



Office of Inspector General
Report of Audit

**Report of Audit on Region 3's
Billing of Superfund Oversight Costs**

E5FFL7-03-0008-7100292

SEPTEMBER 22, 1997

**Mid-Atlantic Division
Philadelphia, PA**

**Inspector General Division
Conducting the Audit:**

Region Covered:

Region 3

Program Offices Involved:

Office of Policy and Management

Hazardous Waste Management Division

Office of Regional Counsel



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September 22, 1997

MEMORANDUM

SUBJECT: Report of Audit on Region 3's
Billing of Superfund Oversight Costs
Audit Report E5FFL7-03-0008-7100292

FROM: Carl A. Jannetti
Divisional Inspector General for Audit (3AI00)

TO: W. Michael McCabe
Regional Administrator (3RA00)

Attached is our final audit report on EPA Region 3's Billing of Superfund Oversight Costs. The overall objectives of this audit were to: (a) review what oversight costs were being eliminated prior to billing; and, (b) determine why the Region sometimes took extraordinary amounts of time to bill the oversight costs to the parties responsible for cleaning up sites.

This audit report contains findings that describe problems the Office of Inspector General (OIG) has identified and corrective actions the OIG recommends. This audit report represents the opinion of the OIG. Final determinations on matters in the audit report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings contained in this audit report do not necessarily represent the final EPA position, and are not binding upon EPA in any enforcement proceeding brought by EPA or the Department of Justice.

ACTION REQUIRED

In accordance with EPA Order 2750, you as the action official are required to provide this office a written response to the audit report within 90 days. Your response should address all recommendations, and include milestones dates for corrective actions planned, but not completed.

We have no objection to the release of this report to the public. Should you have any questions about this report, please contact Michael Wall or Anne Bavuso at 215-566-5800.

Attachment

EXECUTIVE SUMMARY

PURPOSE

We performed an audit on Region 3's billing of Superfund oversight costs. The purpose of this audit was to: (a) review what oversight costs were being eliminated prior to billing; and, (b) determine why the Region sometimes took extraordinary amounts of time to bill the oversight costs to the parties responsible for cleaning up the sites.

BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to recover its costs from responsible parties in order to help replenish the Superfund Trust Fund. The law, as amended by the Superfund Amendments and Reauthorization Act of 1986, stipulates that EPA may help fund state government efforts to remediate hazardous waste sites. Both EPA and the states are to comply with the cost documentation requirements found in the Code of Federal Regulations to ensure that the maximum amount of cost is recovered.

Oversight costs are costs incurred by EPA or a state while monitoring cleanup work being performed by responsible parties at "Enforcement-lead" Superfund sites. Such costs can include charges for personnel (salary, indirect costs, and travel) as well as charges by contractors. EPA recovers these costs through the use of enforcement documents, i.e., either a Consent Decree (CD) or an Administrative Order on Consent (AOC). An AOC is a legally-binding agreement between EPA and the responsible parties; a CD is a similar document, except that it is filed in court for a judge's approval.

RESULTS-IN-BRIEF

Region 3 sometimes took extraordinary amounts of time to bill responsible parties for oversight costs. In several instances

these delays amounted to years, even though the bills were to have been sent on an annual basis. In one instance, the bill presented to the responsible party represented charges generated over an eight-year period. According to regional personnel, these delays occurred because oversight billings were considered a low priority, and because of a reluctance by regional Superfund program personnel to relinquish control of the billings to regional financial personnel. As a result, reimbursement to the Superfund Trust Fund was delayed, and the responsible parties were afforded an opportunity to challenge the charges, which in turn caused more delays.

The Region also experienced a problem in billing State of Maryland oversight costs, which are paid by EPA through State Cooperative Agreements. Under one such agreement the State billed EPA \$149,000 for a site in our review. However, these oversight costs could not be billed to the responsible party, because the State had destroyed employee time sheets needed to support them.

In addition, the Region needs to amend its procedures for distributing AOC's, because personnel responsible for tracking them did not always know how many there actually were.

