



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA's Gulf Coast Oil Spill Response Shows Need for Improved Documentation and Funding Practices

Report No. 11-P-0527

August 25, 2011



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Abbreviations

ADA	Anti-Deficiency Act
BP	BP America Production Company
CBI	Confidential business information
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
DWH	Deepwater Horizon
EPA	U.S. Environmental Protection Agency
EPM	Environmental Programs and Management
IAP	Incident action plan
IFMS	Integrated Financial Management System
MOU	Memorandum of understanding
NCP	National Contingency Plan
NPFC	National Pollution Fund Center
OCFO	Office of the Chief Financial Officer
OIG	Office of Inspector General
OPA	Oil Pollution Act
PRFA	Pollution Removal Funding Authorization
S&T	Science and Technology
SCORPIOS	Superfund Cost Recovery Package Imaging and On-Line System
SitRep	Situation report

Cover photo: Deepwater Horizon platform fire. (EPA photo)

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At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We conducted this review to determine whether the U.S. Environmental Protection Agency (EPA) has controls in place to recover its Gulf Coast oil spill response costs as required and recommended by policy and guidance.

Background

On April 22, 2010, the Deepwater Horizon mobile offshore drilling unit sank, causing the largest oil spill in U.S. history. The U.S. Coast Guard, as lead agency for the response, authorized EPA to monitor and respond to potential public health and environmental concerns. To do so, EPA collected and managed environmental data, oversaw waste management activities, and provided technical assistance. As of December 31, 2010, the Coast Guard had authorized EPA to spend approximately \$61.9 million on response work. EPA bills its costs and receives reimbursement from the Coast Guard.

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

The full report is at:
www.epa.gov/oig/reports/2011/20110825-11-P-0527.pdf

EPA's Gulf Coast Oil Spill Response Shows Need for Improved Documentation and Funding Practices

What We Found

EPA needs additional management controls to track and recover its Gulf Coast oil spill response costs. EPA needs controls to ensure documentation for its response activities is consistent and provides a clear audit trail that links response costs to authorized activities. While response costs were charged to a site code, we were unable to determine the specific tasks associated with certain costs to ensure they were related to authorized activities. Further, EPA needs controls in its billing review to ensure that cost documentation packages are clear and complete.

EPA also needs to reach agreement with the Coast Guard regarding the sharing of contractor-designated confidential business information; this impasse has affected reimbursement of EPA's response costs. EPA contract costs represent over 67 percent of its total response costs. Until this matter is resolved, reimbursement of EPA's response costs may be further delayed or denied, and EPA may be at risk of incurring additional Anti-Deficiency Act (ADA) violations, beyond the one it incurred in November 2010, as well as Prompt Payment rule penalties.

EPA needs a new approach to enable it to fund emergency responses to oil spills. EPA had limited cash on hand to fund its response work. In an attempt to prevent a cash shortfall and avoid an ADA violation, EPA received a cash advance of \$32 million from the Coast Guard in August 2010. Despite the advance, EPA incurred an ADA violation in November 2010. EPA also temporarily charged non-oil-spill appropriations, such as Superfund, and reprogrammed funds to fund its response work. EPA's temporary charging to Superfund resulted in a purpose violation because Superfund cannot be used for oil spill response. While EPA's actions ultimately provided it with access to funds, the ADA and purpose violations, coupled with the extra work required by EPA to find sufficient funds during an oil spill disaster, indicate a need for a new funding approach.

What We Recommend

We recommend that EPA implement controls to ensure that documentation supports authorized response activities and that response bills and supporting cost documentation packages are clear and complete. We also recommend that EPA reach an agreement with the Coast Guard on the confidential business information issue. EPA should also seek new or additional emergency response funding authority for oil spills. During the course of this review, EPA took action to seek this authority. EPA disagreed with our first recommendation, but agreed with the three remaining recommendations.



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

THE INSPECTOR GENERAL

August 25, 2011

MEMORANDUM

SUBJECT: EPA's Gulf Coast Oil Spill Response Shows Need for
Improved Documentation and Funding Practices
Report No. 11-P-0527

FROM: Arthur A. Elkins, Jr.
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is written over the printed name.

TO: Bob Perciasepe
Deputy Administrator

Barbara Bennett
Chief Financial Officer

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

The estimated direct labor and travel costs for this report are \$305,261.

Action Required

Recommendation 4 is in a closed status for reporting purposes; therefore, you do not need to respond further regarding this recommendation. The Agency disagreed with recommendation 1, and this recommendation is unresolved with resolution efforts in progress. The Agency provided an acceptable corrective action plan for recommendations 2 and 3, and these are still in an open status. Therefore, in accordance with EPA Manual 2750 and ongoing resolution efforts, you are required to provide a written response to recommendation 1, including a proposed corrective action plan, within 90 calendar days of the report date. In addition, in your 90-day response you

may update the OIG on the implementation status of the agreed-to corrective actions for recommendations 2 and 3.

The response will be posted on the OIG's public website, along with our memorandum commenting on the response. The response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. Please e-mail your response to Carolyn Copper at copper.carolyn@epa.gov. The final response should not contain data that should not be released to the public; if the response contains such data, the data for redaction or removal should be identified. We have no objections to the further release of this report to the public. We will post this report to our website at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact Wade Najjum at (202) 566-0827 or najjum.wade@epa.gov, or Carolyn Copper at (202) 566-0829 or copper.carolyn@epa.gov.

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Chapter 1

Introduction

Purpose

The purpose of our review was to evaluate U.S. Environmental Protection Agency (EPA) management controls for ensuring EPA's costs for responding to the Gulf Coast oil spill are tracked and recovered. Our objective was to determine whether EPA has controls in place to recover its Gulf Coast oil spill response costs as required and recommended by policy and guidance.

Background

On April 22, 2010, the mobile offshore drilling unit Deepwater Horizon (DWH), leased by BP America Production Company (BP), sank after an explosion. Following the explosion, and until the well was sealed in September 2010, the well released several thousand barrels of crude oil a day into the Gulf of Mexico. This is the largest oil spill in U.S. history. The U.S. Department of Homeland Security declared the spill a "Spill of National Significance."¹

National Contingency Plan and Federal Response

The National Contingency Plan (NCP) outlines the organizational structure and procedures for preparing for and responding to discharges of oil and releases of hazardous substances, pollutants, and contaminants, and the Oil Pollution Act (OPA) authorizes funding for responses to oil releases under the Oil Spill Liability Trust Fund. The federal government uses the trust fund for removal costs, and monitoring, administrative, and operational and personnel costs for implementation and enforcement of the OPA. The U.S. Coast Guard led the federal response to the oil spill as the federal on scene coordinator.

The U.S. Coast Guard National Pollution Fund Center (NPFC) administers the trust fund. NPFC designated two BP subsidiaries and five other companies as responsible parties for DWH oil-spill-related claims. The federal on scene coordinator has obligated \$589 million of funding advanced by the Oil Spill Liability Trust Fund, of which \$554 million had been expended through September 30, 2010. NPFC obligates funds to other federal, state, and local government agencies via approved Pollution Removal Funding Authorizations (PRFAs) or Military Interdepartmental Purchase requests that provide reimbursable funding authority. After NPFC authorizes reimbursement, it pays

¹ A "Spill of National Significance" is a spill that, due to its severity, size, location, actual or potential impact on the public health and welfare or the environment, or the necessary response effort, is so complex that it requires extraordinary coordination of federal, state, local, and responsible party resources to contain and clean up the discharge.

the government agencies from the trust fund for their actual expenditures. NPFC has billed the responsible parties for the Deepwater Horizon oil spill \$518 million, as of September 30, 2010. The billed amounts encompass actual Coast Guard expenditures and funds obligated by the federal on scene coordinator to other federal, state, and local government agencies. All the obligations and expenditures and are considered billable and fully collectible from the responsible parties as of September 30, 2010.² According to the Government Accountability Office, BP has paid the NPFC \$518.4 million as of October 12, 2010.

EPA provided support as authorized by the Coast Guard. EPA's support function included monitoring and responding to potential public health and environmental concerns. EPA collected and managed environmental data; took air, water, and sediment samples to determine potential risks to public health and the environment; and provided oversight on waste management activities and other general oversight and technical assistance.

Funding of EPA Response Activities

Because EPA served in a support role, it received PRFAs from the Coast Guard that defined EPA's response activities. The PRFAs authorized EPA to provide support to the Coast Guard. PRFAs are based on a statement of work and a cost estimate.

