



OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## Evaluation Report

# Immediate Action Needed to Address Weaknesses in EPA Efforts to Identify Hazardous Waste Sites in Indian Country

Report No. 2004-P-00003

January 30, 2004



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## **Abbreviations**

CERCLIS      Comprehensive Environmental Response, Compensation and Liability  
Information System

NPL            National Priorities List

NTEC         National Tribal Environmental Council

TASWER      Tribal Association on Solid Waste and Emergency Response

**Cover photograph:** The Upper Columbia River, a hazardous waste site impacting the  
Confederated Tribes of the Colville Reservation (OIG staff photo)



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

OFFICE OF  
INSPECTOR GENERAL

January 30, 2004

**MEMORANDUM**

**SUBJECT:** Immediate Action Needed to Address Weaknesses in EPA Efforts to Identify Hazardous Waste Sites in Indian Country  
Report No. 2004-P-00003

**FROM:** Carolyn Copper /s/  
Director of Program Evaluation: Hazardous Waste Issues  
Office of Program Evaluation

**TO:** Barry Breen  
Principal Deputy Assistant Administrator  
Office of Solid Waste and Emergency Response

In connection with our ongoing evaluation of the Environmental Protection Agency's (EPA's) activities to enhance the role of Indian tribes in the Superfund program, we noted immediate actions were needed to address weaknesses in the Agency's development of an inventory of hazardous waste sites in Indian Country. This is our final memorandum report on this issue; it contains the findings that describe the problems the Office of Inspector General (OIG) has identified and the corrective actions the OIG recommends. This report represents the opinion of the OIG and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

**Action Required**

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days of the date of this report. You should include a corrective action plan for agreed-upon actions, including milestone dates. We have no objections to the further release of this report to the public. For your convenience, this report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions, please call me at (202) 566-0829 or Katherine Thompson, Project Manager, at (916) 498-6535.

## Results in Brief

In 1999, the Agency started its development of an inventory of hazardous waste sites on Indian land. To obtain necessary tribal input on the sites it identified, EPA provided funding under a cooperative agreement to a recipient, the Tribal Association on Solid Waste and Emergency Response (TASWER). By law, EPA is required to determine the extent of hazardous waste sites on Indian lands, in consultation with tribes.

In connection with our ongoing evaluation of EPA's Superfund activities in Indian country, we evaluated the Agency's inventory development efforts, including the methodology being used to obtain tribal input. We found serious shortcomings in its efforts:

- The Agency's inventory development efforts had been substantially delayed due to project mismanagement issues associated with TASWER.
- The Agency had not fully defined the inventory-related information needed to manage its Superfund activities in Indian country. As such, it risked collecting insufficient or irrelevant inventory data from tribes.
- TASWER's methodology for obtaining tribal input had serious limitations that may prohibit the development of an accurate and reliable baseline inventory of sites of tribal concern.
- The Agency had not developed a detailed plan for validating, managing, storing, or updating the baseline inventory. This process has the potential to be complex and resource intensive and could cause additional delays in the completion of the inventory.

We believe that these shortcomings in the Agency's inventory development effort, if not substantially revised, will not likely produce credible results or reliably meet EPA's program management needs. Moreover, without significant modifications, the Agency will be required to make an additional investment in this effort. Because TASWER's contractor was just beginning its tribal input activities in July 2003, we issued a "flash" memorandum in draft to the Agency in October 2003 advising it of the need to take immediate actions to address weaknesses in the inventory development effort.

## Background

Three factors establish EPA's need and commitment to determine the extent of hazardous waste sites on Indian lands. First, the 1986 Superfund Amendments and Reauthorization Act required EPA to conduct a survey ". . . in consultation with Indian tribes, to determine the extent of hazardous waste sites on Indian lands." Second, in response to a 1998 national tribal forum, EPA formally agreed to develop a list of hazardous waste sites that potentially qualified for action under the Comprehensive Environmental Response, Compensation, and Liability Act (also known as CERCLA or Superfund) and determine the tribes' priorities for these sites. Third, in its 2002 draft "Tribal Program Strategy," EPA stated that it will develop a baseline of

national Superfund data on the extent of hazardous waste sites in or impacting Indian country to provide a sound basis for program decisions.

Development of the baseline inventory is a large and difficult effort for several reasons. EPA must consult with more than 560 Federally-recognized tribes. In addition, obtaining tribal input can be an arduous task for a number of reasons, one being the difficulty in obtaining responses to requests for information. Another problem is the lack of tribal staff available to answer questions. Complex Indian land and treaty rights issues further complicate the development of an inventory. For example, hazardous waste sites, though not directly on a reservation, may impact a tribe by diminishing its ability to fish, hunt, or gather in usual and accustomed areas.

## **Scope and Methodology**

Our observations and suggestions are based on interviews and documentation obtained from knowledgeable Office of Solid Waste and Emergency Response headquarters staff and regional staff. In addition, we interviewed and obtained documentation from TASWER, headquartered in Washington, D.C. TASWER is the current EPA recipient conducting and managing activities designed to produce the inventory of hazardous waste sites on tribal lands. We interviewed the National Tribal Environmental Council (NTEC), a tribal membership organization. We also took into account the results of an OIG audit of TASWER's agreement, "*Costs Claimed by the Tribal Association on Solid Waste and Emergency Response Under EPA Assistance Agreement No. CR827181-01*," issued September 19, 2003. We are performing our evaluation according to *Government Auditing Standards*, issued by the Comptroller General of the United States.

## **Findings**

### ***Agreement Mismanagement Has Delayed Inventory Development***

In 1999, 13 years after the inventory requirement was mandated by Congress, EPA developed a list of actual and potential Superfund sites impacting tribal lands using the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) and other sources, such as the Department of Defense and NTEC. To obtain necessary tribal input on the sites that were identified, EPA provided funding under a cooperative agreement to a recipient, TASWER. Due to agreement mismanagement, TASWER has not yet produced a tribal-verified inventory of hazardous waste sites on Indian lands, although records indicate that TASWER has been managing the effort for more than three years – since July 2000.

TASWER's management failures involved awarding a noncompetitive contract in October 2000 to the National Energy-Environment Law and Policy Institute of the University of Tulsa College of Law to complete a tribal census of known and suspected hazardous waste sites on or near tribal lands. In addition, TASWER paid \$500,000 of the \$750,000 contract amount to the University of Tulsa (Tulsa) under this contract in advance of work performed. According to EPA officials, they had assurances from TASWER that the contract was competitively awarded. However, EPA later discovered that they had been misled by TASWER senior management.

Subsequently, EPA evaluated TASWER's contract management and issued a stop work order on July 3, 2002, nearly two years after the contract was awarded. As of September 2003, TASWER had not received a final accounting of funds expended or a refund for uncompleted work.

