



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Audit Report

EPA Can Improve Its Managing of Superfund Interagency Agreements with U.S. Army Corps of Engineers

Report No. 2007-P-00021

April 30, 2007



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Abbreviations

EPA	U.S. Environmental Protection Agency
IAG	Interagency Agreement
IPAC	Intra-governmental Payment and Collection
M&S	Management and Support
OARM	Office of Administration and Resources Management
OIG	Office of Inspector General
OSWER	Office of Solid Waste and Emergency Response
RPM	Remedial Project Manager
The Corps	U.S. Army Corps of Engineers

Cover photo: Sign located at the entrance to the Federal Creosote Superfund Site in Manville, New Jersey, managed by the U.S. Army Corps of Engineers under an EPA Interagency Agreement (EPA OIG photo).



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

In Fiscal Year 2006, the U.S. Environmental Protection Agency (EPA) made about \$255 million in Superfund Interagency Agreement (IAG) payments to the U.S. Army Corps of Engineers (the Corps). We sought to determine the effectiveness of EPA's selection of the Corps to perform cleanup, as well as EPA's effectiveness in monitoring Corps-conducted cleanups.

Background

The goal of the Superfund program is to clean up hazardous waste sites that pose risks to human health and the environment. EPA accomplishes Superfund goals through a variety of mechanisms, including IAGs. An IAG is a written agreement in which one Federal agency (such as EPA) obtains supplies and services from another agency (such as the Corps) on a reimbursable basis.

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

To view the full report, click on the following link:
www.epa.gov/oig/reports/2007/20070430-2007-P-00021.pdf

EPA Can Improve Its Managing of Superfund Interagency Agreements with U.S. Army Corps of Engineers

What We Found

EPA needs to better justify and support its decisions to enter into Superfund IAGs with the Corps. Decision memorandums used to justify awarding Superfund IAGs to the Corps did not contain comparisons of alternatives considered. Further, EPA did not develop independent cost estimates. This occurred because EPA generally believes the Corps has more construction and contracting expertise to manage Superfund projects than its own personnel. As a result, EPA has limited assurance that the Superfund IAGs it awards to the Corps are based on sound decisions. EPA regions have initiated some corrective actions, but further steps are needed.

EPA also needs to improve its monitoring of IAGs with the Corps to better manage cost, timeliness, and quality. Specifically, the Agency needs to:

- Ensure the Corps improves the quality and timeliness of monthly invoices and progress reports it submits to EPA.
- Ensure it knows what services the Corps is being paid for and that the amount billed is based on clear supporting documentation.
- Include terms and conditions in IAGs that establish criteria against which the Corps' performance will be evaluated.

EPA regions indicated they were generally very satisfied with the majority of the work performed by the Corps. Nonetheless, EPA needs to better monitor the more than \$250 million it pays to the Corps each fiscal year to clean up Superfund sites. Improved monitoring would also eliminate \$2.5 million in excess and idle Management and Support fees that EPA paid the Corps that could be put to better use in the Superfund program.

What We Recommend

EPA needs to develop its own independent cost estimates for Corps in-house costs, conduct cost analysis of alternatives when determining whether to use the Corps, and document actions taken. EPA also needs to require the Corps to improve the format of its monthly reports, use the Intra-governmental Payment and Collection System to reimburse the Corps for its in-house costs, address the \$2.5 million in Management and Support fees being held by the Corps, include terms in future IAGs to allow better monitoring, and develop a plan on using feedback reports. EPA agreed with all but one of our recommendations, and for this recommendation it proposed an alternative action that meets the intent of our recommendation.



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

OFFICE OF
INSPECTOR GENERAL

April 30, 2007

MEMORANDUM

SUBJECT: EPA Can Improve Its Managing of Superfund Interagency
Agreements with U.S. Army Corps of Engineers
Report No. 2007-P-00021

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

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is \$216,840

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days of the date of this report. You should include a corrective action plan for agreed upon actions, including milestone dates.