EPA received PRFAs for its response work that occurred or was coordinated in Regions 4 and 6 and EPA headquarters. The Coast Guard amended PRFAs beyond the initial authorizations as additional cleanup funding or activities were necessary. Because of some lag time in the approval process, EPA PRFAs and subsequent amendments were generally retroactive. As of December 31, 2010, EPA's PRFAs show approximately \$61.9 million in authorized response costs.³ EPA submits bills to the Coast Guard for reimbursement from the trust fund for its PRFA-authorized response costs.

EPA's 1996 memorandum of understanding (MOU) with the Coast Guard for use of the trust fund outlines requirements for EPA bills and cost documentation. The MOU provides that EPA shall produce a comprehensive written record supporting all expenditures and costs incurred in each removal. NPFC implementing guidance⁴ states that documentation provided should support a clear audit trail for reimbursement. This documentation will support reimbursement of EPA costs. The documentation will also assist with NPFC's cost recovery on behalf of the trust fund.

² *Department of Homeland Security FY 2010 Annual Financial Report.*

³ Headquarters PRFAs were as of October 31, 2010.

⁴ NPFC Instruction 16451.2, *Technical Operating Procedures for Resource Documentation under The Oil Pollution Act of 1990.*

EPA used its available cash from its Oil Spill appropriation along with any reimbursements received from the Coast Guard for previous oil spill work performed to pay for its PRFA-authorized activities. For those PRFA activities pending approval for funding, EPA temporarily charged other non-oil-spill appropriations: Hazardous Substance Trust Fund (Superfund), Environmental Programs and Management (EPM), and Science and Technology (S&T). EPA also reprogrammed existing Oil Spill and EPM funds.

On August 3, 2010, EPA signed an MOU with the Coast Guard NPFC for a cash advance of \$32 million. The MOU allowed for an advance of funds to ensure that EPA had cash available in the Agency account to pay expenses. EPA provided billing summaries and detailed cost documentation packages at a later date to support the expenses to liquidate the advance.

EPA's Reimbursable Costs

As of March 3, 2011, EPA had spent just over \$46.2 million in payroll, travel, miscellaneous, and contract costs (table 1). Payroll represents payroll costs (exclusive of indirect costs) of EPA response personnel. Travel represents travel expenses incurred by EPA response personnel. Miscellaneous represents costs for small purchases, such as office supplies. Contracts represent costs for EPA contractors employed in the response effort, as well as additional support services provided to EPA through interagency agreements with other federal agencies.

Table 1: EPA's reimbursable oil spill response costs^a as of March 3, 2011

	Payroll	Travel	Miscellaneous	Contracts	Total Costs
Region 4	\$4,147,448	\$1,204,445	\$138,713	\$5,907,440	\$11,398,046
Region 6	4,346,551	871,369	116,086	21,499,763	26,833,769
HQ EOC^b	3,908,896	335,386	4,927	3,746,718	7,995,927
Total	\$12,402,895	\$2,411,200	\$259,726	\$31,153,921	\$46,227,742

Source: Office of Inspector General (OIG) analysis of EPA data.

^a Data do not include EPA's indirect costs.

^b Headquarters Emergency Operation Center.

Noteworthy Achievements

In response to the Gulf Coast oil spill, EPA developed a number of documents to strengthen its management controls and ensure accountability of its response funds. These documents include:

- ***EPA's Deep Water Horizon/BP Oil Spill Stewardship Plan (finalized October 25, 2010)***—EPA developed this plan to ensure that resources utilized for the oil spill support the Agency's mission and comply with EPA guidance. The plan considers internal controls and possible areas of risk related to contracts and acquisitions, contract property,

purchase cards, personal property, interagency agreements, payroll and travel, and budget execution.

- **DWH Tracking and Spending Guidance**—As EPA’s oil response activities evolved, EPA developed a series of four guidance documents during May through August 2010. These documents helped EPA ensure appropriate tracking of its response costs and maintain fiscal integrity. We identify these guidance documents in appendix A.
- **Specific Headquarters and Regional Guidance on Charging to DWH Oil Spill Response**—Headquarters, Region 4, and Region 6 each developed guidance to help ensure appropriate charging of payroll-related DWH response costs. We identify these guidance documents in appendix A.

Scope and Methodology

We conducted this evaluation from July 2010 to May 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objective.

To gain an understanding of EPA’s management controls to track and recover its Gulf Coast oil spill response costs, we met with managers and staff in EPA’s program offices in headquarters, Washington, DC; the Cincinnati Finance Center, in Cincinnati, Ohio; Region 4, in Atlanta, Georgia; and Region 6, in Dallas, Texas. We also reviewed guidance issued by the Agency for tracking and monitoring its oil spill response costs.

To determine how EPA funded its response, we obtained and reviewed temporary charging and reprogramming data from the Agency, MOUs between EPA and the Coast Guard, and PRFAs issued to EPA.

To determine whether EPA’s response costs support and align with its PRFA activities, we judgmentally selected a sample of transactions from individual cost documentation packages submitted to the Coast Guard. EPA submitted three packages on October 14, 2010, one each for Regions 4 and 6 and EPA headquarters. These represented the first detailed cost documentation packages that EPA was required to submit based on the cash advance MOU. We took our sample from cost documentation packages submitted for Bill #4 for Regions 4 and 6, and Bill #3 for headquarters. The sample represented approximately \$2.9 million, or 51 percent, of the total costs submitted in the October 14, 2010, cost packages. We used the sample to evaluate EPA’s compliance with cost documentation requirements described in the cash advance MOU with the Coast Guard.

We also reviewed various Agency-generated reports with response activity details, including situation reports (SitReps) and incident action plans (IAPs), in an effort to link Agency payroll to authorized PRFA activities for the judgmentally selected pay period #20 (June 20 through July 3, 2010). We reviewed a snapshot of data provided by Regions 4 and 6 from their Asset Tracker database, an Agency Incident Command database tool.

Appendix A provides further details on our scope and methodology.

Chapter 2

EPA Should Improve Controls to Document Response Activity

EPA did not consistently generate documentation that captured its response activities across Regions 4 and 6 and headquarters. In addition, the documentation the regions generated does not provide a clear audit trail between the work it performed and what it billed the Coast Guard. A clear audit trail is needed to show that response costs relate to PRFA-authorized activities. EPA does not have guidance that requires documentation to identify costs billed to a specific activity. EPA guidance, *Tracking Spending for the BP Gulf of Mexico (Deepwater Horizon) Oil Spill*, issued May 18, 2010, provides that EPA track its response costs (reimbursable and nonreimbursable) with the designated oil spill site accounting code. However, use of the site code only indicates that work relates to the site; it does not identify the specific PRFA activity conducted. While all costs we reviewed were charged to the site code and may be appropriate, we were unable to determine the specific tasks underlying certain costs to ensure they were related to authorized activities. Without a clear audit trail, the Coast Guard could delay or deny reimbursement of these costs.

EPA Response Activity Does Not Provide a Clear Audit Trail

Although EPA established various controls to track its Gulf Coast oil spill response costs as required and recommended by relevant Agency guidance, EPA has not implemented controls to ensure that it consistently generates response activity documentation that provides a clear audit trail linking response work performed to work billed. EPA's 1996 MOU with the Coast Guard provides that EPA shall produce a comprehensive written record supporting all expenditures and costs incurred. Further, NPFC guidance provides that documentation should support a clear audit trail for reimbursement. Our review of a sample of EPA's billings showed that the information EPA submitted to the Coast Guard in its cost documentation packages does not clearly demonstrate that the costs billed relate to authorized PRFA activities. In addition, our review of EPA's response activity documentation showed that EPA did not consistently generate documentation across Regions 4 and 6 and headquarters that would clearly link its response work to billed costs.

Controls to Track Activities

EPA relied on existing controls to ensure proper charging and billing of costs for reimbursement, including established controls over its systems to track employee time, travel, and contract costs. In addition, EPA and the regions developed additional guidance and implemented new controls to track its response costs.

In particular, EPA established an accounting code within its financial management system for recording and tracking costs associated with its oil-spill-related activities.

EPA's cost documentation packages provided to support each bill sent to the Coast Guard dealt with financial activity categories (e.g., travel, payroll, contracts, miscellaneous, and interagency agreements). The packages did not include information on response activities. EPA generally provided information on response activities to the Coast Guard (exclusive of the billings and cost documentation packages) in the form of SitReps. In some instances, EPA provided weekly IAPs. These reports and plans described activities EPA would conduct and/or conducted under the PRFAs, providing the operational period and identifying EPA staff and contractors performing the work.