RECOMMENDATIONS

We recommend that the Region 3 Administrator ensure that oversight costs are billed in accordance with the enforcement agreements signed with the responsible parties. We also recommend that the Region 3 Administrator: (a) determine if Maryland's Department of the Environment lacks time sheets to support oversight charges at Superfund sites covered by other cooperative agreements; and, (b) initiate sanctions if the State does not adhere to required record-keeping criteria.

**AGENCY
COMMENTS AND
OIG
EVALUATION**

We issued a draft report on July 8, 1997. We received a response from Region 3 on August 25, 1997. We reviewed the response, held an exit conference with regional personnel on September 10, 1997, and made changes to our report as

warranted. However, we did not materially change our position. The response can be found in its entirety in Appendix A . Due to the length of the response, we addressed the Region's comments on our findings and recommendations at the end of each report Chapter.

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CHAPTER 1

INTRODUCTION

Purpose

We performed an audit of Region 3's billing of Superfund oversight costs. The purpose of this audit was to: (a) review what oversight costs were being eliminated prior to billing; and, (b) determine why the Region sometimes took extraordinary amounts of time to bill the oversight costs to the parties responsible for cleaning up the sites.

Background

Oversight costs are costs incurred by EPA while monitoring cleanup work being performed by responsible parties at "Enforcement-lead"

Superfund sites. Such costs can include charges for EPA personnel (salary, indirect costs, and travel), as well as charges by EPA contractors or state employees. The legislation authorizing Superfund enables the Agency to recover oversight costs from the responsible parties. Such recoveries are to be accomplished by use of enforcement documents, i.e., either a Consent Decree (CD) or an Administrative Order on Consent (AOC). An AOC is a legally-binding agreement between EPA and the responsible parties; a CD is a similar document, except that it is filed in court for a judge's approval.

Superfund legislation enables the Agency to recover oversight costs

In Region 3, oversight costs are to be billed on either an annual or on a non-annual basis, as stipulated by the site-specific enforcement document. In the case of the "annuals," the Region is required to start assembling a bill on the yearly anniversary of the signing of the agreement. In the case of the

“non-annuals,” the bill is to be generated either periodically, or upon completion of the work stipulated in the agreement. The billing process, which is time-consuming and laborious, generally involves several steps. First, the Office of Superfund Programs authorizes the Office of the Regional Comptroller to initiate a bill. After reviewing the accounting system to verify the financial accuracy of the costs, the Comptroller submits a proposed cost package back to Superfund. There the package is verified to ensure that the costs agree with the oversight work actually performed. The package is then forwarded to the Office of Regional Counsel (ORC) for confirmation that the proposed costs are legally billable under the enforcement document. Finally, after all three offices have agreed on its content, the bill is presented to the responsible party for payment.

In a July 31, 1996 memorandum, EPA Headquarters explained that the Administrator wished to reduce EPA oversight activities at sites where quality work was being performed by the responsible parties. The memorandum suggested that the Regions “foster an improved relationship, or recognize existing relationships, with cooperative parties,” and stipulated that the Regions should: (1) evaluate all the responsible party sites to identify where oversight could be reduced; and, (2) at the time of annual billing, provide the responsible parties with an estimate of the oversight costs for the next year.

**Scope and
Methodology**

The initial focus of our review originated from an earlier audit, during which the auditors questioned the Region’s generosity in eliminating oversight costs on bills to responsible parties. Although during our survey we noted instances where some EPA costs were eliminated, the amounts were either not material or the rationale provided for dropping the costs was reasonable. We did note, however, that Region 3 had difficulty in obtaining documentation to support oversight costs incurred by the State of Maryland. Moreover, the

Region also had a problem in regard to the timeliness of its billing of responsible parties for annual Superfund oversight costs. This issue was repeatedly cited in annual reports on internal controls submitted to the Regional Administrator by the Office of the Comptroller, the Hazardous Waste Management Division, and the Office of Regional Counsel for Fiscal Years 1994 through 1996. These reports were prepared in compliance with the Federal Managers' Financial Integrity Act.