If you or your staff have any questions regarding this report, please contact me at 202-566-0899 or heist.melissa@epa.gov; or Carl Jannetti, Product Line Director, at 215-814-5800 or jannetti.carl@epa.gov.

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Chapter 1

Introduction

Purpose

In Fiscal Year 2006, the U.S. Environmental Protection Agency (EPA) made about \$255 million in Superfund Interagency Agreement (IAG) payments to the U.S. Army Corps of Engineers (the Corps). We conducted this audit to determine:

- The effectiveness of EPA's analysis and selection of the Corps to perform cleanup versus an EPA contractor, a State, or the Bureau of Reclamation.
- The effectiveness of EPA's activities to ensure cleanups conducted by the Corps are accomplished on time, within budget, and to quality standards.

Background

The Superfund program was authorized under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. The goal of the program is to clean up uncontrolled hazardous waste sites that pose unacceptable risks to human health and environment. EPA accomplishes its Superfund goal through a variety of mechanisms that include contracts, partnerships with States, and IAGs.

An IAG is a written agreement between Federal agencies in which one agency (such as EPA) needing supplies or services obtains them from another Federal agency (such as the Corps) on a reimbursable basis. An IAG can take a variety of forms. The work can be performed directly by the Corps staff on behalf of EPA, or the Corps can have the work performed by a contractor on behalf of EPA. EPA's Grants Administration Division, within the Office of Administration and Resources Management (OARM), is authorized to enter into and execute IAGs for the Agency. The Office of Solid Waste and Emergency Response (OSWER) sets policies for managing Superfund sites. EPA policy requires decision memorandums to justify the award of IAGs.

Remedial Project Managers (RPMs) in regional offices manage Superfund IAGs. RPMs recommend the mechanisms (e.g., another Federal agency such as the Corps) for cleaning up the site. RPMs have to work with EPA contracting officers and contractors when using EPA contracts. When RPMs use the Corps via IAGs, they have fewer contracting duties because they transfer to the Corps most of the administrative tasks for awarding and managing the cleanup contracts. EPA said that the Corps also offers unique strengths to the Agency in the areas of design, construction, claims, and independent government cost estimates. Further, RPMs have to monitor the contractor's cost and work when EPA contracts are used, while the Corps monitors cost and work of the contractors

when IAGs are used. The RPM is responsible for monitoring the cost and work of the Corps through site visits, monthly reports, and conference calls.

In Fiscal Years 2005 and 2006, EPA paid the Corps over \$261 million and \$255 million, respectively, for Superfund IAGs (see Table 1-2). These payments were for costs of the Corps oversight (in-house) as well as the cost for the Corps' contractor that performed the work.

Table 1-2: Payments for Superfund IAGs Awarded to the Corps

Fiscal Year 2005		
Non Direct Site Charges	\$86,591,000	33%
EPA Direct Site Payments to Corps' Contractors	\$174,652,000	67%
Total	\$261,243,000	
Fiscal Year 2006		
Non Direct Site Charges	\$74,759,000	29%
EPA Direct Site Payments to Corps Contractors	\$180,905,000	71%
Total	\$255,664,000	

Source: EPA Cincinnati Finance Center

Noteworthy Achievements

Regions 1, 2, and 3 demonstrated unique and notable achievements related to IAG management:

- Region 1 designed and instituted a decision matrix to evaluate specific factors surrounding Superfund sites when deciding whether the best option for cleaning the site was to use the Corps or EPA's response action contractors.
- Region 2 compared the cost of services for the Corps to that of EPA's response action contractors to determine, in general, whether IAGs with the Corps or response action contractors were more economical.
- Region 3 established a regional management team, consisting of executive level managers, to review RPMs' decisions to use the Corps or EPA's response action contractors.

Scope and Methodology

We performed this audit from July to December 2006 in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. We selected IAGs for review, based on dollar amount or award date. Using these criteria, we reviewed 26 IAGs that Regions 1, 2, and 3 awarded to the

Corps valued at \$1 billion from a universe of 223 IAGs valued at almost \$1.9 billion.