Although not provided to the Coast Guard, EPA used its Asset Tracker database as a resource tool for tracking and monitoring resources. Asset Tracker allows the regions to keep track of the personnel resources needed in the regional offices and in the field. It lists the position, location, title of position, and dates that person will be in that position. The regions also used Asset Tracker as a tool in the review of its travel costs. According to EPA, its response activity documentation, in conjunction with its cost documentation, provides a complete picture of EPA's response work undertaken and billed. EPA also stated that the Coast Guard could use the documentation to prepare its cost recovery packages.

OIG Sample Results

We reviewed a judgmental sample of payroll, travel, miscellaneous, and contract costs to determine whether the response costs EPA billed support and align with its authorized PRFA response activities. Our review showed that EPA charged its response costs against the designated site accounting code as required by Agency guidance. However, none of the supporting documentation for payroll and miscellaneous costs contained in the cost documentation package we reviewed linked the costs billed to a specific PRFA activity. Only 35 percent of travel costs reviewed included some description that would link the travel to PRFA activities. Only 36 percent of the contract costs reviewed included a delivery/task order number that we could potentially link to a PRFA activity.

Payroll

For payroll, the supporting information in the cost documentation package included employee timesheets. The timesheets provided a name and, in most cases, a title such as environmental scientist, environmental engineer, scientist, or chemist. There was no supplemental information or documentation provided with the package that addressed how the costs link to the authorized PRFA activities. To determine this link, we reviewed a judgmental sample of supplemental information that included SitReps from Regions 4 and 6 and headquarters. We

also reviewed selected IAPs for Region 6 (IAPs were not prepared for Region 4 and headquarters). In addition, we reviewed a snapshot of data provided by Regions 4 and 6 from their Asset Tracker database.

We were able to link the Regions 4 and 6 SitReps and the Region 6 IAPs to PRFA-authorized activities. However, the SitReps we reviewed for headquarters did not contain enough details to link the work performed to the authorized activities. We were only able to identify a portion of EPA staff from the Regions 4 and 6 SitReps and IAPs and link these staff to time charges billed for the applicable period. The Regions 4 and 6 SitReps and IAPs did not account for many of the EPA staff billed for reimbursement. The headquarters SitReps did not identify any EPA staff. As such, we were unable to link the payroll charges billed to response activities.

Although our review of Asset Tracker was limited, we believe this resource may be a useful tool, along with the SitReps and IAPs, for linking EPA work performed to work billed. EPA managers reported that they could provide documentation linking costs to a specific response activity with additional effort. Based on our analysis of documentation provided by Regions 4 and 6, we agree with managers in those regions that, with additional effort, EPA could potentially link its payroll costs to PRFA activities. Because of the limited data for headquarters, we could not determine a potential link between work performed and work billed.

Travel

For travel, the information contained in the cost documentation package identified the employee, location, and general purpose of the trip, e.g., DWH oil spill, oil spill support, etc. However, only 35 percent of the vouchers included some description that would link the travel to a PRFA activity. As with payroll, we believe Asset Tracker may be a useful tool in linking travel to authorized PRFA activities.

Miscellaneous

Miscellaneous costs provided no description of the item purchased, purpose for the purchase, or activity related to the purchase. EPA did not include any additional documentation that would help link these cost to authorized PRFA activities.

Contracts

Some contractor invoices (36 percent) provided delivery order/task order numbers. The Coast Guard could use these numbers, along with additional contract information, to determine the activities performed. The remaining 64 percent of contract invoices did not provide any information or documentation

that would identify the work performed. Resolution of the confidential business information (CBI) issue, as discussed in chapter 4 of this report, may provide further clarification of contractor activities.

Conclusion

EPA took a number of needed actions to ensure that it had sufficient resources to respond to the Gulf Coast oil spill and that it had controls to track and document its response costs. However, EPA needs to do more to assure that the Coast Guard will reimburse its costs. Consistent and complete documentation that details response activities and links them to authorized PRFA activities will provide a clearer audit trail than currently exists.

Recommendation

We recommend that the Chief Financial Officer:

1. Implement controls to ensure that EPA consistently generates response activity documentation that provides a clear audit trail linking response work performed to response work billed.

Agency Response and OIG Evaluation

The Office of the Chief Financial Officer (OCFO) provided Agency comments. We reviewed OCFO's comments, met with OCFO officials to discuss the comments, and made changes to the report where appropriate. Appendix B provides the full text of OCFO's response and the OIG's comments.

EPA disagreed with recommendation 1. The Agency believes that the necessary controls needed to track EPA's DWH response costs to EPA's three PRFA's are in place. The Agency stated that DWH guidance established the accounting codes to track costs associated with the three PRFAs which were assigned to the Agency for response work. The Agency asserts that through this guidance, a structure was put in place to provide an audit trail for all costs related to each of the PRFAs and that the PRFAs did not require billing by subcategory, so the Agency did not set up account codes to track lower than PRFA spending. The Agency believes the use of the PRFA account code along with the Agency controls in place prior to making payments indicate that the costs were correctly applied. In a meeting to discuss their comments, an Agency manager stated that the cost benefit of implementing the recommendation needs to be considered. There is concern about putting resources into tracking costs at an activity level when the Coast Guard has not yet asked for information at this level. However, Coast Guard guidance entitled *Technical Operating Procedures for Resource Documentation under the Oil Pollution Act of 1990*, which is listed in Appendix 1 of EPA's 1996 MOU with the Coast Guard, provides that documentation should support a clear audit trail.

In our opinion, the use of the account code only shows that work relates to the site, it does not identify the specific PRFA activity conducted and does not provide a clear audit trail. When the OIG looked at additional information to identify specific PRFA activities conducted in order to link billed activity with authorized PRFA tasks, such as the SitReps and IAPs for payroll as suggested by the Agency, we were unable to link the billed response activity to PRFA authorized activities because a clear audit trail did not exist. We also found that SitReps and IAPs were not consistently generated among EPA Regions 4 and 6 and headquarters.

Recommendation 1 is unresolved with resolution efforts in progress.

Chapter 3

EPA Should Improve Controls to Address Deficiencies in Cost Documentation

EPA needs to improve its billing reviews to ensure clarity and completeness of its cost documentation packages prior to submittal to the Coast Guard. Coast Guard NPFC guidance provides for documentation that supports a clear audit trail. In addition, EPA's cash advance MOU with the Coast Guard outlines specific documentation required to support EPA's bills for its cash advance. Our review of a sample of EPA's billings and supporting cost documentation packages identified examples of required documentation that was missing. We also identified instances in which EPA needed to provide explanation or clarifying documentation. As a result, we were unable to determine whether EPA should have billed the applicable costs for reimbursement. These conditions create risk that Coast Guard may delay or deny reimbursement for some of EPA's response costs possibly as much as \$32 million.

Improvements Needed in EPA's Billing Review Process

EPA relied on its existing controls to ensure proper charging and billing of costs for reimbursement. However, EPA should improve its review of its cost documentation packages to ensure the information clearly supports its billed response costs. Further EPA needs to strengthen its controls to ensure that cost documentation is complete and complies with the documentation requirements of the cash advance MOU. We found examples of missing and incomplete information that required clarification or additional documentation.

OIG Sample Results

We reviewed a judgmental sample of payroll, travel, miscellaneous, and contract costs to determine whether the response costs EPA had billed met Coast Guard NPFC and MOU cost documentation requirements. Within the sample, we observed missing documentation for payroll, miscellaneous, and contract charges. We also found instances in which EPA needed to provide clarification and/or additional information to supplement the already-provided documentation. Clarification and/or additional information was needed for some payroll, travel, and contracts costs.

Payroll

For the payroll charges we reviewed, 25 of 53, or 47 percent, required either explanation or additional documentation. For example, EPA billed costs with no corresponding payroll hours. In addition, EPA split costs, with some costs billed

to Region 4 and some to Region 6, without explanation in the cost package. In one case, five timesheets were missing from the cost documentation. These examples demonstrate that in some cases the cost documentation did not provide a clear audit trail.

Travel

For travel vouchers we reviewed, 12 of 34, or 35 percent, required additional explanation. We found examples of split costs, with some costs billed to Region 4 and some to Region 6, cross-funding between the DWH site code and other programs such as Superfund, and split payments between the traveler and the traveler's credit card. In all instances, EPA provided no explanation with the detailed cost documentation.

Miscellaneous

For miscellaneous costs, 100 percent of the 20 vouchers we reviewed required additional documentation. None of the vouchers included receipts or invoices to support the cost. Although not included as part of the cost documentation package, EPA explained that it could obtain the supporting documentation from the employee if requested.