We performed this audit according to the *Government Auditing Standards* (1994 Revision) issued by the Comptroller General of the United States as they apply to economy and efficiency program audits. Our review included tests of documents and other auditing procedures we considered necessary.

To accomplish our objectives we interviewed Region 3 personnel within the Office of Superfund Programs, the Office of the Regional Comptroller, and the Office of Regional Counsel. These individuals included branch chiefs, finance cost recovery specialists, program cost recovery specialists, remedial project managers, and attorneys. We reviewed the individual enforcement documents (AOC's and CD's), Superfund oversight inventory reports, CERCLA enforcement document distribution procedures, Superfund cost recovery procedures, oversight billing reports, billing status reports, three Maryland Cooperative Agreements, EPA contractor reports on State reviews, Memoranda of Understanding documents, cost summary packages, individual site files, and 15 of the 76 enforcement dockets for sites with annual billing provisions during fiscal year 1996.

We reviewed the internal controls regarding the elimination of oversight costs from bills, and we found that the Region was unable to bill costs incurred by one State agency. We reviewed the internal controls involving how bills were authorized and assembled, and we recommended that action be taken to formalize the process. We reviewed the internal

controls involving how enforcement documents were tracked, and we recommended amending the process. We did not review the internal controls associated with the input of information into the Region's Integrated Financial Management System or any other automated recorded system.

Our survey began on October 7, 1996 and ended on December 9, 1996. As a result of the survey, we initiated an in-depth review on December 10, 1996. We completed fieldwork for the audit on June 18, 1997, and issued a draft report on July 8, 1997. Region 3 provided a response on August 25, 1997, and we held an exit conference with regional personnel on September 10, 1997. Due to the length of the response we addressed the Region's comments at the end of each report Chapter. The response in its entirety can be found Appendix A.

Prior Audit Coverage

Past EPA Office of the Inspector General audit reports have identified concerns with Agency delays in billing responsible parties. These include:

- Audit Report E9HHF2-11-0031, issued on September 30, 1992, which discussed one site in Region 6 where the Agency delayed billing a responsible party for \$1.1 million.
- Audit Report E1SFG4-11-5015, issued on July 29, 1994, which found that Regions 3 and 6 were generally billing oversight costs one month to two years late.
- Audit Report E1SFB5-11-0008, issued on November 29, 1995, which discussed: (a) one site in Region 8 where the responsible party used a three-year delay in billing to negotiate a reduction in the bill; and (b) one site in Region 3 where there was a two-year billing delay.

CHAPTER 2

DELAYED OVERSIGHT BILLINGS

In several instances
delays amounted to
years

Region 3 sometimes took extraordinary amounts of time to bill responsible parties for oversight costs. In several instances these delays

amounted to years, even though the bills were to have been sent on an annual basis. In one instance, the bill presented to the responsible party represented charges generated over an eight-year period. According to regional personnel, these delays occurred because oversight billings were considered a low priority, and because of a reluctance by Superfund program personnel to relinquish control of the billings to financial personnel. As a result, reimbursement to the Superfund Trust Fund which paid the costs was delayed. The billing delays also afforded the responsible parties an opportunity to challenge the charges, which in turn caused more delays.

In 1996, the regional components responsible for oversight billings took informal measures to accelerate the process, and the statistics for fiscal year 1996 and the first quarter of fiscal year 1997 indicate that the number of annual bills generated has increased. We believe that Region 3 should formalize the procedures by which future oversight bills will be processed.

Fiscal Year 1996 Delays

According to the Region's records, there were 76 enforcement dockets for sites with annual billing provisions during fiscal year 1996. Of this amount, 43 dockets were billed; 33 were not (Note: there can be logical reasons why a docket is not billed, e.g., there are no costs). We reviewed 15 of the 76 dockets and found:

- 8 instances where the bills were delayed, in one case for seven years.
- 3 instances where the responsible parties complained that the billing delays adversely affected their ability to verify the accuracy of what was being billed.
- 4 instances where the responsible parties requested documents to support earlier bills, and it took the Region between eight months and seven years to provide the documents.
- 4 instances where no bills had ever been sent even though costs were incurred as far back as 1988.