EPA lifted the stop work order on November 26, 2002. At EPA's urging, TASWER cancelled its contract with Tulsa and, on June 30, 2003, TASWER issued a competitively-awarded contract to Zender Environmental Science and Planning Services. This second award was made over 2½ years after the first contract was awarded to Tulsa.

We observed other weaknesses in TASWER's management of the inventory project and related project dollars:

- An information collection request required Office of Management and Budget approval because the inventory project involved conducting a census of all Federally-recognized tribes.<sup>1</sup> However, this request was not submitted until November 2002, 2 years after the contract to the University of Tulsa was awarded. According to EPA, the information collection request was delayed because TASWER did not provide EPA with a sufficient description of the census methodology.
- At EPA's request, the EPA OIG audited TASWER's costs claimed under its cooperative agreement. The audit found numerous problems with TASWER's financial management, including the inability to reconcile claimed costs to its general ledger and inappropriate draw downs of cash.

EPA officials told us that one of the reasons they were not fully aware of project problems was because EPA has limited control over grant work. They also stated they had been misled by the previous TASWER executive director. EPA believes that past grant mismanagement problems will not be repeated because, according to EPA, the primary source of past mismanagement was the former TASWER director. That director resigned and a new TASWER director was hired in September 2002.

### ***Program Information Needs Require Definition***

EPA had not fully defined the inventory-related information it needs to manage its programs, activities, or initiatives related to Superfund, or general hazardous waste issues on Indian lands. For example, EPA had not determined if or how Superfund or hazardous waste sites impacting tribes would be prioritized, or how progress in assisting tribes with Superfund issues at these sites would be measured or reported. Without first identifying its program information needs, the Agency risks collecting insufficient or irrelevant inventory data from tribes.

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<sup>1</sup> Among other things, the Paperwork Reduction Act of 1995 requires that agencies request approval from the Office of Management and Budget before requesting the same information from 10 or more persons.

## ***Multiple Limitations in Census Survey Methodology***

We identified several limitations that may prohibit development of an accurate and reliable baseline inventory of sites of tribal concern. They included:

- Inaccurate, obsolete, and incomplete data sources used for determining sites of tribal concern;
- Poorly designed tribal outreach plans;
- Lack of consultation with a key tribal stakeholder; and,
- The exclusion of off-reservation sites from the tribal survey that may impact treaty-reserved resources or reservation environments.

### **Source Data Obsolete**

TASWER's tribal survey is based on a list of actual and potential sites from several sources including EPA, the Department of Defense, and a Georgia Tech Research Institute project. However, this list, compiled by Tulsa, is incomplete and inaccurate, in part because it is obsolete. First, the list of sites EPA provided to TASWER was developed in 1999 and does not reflect interim changes to CERCLIS. For example, EPA's list does not include the Midnight Mine, a site of concern to the Spokane Tribe, added to Superfund National Priorities List (NPL) in May 2000. On the other hand, EPA's list does include the Tulalip Landfill, a site that was deleted from the NPL in September 2002. Further, EPA's list was generated based on regional input. We attempted to verify the accuracy of this final list, based on a review of regional submissions. However, EPA was unable to locate some of the source documents for sites regions had recommended for listing on the inventory.

Second, the list of sites TASWER is working from does not appear to account for information produced by a 2002 NTEC study. This study adopted a different definition of sites of concern by identifying all NPL sites within 50 miles of Indian country (more than 400 NPL sites). We have not determined the degree to which there is an actual conflict between TASWER's survey methodology and the NTEC study. However, there is an appearance of conflict that we believe will impair EPA's ability to gain a consensus among tribes, or their representatives, on the reliability and validity of information currently being collected.

### **Outreach Poorly Designed**

TASWER's plan for surveying tribes has design flaws that need to be addressed. For example, while TASWER's contractor is responsible for making three attempts to establish a successful contact with an impacted tribe, an EPA official said that three attempts would be insufficient. Further, TASWER's previous work indicated tribes may be hesitant to respond to requests to verify possible hazardous waste sites due to proprietary information concerns involving secret, sacred, and otherwise culturally sensitive sites. However, no method has been proposed by the performing contractor to account for this potential non-response problem.

TASWER's survey methodology does not include providing tribes with a list of hazardous waste sites to be verified. Rather, according to TASWER's survey methodology, "Tribes will be told

verbally which sites are included in the database.” TASWER’s contractor said this method was being used because of concerns regarding the effort required to send site mapping information to each tribe. However, unless tribes are provided a list of sites, the potential exists for miscommunication and misunderstandings over which sites are included.

Further, TASWER has not established a goal for a tribal response rate. Survey response rates are important quality indicators, since non-respondents generally differ from respondents and a low response can bias survey results as well as reduce the precision of estimates.

### **Lack of Consultation With Key Tribal Stakeholder**

Tribal consultation is important for ensuring the results of the baseline inventory are useful to EPA and tribal stakeholders and is a fundamental aspect of the Federal trust responsibility. We observed that TASWER did not consult with NTEC, a key tribal stakeholder, on the reasonableness of its most recent (July 2003) tribal survey methodology. This is a potential problem since TASWER’s exclusion of off-reservation sites from its survey is inconsistent with an NTEC study, also funded by EPA. Because the baseline inventory is key to development of EPA’s strategy to address hazardous waste sites impacting Indian lands, it is critical that tribal stakeholder views are included in the methodology development process. Consultation with key tribal stakeholders may also help identify and correct weaknesses in the tribal outreach plan, such as methods to deal with non-response issues.

### **Exclusion of Off-Reservation Sites From the Tribal Survey**

The current survey methodology does not account for sites located outside Indian country. EPA’s draft Tribal Program Strategy calls for the identification of sites “in or impacting” Indian country. Hazardous waste sites not directly on a reservation may impact a tribe by diminishing its ability to fish, hunt, or gather. In a number of Indian treaties, tribes explicitly reserved rights pertaining to the environment, including rights to fish, hunt, and gather in ceded areas (outside of reservations) that were their “usual and accustomed” hunting and fishing areas. A Federal court decision established the general rule that the Federal government cannot abridge natural resource rights ceded to Indian tribes under treaties. This rule prohibits acts that would diminish the ability of a tribe to exercise its treaty rights, and notes “existence of an environmentally-acceptable habitat is essential to the survival of the fish, without which the expressly-reserved right to take fish would be meaningless and valueless.”



Figure 1- Sign (left) warns public to avoid consumption of shellfish from waters off the Wyckoff-Eagle Harbor site. (EPA OIG photo)

Experiences of the Suquamish Tribe, located on Bainbridge Island, Washington, provide an example of how contamination at an off-reservation site can impact a tribe. The tribe's treaty-reserved resources included its adjudicated usual and accustomed fishing area—about 3,500 square miles in the Puget Sound area. As a result, the tribe has a vested interest in 11 Superfund sites, including the Wyckoff-Eagle Harbor site, because the tribe's fishing rights have been adversely impacted by contamination from the sites (figure 1). According to TASWER's current survey

methodology, sites not in Indian country, such as the Wyckoff-Eagle Harbor site, would be excluded from the survey.