Contracts

For contract costs, 19 of 27, or 70 percent, of the invoices reviewed required additional documentation or explanation. We found examples of contract vouchers that were missing invoices and invoices in which EPA had redacted CBI. In addition, some vouchers had invoices that included charges for other EPA work, not only the BP spill. In all instances, EPA provided no explanation in the detailed cost documentation.

Coast Guard Review of Cost Documentation Packages

On November 1, 2010, EPA received comments from the Coast Guard on its review of the same billings included in our sample. The Coast Guard comments were similar to our independent findings. The Coast Guard requested additional explanation or description from EPA, along with additional supporting documentation for various costs including payroll, travel, miscellaneous, and contracts. According to EPA, in April of 2011, the Coast Guard accepted EPA's payroll and travel documentation, but requested more specific cost documentation to support the \$32 million in contractor and miscellaneous invoices. Because the Coast Guard's review of contractor and miscellaneous invoices is still in process, it cannot be determined that the Coast Guard has denied any costs for reimbursement or requested repayment of any advanced funds.

Conclusion

While EPA has established charging and billing processes, it could do more to ensure that the Coast Guard reimburses its response costs and does so in a timely manner. EPA cost documentation packages need to be clear and complete to comply with the Coast Guard NPFC and cash advance MOU cost documentation requirements and to avoid the risk that Coast Guard may delay or deny reimbursement for some of EPA's response costs, possibly as much as \$32 million.

Recommendation

We recommend that the Chief Financial Officer:

2. Implement controls to ensure that bills and supporting cost documentation packages submitted to the Coast Guard are clear and complete, and comply with cost documentation requirements.

Agency Response and OIG Evaluation

OCFO provided Agency comments. We reviewed OCFO's comments, and met with OCFO officials to discuss the comments. Appendix B provides the full text of OCFO's response and the OIG's comments.

The Agency agreed with recommendation 2 and provided an acceptable corrective action plan. The Agency stated it is in negotiations with the Coast Guard to establish a protocol for future sites that will include a new cost documentation procedure that ensures EPA provides the Coast Guard with the necessary documentation to support the EPA billings. This recommendation is open with agreed-to corrective actions pending.

Chapter 4

EPA at Risk Due to Impasse on Handling of Confidential Business Information

EPA and the Coast Guard have reached an impasse on the handling of contractor CBI. Although EPA submitted required invoices in its cost documentation packages to the Coast Guard, in the sample we reviewed, EPA redacted most if not all information (other than the total cost billed) contained in the invoices. EPA indicated that it could not release the information without a signed non-disclosure agreement for protection of CBI. EPA's cash advance MOU with Coast Guard established specific documentation requirements that EPA should meet in supporting the drawdown of its cash advance, including contractor invoices and supporting documentation with detailed activity. By redacting CBI information from its invoices, EPA does not comply with its MOU requirements. As a result, EPA is at risk of the Coast Guard indefinitely delaying reimbursement, denying costs, and requiring repayment of cash advances. This is significant because EPA contract costs represent over 67 percent of its total response costs. Any of these situations could potentially render EPA unable to pay its contractors in a timely manner. If this impasse remains unresolved, EPA may be at risk of incurring Anti-Deficiency Act (ADA)⁵ and Prompt Payment rule⁶ penalties. As detailed in chapter 5, EPA had incurred an ADA violation in November 2010.

Redacted CBI Needed for Reimbursement and Cost Recovery

The Coast Guard, in its November 1, 2010, comments to EPA on its cost documentation packages, stated that it needed explanations, clarifications, and invoices to consider the costs for reimbursement. EPA later clarified that the Coast Guard needed unredacted documentation. The Coast Guard also informed EPA that it needed the information for cost recovery. EPA stated that, due to protection provided by the Trade Secrets Act, EPA could only share CBI with the Coast Guard after providing proper notice to respective contractors about the potential release. EPA indicated that the Coast Guard would have to sign a non-disclosure agreement before EPA would release any documentation containing CBI. EPA stated the non-disclosure agreement was necessary because EPA

⁵ An ADA violation occurs when funds are obligated or expended without sufficient appropriations to cover the obligation or expenditure. Based on Office of Management and Budget Circular A-11 (Part 4), the EPA Administrator is required to report the ADA violation through the Director of the Office of Management and Budget to the President, Congress, and the Comptroller General, and provide a comprehensive plan of action for preventing any future recurrence.

⁶ The Prompt Payment rule ensures that federal agencies pay vendors in a timely manner. Under the rule, agencies that pay vendors after a payment due date are assessed late interest penalties.

regulations require a non-disclosure agreement be in place before EPA can provide unredacted documents to another federal agency.

As an interim measure to address the sharing of CBI, EPA and the Coast Guard signed an agreement on November 18, 2010, that allowed the Coast Guard to view unredacted invoices in EPA offices. However, the Coast Guard could not copy or retain the contractor invoices. The Coast Guard visited EPA in November 2010 and reviewed some contractor invoices. Not all invoices were available because EPA had not completed its required contractor release notifications. The Coast Guard returned to EPA in early December 2010 to complete its review but, due to a miscommunication, was unable to gain access to the EPA building.

Also during this time, due to ongoing cash flow problems, EPA requested and the Coast Guard denied a second cash advance. According to the Coast Guard, the denial was due in part to EPA not providing required contractor CBI-related cost documentation. Ultimately, the denial of EPA's second cash advance request contributed to EPA incurring an ADA violation in fiscal year 2011 and has created delays in payments to EPA's contractors.

On December 10, 2010, EPA's Deputy Chief Financial Officer met with the Coast Guard on the CBI issue and sent it a non-disclosure agreement for signature. The agreement stipulates an EPA requirement to identify CBI and notify contractors of the release of CBI in invoices. The December 2010 agreement is not limited to DWH only, but covers all cost documentation related to all actions taken by EPA and its contractors under EPA's removal authority under Section 311 of the CWA, OPA, and/or the NCP. By signing the agreement, the Coast Guard would be agreeing that material designated as CBI or potential CBI by EPA shall not be disclosed unless it is in accordance with 40 Code of Federal Regulations § 2.209(c)(5).

According to EPA's Deputy Chief Financial Officer, correspondence with the Coast Guard in December 2010 indicated that the Coast Guard would get back to EPA regarding the non-disclosure agreement. On January 25, 2011, the OIG contacted the Coast Guard to discuss the impact of the CBI issue on EPA's cost reimbursement. The Coast Guard informed us that while it wishes to resolve the CBI issue, it has not agreed to EPA's proposed non-disclosure agreement. Further, EPA has not released unredacted contractor cost documentation for Coast Guard review. The Coast Guard explained that it needed the CBI contract-related cost documentation for cost recovery from the responsible parties, and cost recovery is needed to reimburse EPA.

The OIG met with EPA financial officers on February 15, 2011, for an update on the CBI issue. At that meeting, we learned that the Coast Guard had not signed or contacted EPA about the non-disclosure agreement. Additionally, EPA has not

released its unredacted contractor cost documentation and, as of mid-January 2011, has stopped submitting bills to the Coast Guard for reimbursement.

Conclusion

If EPA and the Coast Guard cannot reach agreement on the sharing of CBI, there is risk that the Coast Guard will not reimburse EPA for a significant portion of its response costs. In addition, the impasse has contributed to delays in payments to EPA's contractors. If this issue remains unresolved or is not timely addressed, and EPA cannot pay its contractors timely, EPA may face additional ADA violations and Prompt Payment rule penalties. Further, the unresolved CBI issue impedes EPA's ability to seek additional cash advances from the Coast Guard.

Recommendation

We recommend that the Deputy Administrator:

3. Work with Coast Guard counterparts to develop and ensure the timely implementation of an appropriate means of sharing EPA contractors' response cost documentation designated as CBI.

Agency Response and OIG Evaluation

OCFO provided Agency comments. We reviewed OCFO's comments, met with OCFO officials to discuss the comments, and made changes to the report where appropriate. Appendix B provides the full text of OCFO's response and the OIG's comments

The Agency agreed with recommendation 3 and provided an acceptable corrective action plan. The Agency stated that it implemented a non-disclosure agreement with the Coast Guard in March 9, 2011. In addition, the Agency said that it is in negotiations to implement a non-disclosure agreement that will cover all work performed on future sites and this will be completed by December 31, 2011. This recommendation is open with agreed-to corrective action pending.