In an effort to determine the causes of the delays, we reviewed the files of 5 of the 15 dockets in more detail. Four of the five files are addressed below; the fifth file is addressed in Chapter 3 of this report.

Site A

According to ORC and Superfund program personnel, this billing was delayed because it was not a high priority. The terms of the 1988 enforcement document stipulated that the responsible party would annually pay 2.25 percent of its site cleanup costs to EPA for oversight. However, the Region did not send the first oversight bill until May 1996, more than seven years after the enforcement document became effective. This bill was for \$1,288,174, which represented EPA's actual oversight costs, and the responsible party was informed that interest would accrue at the rate of 5.85% on any amount unpaid in June 1996. Asserting that it only owed \$203,192, the responsible party requested documents to support EPA's figures. In response, in October 1996, the Region requested access to audit the records supporting this assertion. But the responsible party declined because it wished to resolve the

Oversight Billing
Not a High Priority

issue in a “less formal matter than an audit.” As of April 30, 1997, the Region still awaited a detailed cost summary from the responsible party. Thus, the \$1,288,174 remains unpaid and no interest has been assessed.

Site B

In November 1991, the Region sent a \$109,172 bill for the first year of oversight. In January 1992 the responsible party paid the bill. However, the Region did not submit another bill until August 1996, when it asked for payment of \$524,602 for the four-year, nine-month period ended March 1996. In September 1996, the responsible party requested supporting documentation and asked the Region:

Responsible Party
Criticizes the Region

Why it did not provide the annual accounts of its oversight costs as it was required to under the Consent Decree. Note, in particular, that paragraph XXI9F of the Consent Order requires EPA to “provide the Settlor with an estimate of the amount of oversight costs for the next year.” Furthermore, it was contemplated by paragraph XXI(B) of the Consent Decree that invoices for oversight costs would be submitted on an annual basis. However, despite the repeated inquiries made by our project manager, [name deleted], over the course of this project, we never received either an estimate or annual invoice. As a result of EPA’s failure to submit the annual accounting as required under the Consent Order, (and the passage of five years since the first costs now sought to be recovered were incurred), it has clearly become more difficult to determine whether the costs EPA now seeks to recover are

accurate or limited to the costs recoverable under the Consent Order.

Site C

The enforcement document was signed in July 1987. The first oversight bill was for \$10,483 and covered to the end of December 1987. Although the responsible party agreed to pay the bill, the Region was not sure whether it was paid. In August 1989, the Region billed the responsible party \$56,019 for oversight during the twelve-month period ended December 1988. Two weeks later the responsible party requested documents to support the bill. However, the Region did not comply with this request. According to a file memorandum, “. . . the site passed thru a few ORC attorney assignments and we never got our act together regarding dealing with the CBI [Confidential Business Information]” In February 1996, a “comprehensive” bill of \$819,131 was sent to the responsible party for the entire eight-year period. In April 1996, the responsible party questioned the Region’s right to recover the costs because of the lateness of the bill and requested supporting documentation.

Regional Attorneys
Contribute to Delays

Site D

The enforcement document was effective in June 1989. However, the Region did not bill for oversight until November 1995, when it requested the responsible party to pay \$312,399 for a five-year period ended August 1994. On December 28, 1995, the responsible party requested supporting documentation asserting that:

Responsible Parties
Challenge Costs

Their ability to evaluate the claims for oversight costs has been prejudiced by EPA’s not having submitted its claim as provided in the Consent Order.

EPA did not submit any requests for oversight costs (not to mention an accounting of such costs) until November 21, 1995, six-and-a-half years after EPA's oversight activities began and more than a year after they ended.

Due to the passage of time [the responsible party's engineer] . . . lacks the institutional memory necessary to provide effective assistance to the [responsible party] in evaluating EPA's oversight costs

Upon receiving the supporting documents in April 1996, the responsible party challenged \$185,525 of the \$312,399 billed. The challenged amount represented indirect costs incurred by EPA's contractor, which were billed to the Agency as a direct charge. However, the responsible party asserted that it did not have to pay for the contractor's indirect costs, because the enforcement document stated that oversight charges would not include indirect costs. As a result, EPA settled for only \$19,472 of the \$185,525 incurred.