### **Agency Lacks Plans for Managing Tribal Site Inventory Data**

EPA staff stated they had not developed a detailed plan for validating, managing, storing, or updating the baseline inventory. In particular, the validation process has the potential to be very complex and resource intensive, and if done thoroughly, will likely cause additional delays in the final completion of an inventory. If the remaining tasks are significantly delayed, they may render parts of the original data irrelevant to EPA's needs and purposes.

We observed the following tasks that EPA will need to account for in the management and verification of the inventory data, when complete.

- Validation of the inventory by tribes, EPA regions, and Headquarters. EPA stated that, when the inventory is complete, it plans to evaluate sites to determine which sites are of concern to both EPA and tribes and which Federal program (e.g., Superfund, Brownfields, Resource Conservation and Recovery Act), if any, could address the site. This is necessary because in developing its list of actual and potential sites, EPA had cast "the widest net possible" and identified any site that may contain hazardous waste (such as open dumps) or may be of interest to tribes. EPA believes that, in the end, it is likely that many of these sites will be ineligible for Superfund or will not be of concern to tribes. Although EPA recognizes that there will be a considerable data verification effort needed to determine the best program for a site, or its eligibility, EPA told us it only has "a skeleton of a process" for how to conduct these planned activities. EPA will also need to determine how the inventory will be updated. Maintenance of a dynamic inventory requires the definition of a process for the review and updating of the data.

- Storage of the initial data in a database. EPA has not determined how or where the information will be stored, including which data elements will be included or required. EPA staff indicated that the results produced by TASWER would be sent to EPA in an industry-standard database format. The information provided is likely to contain data that cannot be readily stored in CERCLIS. However, no provisions have been made to establish an EPA database to store the data before selected data elements are transferred to CERCLIS.
- Transfer of selected data into CERCLIS. EPA has not defined a mechanism for transferring the baseline inventory data to CERCLIS, the Agency's primary national information system for Superfund sites' location, status, contaminants, and actions taken. EPA staff told us that they anticipated that CERCLIS would be the data repository for the tribal site inventory. Accordingly, a mechanism must be identified for the transfer of data into CERCLIS. This data transfer could be either automated or manual but, in either case, requires the allocation of resources to transfer the data and to ensure that data quality criteria have been met.
- Storage of inventory data in CERCLIS using defined tribal data elements or attributes. EPA has not determined which CERCLIS data elements would be used to track the baseline inventory. CERCLIS contains at least nine tribal identifiers, and the functions and relationships to each other are not readily apparent. These identifiers range from explicit (an ownership code that indicates Indian land) to arcane (presence of a tribal cooperative agreement, as indicated by the fourth digit of the account code).
- Definition of inventory format. EPA has not defined the tribal site inventory reporting format or data access requirements. EPA needs to consider internal and external informational needs, such as the distribution of reports to tribes, online access, and public access through the Envirofacts, CERCLIS, and EPA's Tribal Information Management System. Since CERCLIS was the planned data repository for tribal site information, periodic data extraction will be required. To our knowledge, the mechanism for this extraction and the format of the inventory has not been defined. Further, we are not aware of any consultation efforts with tribal stakeholders to identify their periodic information needs. These must logically be defined prior to the definition of CERCLIS tribal data elements to ensure that CERCLIS can generate the required reports and provide needed online data access.

## Conclusions

An inventory of hazardous waste sites in Indian country performed in consultation with tribes is required by law. EPA has made a commitment, and taken steps to develop an inventory through its own efforts and by involving tribal groups, through TASWER. However, the combination of TASWER's past mismanagement practices and the current, questionable inventory methodology make it highly unlikely that EPA's current efforts to develop an inventory of hazardous waste sites in Indian country will produce results that will reliably meet EPA's program management needs. Further, EPA's need to develop data management and verification plans – which can be extensive, detailed, and require resources and time – indicates there will be potential, significant delays in obtaining a final inventory. Because the current inventory methodology is already

based on the use of obsolete and unverified information, continued delays in the completion of the inventory will exacerbate the existing inaccuracies in the inventory data. We believe the current efforts are misdirected and, without modification, will not produce credible or effective results.

## **Recommendations**

We recommend that EPA's Office of Solid Waste and Emergency Response:

1. Provide periodic, planned, and focused oversight to TASWER's cooperative agreement.
2. Define specific program information needs for managing and developing effective programs, policies, or guidance concerning hazardous waste in Indian country, and ensure the inventory methodology can support these informational needs.
3. Review the inventory methodology and address key limitations. At a minimum, ensure the inventory methodology:
  - a. Includes tribal consultation and is agreed to by tribal stakeholders, including NTEC;
  - b. Defines an acceptable, justified, tribal response rate and includes a clear management plan to achieve this response rate;
  - c. Accounts for non-response problems associated with proprietary information concerns of tribes;
  - d. Includes providing tribes with written lists of sites they are being asked to verify;
  - e. Is based on complete, accurate, and up-to-date information, including current CERCLIS site information and the NTEC 2003 study of sites; and
  - f. Accounts for current limitations in excluding off-reservation sites that may impact treaty-reserved natural resources or reservation environments.
4. Develop a detailed plan for validating, managing, storing, and updating the baseline inventory. Ensure the plan is clearly articulated and includes milestones and resource estimates. Specific steps to be addressed sequentially include defining the:
  - a. Process for review of the inventory by tribes, EPA regions, and headquarters;
  - b. Format and content of the inventory that meets EPA and tribal needs;
  - c. Required CERCLIS modifications;
  - d. Mechanism for import of inventory data into CERCLIS; and
  - e. An Agency storage medium for the initial inventory data.

## Agency Comments and OIG Evaluation

The Agency responded that, on balance, it believes the OIG recommendations are appropriate to consider and may help ensure that the inventory project is successful for both tribes and EPA. (The Agency's complete response can be found in Appendix A.) The Agency stated it had addressed the substantive limitations in the planned methodology for tribal input for the hazardous waste site inventory in Indian country. It agreed to continue "close oversight" over TASWER's cooperative agreement. However, it was "deeply concerned" about three broad issues arising from the report.

First, the Agency believed that our report did not take into account major changes and improvements made by TASWER over the past year, in the aftermath of EPA issuing a stop work order to TASWER. EPA stated that the stop work order was lifted after EPA was satisfied that deficiencies were addressed. The OIG did note major changes made by TASWER, such as the change in executive directors, the hiring of a new contractor, and use of competitive procurement. However, considering the magnitude of past mismanagement issues and the importance of TASWER's effort to the Agency's baseline tribal inventory, we believe continued close oversight is imperative.

Second, the Agency did not agree that our draft report recommendation to impose another stop work order on TASWER was viable. We agree that, based on the Agency's response, a stop work order is not warranted at the current time. The Agency has indicated that TASWER (1) has corrected its regulatory violations, (2) can meet its programmatic and fiscal commitments, (3) has been responsive to the Agency's suggestions and needs for the project, and (4) understands that the substance of its work must meet the Agency's technical standards. The applicable recommendation has been modified accordingly.

