



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

EPA Should Bill Superfund Oversight Costs More Timely

Report No. 11-P-0697

September 22, 2011

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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CFC	Cincinnati Finance Center
EPA	U.S. Environmental Protection Agency
IFMS	Integrated Financial Management System
MOU	Memorandum of understanding
OIG	Office of Inspector General
ORC	Office of Regional Counsel
OSWER	Office of Solid Waste and Emergency Response
PRP	Potentially responsible party
SCORPIOS	Superfund Cost Recovery Package Imaging and On-Line System

Hotline

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At a Glance

Catalyst for Improving the Environment

Why We Did This Review

The purpose of this audit was to determine whether the U.S. Environmental Protection Agency's (EPA's) Superfund oversight bills reflect the correct nature and dollar amount, and whether EPA timely bills and collects Superfund oversight expenditures.

Background

Although potentially responsible parties (PRPs) pay for cleanup at Enforcement Lead Superfund sites, EPA incurs oversight costs from monitoring the PRPs' cleanup work. The Comprehensive Environmental Response, Compensation, and Liability Act authorizes EPA to recover from PRPs Superfund cleanup costs that are not inconsistent with the National Contingency Plan.

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/2011/20110922-11-P-0697.pdf

EPA Should Bill Superfund Oversight Costs More Timely

What We Found

Based on our audit of oversight billings for nine sites in Regions 1, 5, and 9, we found that Region 5 did not timely bill or did not bill approximately \$8.6 million in oversight costs for two sites. The \$8.6 million consists of \$2.5 million for costs incurred between 2000 and 2008 that were not timely billed, and \$6.1 million that was not billed prior to the start of our audit. During our audit, Region 5 billed about \$1 million of the \$6.1 million. We did not identify problems with oversight cost billings in Regions 1 or 9.

Region 5 did not timely bill oversight costs and has not billed certain costs because the accounting staff has difficulty in allocating costs at sites with multiple agreements and operable units, and the case management team has difficulty coordinating review of oversight costs. Further, EPA's policies do not require oversight bills to be issued within a specific timeframe. Untimely billing of oversight costs results in delays in replenishing the Superfund Trust Fund, and limits EPA's ability to timely clean up other priority sites to further protect human health and the environment.

What We Recommend

We recommend that the Region 5 Regional Administrator direct the Superfund Division Director to develop a policy to require that oversight billings be issued no less than annually, and procedures to help staff prepare oversight billings and resolve billing problems. We also recommend that the Region 5 Regional Administrator direct the Superfund Division Director to bill PRPs up to \$4,319,545 incurred for the Allied Paper site and approximately \$783,845 for the Sauget site.

While Region 5 did not agree with the recommendation to issue a policy requiring annual billings, Region 5 stated that it plans to bill any future oversight costs on an annual basis. If the Agency bills annually as indicated, that would address the intent of our recommendation. Region 5 agreed that additional protocols are needed to ensure that management is made aware of any projected delay in oversight billing and will develop standard operating procedures. Region 5 partially satisfied our last recommendation by billing \$2,389,367 and \$757,312 in costs for the Allied and Sauget sites, respectively, through August 2, 2011. Because of the timing of the billings, we were unable to verify how much remains to be billed.



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

THE INSPECTOR GENERAL

September 22, 2011

MEMORANDUM

SUBJECT: EPA Should Bill Superfund Oversight Costs More Timely
Report No. 11-P-069⁷

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: Susan Hedman
Regional Administrator, EPA Region 5

This is our report on the subject audit 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 on the subjects reported. Final determination on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The estimated direct labor and travel costs for this report are \$233,961.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed-upon actions, including milestone dates. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your 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. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal. 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 Paul Curtis at (202) 566-2523 or curtis.paul@epa.gov, or Meg Hiatt at (513) 487-2366 or hiatt.margaret@epa.gov.