We visited EPA headquarters in Washington, DC; Region 1 in Boston, Massachusetts; Region 2 in New York, New York; and Region 3 in Philadelphia, Pennsylvania. At headquarters we met with OSWER and OARM personnel to discuss Superfund IAG policies and review documents. During our site visits in the regions, we interviewed personnel and reviewed documents used for justifying and managing Superfund IAGs.

To accomplish our first objective, we reviewed 12 IAGs valued at almost \$30 million awarded after January 2002. We limited the sample to IAGs awarded after January 2002 to ensure applicability with OARM's policy on decision memorandums issued in 2002. We interviewed RPMs, project officers, and others to determine why awarding an IAG to the Corps was the best alternative. We also reviewed decision memorandums and other documents to determine the justification cited for awarding IAGs to the Corps.

To answer our second objective, we interviewed OARM and OSWER personnel responsible for establishing and implementing policy for managing IAGs with the Corps. In the regions we interviewed RPMs, project officers, and other managers responsible for monitoring IAGs. We reviewed statements of work, monthly progress reports and invoices, and other documents used to monitor the 26 IAGs in our sample. However, we only reviewed monthly reports for 17 of the 26 sample IAGs because the remainder were unavailable.

We reviewed management controls related to our objectives. As part of this review, we examined EPA's Fiscal Years 2005 and 2006 Integrity Act Annual Assurance Letters for OSWER and the Fiscal Year 2005 letter for OARM. OSWER did not report any material weaknesses pertaining to Superfund IAGs. OARM continued to report on its progress in addressing the Agency level weakness of Grants Management.

On October 29, 2004, in response to EPA OIG report 2005-P-00001, OSWER indicated its Superfund Contracts Regional Review Program would review how regions document decisions for entering into IAGs with the Corps. On August 19, 2005, OSWER reported in its 2005 Annual Assurance Letter that it had not collected enough data to determine whether clarifying guidance was needed. OSWER's 2006 Annual Assurance Letter did not comment on this topic.

Other controls we reviewed included the feedback reports submitted by all 10 EPA regions. OSWER developed an electronic feedback form to determine the degree of the RPMs' satisfaction with the Corps and its contractors for all active Superfund projects managed under IAGs. We focused on the reports from Regions 2, 3, and 9 since they had comments that pertained to our review.

EPA responded to our draft report on March 28, 2007. We summarized their response and included our evaluation at the end of Chapters 2 and 3.

Prior Reports

We researched prior EPA OIG, Government Accountability Office, and other reports and noted two pertinent EPA OIG reports:

- **EPA OIG Report No. 2005-P-00001, *Response Action Contracts: Structure and Administration Need Improvement*, December 2004:** We reported that EPA regions do not consistently document the rationale for deciding which procurement option to use for Superfund cleanups. We also noted that EPA does not have a process to measure and disseminate information on the Corps' past performance in support of EPA.
- **EPA OIG Report No. 2001-P-00011, *Superfund: Superfund Interagency Agreements*, June 2001:** We reported that EPA generally had effective controls to ensure its Superfund IAGs achieve expected environmental results timely and efficiently. However, we noted areas in which EPA could make improvements. In particular, the 1991 OSWER Directive 9242.3-08 *Revision of Policy Regarding Superfund Project Assignment Between Alternative Remedial Contracting Strategy Contractors and the U.S. Army Corps of Engineers* was superseded, but still used to assign Superfund work between EPA contractors and IAGs with the Corps.

Chapter 2

IAG Award Process Could be Further Improved

EPA needs to better justify and support its decisions to enter into Superfund IAGs with the Corps. Eleven of the 12 decision memorandums we reviewed for projects awarded to the Corps contained no comparisons of alternatives. Further, EPA did not develop its own independent cost estimates. This occurred because EPA generally believes the Corps has more construction and contracting expertise to manage Superfund projects than its own personnel. Also, OSWER and OARM did not hold regions accountable to follow policies for awarding and justifying IAGs. As a result, EPA has limited assurance that the approximately \$255 million that EPA paid to the Corps in Fiscal Year 2006 to manage Superfund IAGs was based on sound decisions. Prior to our audit, some EPA regions had initiated corrective measures, such as developing a decision matrix (Region 1) and establishing a regional management team to evaluate alternatives (Region 3). While we believe these are worthwhile processes, further improvements to these processes would make them more effective.