Third, the Agency believed that there was an implied assumption in the report that EPA must manage this effort as if TASWER (and its contractor) is an EPA contractor, rather than a grantee. The Agency pointed out that it made a "conscious policy choice" to support the work of an organization representing the interests of tribal co-regulators under a cooperative agreement, rather than acquire services under a contract. The Agency also advised that the principal purpose of TASWER's project is to further TASWER's efforts on behalf of tribes, rather than meet the Agency's program management needs. The Agency said that under EPA Order 5700.1, a cooperative agreement is not an appropriate mechanism to collect Agency data.

We are pleased that the Agency recognizes the limitations in its ability to obtain an Agency inventory, to meet Agency needs, through the use of a cooperative agreement. In the absence of any other OSWER-sponsored efforts to create an inventory, there is an appearance that the Agency is relying on TASWER's project to create its inventory. Nonetheless, the Agency stated that it intends to invoke its right, under 40 CFR 30.36, to use the data that TASWER generates under the cooperative agreement for Federal purposes. Further, according to the Federal Grant and Cooperative Agreement Act, cooperative agreements are used when substantial agency involvement is anticipated. Given these factors, the delays, mismanagement, and serious technical weaknesses we identified, we continue to believe that the Agency must exercise any authority and oversight it can over TASWER's project. In addition, as we discussed with

Agency staff on January 15, 2004, our recommendations for improvements in the inventory methodology and data management plans were directed at the Agency's needs, not TASWER's. Therefore, we have restated the Agency's requirement to respond to our recommendations as described below.

**Recommendation 1:** The Agency agreed to continue close oversight of TASWER and stated it was maintaining substantial involvement through frequent meetings with TASWER, and shared information. In light of the Agency's response to our draft memorandum, we have modified our recommendation to stress the importance of periodic, planned, and focused Agency oversight of TASWER's cooperative agreement. We ask that the Agency address this specific recommendation in its response to the final report, along with projected milestones for completion.

**Recommendation 2:** The Agency responded that it will continue to work on an appropriate basis with TASWER to communicate information needs that may optimize benefits to tribes. However, it noted that TASWER's cooperative agreement was not intended to satisfy Agency information needs. The Agency agreed that it needs to plan how it will conduct its next steps in light of TASWER's findings and resulting tribal expectations. The Office of Solid Waste and Emergency Response agreed to coordinate with the Agency's American Indian Environmental Office in designing data input and future reporting needs in the Tribal Information Management System and CERCLIS.

This recommendation addresses the Agency's responsibility and process to identify its baseline inventory information requirements, such as site location, impacted tribe, nature of contamination, status of the cleanup, among others. These information requirements should consider not only the needs of CERCLIS and the Tribal Information Management System, but other inventory-related information required for fully developing a plan for managing Superfund program responsibilities in Indian country. According to Agency staff, these information requirements have been largely identified. In response to the final report, the Agency needs to provide additional details on the requirements that have been identified. If they have not been fully developed, indicate milestones for completion.

**Recommendation 3:** The Agency stated that it had raised the methodology issues with TASWER and they had been satisfactorily resolved. Concurrent with the development of the OIG draft report, TASWER's contractor completed a substantial degree of outreach and research and revised its methodology. Specifically, TASWER (or its contractor) has:

- Identified actions in its workplan to update deficiencies in the data.
- Devised strategies to increase its tribal survey response rate to between 40 and 50 percent.
- Conducted outreach with many stakeholders for this project, including the National Tribal Environmental Council.
- Advised EPA it will include off-reservation sites of concern identified by Indian tribes through the survey in its project.

The Agency noted that it was maintaining substantial involvement in the project to help TASWER shape a data collection effort that will effectively meet tribal needs. It said it will provide technical assistance to TASWER to help it develop a clear management plan and ensure

the plan includes tribal non-response issues. We request milestones for completion of the management plan and, as noted previously, EPA's plans for maintaining periodic and focused oversight. We also request that this oversight include a demonstration by TASWER that the proposed 40 to 50 percent response rate will capture a valid representative sample.

**Recommendation 4:** The Agency acknowledged that TASWER's project is subject to the Agency's quality assurance practices and said it agreed with the overall OIG recommendation for data management planning. It recognized that the information would be useful for shaping a detailed data management plan to meet the research needs of tribes and TASWER's co-regulatory responsibilities. The Agency indicated that many of the findings raised by the OIG are under active consideration by both the Agency and TASWER's contractor. Specifically, the Office of Solid Waste and Emergency Response, in collaboration with TASWER and the American Indian Environmental Office, stated it would address:

- Development of data quality objectives for accepting TASWER's data, noting the approach for quality assuring the inventory data;
- Development of a data entry control plan outlining the requirements and methods necessary to enter the inventory data into CERCLIS;
- Update of the Superfund Program Implementation Manual to revise and create new tribal data definitions as necessary;
- Creation of a CERCLIS/WasteLAN User Request entry to generate and update tribal data elements in CERCLIS;
- Development of a CERCLIS/WasteLAN requirements analysis supporting the creation and update of tribal data elements in CERCLIS;
- Transfer of tribal inventory data to CERCLIS via a CERCLIS/WasteLAN revision;
- Development of a CERCLIS/WasteLAN Tribal Data Quick Reference Guide presenting key tribal data fields and the process for updating those fields within WasteLAN;
- Development of tribal reports within EPA's CERCLIS/WasteLAN and Superfund eFacts applications for internal Agency use; and
- Inclusion of tribal data in the Agency's public Superfund web site.

This recommendation addresses the Agency's need to develop a specific plan for validating and managing its tribal inventory. Because the Agency's position is that TASWER's project is not designed to meet the Agency's needs, the Agency is required to respond to this recommendation. The outline the Agency describes above has important elements; however, our recommendation calls for a more detailed, sequenced plan that includes specific activities needed, such as those necessary for the validation process. The plan should also include a process for considering internal and external informational needs based on consultation with stakeholders, such as regions and tribes. In response to our final report, the Agency needs to include this detailed, sequenced plan along with milestones for completing activities.

## ***Agency Response***

December 16, 2003

### **MEMORANDUM**

**SUBJECT:** Response to OIG Assignment No. 2002-001135, Immediate Action Needed to Address Weaknesses in EPA Efforts to Identify Hazardous Waste Sites in Indian Country

**FROM:** Barry Breen  
Principal Deputy Assistant Administrator  
Office of Solid Waste and Emergency Response

**TO:** Carolyn Copper  
Director of Program Evaluation: Hazardous Waste Issues  
Office of Program Evaluation

Thank you for the opportunity to provide comments on the draft evaluation report on “Immediate Action Needed to Address Weaknesses in EPA Efforts to Identify Hazardous Waste Sites in Indian Country,” Assignment No. 2002-001135. This evaluation raised some very important issues and we appreciate the opportunity to respond to your findings. Due to the significant coordination on this response document, not all of the referenced attachments were reviewed by the appropriate offices. Therefore, OSWER will send the attachments under separate cover by mid week.