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Purpose

The purpose of this audit was to determine whether the U.S. Environmental Protection Agency's (EPA's) Superfund oversight bills reflect the correct nature and amount, and whether EPA timely bills and collects Superfund oversight expenditures.

Background

Although potentially responsible parties (PRPs) pay for cleanup at Enforcement Lead Superfund sites, EPA incurs oversight costs from monitoring the PRPs' cleanup work. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to recover from PRPs Superfund cleanup costs that are not inconsistent with the National Contingency Plan. Recoverable costs include EPA's planning and implementing cleanup actions, investigation and monitoring, actions to limit access to the site, indirect costs needed to support the cleanup work, EPA's contractor costs, and annual allocation costs. EPA recovers these costs through cost recovery actions. Cost recovery settlements are either embodied in a consent decree or administrative orders.

- A consent decree is a legal agreement entered into by the United States (through EPA and the U.S. Department of Justice) and PRPs and lodged with a court.
- An administrative order on consent is a similar document, except that it is not approved by the court.

EPA may also recover oversight costs through unilateral administrative orders, which require PRPs to undertake response actions when a settlement is not reached. The settlement agreements establish the billing frequency, and often the agreements state that EPA will bill periodically.

EPA tracks the oversight costs in the Integrated Financial Management System (IFMS). The Office of Regional Counsel (ORC), Superfund Division, or finance office in the regions prepares the cost recovery packages using the Superfund Cost Recovery Package Imaging and On-Line System (SCORPIOS), which extracts costs from IFMS. The cost recovery packages are a compilation of costs incurred for a site and can include such costs as payroll, travel, contractor costs, and indirect costs. The review process of the cost recovery packages varies slightly by region. The ORC, Superfund Division, and finance office review the cost recovery packages to verify financial accuracy of the costs. After all three offices agree on the content, either the Superfund Division or finance office (depending on the region) prepares the final bills, sends the bills to the PRPs, and provides a copy to the Cincinnati Finance Center (CFC). Further, the CFC has the lead role in collecting the oversight costs and assessing interest on delinquent bills. The CFC involves the regions as necessary.

Noteworthy Achievements

As we conducted our audit, we identified the following noteworthy achievements related to the billing of the oversight costs in Region 9:

- The ORC, Superfund Division, and Cost Accounting Team conduct monthly meetings to discuss the billings as well as any site issues.
- The Cost Accounting Team uses a cost recovery documentation checklist included in a Lotus Notes database to compile the financial cost documentation summary/package. The checklist consists of a list of potential EPA intramural and extramural service providers. It allows the cost documentation requester to specify the type of cost summary/package needed for a particular cost recovery activity and prepare additional instructions for the Cost Accounting Team. The checklist facilitates the process of preparing the cost documentation summary/package by identifying the types of costs that need to be included in the cost package (e.g., headquarters or regional payroll, interagency agreements, contracts).
- The Superfund Division and Cost Accounting Team provide periodic training on site-specific charging as well as cost documentation procedure orientation to new attorneys, remedial project managers, and program project officers to inform them how to track their time accurately by site and what needs to be included in the costs documentation summary/package.

Scope and Methodology

We conducted our audit from January 13 to July 8, 2011, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

We selected Regions 1, 5, and 9 for review because they had the largest amounts of unbilled oversight costs in the Agency's fiscal year 2010 unbilled oversight accrual spreadsheet. We reviewed laws and regulations related to the billing of Superfund oversight costs. We also reviewed EPA policies and guidance. We reviewed documents for selected sites, including settlement agreements, itemized costs summaries from SCORPIOS, and billing queries from EPA's Financial Data Warehouse to determine the accuracy and timeliness of billings.

Appendix A contains further details on our scope and methodology.