Sites Lacking Bills

There were four enforcement documents, going back as far as 1987, under which no bills were sent. According to regional personnel, three of these documents had no bills because billing for oversight was considered a low priority. Moreover, because the responsible party that was liable under two of the documents has since filed for bankruptcy, any collection of costs is further jeopardized. The fourth document was superseded and should have been deleted from the Region's list nine years ago.

Region 3 Took Steps to Mitigate the Problem

There are three major Region 3 components in the oversight billing process. The Office of Regional Counsel (ORC) sends the enforcement document to the Office of the Comptroller and to the Office of Superfund Programs. The Office of the Comptroller: (a) records costs; (b) verifies costs to supporting documents, such as time sheets and travel claims; and, (c)

establishes the accounts receivable. The Office of Superfund Programs also verifies the charges by ensuring that they accurately reflect which EPA employees and contractors “oversaw” the responsible party’s work on the site. The Office of Regional Counsel verifies that the costs being billed are billable under the terms of the enforcement document. After these actions, the three offices meet to finalize the bill before it is sent to the responsible party for payment. However, there was no formal stipulation as to how long this entire process is to take, which may, in part, explain why it sometimes took years.

As seen in several of the examples, the process apparently worked with several of the earlier enforcement documents; at the end of the first year the Region billed the oversight charges and the responsible parties paid the bills. However, according to regional Superfund personnel, in 1990, priorities shifted from collecting costs on existing documents to negotiating entirely new agreements. Also, the Office of the Comptroller was unable to even initiate the billing process until authorized by the Office of Superfund Programs, which was hesitant to do so because it questioned whether financial personnel had sufficient knowledge of the site histories. However, in 1996, in an effort to address the backlog of unbilled oversight costs, the Office of Superfund Programs informally gave the Office of the Comptroller carte blanche authorization to initiate 1995 bills.

CONCLUSION

Region 3 knowingly allowed oversight billings to become backlogged, despite the fact that it had executed legal documents with the responsible parties. As a result, Superfund Trust Fund reimbursements were delayed for years. Also, had the Region abided by the agreements it signed it might have remedied problems earlier. For example, had the Region billed for “SITE D” oversight when initially due, instead of waiting five years, it might have resolved the issue

of “indirect costs” and saved a large portion of the \$166,053 (\$185,525 - \$19,472) it failed to recoup from the responsible party. Annual billings might also influence the responsible parties to make payments without argument, or, at the very least make it easier for EPA to provide supporting documents and settle any complaints in a timely fashion. Finally, although the Region has taken informal measures to reduce the oversight billing backlog, we believe that even more can be done.

RECOMMENDATIONS

We recommend that the Region 3 Administrator:

- 1) Ensure that oversight costs are billed in accordance with the enforcement agreements signed by the Region, e.g., on their anniversary date.
- 2) Formalize the procedures by which future oversight bills will be processed by the three offices involved, and specify within these procedures exactly how long it should take these offices to initiate, assemble, and issue an oversight bill.

REGION 3 RESPONSE:**RECOMMENDATION 1**

Since 1995, the Region has improved the process of expediting oversight billings, inclusive of (1) the Office of the Comptroller to initiate anniversary bills and (2) development and enhanced management of the Superfund Oversight Billing Tracking System. Thus, the Region is reasonably assured that oversight costs are billed in accordance with the Region’s signed enforcement agreements.

RECOMMENDATION 2

The Region monitors and evaluates oversight billing performance based on a Headquarters' criteria which measures oversight billings reliably prepared within 120 calendar days of the anniversary date, or within the time frame specified in the current decree or administrative order of consent, or as directed by the program office.

OIG EVALUATION:

RECOMMENDATION 1

We recognized the fact that the Region had taken action to reduce its oversight billing backlog. However, in light of the years of delays that occurred in the past, we believe that regional management should ensure that future bills are sent in accordance with the agreements signed by the Region.