The Office of Solid Waste and Emergency Response (OSWER), including the Office of Site Remediation and Technology Innovation (OSRTI), and the Office of Solid Waste (OSW) has worked with the Office of General Counsel (OGC), the Office of Grants and Debarment (OGD), the American Indian Environmental Office (AIEO), and the Tribal Association on Solid Waste and Emergency Response (TASWER), a grantee to OSWER, to provide comments on the OIG’s findings and recommendations. On balance, EPA believes that the recommendations outlined in the report are appropriate to consider and may help ensure that this project is successful to both tribes and EPA. However, we are deeply concerned about three broad issues arising from the report. First, the report fails to take into account major changes and improvements by TASWER over the past year, in the aftermath of EPA issuing a stop work order. The stop work order was lifted only after EPA was satisfied that deficiencies were addressed and that TASWER was prepared to meet its fiscal and programmatic commitments.

Second, your recommendation that EPA impose another stop work order on TASWER is not viable. There does not appear to be a basis to institute a second stop work order to TASWER under the applicable regulations. Such an action creates upheaval and disruption that would have a negative affect on those who are now working effectively to make TASWER a responsible and productive grantee. The third area of concern is the implied assumption in the report's findings and recommendations that EPA must manage this effort as if TASWER and its contractor are EPA contractors. EPA must manage TASWER's effort consistent with its legal relationships under a cooperative agreement.

It is important for the OIG to recognize that EPA made a conscious policy choice to support the work of an organization representing the interests of tribal co-regulators under a cooperative agreement, rather than acquire services under a contract. We chose the cooperative agreement mechanism for several reasons, with the primary aim to build tribal capacity to identify hazardous waste sites in Indian country. Our decision to invest in TASWER was based on direct comment from tribes that a tribally-implemented effort would be preferable (See Attachment A). EPA hopes to realize improved response by tribes to our initial list of identified sites and long-term credibility, by having a tribal organization directly work with tribes to collect data, rather than an EPA contractor. Although we view OIG's recommendations as constructive on balance, we are concerned that your report neither recognizes the nature of EPA's legal relationship with TASWER under a cooperative agreement nor the long-term value to the Agency of the cooperative agreement approach in fostering effective sovereign-to-sovereign relations. The presumption in your report that TASWER and its contractor Zender Environmental Planning and Associates (Zender) are performing work for EPA and that the project is intended to meet EPA's program management needs is not accurate. The principal purpose of this project is to further TASWER's efforts on behalf of the tribes.

Because the project is being conducted through a cooperative agreement, there are key differences in EPA's role in the performance of the project from that of our role in a contract. EPA has "substantial involvement" in the research and grant management oversight. However, TASWER, not EPA, is the responsible authority for the performance of its contractor, (40 CFR 30.41). Ultimately, TASWER is responsible for the project and has been responsive to our suggestions and needs for the project, which is intended to benefit tribes. Zender recognizes that the substance of its work must meet the Agency's technical standards. The contractor states, "Agency acceptance...is crucial for Tribes. Without engaging in a strict methodology protocol for the TASWER Project, sites that the Tribes identify will not be recognized by the federal government as valid sites and thus will not be eligible for the wide array of funding that is available for recognized hazardous waste sites." The contractor also states, "If the TASWER project work is carried out in such a way that the... methodology standards are not met, this work will be futile in short order." (See Attachment B, page 7) Nonetheless, the contractor is tasked with meeting the needs of the TASWER and the tribes rather than EPA's. The Agency cannot legally provide day-to-day direction to TASWER's contractor as if it were an EPA contractor.

## RESPONSE TO OIG FINDINGS AND RECOMMENDATIONS

### **OIG Finding: Grant Mismanagement has Delayed Inventory Development**

### **OIG Recommendation: Issue a stop work order to TASWER related to its work, to create an inventory of hazardous waste sites on Indian lands.**

It is a serious matter for EPA to issue a stop work order to a cooperative agreement recipient. To do so in this case, the Agency must find that TASWER has materially failed to comply with the terms and conditions of the cooperative agreement or an applicable statute or regulation, (40 CFR 30.62(a)(1) and (2)). As indicated below, the Agency did issue a stop work order to TASWER in July 2002 on the basis of specified material violations of 40 CFR Part 30 relating to financial management systems and competitive procurement. These violations were subsequently corrected. Your report does not identify any specific terms and conditions, regulations or statutes with which TASWER is currently in material non-compliance, and the Agency cannot issue a stop work order to TASWER solely on the grounds that the OIG believes that TASWER's contractor should be using a different inventory methodology.

EPA continues close oversight of the cooperative agreement in the aftermath of lifting the stop work order. TASWER is fully cooperating with EPA in carrying out its approved workplan, including the Hazardous Waste Sites on Indian Lands project. OSWER maintains substantial involvement through frequent meetings with TASWER, and shared information.

#### **Action on #1 Recommendation:**

None planned.

### **OIG Finding: Program Information Needs Require Definition.**

### **OIG Recommendation: Define specific program information needs for managing and developing effective programs, policies, or guidance concerning hazardous waste in Indian country, and ensure the inventory methodology can support these informational needs.**

The OIG finding is that EPA's program information needs will not be met through this project because EPA has not defined its needs for developing an effective Superfund program, policies and guidance, and resolving general hazardous waste issues. EPA has three concerns in response to this finding. First, the data collection effort by TASWER is not intended to provide a comprehensive answer to the Superfund program's information needs. TASWER is conducting the Project research for the benefit of Tribes – to build long-term tribal capacity to identify and seek solutions for hazardous waste sites impacting Indian country. Obtaining data is incidental to the principal purpose of this agreement, which is to build the research capacity of a tribal "co-regulator" organization as described at EPA Order 5700.1, Policy for Distinguishing Between Acquisition and Assistance (March 22, 1994), pages 8 and 9.

As a representative of tribal co-regulators, TASWER recognizes that for the data to be useful to the tribes, it must also be useful to EPA. EPA has the right under 40 CFR 30.36 to use the data TASWER generates under the cooperative agreement for Federal purposes and the

Agency intends to invoke that right. As co-regulators, Tribes and EPA must ultimately have similar understanding of the data to be able to work together and make good decisions on what the next steps should be to address the identified sites. TASWER has structured its data methodology around the recognition of these basic data needs.