Regional Decisions Need Better Justification

In January 2002, OARM's Grants Administration Division issued *IAG Guidance on Use of Interagency Agreements* that requires EPA to prepare decision memorandums that include:

- Information on alternatives to IAGs.
- Determinations that costs are reasonable based on an independent estimate of costs or other appropriate cost information developed by EPA.
- An explanation as to why the other Agency was selected.

The decision memorandum is the key document that EPA uses and reviews to justify awarding the IAG.

Of the 26 IAGs we sampled, 12 were awarded by Regions 1, 2, and 3 after OARM issued its January 2002 guidance. Our review of these 12 IAGs, valued at almost \$30 million, determined that:

- Only one decision memorandum discussed alternatives to the Corps.
- The files for another five of these IAGs (but not the decision memorandums) showed the region considered alternatives to the Corps.
- For the remaining six IAGs, there was no documented evidence to indicate that regional offices considered alternatives before using the Corps.

See Table 2-1 for a breakdown. Moreover, none of the 12 decision memorandums contained an EPA-developed cost estimate of the Corps' costs. (Region 3 did develop a cost estimate for one IAG but did not discuss it in the decision memorandum.) As a result, EPA spent approximately \$28 million to procure the services of the Corps and its contractors without preparing its own cost estimate to ensure the prices proposed by the Corps were reasonable.

Table 2-1: Details on 12 IAGs Reviewed

Region	Site Name	Award Amount	Documentation in Decision Memo		Alternative Considered But Not in Decision Memo
			EPA Cost Estimate	Alternative Considered	
1	Atlas Tack	\$14,340,000	No	No	Yes
1	Elizabeth Mine	3,200,000	No	No	Yes
1	Eastland Wools Mills	3,500,000	No	No	Yes
1	Selresim	900,000	No	No	Yes
2	Hooker I	75,000	No	No	No
2	Hooker II	75,000	No	No	No
3	Westinghouse	250,000	No	No	No
3	William Dick Lagoon	306,000	No	No	Yes
3	Eastern Diversified	80,000	No	No	No
3	Safety Light	2,000,000	No ¹	Yes	NA
3	Big John Salvage	4,590,000	No	No	No
3	RCRA	525,000	No	No	No
		\$29,841,000			

Source: EPA's IAG Database and Decision Memorandums

Instead of referring to a cost estimate, the Region 2 decision memorandums stated “the projected budget furnished by [the Corps] ... has been reviewed by EPA staff and has been determined to be reasonable in relation to the level of [the Corps] ... involvement expected at this site.” The Region 1 decision memorandums showed total estimated cost, but did not include further breakdown of costs needed for an adequate cost estimate. Moreover, there was no indication of how or who developed the Region 1 estimates, and two Region 1 RPMs told us they relied on the Corps to provide cost estimates. We agree there are instances for which EPA may want to utilize the Corps because of specialized expertise. For example, Superfund activities that involve unexploded ordinance is an area in which the Corps has unique expertise. However, without comparing the Corps' cost estimate to an EPA-developed cost estimate, EPA cannot be assured that the cost proposed by the Corps is reasonable or appropriate.

Several RPMs told us that they often relied on the Corps to prepare the estimates. OSWER personnel also believed EPA could rely on the Corps' estimates without performing its own formal analysis. They said they believed the Corps was less

¹ Independent cost estimate developed by Region 3 but not discussed in decision memorandum.

expensive and better suited to manage the remedial Superfund activities than its own regions. However, an EPA cost estimate should still be developed and considered to determine if the costs proposed by the Corps are reasonable.