RECOMMENDATION 2

In our draft report we had recommended that the Region establish a formal criterion as to how long it should take to assemble an oversight bill, and to include this criterion as a means by which to measure performance. In response to the draft, the Region explained that it already had such a criterion, namely a 120 day time frame provided by EPA Headquarters. However, during the audit we were informed that the Headquarters 120 day time frame was not an evaluation criterion, but rather a tool to gather data to support the Agency's financial statement. We were also informed that the 120 day time frame only applied to "Finance;" it did not include the delays caused by the "Program." Thus, we now recommend that the Region formalize its billing procedures and include the "Program" within these procedures.

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CHAPTER 3

STATE COSTS NOT RECOVERABLE

State Costs Not Billed to Responsible Party

Region 3 experienced problems billing a responsible party for oversight, because the State of Maryland destroyed employee time sheets. As explained in Chapter 2, we reviewed the files of five sites in detail in order to learn why billing delays occurred. Although in all five cases the delays were attributable to internal regional issues, there was an additional condition regarding the fifth site, whose cleanup was being overseen by the State of Maryland's Department of the Environment.

Under the terms of a Multi-Site Cooperative Agreement, the State would assist EPA in overseeing responsible party cleanups. The State oversight costs would be paid for by EPA, which in turn would include these costs in annual bills to the responsible parties. However, in the case we reviewed the Region was unable to bill \$149,000, because the State had destroyed the time sheets needed to verify the costs. The Region only learned of this problem in 1995. However, if Region 3 had billed the responsible party in accordance with the enforcement document, it would have learned of the situation years earlier and been able to take corrective action. We believe that the Region should now avail itself of the sanctions available in accordance with the terms of the cooperative agreement with the State.

The enforcement document for this fifth site was signed in April 1988. The Region billed the responsible party for two years of oversight in December 1990 and received payment in August 1991. The Region did not send another bill for

oversight until December 1996, when it requested the responsible party to pay \$299,000 for a six-year period ended October 1995. However, excluded from this bill was an additional \$149,000 that had been paid by EPA to the State. According to regional personnel, they could not bill these costs to the responsible party because the State of Maryland was unable to provide documentation to support the costs. Consequent to our questioning this exclusion in 1997, regional personnel informed us that they had “revisited” the issue, learned of the existence of some backup records, and hoped to bill a portion of the costs sometime in the future.

**Regional Awareness
of the Condition**

In December 1994, a Region 3 contractor conducted a “Cost Recovery Review” of the Maryland Department of the Environment. On March 8, 1995, the contractor reported two deficiencies. First, the State was destroying cost records rather than keeping them for the minimum requirement of 10 years. Second, the State did not have a clear audit trail of costs by site, operable unit, or by activity. As a result of these deficiencies, the contractor concluded that it would be difficult for the State to provide documentation to support the amounts it had charged EPA for oversight. Moreover, these deficiencies were also noted in the 1996 Hazardous Waste Management Division Assurance Letter to the Regional Administrator, submitted in accordance with the Federal Managers’ Financial Integrity Act.

In June 1996, EPA’s contractor conducted a follow-up on the March 1995 “Cost Recovery Review.” The contractor found that although Maryland had made good progress toward retaining time sheets, it still did not segregate costs among operable units. Moreover, we have since learned that EPA has other cooperative agreements with Maryland where the State is assisting in managing responsible party sites. Thus, the deficiencies noted above will impact on the recovery of oversight costs on these sites as well.