Results of Review

Based on our audit of oversight billings for nine sites in Regions 1, 5, and 9, we found that Region 5 did not timely bill or did not bill approximately \$8.6 million in oversight costs for two sites. The \$8.6 million consists of \$2.5 million for costs incurred between 2000 and 2008, which were not timely billed, and \$6.1 million that was not billed prior to the start of our audit. During our audit, Region 5 billed about \$1 million of the \$6.1 million, leaving \$5.1 million to be billed. We did not identify problems with oversight cost billings in Regions 1 or 9. CERCLA authorizes EPA to recover its costs from PRPs to help replenish the Superfund Trust Fund, and Office of Solid Waste and Emergency Response (OSWER) guidance states that EPA will strive to issue timely (e.g., annual) oversight bills, and that regions are required to issue a timely bill for future response costs to the extent called for by the underlying settlement agreement. Region 5 did not timely bill oversight costs and has not billed certain costs because the accounting staff has difficulty (1) allocating costs at sites with multiple agreements and operable units, and (2) coordinating review of oversight costs. Further, EPA's policies do not require oversight bills to be issued within a specific timeframe. Untimely billing of oversight costs results in delays in replenishing the Superfund Trust Fund and limits EPA's ability to timely clean up other priority sites to further protect human health and the environment. EPA also lost or postponed the opportunity to collect interest on oversight costs not billed and collected that would have accrued to the Trust Fund.

Office of Solid Waste and Emergency Response Interim Guidance

OSWER Directive No. 9200.0-32P, *Interim Guidance on Implementing the Superfund Administrative Reform on PRP Oversight*, was issued to provide guidance to regions on implementation of the Superfund reform on the administration of PRP oversight. The guidance states, "Where PRPs have entered into agreements with EPA to pay oversight costs, EPA will strive to issue timely (e.g., annual) oversight bills based on known or available costs at the time of billing." The guidance also states that under the Superfund reform on PRP oversight, regions are required to issue a timely bill for future response costs (including oversight costs) that is, to the extent called for by the underlying agreement, accompanied by appropriate cost documentation.

Region 5 Billing Practices

Region 5 did not timely bill oversight costs of \$2.5 million for the Sauget site under a November 2000 administrative order on consent and a September 2002 unilateral administrative order. The first billings under these orders were not issued until September 2008 and covered billing periods of approximately 6 and 7 years. Table 1 provides a summary of the costs not billed timely.

Table 1: Oversight costs not billed timely

Site	Order date	Billing date	Billing period	Amount
Sauget	11/24/2000	09/25/2008	11/25/2000–12/31/2007	\$1,463,351
Sauget	09/30/2002	09/25/2008	09/30/2002–08/31/2008	1,007,146
Total				\$2,470,497

Source: Office of Inspector General (OIG) analysis.

Further, Region 5 did not bill oversight costs of up to \$6.1 million. Table 2 provides a summary of the costs not billed for the two sites.

Table 2: Oversight costs not billed

Site	Billing period	Amount
Allied Paper	02/15/2005–12/31/2010	\$5,319,545 ^a
Sauget	01/01/2008–10/31/2010	783,845 ^b
Total		\$6,103,390

Source: OIG analysis.

^a Under five settlement agreements.

^b Under the administrative order on consent.

As of May 2011, Region 5 issued oversight bills totaling approximately \$1 million for the Allied site for costs incurred from 2005 through 2010. Subsequent to issuing out draft report, Region 5 billed \$2,389,367 and \$757,312 in costs for the Allied and Sauget sites through August 2, 2011. Because of the timing of the billings, we were unable to verify how much remains to be billed.

Region 5 stated that the oversight billings took longer because it is difficult for the accounting staff to allocate costs at sites with multiple agreements, operable units, and complications due to a complex bankruptcy. The region also said that for these sites, it is difficult for the case management team for each settlement agreement (consisting of the lead attorney, remedial project manager, and on-scene coordinator) to coordinate the review of costs. Also, we believe the billings were not timely because EPA's policies do not require oversight billings to be issued within a specified timeframe. Region 5 has a Superfund cost recovery procedures memorandum of understanding (MOU) with ORC, the Superfund Division, and the finance office. This MOU defines roles and responsibilities of ORC, Superfund Division, and the Resources Management Division, and includes the Superfund cost recovery procedures and timeframes for reviewing and issuing draft and final oversight billings. However, we found that for the Sauget and Allied Paper sites, the timeframes in the MOU were not met.