The third concern is the OIG finding that the data collection effort should satisfy information needs for Superfund program management, policies, guidance and general hazardous waste issues on Indian lands. OGC has advised OSWER that a cooperative agreement would not be the appropriate mechanism to collect such data as it would be inconsistent with EPA Order 5700.1, EPA's interpretation of the Federal Grant and Cooperative Agreement Act. The Order provides, on pages 9 and 10, that EPA must use a contract to obtain specific information for the Agency's own use to evaluate Agency efforts and programs to improve internal operations, to obtain specific information for technical and policy decisions for help in preparing EPA guidance documents and policy analyses. This position is inconsistent with other OIG audits criticizing the Agency for failing to comply with the Federal Grant and Cooperative Agreement Act. *See for example*, Matter of Environmental Protection Agency-Inspector General-Cooperative Agreement-Procurement, B-262110, March 17, 1997.

Zender understands the distinct dynamic between tribally-researched data versus EPA program management activities. Zender states in its most recent report, "...The number of and location of such sites is information that USEPA, the ultimate funder of the Project, will need when it deals with Tribes on the issues of hazardous waste. That is, regardless of whether it is or is not a "hazardous waste site" (i.e., Subtitle C handler, storage, disposal, etc.), the Tribe will consider it as such and will expect to be assisted to deal with it as such. It is then EPA's choice to expend resources educating Tribes on what constitutes a hazardous waste site, or how they deal/manage with such a waste site (including referral of Tribes to correct federal government department based on site characteristics (e.g., DOD, DOE purview sites))" (See Attachment B, page 2).

OSRTI is undertaking a separate effort to develop tribal-specific, internal reporting measures on OSWER program performance. The draft measures being evaluated by OSRTI stem directly from tribal recommendations to EPA through the NACEPT Superfund subcommittee and the Superfund Tribal Working Group (See Attachment C). EPA is analyzing the information needs for these potential draft measures and believes it would most appropriately be satisfied through government-to-government discussions between EPA Headquarters, Regional offices and individual tribes as part of an annual planning process.

**Action on #2 Recommendation:**

OSWER will continue to work on an appropriate basis with TASWER to communicate mutual information needs that may optimize benefits to tribes.

Despite our stated concerns, this recommendation does highlight the need for EPA to think ahead as to how it will conduct the next steps in light of TASWER's findings and resulting tribal expectations. OSWER will coordinate with AIEO in designing our data input and future reporting needs in both TIMS and CERCLIS.

**OIG Finding: Multiple Limitations in Census Survey Methodology**

**OIG Recommendation: Review the inventory methodology and address key limitations in the methodology before lifting any stop work order. At a minimum, ensure the inventory methodology:**

- a. Includes tribal consultation and is agreed to by tribal stakeholders, including NTEC;
- b. Defines an acceptable, justified, tribal response rate and includes a clear management plan to achieve this response rate;
- c. Accounts for non-response problems associated with proprietary information concerns of tribes;
- d. Includes providing tribes with written lists of sites they are being asked to verify;
- e. Is based on complete, accurate, and up-to-date information, including current CERCLIS site information and the NTEC 2003 study of sites; and
- f. Accounts for current limitations in excluding off-reservation sites that may impact treaty-reserved natural resources or reservation environments.

The OIG's findings go into great detail regarding TASWER's methodology for the tribal project. Provided its actions are consistent with the scope of work and terms and conditions of the grant, TASWER is the ultimate decision-maker for the methodology of this project. EPA is maintaining substantial involvement in the project to help TASWER shape a data collection effort that will effectively meet tribal needs. The resulting data from this project ties together tribal expectations with federal responsibilities for hazardous waste sites. Successful outcome will depend upon appropriate partnership between EPA and the Tribes.

EPA's primary technical concern regarding the OIG findings on methodology is that the draft report does not recognize recent changes to the originally proposed methodology. OIG's findings appear to be mostly based on a Zender document entitled, *Description of Survey Methodology-TASWER Hazardous Waste Site Project*. TASWER's contractor provided this document directly to the OIG without prior review by TASWER or EPA. It was written only six days after the contractor formally began work on the project and before Zender conducted additional dialogue with project stakeholders. TASWER's contractor has subsequently completed a substantial degree of outreach and research for this project over the last three months, concurrent with the OIG development of the draft Evaluation Report. (See Attachment B, pages 13–16) The OIG used the Zender document to identify certain methodological assumptions by the new contractor that conflicted with the understood approach of the old contractor. EPA subsequently raised the issue with TASWER and received responses from TASWER. TASWER is involving EPA in ongoing discussions as they make decisions on a final methodology with Zender. The following information from TASWER regarding the Zender project demonstrates that the contractor has revised their methodology to make it more consistent with EPA's understanding of the TASWER workplan.

**Source Data Obsolete**

EPA recognizes that the initial data OSWER collected to support TASWER's efforts on this project is now several years old. We agree that the data needs to be updated to reflect the

most recent changes to CERCLIS. However, given the relatively small number of sites added to or deleted from CERCLIS each year, we do not believe that the bulk of the data is severely incomplete or inaccurate. The TASWER Project has already identified actions in its proposed workplan that will update deficiencies in the data. The contractor will: (1) call Regional CERCLA offices for verification of CERCLA sites in Indian country provided by EPA; and (2) discuss with Tribes sites of concern through the survey. In response to this finding, EPA will conduct another data pull to assist TASWER in updating the original CERCLIS data provided by EPA. This may reduce or eliminate the need for the contractor to call Regional Offices to verify sites.

The OIG is correct that the list of sites for the TASWER project does not contain information produced in a 2002 National Tribal Environmental Council (NTEC) study. TASWER's list contains an older NTEC study, which has not been updated with the 2002 study information. The complete list of data sources compiled by the old contractor, Tulsa University, is found in Volume 2 of their final report to TASWER. (See Attachment D) To date, the OIG has only received Volume 1.

TASWER is under no obligation to use the same methodology used by NTEC to conduct the 2002 study, which uses a 50-mile radius from reservation boundaries to identify sites potentially impacting Indian country. TASWER has advised EPA that the TASWER-sponsored census research will include off-reservation sites of concern. However, TASWER may perceive a 50-mile radius as too extensive for purposes of establishing a refined baseline for their purposes. Sites of concern recommended by tribal representatives will be included in the TASWER survey regardless of proximity to reservation boundary, but TASWER disagrees with the logic of automatically including ALL sites within a 50-mile radius. When EPA originally generated CERCLIS data for this project, the Superfund program did not specify a pre-determined radius for identifying CERCLIS sites. However, based on recommendations from the EPA RCRA program, TASWER will use a 5-mile radius for generating an initial list of potential RCRA sites.

#### Outreach Poorly Designed

The OIG points out vulnerabilities in Zender's original proposed methodology. Subsequent discussions with EPA and tribal stakeholders have resulted in the following response from TASWER:

“TASWER is fully aware of concerns associated with potential low response rates from tribes contacted in the census research. Several meetings have taken place between TASWER, TASWER's new contractor, and EPA to address these concerns. However, given the finite time available for the research, some limitations are necessary. Every effort will be made to contact tribes and increase response rates. Surveys to tribes that rely exclusively on mailed questionnaires seldom exceed 20% response rates.