Sanctions Available to Region 3

According to the cooperative agreement we reviewed, the State was subject to the general administrative requirements found in the Code of Federal Regulations (CFR), specifically 40 CFR Part 30. As explained in the “Cost Recovery Review,” the State was also subject to 40 CFR Part 35, Subpart O under which the State was required to: (a) retain all financial records for 10 years unless otherwise directed by the EPA; and, (b) obtain written approval before destroying any records. Under 40 CFR Part 35.6270 the State was required to maintain a record keeping system that: (a) enables site specific costs to be tracked by site, activity, and operable unit; and, (b) provides sufficient documentation for cost recovery purposes. Under 40 CFR Part 30, if the State does not comply with all of the terms and conditions of the assistance agreement, EPA may: (a) withhold payment; or, (b) withhold or terminate the assistance agreement for cause. Finally, according to the Cooperative Agreement:

Failure on the part of the recipient to comply with the conditions may cause the unobligated portion of the Letter of Credit to be revoked and the payment method changed to a reimbursable basis.

CONCLUSION

Generally, when responsible parties receive a bill for oversight, they request Region 3 to supply documentation to justify the amount being billed. On some sites, State agencies assist EPA in providing oversight under cooperative agreements. In regard to the site in our review, the Region delayed billing the responsible party for a period of six years. In 1995, an EPA contractor reported that Maryland’s Department of the Environment had destroyed employee time sheets and did not properly track costs. Thus, in 1996, the Region was unable to bill the responsible party for the \$149,000 it had already paid to the State. Although a follow-up review indicates the State has initiated corrective measures, we believe that Region 3 should determine how much it has paid the State for non-

recoverable costs at other sites under other cooperative agreements with Maryland.

RECOMMENDATIONS We recommend that the Region 3 Administrator:

- 1) Determine if Maryland's Department of the Environment lacks time sheets to support oversight charges at Superfund sites covered by other cooperative agreements. By doing so now, the Region might be able to find backup records such as those that were found for the site discussed in our finding.

- 2) Initiate sanctions against the State of Maryland's Department of the Environment if it does not adhere to the record-keeping and retention criteria stipulated by the Code of Federal Regulations.

REGION 3 RESPONSE:

RECOMMENDATION 1

Working with EPA's finance staff, the Maryland Department of the Environment (MDE) has submitted a corrective action plan to reconcile differences between the EPA draws and the reported EPA grant expenditures. The State has also purchased an electronic imaging and filing system to scan and file current and prior Superfund cooperative agreement documents. Finally, the Region has scheduled a follow-up review of the MDE financial management and record-keeping practices in the first quarter of Fiscal Year 1998.

RECOMMENDATION 2

The Maryland Department of the Environment has made significant progress to correct previous deficiencies. However, the Region will take appropriate action if

a future 1998 review discloses record-keeping and financial management deficiencies in the cooperative agreements.

OIG EVALUATION:

RECOMMENDATION 1

In our draft report, we explained that Region 3 experienced problems billing a responsible party for one site, because the State of Maryland had destroyed employee time sheets. We recommended that the Region determine the effect of the State's record-keeping deficiencies for the other Superfund sites covered by other cooperative agreements with Maryland. The Region's response indicated that the State had initiated corrective action in general. However, we still believe that the Region should determine how much the destruction of time sheets affected the other sites and whether backup records exist.

RECOMMENDATION 2

The Region's action should achieve the intent of this recommendation. No further action is required.

CHAPTER 4

AMENDING THE AOC DISTRIBUTION PROCESS

Region 3 needs to establish a bona fide distribution process for its Administrative Orders on Consent (AOCs). During our review, we noted that the personnel responsible for tracking AOCs did not always know how many orders there actually were. Specifically, these individuals were unaware of the existence of five AOCs for one site. Although four of these orders were effective as of July 1993, they were not added to the regional tracking system until November 1996, more than three years later. According to regional personnel, the four orders were “recently located.” However, we also found a fifth order for the same site about which the Region had been still unaware. Effective May 1995, this AOC was only added to the tracking system in December 1996, when we brought it to the Region’s attention. These lapses occurred because, although the AOC distribution process designates to whom the document should be distributed, it does not designate precisely who should actually distribute the document. As a result, the Region was tardy in billing the responsible parties for oversight costs of \$223,000. During our review, the Region billed \$132,718 under the four orders and collected \$122,606 within two months of the billings. A bill for \$90,277 is currently in preparation on the fifth order.