Conclusions

Region 5 did not timely bill oversight costs, which delayed replenishing the trust fund and having the funds available to clean up other sites. Specifically, Region 5 did not bill oversight costs of up to \$6.1 million accumulated at two sites between

2000 and 2010. EPA also lost or postponed the opportunity to collect interest on oversight costs not billed and collected that would have accrued to the Superfund Trust Fund.

Recommendations

We recommend that the Regional Administrator, Region 5, direct the Superfund Division Director to:

1. Develop a policy to require Region 5 to bill Superfund oversight cost billings no less frequently than annually.
2. Develop procedures for staff involved in oversight billings to meet on a regular basis to discuss the status of billings due under agreements or orders, to coordinate staff in preparing and reviewing bills, and to resolve problems that are delaying the issuance of bills.
3. Bill PRPs up to \$4,319,545 incurred for the Allied Paper site, and approximately \$783,845 for the Sauget site.

Agency Comments and OIG Evaluation

Region 5 did not agree with our recommendation to develop a policy to require them to bill Superfund oversight costs billings no less frequently than annually. Region 5 recognized the existence of the current guidance in OSWER Directive No. 9200.0-32P, *Interim Guidance on Implementing the Superfund Administrative Reform on PRP Oversight*. The guidance states that, “Where PRPs have entered into agreements with EPA to pay oversight costs, EPA will strive to issue timely (e.g., annual) oversight bills.” Region 5 noted that the guidance is not mandatory and believes it is important to leave some control over the timing of oversight billing to the discretion of the enforcement team. We agree that there should be some control over the timing of oversight billings left to the discretion of the enforcement team, but in no case should billings be less frequent than annually. While Region 5 did not agree with the recommendation to issue oversight bills annually, Region 5 stated that they plan to bill any future oversight costs on an annual basis. If Region 5 bills annually as indicated, that would address the intent of our recommendation. Therefore, we continue with our recommendation that Region 5 timely bill oversight costs to PRPs no less frequently than annually, as less frequent billings delay replenishing the Superfund Trust Fund, and consider the recommendation unresolved in lieu of a planned completion date.

Region 5 referred to the MOU for Superfund cost recovery procedures that formalizes cost recovery procedures among the Superfund Division, the ORC, and the Resources Management Division. However, Region 5 agreed that additional protocols are needed to ensure that management is made aware promptly of any projected delay in oversight billing so issues can be resolved expeditiously.

Region 5 will develop standard operating procedures to provide staff with clear direction on the process of informing management of any issues that could delay a bill. Management review and approval will be required for any bills to be issued less frequently than on an annual basis. We still recommend that Region 5 develop procedures for staff involved in oversight billings to meet on a regular basis to discuss the status of billings.

Region 5 partially satisfied our recommendation 3 by billing \$2,389,367 and \$757,312 of the amounts questioned in this report for the Allied Paper and Sauget sites through August 2, 2011. Because of the timing of the billings, we were unable to verify how much of the remaining funds were available for additional billings. We acknowledge that the complexities of agreements and difficulties in allocating costs to different PRPs can cause delays in billing, and commend Region 5 for its efforts in billing oversight costs as recommended.

Appendix B provides Region 5's response to the draft report. Region 5 included three attachments in its response. Attachment 1 refers to OSWER Directive No. 9200.0-32P, *Interim Guidance on Implementing the Superfund Administrative Reform on PRP Oversight*. Attachment 2 refers to Region 5's MOU for Superfund cost recovery procedures. Attachment 3 provides details for the amounts billed for the Allied Paper and Sauget sites. Due to the length of the directives and the MOU, we did not include the full text of the attachments.