Chapter 5

EPA Needs Additional Authority for Funding Future Responses

EPA did not have sufficient oil spill response funding to handle its costs related to the Gulf Coast oil spill. For those PRFA activities pending approval and funding by the Coast Guard, EPA temporarily charged three non-oil-spill appropriations, resulting in one purpose violation with respect to the Superfund appropriation.⁷ EPA also reprogrammed available Oil Spill and EPM-appropriated funds to cover these initial unfunded costs. For its PRFA-funded activities, EPA used available cash from its Oil Spill appropriation along with any reimbursements received from the Coast Guard for previous oil spill work to pay for these activities prior to receiving reimbursement from the Coast Guard. While EPA used its authority to temporarily charge other appropriations and reprogram existing funds, this authority was limited by relevant appropriation laws. EPA does not appear to have the additional authority to provide itself with an alternative funding option for immediate access to necessary response funds—other than its limited Oil Spill appropriation—or to allow itself a waiver or temporary exemption from relevant appropriation laws. As a result, EPA could not cover its rapidly growing response costs. Despite a cash advance from the Coast Guard of \$32 million, EPA continued to have cash flow problems that resulted in an ADA violation in November 2010. Without additional emergency oil spill response funding, EPA’s removal ability may be impeded, and EPA may be vulnerable to potential ADA and Prompt Payment rule penalties on this and future oil spills.

EPA Faced Funding Challenges in Its Oil Spill Response

EPA faced challenges in funding its response work. Reimbursement from the Coast Guard was not immediate and EPA did not have enough of its own resources to cover its increasing response activities. In an attempt to prevent a funding shortfall, EPA issued guidance that allowed for temporary charging to non-oil-spill appropriations and for the reprogramming of funds. EPA also sought and received a cash advance for \$32 million from the Coast Guard. Because EPA did not have timely access to sufficient funds, it incurred an ADA violation in November 2010. In addition, EPA’s temporary charging against Superfund resulted in a purpose violation because EPA did not use the Superfund funds for their intended purpose.

⁷ Under 31 U.S. Code § 1301(a), EPA may not charge Superfund for activities solely undertaken to respond to the oil spill, even on a temporary basis.

Temporary Charging

Due to the limited availability of Oil Spill Trust Fund appropriated funds and time lags in the approval of its PRFAs, EPA temporarily charged other non-oil spill appropriations.

EPA issued *Additional Guidance on Tracking Spending for the BP Gulf of Mexico (Deepwater Horizon) Oil Spill* on June 22, 2010, that addressed temporary charging. EPA temporarily charged to other appropriations approximately \$1.3 million of payroll and just over \$1.0 million of other costs, including travel, contracts, and expenses. Specifically, EPA charged costs to the Superfund, EPM, and S&T appropriations. Payroll charges to these appropriations began on April 25, 2010, and ended in July 2010. The charges involved 260 employees and 794 payroll transactions (table 2).

Table 2: Temporary payroll charging

Fund	Number of transactions	Number of employees affected	Amount
Superfund	36	19	\$86,150
S&T	194	64	308,554
EPM	564	177	933,537
Total	794	260	\$1,328,241

Source: OIG analysis of EPA data.

EPA also expended or planned to expend other nonpayroll costs, including travel, contracts, and other expenses, under the S&T and EPM appropriations. The nonpayroll expenses began May 13, 2010, and continued through August 31, 2010. The expenses included 759 transactions totaling over \$1.0 million (table 3).

Table 3: Temporary other costs charged

Fund	Number of transactions	Amount
Superfund	0	\$0
S&T	308	421,763
EPM	451	583,802
Total	759	\$1,005,565

Source: OIG analysis of EPA data.

Because charges were made to non-oil-spill appropriations, EPA was required to correct or reverse its temporary charges to the Superfund, S&T, and EPM appropriations to the reimbursable Oil Spill appropriation. This correction was necessary for EPA to bill the Coast Guard for reimbursement. Further, EPA had to reverse the temporary charges to the S&T and EPM appropriations by the end of the fiscal year to avoid a purpose violation. Per EPA, all appropriate temporary charges were corrected by the end of the fiscal year as required.

EPA's temporary charging to Superfund violated 31 U.S. § 1301(a), a "purpose statute" violation because EPA may not charge Superfund for activities solely undertaken to respond to the oil spills. An EPA memorandum, *Adjustments to Appropriated Funds Spending for the BP Gulf of Mexico (Deepwater Horizon) Oil Spill*, dated August 20, 2010, required that all appropriate charges be reversed to EPA's oil spill appropriation (H) or reimbursable account (HR). Because EPA was able to reverse all appropriate temporary charges to Superfund within the same fiscal year they occurred (fiscal year 2010), the Superfund purpose violation did not result in an ADA violation.

Reprogramming

In addition to temporary charging, EPA also asked the Office of Solid Waste and Emergency Response and the regions (with the exception of Region 4 and 6), in its *Oil Appropriations Spending Memorandum*, dated June 7, 2010, to reprogram any available Oil-Spill-appropriated funds to cover its response costs. EPA reprogrammed approximately \$4.3 million, including \$1.3 million in Oil Spill funds and \$3.0 million in EPM funds. The Agency advised the OIG that it would not necessarily reverse these funds because it was not required to do so.

Cash Advance

EPA used available cash from its oil spill appropriation along with any reimbursements received from the Coast Guard for previous oil spill work performed to cover its PRFA activities prior to reimbursement by the Coast Guard. However, due to the timing and magnitude of the spill and EPA's escalating involvement in the response, EPA did not have enough cash in its Oil Spill fund to cover its response costs. When the oil spill occurred on April 22, 2010, EPA was into the third quarter of the fiscal year and had less cash for oil spill response than at the start of the fiscal year. By June 2010, EPA realized that cash was going out faster than the reimbursement was coming in.

To prevent an anticipated cash shortfall, EPA negotiated a cash advance MOU with the Coast Guard's NPFC in August 2010. The MOU provided a \$32 million cash advance, including \$9 million allocated to Region 4, \$18 million to Region 6, and \$5 million to headquarters.

EPA needed the cash advance to manage its cash flow for the DWH expenses. These expenses were within EPA's approved PRFA funding but exceeded the Agency's available cash. The cash advance temporarily solved EPA's anticipated cash shortfall at the time. However, in November 2010, EPA continued to experience cash flow problems resulting in part from its response to the DWH oil spill and the Enbridge spill in Michigan. EPA asked the Coast Guard for another cash advance. This time, EPA requested a \$10 million cash advance against its interagency agreement with the Coast Guard, rather than its DWH PRFAs. However, per EPA, the Coast Guard denied the request, citing issues with access

to cost documentation. According to EPA, the Coast Guard's denial of the second cash advance, combined with EPA's continued shortfall of funds, contributed to an ADA violation in November 2010.

Conclusion

EPA had to quickly develop novel solutions to fund its Gulf Coast oil spill emergency response work. While these actions provided EPA with access to some necessary funding, EPA's authority did not appear to provide it with an alternative funding option for obtaining immediate access to necessary response funds, other than its limited Oil Spill appropriation along with any reimbursements received from the Coast Guard for previous oil spill work performed. EPA's authority also did not appear to allow it to grant itself a waiver or temporary exemption from relevant laws while it was trying to focus on funding its considerable and time-urgent response. While the cash advance provided EPA with access to needed funds, and the temporary charging and reprogramming provided short-term coverage for response funding prior to receiving authorized funding, EPA may not be able to rely on similar circumstances in the future. During the course of our review, EPA proposed language to the President's 2012 budget to provide that the Oil Spill Fund can seek relief from any other appropriation if the Administrator determines that the Oil Spill Fund does not have enough cash to carry out the oil spill remediation.

Recommendation

We recommend that the Chief Financial Officer:

4. Seek new or additional emergency response funding authority for oil spills.

Agency Response and OIG Evaluation

OCFO provided Agency comments. We reviewed OCFO's comments, met with OCFO officials to discuss the comments, and made changes to the report, as appropriate. Appendix B provides the full text of OCFO's response and the OIG's comments.