The Office of Regional Counsel issued the *CERCLA Administrative and Unilateral Order Procedures*, which provides that AOCs are to be distributed to the Office of the Comptroller and the Office of Superfund Programs. However, this document does not stipulate who should distribute the orders. According to the ORC Docket Clerk, the orders are to be distributed by either the site Remedial Project Manager, or by the Attorney who negotiated the order. However, there is

nothing in writing to require such distribution. Apparently, in the five instances noted above, no one forwarded the orders. Thus the responsible parties were not billed until years after they should have been.

RECOMMENDATION We recommend that the Region 3 Administrator have the AOC distribution process amended to require that a specific individual, e.g., the ORC Docket Clerk, be tasked to send a copy of each AOC to the Office of the Comptroller and as well as to the Office of Superfund Programs.

REGION 3 RESPONSE

The Region is in the process of issuing procedures which will clarify the office responsible for distribution of all copies of CERCLA orders. In addition, ORC has recently begun providing a list of issued CERCLA administrative orders to Finance.

OIG EVALUATION

During the exit conference we clarified that the Region intends to assign this responsibility to a specific individual. We ask that a copy of the procedures be provided to our office.

CHAPTER 5

OTHER MATTERS

On October 2, 1995, the Administrator announced several new Superfund reforms including an initiative to encourage and reward cooperative parties by reducing EPA oversight activities. In a July 31, 1996 memorandum, EPA Headquarters provided examples of oversight monitoring activities that should be considered for reduction depending upon site circumstances. These examples included items such as reducing the number of field visits to observe routine activities or taking fewer split samples at the site. The memorandum also:

- Referred to a list of 100 sites with cooperative and capable parties, where the Regions had already reduced oversight or had plans to reduce oversight.
- Explained that EPA's overall goal is for a nationwide 25% reduction in oversight costs over the next year at these 100 sites.
- Stipulated that effective immediately, the Regions should evaluate all sites to identify where oversight could be reduced without reducing protection.
- Required that responsible parties receive an estimate of oversight costs for the next year, at the time of annual billing.

At the time of our review, almost 20 months after the Administrator's announcement, the Region had yet to determine at which sites it would attempt to reduce oversight, or to provide any responsible parties with an estimate of

future oversight costs. In conversations we were informed by regional personnel that the Region is still working to refine its list of sites and hoped to have it completed by the end of June 1997.

RECOMMENDATIONS We recommend that the Region 3 Administrator ensure that the list of sites designated for reduced oversight is finalized.

REGION 3 RESPONSE

The Office of Superfund has developed a working list of sites where the responsible parties meet the “technically competent” and “cooperative” criteria in the current Reduced Oversight policy. Region 3 is working with other regions and Headquarters to modify the guidance implementing the Administrator’s 1995 Reduced Oversight Reform. One area under consideration is the provision of oversight cost estimates. In the meantime, the Region plans to meet periodically with potentially responsible parties to solicit their input on the Region’s oversight plans.

OIG EVALUATION

We request that a copy of the final list of the sites designated for reduced oversight be provided to our office. In our draft report, we had recommended that the Region annually provide responsible parties with oversight cost estimates, in accordance with the July 31, 1996, Headquarters memorandum. Based on the Region’s response and arguments presented at the exit conference, we concurred that this issue merited further consideration by the Agency.

APPENDIX A

Region 3 Response to Draft Audit Report E5FFL7-03-0008
With Region 3 Program Offices' and
Maryland's Department of the Environment Comments Attached

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APPENDIX B - DISTRIBUTION

HEADQUARTERS

Director, Financial Management Division (2733F)
Agency Audit Followup Coordinator (3304)
Agency Audit Followup Official (3101)

REGIONAL OFFICE

Regional Administrator (3RA00)
Director, Office of Policy and Management (3PM00)
Director, Hazardous Waste Management Division (3HW00)
Regional Counsel, Office of Regional Counsel (3RC00)
Chief, Grants & Audit Management Branch (3PM70)

OFFICE OF INSPECTOR GENERAL

Headquarters Office (2421)
Divisional Offices

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