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	5	Direct the Superfund Division Director to develop a policy to require Region 5 to bill Superfund oversight cost billings no less frequently than annually.	U	Regional Administrator, Region 5			
2	5	Direct the Superfund Division Director to develop procedures for staff involved in oversight billings to meet on a regular basis to discuss the status of billings due under agreements or orders, to coordinate staff in preparing and reviewing bills, and to resolve problems that are delaying the issuance of bills.	O	Regional Administrator, Region 5	3/30/2012		
3	5	Direct the Superfund Division Director to bill PRPs up to \$4,319,545 incurred for the Allied Paper site, and approximately \$783,845 for the Sauget site. ¹	C	Regional Administrator, Region 5	8/2/2011	\$6,100	\$3,147

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

¹ We found \$6.1 million that was not billed prior to the start of our audit. As of May 2011, Region 5 billed about \$1 million. Subsequent to our audit, Region 5 billed an additional \$3.147 million. Because of the timing of the billings, we were unable to verify how much of the remaining funds were available for additional billings.

Details on Scope and Methodology

We reviewed laws and regulations pertaining to the billing of Superfund oversight costs, including CERCLA. We also reviewed EPA policies and guidance, such as Resources Management Directive System 2550D-12, *Superfund Cost Documentation and Cost Recovery*; Resources Management Directive System 2550D-14, *Superfund Accounts Receivable and Billings*; and OSWER Directive No. 9200.0-32P, *Interim Guidance on Implementing the Superfund Administrative Reform on PRP Oversight*.

We obtained a universe of sites from CFC's fiscal year 2010 fourth quarter unbilled oversight accrual spreadsheet. The accrual spreadsheet contained 832 site IDs with total unbilled oversight costs of \$86 million as of September 30, 2010. Using the CFC's spreadsheet, we selected the regions with the largest amount of accrued unbilled oversight costs for review. The regions selected for review were Regions 1, 5, and 9, with accrued unbilled oversight costs of approximately \$43 million. We then selected three sites with the largest accrued amount for review from the three selected regions, for a total of nine sites. The accrued unbilled oversight costs for the nine sites selected were approximately \$23 million. We believed that by selecting sites with largest amount of unbilled oversight costs, we were more likely to identify instances in which controls over oversight billings were not adequate. Table A-1 provides details on the sites selected for review.

Table A-1: Sites reviewed

Region	Site ID	Site name	Unbilled oversight costs at 09/30/10
1	0146	Wells G & H	\$6,738,204.87
1	0109	W.R. Grace	2,202,599.85
1	011T	Beede Waste Oil	966,128.86
5	059B	Allied Paper	6,763,004.17
5	05XX, 0558	Sauget Area Two	2,043,891.02
5	0582	Rose Township	633,212.04
9	09R8	Unidynamics - UPI	1,531,252.31
9	09JS	Asarco	1,246,177.60
9	09MX	Iron King Mine	1,096,364.32
Total			\$23,220,835.04

Source: OIG analysis.

We developed a questionnaire to obtain information from EPA staff involved with oversight billings. The objective of the questionnaire was to determine the process for billing oversight costs, the status of oversight billings, and whether oversight billings are accurate and timely sent to PRPs. We contacted select accounting staff, cost recovery specialists, regional counsel, and remedial program managers in Regions 1, 5, and 9. We

also interviewed CFC staff about their procedures for billing and collecting oversight costs. We reviewed billing files and records for selected sites, including settlement agreements and itemized cost summaries from SCORPIOS. We reviewed EPA's methodology for allocating the indirect costs. However, we did not audit the indirect cost rate methodology. Headquarters calculates and publishes the annual indirect cost rates and inputs the rates into SCORPIOS. The regions use the indirect cost rates in SCORPIOS to compute the indirect costs that are included in the billings for the oversight costs.