The Agency agreed with recommendation 4, provided an acceptable corrective action plan, and took action to address this recommendation during the course of this review. The Agency advised that in its fiscal year 2012 President's Budget (2012 appropriation), the EPA proposed to Congress new statutory authority for emergency transfers from any of EPA's appropriations into the Oil Spill Response Account when the cash flow of funds out of the account is higher than expected. This authority will reduce the risk of future anti-deficiency violations by the Agency. This recommendation is considered closed with agreed to actions complete.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	9	Implement controls to ensure EPA consistently generates response activity documentation that provides a clear audit trail linking response work performed to response work billed.	U	Chief Financial Officer			
2	13	Implement controls to ensure that bills and supporting cost documentation packages submitted to the Coast Guard are clear and complete, and comply with cost documentation requirements.	O	Chief Financial Officer	12/31/2011	\$32,000	\$32,000
3	16	Work with Coast Guard counterparts to develop and ensure the timely implementation of an appropriate means of sharing EPA contractors' response cost documentation designated as CBI.	O	Deputy Administrator	12/31/2011		
4	20	Seek new or additional emergency response funding authority for oil spills	C	Chief Financial Officer	02/14/2011		

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

Details on Scope and Methodology

We conducted our evaluation from July 2010 through May 2011, in accordance with generally accepted government auditing standards. We reviewed EPA's management controls to track and recover its Gulf Coast oil spill response costs. To gain an understanding of these controls, we met with EPA headquarters managers and staff in OCFO and the Office of Solid Waste and Emergency Response, Office of Enforcement and Compliance Assurance, and Office of General Counsel. We interviewed managers and staff from Regions 4 and 6 and the Office of Financial Management, Cincinnati Finance Center.

To obtain background and an understanding of oil spill response requirements, we reviewed the OPA, as well as the NCP as it relates to the Oil Spill Liability Trust Fund. We identified EPA's roles and responsibilities specifically related to the DWH oil spill. We reviewed specific EPA cost tracking and spending policies and procedures. We reviewed the Coast Guard NPFC guidance as it relates to EPA's required cost documentation for PRFA-directed activities. We reviewed relevant MOUs between the Coast Guard and EPA, including:

- *Memorandum of Understanding between the US EPA and the US Coast Guard - For Use of the Oil Spill Liability Trust Fund*, December, 1996
- *Memorandum of Understanding between Director, USCG National Pollution Funds Center, and Director, USEPA Cincinnati Financial Management Center Governing Cash Advances from the Oil Spill Liability Trust Fund related to the Deepwater Horizon Incident Spill Response*, FPN NI0036, August 3, 2010

We reviewed relevant prior audit and evaluations reports, including: (1) U.S. Government Accountability Office report, *Deepwater Horizon Oil Spill: Preliminary Assessment of Federal Financial Risks and Cost Reimbursement and Notification Policies and Procedures*, GAO-11-90R, November 12, 2010; and (2) U.S. Department of Commerce OIG memorandum, *Survey of NOAA's System and Processes for Tracking Oil Spill Costs*, OIG-11-016-M, December 22, 2010.

To determine where EPA's funding originated for its oil spill response, we requested and reviewed payroll information from the Agency. We used this information to identify all sources of funding for payroll, including temporary charging. We identified and reviewed Agency procedures for the temporary charging and reprogramming of funds. We identified procedures and controls in place to ensure that EPA corrected and reimbursed temporary charges to the appropriate funds.

These procedures and controls are captured within the following guidance:

- *Tracking Spending for the BP Gulf of Mexico (Deepwater Horizon) Oil Spill*, May 18, 2010
- *Oil Appropriation Spending*, June 7, 2010

- *Additional Guidance on Tracking Spending for the BP Gulf of Mexico (Deepwater Horizon) Oil Spill*, June 22, 2010
- *Adjustments to Appropriated Funds Spending for the BP Gulf of Mexico (Deepwater Horizon) Oil Spill*, August 20, 2010

We reviewed EPA's actions to determine whether any ADA violations have occurred and have been reported to Congress or should be.

We obtained and reviewed EPA's PRFAs (including 21 amendments) and associated statements of work through September 30, 2010, for Regions 4 and 6 and headquarters. We reviewed the PRFAs to identify reimbursable and nonreimbursable activities. We also reviewed the PRFAs to determine applicable timeframes for activities billed and eligibility of work performed prior to the PRFA date.

We met with personnel from the Coast Guard NPFC to discuss EPA's billings, cost documentation, and the cash advance MOU. We had communications with Coast Guard staff to obtain an understanding of the Coast Guard's billing and cost documentation review process.

To determine whether response costs submitted by EPA to the Coast Guard support and align with PRFA tasks and activities, we reviewed EPA's supporting cost summaries prepared through Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS). We obtained 14 bills sent to the Coast Guard for costs incurred as of August 31, 2010. The 14 bills included 4 bills for headquarters, 5 bills for Region 4, and 5 bills for Region 6. The bills totaled over \$20.9 million. To determine EPA's compliance with the detailed cost documentation requirements of the cash advance MOU, we reviewed the only cost documentation packages available at the time. In this instance, the first cash advance was in August 2010, and EPA's first cost documentation packages under the MOU were not submitted until October 14, 2010.

The packages, covering costs incurred through July 31, 2010, included one for headquarters supporting Bill #3, one for Region 4 supporting Bill #4, and one for Region 6 supporting Bill #4. The costs of the packages we reviewed totaled approximately \$5.8 million, of which we sampled approximately \$2.9 million, or 51 percent. For each package, we judgmentally sampled the first 10 employees for payroll and travel and the first 10 vouchers for miscellaneous costs. Some employees had multiple entries for payroll and travel. For all three packages, we reviewed all vouchers for contract costs. For payroll, we reviewed employee timesheets and reconciled hours billed to payroll hours for 5 percent of payroll costs in our sample billings. For travel, we reconciled costs billed to supporting vouchers and receipts for 10 percent of travel costs in our sample billings. For miscellaneous costs, we reconciled costs billed to transaction/payment reports (no invoices or receipts provided) for 28 percent of miscellaneous costs in our sample billings. For payroll, travel, and miscellaneous, we attempted to identify activities/work performed to compare activities billed to those authorized in the PRFAs. However, we were unable to accomplish this in most instances because the supporting documentation did not always identify the activity/work performed.

For contract costs, because there were less than 10 vouchers in each of the packages, we reviewed supporting documentation for 100 percent of the contract costs in our sample billings.

We reconciled billed costs to invoices and payment schedules. As with the payroll, travel, and miscellaneous costs, we attempted to identify and compare activities/work performed with those authorized in the PRFAs. Similar to the other costs, we were unable to accomplish this in most instances because EPA did not provide the information in the supporting documentation.

To link activities that employees were performing with PRFA-approved activities, we judgmentally chose to sample the operational period of June 20, 2010, to July 3, 2010 (pay period #20). We reviewed the applicable IAP for Region 6. We reviewed 31 SitReps, including 15 from Region 4, another 14 from Region 6, and 2 from headquarters. We compared these documents to payroll bills in an effort to determine whether staff listed in the SitReps and IAPs correspond to staff listed in the billings. We also reviewed a snapshot from the Asset Tracker provided by Regions 4 and 6.

To determine how EPA tracked temporary costs charged to non-oil-spill appropriations, we requested a listing of all EPA employees working on the response (including those charging the reimbursable oil spill account and those temporarily charging other accounts). We also requested a listing of other costs (nonpayroll) that were temporarily charged. We identified how EPA tracked the costs for future reimbursement. We also reviewed data provided by the Agency indicating that EPA had corrected all appropriate temporary charges.

To determine how EPA tracked reprogrammed Oil Spill appropriations, we obtained and reviewed an Integrated Financial Management System (IFMS) report from the Agency. The Agency had reprogrammed oil funding in 16 instances.

To identify what data systems and processes EPA used to track and monitor costs for reimbursement, we interviewed program officials in Regions 4 and 6 and managers in OCFO and the Office of Financial Management, Cincinnati Finance Center. We identified and relied on information in the SCORPIOS, IFMS, PeoplePlus, and GovTrip data systems to conduct our review. We relied on response activity documentation, including SitReps and IAPs obtained from the Agency's on scene coordinator website and Asset Tracker data provided by Regions 4 and 6. We also relied on other information and data provided by the Agency for temporary charging and reprogramming of funds. We did not verify the accuracy of the information obtained or data received. However, we believe the data was sufficient for our review.

We identified EPA headquarters and Regions 4 and 6 procedures and controls for processing of expenses charged to the DWH oil spill, and supporting documentation, but did not test these controls. We also reviewed regional guidance on charging to the DWH oil spill. The guidance reviewed includes the following:

- *Guidance for Headquarters Payroll Charging to the Deep Water Horizon (DWH) Oil Spill Account, June 17, 2010*
- *EPA Region 6 Guidance for Charging to Deep Water Horizon Oil Spill Response, June 30, 2010*
- *EPA Region 4 Guidance for Charging to BP Gulf of Mexico Deep Water Horizon Oil Spill Response, July 20, 2010*

Agency Response to Draft Report and OIG Comment

(Received June 23, 2011)

MEMORANDUM

SUBJECT: Response to the Draft Report: Office of Inspector General Evaluation of EPA's Gulf Coast Oil Spill Response Shows Need for Improved Documentation and Funding Practices, Project No. 2010-1314, dated May 5, 2011

FROM: Barbara J. Bennett
Chief Financial Officer

TO: Arthur A. Elkins, Jr.
Inspector General

Thank you for providing us with the opportunity to comment on and respond to the findings and recommendations made in the "Draft Report: Office of Inspector General Evaluation of EPA's Gulf Coast Oil Spill Response Shows Need for Improved Documentation and Funding Practices." We have reviewed the draft report and provided two attachments in response: (1) Comments on the OIG Draft Report and (2) Proposed Corrective Action Plan.