Strategies for improving response rate include:

- Ensuring the right person is contacted: every effort will be made to address surveys to specific tribal employees and not to the tribal government head (President, Governor, Chairman, etc.) – names should appear on the envelope and on survey cover letter.
- Initiate prior contact with survey respondents to alert them the survey is coming and to explain how the survey will help them address their concerns with contaminated sites.
- Provision of return envelope with postage.
- Clear indication of when survey response is needed (i.e., a response deadline).
- Use of follow-up letters, phone calls, and when available, e-mail, to remind survey respondents.

Follow-up telephone calls are designed to increase response rate to between 40 - 50 percent, which will be considered an enormously successful survey. While TASWER may not achieve this response rate, establishing the target is viewed as a critical step in the survey's success. In addition to the follow-up telephone calls, the outreach plans are a critical strategy for obtaining feedback from tribal representatives. Outreach activities will typically involve face-to-face discussions between TASWER's contractor and tribal representatives at national and regional conferences and meetings. TASWER's contractor will have surveys and lists of potential sites of concern in both paper and electronic formats at these outreach events for tribal representatives to review and comment on. There is no expectation that TASWER's contractor will be in a position to compel a tribe to respond to the survey when they feel it is not in their interest to do so.

Tribes will be provided with the preliminary list of sites potentially affecting them. TASWER's contractor will include paper copies of the site lists with the survey when it is mailed to each tribe. In addition, any new sites identified by EPA's American Indian Environmental Office "Tribal Information Management System" (TIMS) effort will be included in TASWER's final report. Ongoing meetings between TASWER and EPA's TIMS project manager are ensuring close coordination between the two data validation efforts. In fact, the TIMS effort will rely extensively on TASWER's census survey as part of that projects outreach to tribes (See Attachment E). AIEO will be sending out a letter to tribes that includes specific reference to the TASWER-sponsored data verification effort. Having this prior notification mailed to tribes from a credible EPA official will help improve response rates for the TASWER survey. More than 90% of sites in the preliminary TASWER list are included in TIMS and are available to tribes for review and comment in a secure, tribe specific password protected, on-line data base. The inclusion of tribe-specific lists of potential sites of concern in the TASWER mail survey and the close collaboration between TASWER and EPA are designed to address concerns about lack of access to lists of sites for tribes to review and will reduce misunderstandings over which sites are included in the survey.

Tribal outreach plans were revised by TASWER's former contractor and further refined by the new TASWER contractor (See Attachment F). Outreach activities are currently underway. For example, TASWER's contractor had a promotional outreach booth at the Annual NTEC Conference (Gila River Indian Community, Gila River, AZ - May 2003). TASWER's contractor also held a workshop at the EPA Region 9 Tribal Environmental

Summit (held at the Pachanga Tribe Indian Reservation, CA - October 2003). The purpose of this workshop was to explain the TASWER research effort and to obtain input from tribes. In addition, TASWER's contractor attended the 4th Annual TASWER Training Conference (Reno, NV - November 2003). TASWER's contractor met with more than 50 tribal government representatives at this conference about the census research effort. TASWER's contractor will continue to conduct outreach to tribes throughout the project and improve the census as a result of input obtained. Consultation with other tribal organizations is also part of the outreach activities currently underway."

#### Lack of Consultation with a Key Tribal Stakeholder

OSWER encourages cooperation among tribal co-regulators. At OSWER's request, TASWER has responded to this OIG finding, stating "TASWER acknowledges the importance of working closely with NTEC and using information developed by NTEC that can benefit TASWER's census research. This is demonstrated in the 3-Volume final report submitted by TASWER's former contractor. The report documents the importance of including NTEC data in TASWER's census research, and continued consultation with NTEC. This ongoing TASWER-NTEC relationship is demonstrated by the face-to-face meeting held in Washington, DC between TASWER Executive Director, staff, and NTEC Executive Director on September 17, 2003. (See Attachment G) The NTEC Executive Director expressed the importance of having TASWER as a participant in NTEC's Superfund Tribal Working Group. Consultation with NTEC will continue throughout TASWER's census research. It is not always possible to reach consensus among stakeholders, and consultation with stakeholders does not necessarily mean agreement or consensus. TASWER will analyze NTEC's most recent study and include appropriate, referenced data into the project."

TASWER and TASWER's contractor have conducted outreach with many stakeholders for this project, in addition to individual tribal representatives, and NTEC. Consulted stakeholders include: Inter-Tribal Environmental Council (Talequa, OK), Institute for Tribal Environmental Professionals (Phoenix, AZ), Alaska Forum, Inc. (Anchorage, AK), and others.

#### Exclusion of Off-Reservation Sites From the Tribal Survey

As previously stated, TASWER has advised EPA that the TASWER project will include off-reservation sites of concern identified by Indian Tribes through the survey.

#### **Actions on #3 Recommendations:**

- (a) EPA will closely monitor the cooperative agreement to ensure that TASWER will continue to conduct tribal consultation in the manner laid out in the description above.
- (b) EPA will provide technical assistance to TASWER to help it develop a clear management plan consisting of the items in the above description.
- (c) EPA will collaborate with TASWER to help ensure that its management plan will include non-response issues associated with proprietary information of concern to tribes.

- (d) EPA will closely monitor the cooperative agreement to ensure that TASWER will provide tribes with written lists of sites they are being asked to verify.
- (e) Regional CERCLA offices will collaborate with TASWER to update the data for verification of CERCLA sites in Indian country provided by EPA (if necessary); and (2) EPA will closely monitor the cooperative agreement to ensure that TASWER will discuss with Tribes sites of concern through the survey.
- (f) EPA will closely monitor the cooperative agreement to ensure that TASWER will include off-reservation sites that are of concern to a tribe, including the concern that the site impacts the reservation community or treaty-reserved natural resources. EPA will share data and provide technical assistance to TASWER to enable it to utilize a 5-mile radius for generating an initial list of potential RCRA facilities impacting Indian lands.

**OIG Finding: Agency Lacks Plans for Managing Tribal Site Inventory Data**

**OIG Recommendation:** Develop a detailed plan for validating, managing, storing, and updating the baseline inventory. Ensure the plan is clearly articulated and includes milestones and resource estimates. Specific steps to be addressed sequentially include defining the:

- a. Process for review of the inventory by tribes, EPA regions, and headquarters;
- b. Format and content of the inventory that meets EPA and tribal needs;
- c. Required CERCLIS modifications;
- d. Mechanism for import of inventory data into CERCLIS; and
- e. An Agency storage medium for the initial inventory data.