Prior Reviews

We researched prior EPA OIG and U.S. Government Accountability Office reports related to the Superfund billings. We noted four pertinent EPA OIG reports, as listed below:

- ***Region 3's Billing of Superfund Oversight Costs, Report No. E5FFL7-03-0008-7100292, September 22, 1997.*** We found that Region 3 sometimes took a long time to bill responsible parties for oversight costs. In one instance, the bill presented to the responsible party represented charges generated over an 8-year period.
- ***Region 2's Billing of Superfund Oversight Costs, Report No. E1SFF8-02-0007-8100206, August 13, 1998.*** We found that Region 2 did not timely bill and collect accumulated Superfund oversight costs. Further, the region did not recover cleanup oversight costs from responsible parties for as long as 11 years. Specific contributing factors were (1) other competing priorities, (2) inadequate tracking systems, (3) vague or nonexistent billing requirements in administrative orders on consent or consent decrees, (4) inadequate coordination between program offices and ORC, (5) difficulty in segregating oversight from other response costs, and (6) lack of resources.
- ***Region 9's Controls Over Superfund Oversight Cost Billings, Report No. E1SFF8-09-0022-8100259, September 30, 1998.*** We found that Region 9 had made significant progress in reducing its several-year backlog of unbilled oversight costs by July 1998. However, continued attention is necessary to assure that the region is able to meet EPA's standard for preparing current oversight billings within 120 days of the consent decree or administrative order on consent anniversary date.
- ***EPA Can Recover More Federal Superfund Money, Report No. 08-P-0116, March 26, 2008.*** We found that exceptions to the typical billing approach can impede some cost recovery. These exceptions include the following: (1) regions may not bill some sites annually, (2) sites' established billing cycle may be every 2 years or periodic, (3) EPA has no agreement with the PRP to recover oversight costs, and (4) the region may not find it cost effective to bill for a small amount. Under the above conditions, regions told us they sometimes postpone an annual

detailed review of site costs. When the regional staff finally review the site costs to prepare a bill, they may find that all costs are not fully documented and staff with historic knowledge may not be available.

Internal Control Review

In planning and performing our audit, we reviewed management controls related to our audit objectives. We examined EPA's fiscal year 2010 Federal Managers' Financial Integrity Act Annual Assurance Letters issued by the Regional Administrators and Assistant Administrators for the various EPA programs to identify any weaknesses pertaining to accounts receivables, collections, and oversight costs. In addition, we examined EPA's Office of Management and Budget Circular A-123 Appendix A reviews of internal controls to identify any weaknesses related to accounts receivables, collections, and oversight costs. EPA identified no material weaknesses in its Circular A-123 reviews related to oversight cost billings and collections. We obtained an understanding of control activities through reviews of EPA's various policies, guidance, and procedures related to unbilled oversight costs. We obtained an understanding of the oversight billing process through review of background information, indirect cost rates, and preliminary research walk-throughs. We did not review the internal controls over EPA's IFMS or SCORPIOS from which we obtained information, but relied on reviews of systems conducted during the audit of EPA's fiscal year 2010 financial statements.

Region 5 Response to Draft Report

August 10, 2011

MEMORANDUM

SUBJECT: Region 5 Response to the Office of Inspector General's Draft Report:
"EPA Should Bill Superfund Oversight Costs More Timely"
Project No. OA-FY11-0045

FROM: Susan Hedman
Regional Administrator

TO: Melissa Heist
Assistant Inspector General for Audit

On July 11, 2011 Region 5 received the above-referenced draft report, which accurately identified two Superfund sites where Region 5's oversight bills were not sent out on an annual basis. We welcome this opportunity to comment on the draft report and respond to its recommendations.