If you have any questions concerning this response, please contact Stefan Silzer, Director, Office of Financial Management (OFM), at (202) 564-5389 or Chris Osborne of OFM at (202) 564-5070.

Attachments (2)

cc: Bob Perciasepe
Maryann Froehlich
Wade T. Najjum
Joshua Baylson
Elizabeth Grossman
Stefan Silzer
Raffael Stein
David Bloom
John Bashista
Susan Dax

Melvin Visnick
Carol Terris
Christopher Osborne
Jeanne Conklin
Dale Miller
Sandy Dickens
Janice Kern
Bobbie Trent
Carolyn Copper
Chad Kincheloe
Angela Bennett
Anne Declerck
James Bove
Dana Stalcup

Comments on OIG Draft Report

“Office of Inspector General Evaluation of EPA’s Gulf Coast Oil Spill Response Shows Need for Improved Documentation and Funding Practices”
Project No. 2010-1314, dated May 5, 2011

Chapter 1

Page 1 Paragraph 1 under National Contingency Plan and Federal Response: The report states that the United States Coast Guard (USCG) has collected \$518.4 million from BP for costs related to the spill. The paragraph should go on to explain that “The billed amounts encompass actual Federal On Scene Coordinator (FOSC) expenditures including costs of all USCG personnel, ships, aircraft, and cutters directly supporting the FOSC and funds obligated by the FOSC to other federal, state, and local government agencies. All the obligations and expenditures to date are considered billable and fully collectible from the responsible parties. Funds are obligated by the FOSC to other federal, state, and local government agencies via FOSC approved Pollution Removal Funding Authorizations (PRFAs) or Military Interdepartmental Purchase Requests that provide reimbursable funding authority” (DHS 2010 Annual Financial Report page 99). It should be made clear in the report that the USCG has collected from BP all of the funds obligated to other federal agencies under PRFAs (which include the three PRFAs to the EPA).

OIG Response: Language that OIG could independently support was added to the final report in the *National Contingency Plan and Federal Response* section to include a paragraph from the cited Department of Homeland Security 2010 Annual Financial Report.

Page 2 Paragraph 3 under Funding of EPA Response Activities: The report contains multiple references to the 1996 Memorandum of Understanding (MOU) signed by the EPA and the USCG regarding use of the Oil Spill Liability Trust Fund. The report should also acknowledge that the USCG has accepted summary level documentation for reimbursement since 1996. Prior to the DWH oil spill, USCG only required detailed cost documentation for select cases in which USCG had initiated an action to seek reimbursement from a responsible party.

OIG Response: The Agency has disclosed that Coast Guard has ‘only’ required detailed cost documentation for ‘select cases’ in which Coast Guard had initiated an action to seek reimbursement from a responsible party. Given that the DWH oil spill was the largest oil spill in U.S. history, and with a responsible party, in our opinion, the Agency should have expected that the Coast Guard would be seeking reimbursement from the responsible party and detailed cost documentation from EPA to support the USCG reimbursement efforts. The Agency’s request for OIG to acknowledge in the report that USCG has accepted summary level cost documentation in the past is not relevant in this circumstance.

Page 2 Paragraph 4 under Funding of EPA Response Activities: The description of the cash available to make payments from the Oil Spill Account is unclear. The OIG report states “EPA used its available cash from its Oil Spill reimbursable account to pay for its PRFA authorized activities.” The PRFAs and the interagency agreement with the USCG do not provide cash to the Agency. They only provide the authority to obligate funds. The Agency is limited to the cash available from the Oil Spill appropriation along with any reimbursements received from the USCG for previous work performed.

OIG Response: Language was modified in the final report in the *Funding of EPA Response Activities* section to clarify the information.

Page 3 Paragraph 1: The EPA did not draw down funds based on billing summaries as part of the cash advance. The cash advance was an advance of funds to ensure that the EPA had cash available in the Agency account to pay expenses. The EPA was to provide the cost summaries and cost documentation to support the expenses to liquidate the advance.

OIG Response: Language was added to the final report in the *Funding of EPA Response Activities* section to clarify the information.

Chapter 2

Page 5 Paragraph 1: The OIG states that the documentation does not create a clear audit trail for the USCG to accept the costs. In the previous chapter under Noteworthy Achievements, the OIG states that the DWH Tracking and Spending Guidance “helped EPA ensure appropriate tracking of its response costs and maintain fiscal integrity.” The guidance established the accounting codes to be used to track costs associated with the three PRFAs which were assigned to the EPA for response work. Through this guidance, a structure was put in place to provide an audit trail for all costs related to each of the PRFAs. The PRFAs did not require billing by subcategory so the EPA did not set up account codes to track lower than the PRFA spending.

OIG Response: The guidance OIG includes in the report’s “Noteworthy Achievements” section does not ensure that EPA consistently generates response activity documentation that provides a clear audit trail that links response work performed to response work billed. However, we recognize the value of the guidance as a first important step in tracking the Agency’s response costs and providing consistent guidance to Agency staff and managers.

Chapter 2 of the OIG report states that EPA’s cost documentation packages provided to support the billings EPA sends to the Coast Guard for reimbursement deal with financial activity categories, not response activities. We reviewed a judgmental sample of these cost documentation packages and concluded EPA charged its response costs as required by Agency guidance to the DWH account code. However, only 35 percent of the supporting documentation for travel, 36 percent of the supporting documentation for contracts, and none of the supporting documentation for payroll and miscellaneous provided a clear audit trail that linked the costs billed to specific PRFA activities. Coast Guard NPFC guidance entitled *Technical Operating Procedures for Resource Documentation under the Oil Pollution Act of 1990*, which is listed in

Appendix 1 of EPA's 1996 MOU with the Coast Guard, provides that documentation should support a clear audit trail. EPA advised that it generally provided information on response activities to the Coast Guard in the form of SitReps and IAPs. EPA told us that reviewing response activity documentation in conjunction with its cost documentation would provide a complete picture of EPA's response activity performed and billed. Therefore, we looked at a judgmental sample of the response activity documentation generated by EPA Regions 4 and 6 and headquarters. Based on our review we concluded that the response activity documentation did not provide a clear audit trail between the work performed and billed to the Coast Guard and was not consistently generated by EPA headquarters and Region 4 and 6. While PRFA's may not explicitly require billing by subcategory, to provide a clear audit trail for Coast Guard to reimburse costs, EPA should be able to provide response level activity documentation should the Coast Guard or a responsible party ask for this documentation. We believe that the cost documentation produced by utilizing the PRFA accounting codes, along with improved response level activity documentation, will provide a clearer audit trail. In addition, EPA has disclosed in its response that it is aware that USCG has requested "detailed cost documentation for select cases in which USCG had initiated an action to seek reimbursement from a responsible party." In our opinion, given that the DWH Oil spill was the largest in US history and had a responsible party, EPA should have anticipated and been prepared to provide information that supports a clear audit trail.

The OIG should remove the sentence "While all costs may be appropriate, we were unable to determine whether certain costs were related to authorized activities for reimbursement and, as such, were billable." There is no indication in the draft report that the OIG tested transactions and traced them back to the source to either confirm or deny the costs were associated to the spill. The use of the PRFA account code along with the Agency controls in place prior to making payments indicate that the costs were correctly applied.

OIG Response: Language was modified in the final report to clarify this statement.

As discussed in our response above we reviewed a judgmental sample of cost documentation packages and concluded that EPA charged its response costs as required by Agency guidance, but none of the supporting documentation for payroll and miscellaneous costs, and only 35 percent of the travel costs and 36 percent of the contract costs linked the costs billed to specific PRFA activities. EPA told us that response activity documentation in conjunction with its cost documentation provides a complete picture of EPA's response activity undertaken and billed, so we looked at a judgmental sample of the documentation that the regions generated such as SitReps and IAPs. We concluded that the response activity documentation does not provide a clear audit trail between the work it performed and what it billed to the Coast Guard and was not consistently generated by EPA Regions 4 and 6 and headquarters. Without consistently accounting for response level activity, there is no way to know whether certain costs were related to authorized activities for reimbursement and, as such, billable.