EPA acknowledges that if a grantee's project involves environmentally related data generation, the grantee must develop and implement quality assurance practices consisting of policies, procedures, specifications, standards and documentation sufficient to produce data of quality adequate to meet the project's objectives and to minimize loss of data due to out-of-control conditions or malfunctions (40 CFR 30.54). In addition, the provision in 40 CFR 30.54 contains reference to EPA Order 5360.1 A2, Policy and Program Requirements for the Mandatory Agency-Wide Quality System, which requires non-profit recipients of financial assistance (e.g., Grants and Cooperative Agreements) under the authority of 40 CFR 30, (among other entities), to develop and implement quality assurance practices. Clearly, TASWER is subject to these requirements through the Project's proposed data collection. EPA Order 5360.1 A2 also applies to EPA organizations, including the situation in which EPA will use environmental data collected for other purposes for other sources (also termed "secondary data").

As noted above, OSWER has unrestricted access to data produced under an assistance agreement (40 CFR 30.36). While TASWER will be the primary source of this data for the tribes, OSWER intends to reproduce, or otherwise use, selected data elements from the TASWER database into our data systems, which are in the public domain, to ensure that the data is fully utilized by, and made available to all tribes. EPA believes that tribes can most optimally benefit from the TASWER data if relevant data elements from TASWER can be viewed in other

contexts, such as the publicly-accessible EPA databases CERCLIS and TIMS. Tribes interested in viewing TASWER-derived data elements in relation to EPA's full data sets, including an ability to sort/analyze/compare with other existing EPA data, may gain significant advantages that help resolve their information needs. This arrangement can also facilitate discussions between Tribes and EPA to understand how EPA represents and uses this data in the databases for program decision-making. Most importantly, incorporating TASWER data into EPA's databases can help ensure that the data is fully accessible and free to all tribes.

As a result, OSWER agrees with the overall OIG recommendation for EPA data management planning. We recognize that this information will be useful for shaping a detailed data-management plan to meet the research needs of Tribes and TASWER's co-regulatory responsibilities. It will help EPA to organize the selection and transfer of data shared from TASWER to plan resources for data verification and incorporation into CERCLIS and TIMS. AIEO also agrees with the recommendations. Since both EPA and TASWER must follow the same quality control requirements under Order 5360.1 A2, to ensure that the environmental data are of adequate quality and usability for their intended purposes, EPA believes it makes sense to address each recommendation together with TASWER.

Many of the findings raised by OIG are under active consideration by TASWER's contractor and EPA, although the considerations are still in early stages. For example, TASWER's contractor identifies five points of collaborative interest among their Project, EPA's data collection efforts through the RCRAInfo Tribal Lands Project, and AIEO's TIMS project. These points are generally recognized as starting points for developing a detailed data management plan in coordination with the Agency (See Attachment B, page 23). EPA will use the OIG recommendations, together with our quality system policy, as the basis for developing focused data management activities and identification of resource needs for EPA.

#### Validation of the inventory by Tribes, EPA Regions, and Headquarters:

EPA recognizes that considerable data will be needed to determine "next steps" for sites identified by TASWER. OGC has advised OSWER that a cooperative agreement would not be the appropriate mechanism to collect such data as it would be inconsistent with EPA Order 5700.1, EPA's interpretation of the Federal Grant and Cooperative Agreement Act.

Ultimately, TASWER and the Tribes must decide how they want to manage over the long term, the data they collect through identifying hazardous waste sites on Indian Lands. EPA anticipates that the TASWER tribal data that EPA chooses to incorporate into CERCLIS will be updated in a similar manner to other data in the CERCLIS system, through guidance in the Superfund Program Implementation Manual (SPIM).

#### Storage of the initial data in a database:

This concern does not recognize that TASWER will be the repository for this data. TASWER's database will be the storage medium for use by Tribes. EPA will coordinate with TASWER as they develop their system to anticipate necessary transfer requirements of selected data elements into CERCLIS (and TIMS).

Transfer of selected data into CERCLIS:

EPA will work with TASWER to identify a transfer mechanism. EPA will determine resources needed by EPA to transfer the selected data.

Storage of inventory data in CERCLIS using defined tribal data elements or attributes:

OSWER will continue to refine the CERCLIS tribal identifiers (currently found in the SPIM at [www.epa.gov/superfund/action/process/pdfs/appdxg.pdf](http://www.epa.gov/superfund/action/process/pdfs/appdxg.pdf) ) in relation to expected needs. These needs include baseline inventory information and internal tribal-specific goals and measures under the new EPA Strategic Plan, currently under development.

Definition of inventory format:

EPA will work with TASWER to establish an inventory database structure that supports the information management needs of both organizations.

OSWER and AIEO will begin more detailed discussions on collaborative data management needs based on OIG recommendations. At this point, AIEO's primary concerns for TIMS data collection and coordination with the TASWER project are to:

- Develop mutually understood definitions across federal agencies for the data they collect. For example, AIEO will use the definitions developed under the TASWER Project for "hazardous waste sites" and other site types (i.e., open dumps) to develop a protocol for tribes to use when they collect similar data under their GAP grants. EPA wants to be able to use this data as part of updating/verifying the inventory.
- Develop Quality Assurance Plans (i.e., data quality objectives (DQOs)) for validating collected data.

TASWER's contractor has included the following tasks in its proposed workplan, which are consistent with EPA activities (See Attachment B, page 8). The tasks outlined in the first Quarterly Report for Identifying Sites in Indian Country include:

- Networking with and evaluating the differing definitions of hazardous waste sites and verifying procedures from relevant federal agencies and subprograms.
- Developing a protocol for site documentation acceptable to these agencies, including categorization of sites based on ground-truth verification level.
- Evaluation of TIMS and RCRAInfo with regard to their usefulness to Tribes, and how these systems might be improved with regard to TASWER project aims of site identification of future use to Tribes in funding and decision-making.

**Actions on #4 Recommendations:**

OSWER expects the following plan, conducted in collaboration with AIEO and TASWER, will respond to the specific steps outlined in the OIG's recommendation by addressing the:

- a. Development of data quality objectives for accepting this set of data, noting the approach for quality assuring the inventory data;

- b. Development of a data entry control plan outlining the requirements and methods necessary to enter the inventory data into CERCLIS;
- c.1. Update of the Appendix J: Tribal Involvement of the Agency's current Superfund Program Implementation Manual to revise and create new tribal data definitions as necessary;
- d.2. Creation of a CERCLIS/WasteLAN User Request (WURS) entry to generate/update tribal data elements in CERCLIS;
- e.3. Development of a CERCLIS/WasteLAN requirements analysis supporting the creation/update of tribal data elements in CERCLIS;
- f. Transfer of tribal inventory data to CERCLIS via a CERCLIS/WasteLAN revision;
- g.1. Development of a CERCLIS/WasteLAN Tribal Data Quick Reference Guide presenting key tribal data fields and the process for updating those fields within WasteLAN;
- h.2. Development of tribal reports within EPA's CERCLIS/WasteLAN and Superfund eFacts applications for internal Agency use; and
- i. 3. Include tribal data in the Agency's public Superfund web site.

If you have questions, please contact Felicia Wright on (202) 566-1886 or Johnsie Webster on (202) 566-1912.

## ***Distribution***

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