment 2), with particular areas of focus to include, but not limited to, accounts that have not obligated or disbursed any funds in the past 5 years, accounts 10 years old or more, and accounts with available balances of \$1 million or greater. The checklist used by Headquarters to review special account planning data may be updated by staff as warranted and does not require reissuance of this Data Monitoring Plan. Analysis of special account data will also help identify areas of needed improvement in the management of special accounts.

Dialogue with regions on special account planning data. (*November-December*)

Annual work planning dialogues will take place in November and December to review the data entered by the regions. OSRTI and OSRE will develop materials in advance of these dialogues for regions to review, including any account-specific or region-specific questions. Regions may choose to respond to questions in writing rather than holding a conference call for discussion.

2. ANNUAL SUPERFUND DIVISION DIRECTOR REVIEW

Annual review by regional Superfund Division Directors. (*November-December*)

Regional Superfund Division Directors should review open special accounts with more than \$1 million available or \$0 obligated or disbursed in the past 5 years to ensure effective utilization of these accounts. OSRTI and OSRE will provide to the regions a report in November with those accounts that should be reviewed by the regional Superfund Division Directors. Regions should update their special account planning data based on these reviews by no later than mid-year planning updates.

3. REPORTS FOR STAKEHOLDERS

Prepare reports for the Special Accounts Senior Management Committee (SASMC) and EPA's Annual Performance Plan and Congressional Justification. (*December, June*)

A report to the SASMC should include a summary of the analysis of planning data, and any recommendations or next steps, if appropriate. Reports will be provided in December with analysis of work planning data and in June with an analysis of mid-year data. At a minimum, reports to the SASMC will include the current number of special accounts and amounts available, total amount planned for future use from special accounts, a summary of how special account funds are planned in CERCLIS for future use, including reclassifications and transfers to the Superfund Trust Fund, and any recommendations for further improving the management and/or use of special accounts.

The appendix to EPA's Annual Performance Plan and Congressional Justification with special account financial and work planning information is a high level report in a public venue(s) reporting on a national level, and does not include site-specific confidential planning data. Staff will prepare this report in December for release with the President's Budget in February.

4. MID-YEAR REVIEWS

Regions update special account planning data in CERCLIS at mid-year. (*March*)

OSRTI and OSRE review mid-year special account planning data to ensure compliance with EPA guidance. (*March-April*)

Mid-year data reviews will be used to follow-up on regional issues and monitor planned actions identified in the data from the beginning of the year. The data will be pulled using reports in ReportLink and will be reviewed to ensure that regions are entering quality data and complying with guidance. EPA will monitor accounts to ensure that, among other things, use of funds are being appropriately planned for in accordance with guidance, funds are offered to work parties during settlement negotiations as appropriate, and reclassifications and transfers are occurring in a timely manner. OSRTI and OSRE will review special account planning data in accordance with a checklist (Attachment 2), with particular areas of focus to include, but not limited to, accounts that have not obligated or disbursed any funds the past 5 years, accounts 10 years old or more, and accounts with available balances of \$1 million or greater. The checklist used by OSRTI and OSRE to review special account planning data may be updated by staff as warranted and does not require reissuance of this Data Monitoring Plan. Analysis of data will also help identify areas of needed improvement in the management of special accounts.

Dialogue with regions on mid-year special account planning data. (*April-May*)

Mid-year dialogues will typically take place in April and May to review the special account planning data entered by the regions. These dialogues will focus on the status of completing near-term actions identified, as well as changes in the data since the beginning of the year. OSRTI and OSRE will develop materials in advance of these dialogues for regions to review, including any account-specific or region-specific questions. Regions may choose to respond to questions in writing rather than holding a conference call for discussion.

Checklist for Headquarters' Review of FY 2012 Mid-Year Special Account Planning Data

OSRE

- ☐ Amount to be Obligated for Disbursement to Work Parties field:
 - Is either \$0.0 or greater and is NOT a negative number.
- ☐ Future Settlement Incentive:
 - Review report of upcoming negotiations for FY 2012 and FY 2013 for opportunities to use special account funds as settlement incentive.
 - Ensure funds planned for Future Settlement Incentive are moved to "Amount to be Obligated for Disbursement to Work Parties" field once settlement is finalized.
- ☐ Use Required by Existing Settlements field:
 - Limitation field is checked Yes if this field is used.
 - Use is explained in Comment field and is required by the settlement (is not regional preference for using funds).
 - Ensure funds can't be planned elsewhere in the planning screen.
- ☐ Potential EPA Work Takeover field:
 - Ensure criteria in SA Planning and Use Guidance for financial assurance are met.

OSRTI

- ☐ Available balance amount:
 - Review account plans where available balance is >\$1M.
 - Review account plans where available balance is <\$25K (can account be closed?).
- ☐ Accounts with \$0 obligated or disbursed past 5 years:
 - Review when funds are planned to be used.
 - Check for unliquidated obligations.
- ☐ Accounts more than 10 years old:
 - Review when funds are planned to be used.
- ☐ Accounts at sites that have achieved CC:
 - Ensure funds are planned for use no more than 15 years after site CC achieved.
 - If planned for longer use, confirm with regions why funds are needed.
- ☐ Pre-Remedy Future Costs field:
 - ROD, ROD Amendment, ESD, Action Memo is planned or RI/FS is underway.
- ☐ Pre-Work Party Settlement Contingency field:
 - Negotiations are planned or ongoing and not completed, or
 - Cleanup decision document is planned but RI/FS is not completed.
- ☐ Protectiveness Contingency:
 - Reasonable explanation is entered in Comment field for why contingency is needed.
 - Review number of FYRs completed and findings.
- ☐ Other Plans:
 - Review explanation for use of funds entered in the Other plans field.
- ☐ Unassigned Remaining Balance:
 - Is not negative and is not more than \$100K.
- ☐ Review Comment field to ensure special account planned uses consistent with information entered.
- ☐ Review audit report for each region to identify data quality concerns.
- ☐ Review planned T obligations for sites to ensure SA funds being used first.
- ☐ Review unliquidated T obligations for sites to identify where special account funds may be used instead.
- ☐ Review status of planned reclassifications, transfers, and closures for FY 2012.