Throughout this Chapter, the OIG continues to state that the costs were not identifiable to specific response activities. The Agency account code was not set up to track an activity because there was no requirement in the PRFA to track at other than the PRFA spending level.

OIG Response: EPA stated that response activity documentation in conjunction with cost documentation provides a complete picture of EPA’s response activity undertaken and billed. Coast Guard NPFC guidance entitled *Technical Operating Procedures for Resource Documentation under the Oil Pollution Act of 1990*, which is listed in Appendix 1 of EPA’s 1996 MOU with the Coast Guard, provides that documentation should support a clear audit trail. While PRFA’s may not require billing by subcategory, EPA should be able to consistently provide response activity documentation in order to provide a clear audit trail that supports reimbursement of costs from the Coast Guard and future cost recovery efforts. EPA has disclosed in its response that it is aware that the Coast Guard has requested “detailed cost documentation for select cases in which Coast Guard had initiated an action to seek reimbursement from a responsible party.” In our opinion, given that the DWH oil spill was the largest in U.S. history and had a responsible party, EPA should have anticipated and been prepared to provide information that supports a clear audit trail and costs at the activity level.

Chapter 3

The chapter identifies issues with payroll and travel along with a statement that the USCG had provided comments on the billings issued through November 2010. The payroll and travel issues in question were minor and the USCG was provided with a satisfactory explanation in a timely manner. The EPA and the USCG reached an agreement on the Confidential Business Information (CBI) issue for DWH in March 2011. Once the agreement was signed, the EPA provided the cost documentation for billing processing to the USCG. On May 2, 2011, the USCG had completed the review of the cost documentation and has accepted all payroll and travel claims without question.

OIG Response: The Agency’s response does not address issues the OIG identified with payroll, travel, miscellaneous, and contract costs, some of which were similar to the issues expressed by the Coast Guard. Further, the Agency’s response also does not provide details on how the CBI agreement with the Coast Guard addresses the OIG findings regarding reimbursement of EPA’s contracts costs. As stated in the report, OIG observed missing documentation for payroll, miscellaneous, and contract charges, and identified areas where clarification and/or additional information was needed for some payroll, travel, and contracts costs for the sample we reviewed. Regardless of how ‘minor’ EPA believes the Coast Guard comments were, EPA still had to address the comments before Coast Guard would reimburse these charges. We believe EPA should implement controls to ensure that bills and supporting cost documentation packages submitted to the Coast Guard are clear and complete and comply with cost documentation requirements.

In follow-up communications with the Agency on its draft report comments, we requested the March 2011 CBI agreement. Based on our review of the information, we determined that the agreement has not yet been effective in providing EPA reimbursement of its contractor costs and other costs are also under review by USCG. However, the agreement has resulted in some EPA costs being reimbursed.

Page 10 Paragraph 1 under Coast Guard Review of Cost Documentation Packages: The OIG states that on November 1, 2010 the EPA received comments on the cost documentation, which had been provided, and were similar to the OIG findings explained in previous sections of this chapter. The questions from the USCG did not dispute whether the costs were charged correctly but were seeking information to either explain the EPA payment process or question what they felt was an anomaly. The expenses were correctly charged to the applicable PRFA.

OIG Response: As the OIG report states, the Coast Guard requested additional explanation or description from EPA along with additional supporting documentation for various costs including payroll, travel, miscellaneous, and contracts. We believe that the Coast Guard requested this information to assist in its review in determining whether the costs were PRFA-related costs and, as such, reimbursable.

Our report goes on to state that the Coast Guard review is still in process. EPA has stated in its response that in March 2011, EPA and the Coast Guard reached an agreement on the CBI issue for DWH. EPA further states that on May 2, 2011, the Coast Guard had completed its review of the cost documentation and had accepted all payroll and travel claims without question. However, as stated in the response above, we determined that the March 2011 agreement has not yet been effective in providing EPA reimbursement of its contractor costs and other costs are also under review by the Coast Guard. The agreement has resulted in some EPA costs being reimbursed.

It should also be noted that during this time there was not the appearance of consistent approaches to communications and understanding of cost documentation requirements. While the program, OCFO and the Agency would benefit from improved procedures for documentation and an updated signed MOU, everyone should be cautious in drawing conclusions based on information and responses/interviews collected during the early stages of the response when some of the parameters seemed to change week to week. For instance, the requirements for detailed cost documentation appeared to change and become more stringent as time passed.

OIG Response: The OIG appreciates that the DWH oil spill was an evolving situation and has noted in the Background of the report that the DWH is the largest spill in US history. Chapter 5 of the OIG report also describes EPA's DWH funding challenges. As stated in the Agency response, EPA will benefit from improved procedures for cost documentation; highlighted by EPA's experiences with the DWH oil spill.

Chapter 4

While the OIG has provided a synopsis of the negotiations with the USCG on the CBI issue, the OIG does not address the underlying need for the CBI non-disclosure agreement. By failing to discuss the basis for this necessity, the report inaccurately characterizes the EPA as being unreasonable for requiring the USCG to enter into the non-disclosure agreement.

OIG Response: The OIG report states that EPA stated that, due to protection provided by the Trade Secrets Act, EPA could only share CBI with the Coast Guard after providing proper notice to respective contractors about the potential release. We do not believe the OIG report implies

that EPA was unreasonable for requiring the Coast Guard to enter into the non-disclosure agreement.

The OIG points out that the USCG requires un-redacted documents for cost recovery, but fails to explain that EPA regulations require that a non-disclosure agreement be in place before the EPA can provide un-redacted documents to another federal agency (40 CFR 2.209(c)). The 1996 MOU, which has already been discussed above, does not establish the necessary documentation for interagency sharing of CBI and, in fact, does not discuss CBI at all. Requiring a non-disclosure agreement is a necessary action that is not contradicted by the MOU. Therefore, the EPA's handling of CBI has been, and is, in accordance to its regulations under 40 CFR Part 2. A non-disclosure agreement between the EPA and USCG was put in place in March 2011, at which time the un-redacted documents were provided to the USCG.

OIG Response: Language was added to the final report in the *Redacted CBI Needed for Reimbursement and Cost Recovery* section to include information provided.

OCFO's Response to OIG Draft Report – Corrective Action Plan

“Office of Inspector General Evaluation of EPA’s Gulf Coast Oil Spill Response Shows Need for Improved Documentation and Funding Practices”

Project No. 2010-1314, dated May 5, 2011

Rec. No.	OIG Recommendation	Action Official(s)	Proposed Corrective Action	Proposed Completion Date
1.	Implement controls to ensure that EPA consistently generates response activity documentation that provides a clear audit trail linking response work performed to response work billed.	Office of the Chief Financial Officer (OCFO)/Office of Financial Services (OFS)	1.1 The necessary controls needed to ensure that the EPA consistently generates response activity documentation are currently in place. The account code provided for each Pollution Removal Funding Authorization (PRFA) or site identified through the interagency agreement provides a clear audit trail to track the costs to each response activity.	N/A
2.	Implement controls to ensure that bills and supporting cost documentation packages submitted to the Coast Guard are clear and complete, and comply with cost documentation requirements.	OCFO/OFS	2.1 The EPA and USCG are in negotiations to establish a protocol for future sites that will include a new cost documentation procedure that ensures the EPA provides the USCG with the necessary documentation to support the EPA billings.	December 31, 2011
3.	Work with Coast Guard counterparts to develop and	Office of the Administrator	3.1 The EPA and the USCG reached an	March 9, 2011

Rec. No.	OIG Recommendation	Action Official(s)	Proposed Corrective Action	Proposed Completion Date
	ensure the timely implementation of an appropriate means of sharing EPA contractors' response cost documentation designated as Confidential Business Information (CBI).	(OA)	agreement on the CBI issue for DWH. 3.2 The EPA and USCG are in negotiations to implement a non-disclosure agreement that will cover all work performed on future sites.	December 31, 2011
4.	Seek new or additional emergency response funding authority for oil spills.	OCFO/Office of Budget	4.1 In its FY 2012 President's Budget (2012 appropriation), the EPA proposed to Congress new statutory authority for emergency transfers from any of EPA's appropriations into the Oil Spill Response Account when the cash flow of funds out of the account is higher than expected. This authority will reduce the risk of future anti-deficiency violations by the Agency.	February 14, 2011

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