Region 5 has a sound cost recovery program; oversight bills are issued on an annual basis in the vast majority of cases. In fiscal year 2010, 98 percent of the regularly scheduled oversight bills were issued timely (i.e. within 120 days of the annual anniversary date of the order). We agree, however, that our process can be improved to ensure that existing policies and procedures are followed consistently and that issues causing potential delays in billing are elevated to management promptly. With regard to the two specific instances identified in the draft report, we must point out that in one instance (the Allied Paper/Portage Creek/Kalamazoo River Superfund Site), billing was complicated by the bankruptcy liquidation of one of the major potentially responsible parties (PRPs) at the site. This PRP was also a signatory to the agreements giving rise to the oversight costs. In the other matter (the Saugat Area 2 Superfund Site), billing has been extraordinarily complicated due to the fact that different PRPs are responsible for cleanup at various areas of the site. Although the complex bankruptcy and complicated allocation of costs do not necessarily excuse the billing delays, we believe they are explanations that should be taken into account in your final report.

With regard to the recommendation that we develop a policy to require billing no less frequently than annually, I direct you to EPA's *Interim Guidance on Implementing the Superfund Administrative Reform on PRP Oversight*, OSWER Directive No. 9200.0-32P (Attachment 1). This guidance states that "where PRPs have entered into agreements with EPA to pay oversight costs, EPA will strive to issue timely (e.g., annual) oversight

bills.” It is a general goal of the Agency and Region 5 to issue oversight bills annually. This goal, however, is not a mandatory requirement, nor does Region 5 believe it should be. The discretion inherent in the goal is reflected in EPA’s model settlement agreements, which typically provide that EPA will bill the respondents or defendants “on a periodic basis” (see, e.g., paragraph 55.a. of the Model Remedial Design and Remedial Action Consent Decree). This discretion may be appropriate in individual cases, such as at the Allied Paper/Portage Creek/Kalamazoo River Superfund Site. In this case, EPA has been negotiating a series of settlement agreements to perform very costly cleanup work at the site. Region 5 believes that it is important to leave some control over the timing of oversight billing to the discretion of the enforcement team.

With regard to your recommendation concerning the development of procedures for staff coordination on oversight billing, I want to call your attention to Region 5’s Memorandum of Understanding (MOU) for Superfund cost recovery procedures (Attachment 2). The MOU was last amended on September 27, 2001 and formalizes cost recovery procedures among the Superfund Division, the Office of Regional Counsel, and the Resource Management Division. This MOU recognizes the roles and responsibilities of all personnel involved in Superfund cost recovery and establishes the Cost Recovery Task Force. This task force includes representatives from each division and meets on a quarterly basis for the purpose of assessing whether oversight bills are sent in the appropriate time frame. Region 5 also has a bill tracking system which records billing dates and establishes dates for future billings.

Region 5 agrees, however, that additional protocols are needed to ensure that management is made aware promptly of any projected delay in oversight billing so that issues can be resolved expeditiously. To that end, we will develop a standard operating procedure (SOP) to provide staff with clear direction on the process of informing management of any issues that could delay a bill. Management review and approval will be required for any bills to be issued less frequently than on an annual basis. The SOP will be finalized within the next three months. In addition to the existing tracking tool, we will use the unbilled accrual report on a quarterly basis to monitor for any outlier situations that may be developing. Finally, we will revisit and update the MOU to reflect recent organizational changes and any other appropriate updates.

We have already addressed your final recommendation. The billing for the total amount of recoverable oversight costs for the Allied Paper/Portage Creek/Kalamazoo River and Sauget Area 2 Superfund Sites has been brought up-to-date. See Attachment 3 for details on the billing dates and amounts. We plan to bill any future oversight costs on an annual basis.

Thank you for providing us with an opportunity to respond to your draft report. I believe that the procedures we will implement as a result of your investigation will make an already strong program even stronger. If you have any questions, please contact me or your staff may contact Dale Meyer, Resource Management Division at 312-886-7561 or meyer.dale@epa.gov; Larry Kyte, Office of Regional Counsel at 312-886-4245 or

kyte.larry@epa.gov; or Sharon Jaffess, Superfund Division at 312-353-0536 or jaffess.sharon@epa.gov.

Attachments (3)

cc: Eric Levy

Distribution

Office of the Administrator
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