In Fiscal Year 2004, EPA reported that it obligated approximately 56 percent of its remedial action funding to IAGs, 36 percent to contracts, and 8 percent in grants to States. Over the past 20 years, EPA policy has evolved to provide EPA regions the latitude to manage most cleanups, no matter what the dollar value. However, many EPA personnel still believe the Corps is better suited to manage Superfund cleanups. In 1984, EPA signed a Memorandum of Understanding with the Corps indicating the Corps will manage all cleanups paid for with Superfund money unless the Corps cannot provide necessary support. In 1988, EPA issued another memorandum that required only cleanups exceeding \$5 million to be assigned to the Corps. In December 1991, EPA again revised its policy to require EPA to assign only remedial actions costing more than \$15 million to the Corps. The latest policy, dated May 2003, removed all dollar thresholds and permitted EPA to manage all cleanups, no matter what the dollar value. However, the latest policy still encouraged the continued use of the Corps for larger projects, and EPA regions continue to rely heavily on the Corps.

EPA's 2004 internal study, *Superfund: Building on the Past, Looking to the Future*, also known as the "120-Day Study," noted there is a perception in EPA that some regions are using IAGs as a default vehicle, instead of deliberately choosing an IAG, because of the Corps' unique capabilities. This study recommended that regional senior management should be involved in selecting the cleanup mechanism (other Federal agency, remedial action contractor, or State agency) to ensure effective use of funds. However, we found the decision memorandums RPMs prepared did not include cost estimates and information pertaining to alternatives, when considered. EPA personnel often believed the expertise, resources, and experience of the Corps were more important than cost. In addition, the 2006 Performance Plan for RPMs did not include any critical job elements that pertained to the management of IAGs, lessening the incentive for following guidance.

OSWER Requirements Not Followed

In addition to removing dollar thresholds when deciding to award IAGs to the Corps, OSWER's May 2003 *Superfund Policy for Assigning Work to the US Army Corps of Engineers* identified seven factors that regions should consider and document when deciding whether to use either response action contracts or the Corps. This policy stated, "As with all procurements, analysis should be conducted to select the appropriate contracting vehicles.... All analyses should be documented in the site or contract file. The documentation should outline the reason behind the selection, especially any factors that were used to make the decision."

Although Regions 1 and 3 had potential best practices in this area, improvements could be made. Region 1 utilized and documented a decision matrix, while Region 3 developed a Site Advisory Outline for the Regional Management Team process. The Region 1 decision matrix listed factors the RPM should consider that were similar to those required in the May 2003 policy. The Region 3 Regional Management Team process consisted of involving executive level managers in the decision making to ensure an RPM’s desire to award an IAG to the Corps is justified. However, these processes did not consider all seven factors required by the 2003 policy, as shown in Table 2-2.

Table 2-2: Factors Considered by Potential Best Practices

	May 2003 Policy Source Selection Factors	Potential Best Practice	
		Region 1 Decision Matrix	Region 3 Site Advisory
1.	Site Characteristics	Yes	Yes
2.	Remedy Characteristics	No	Yes
3.	Local/Public Interest	No	Yes
4.	Experience/Regional Infrastructure	Yes	No
5.	Capability/Capacity of Contractors	Yes	No
6.	Conflict of Interest	Yes	No
7.	Unique Site Needs	Yes	Yes

Source: EPA Policy and IAG Files

Also, a selection factor in the Region 1 decision matrix was outdated. The decision matrix asked, “Is the work a Remedial Action with an estimated cost of more [than] ... \$15 million?If yes, then ... [the Corps] contractor support is strongly suggested (1991 Guidance memo).” This factor became outdated when OSWER’s 2003 policy removed the dollar threshold. The Region 1 and 3 processes are tools that have potential to support the justifications of all regions for decisions made when awarding IAGs. However, the documents need to be more comprehensive to ensure that all the factors from the May 2003 policy are included and that Agency cost estimates are developed and considered.

EPA OIG Report No. 2005-P-00001 recommended that OSWER issue clarifying guidance to regional offices about documenting its rationale for what entity will perform cleanup. However, as of November 2006, EPA was still evaluating how to clarify its guidance, but told us that they had verbally recommended that all regional offices should consider using the Region 1 decision matrix. The issues reported in this chapter demonstrate that the regions continued to utilize their own processes, which are not in full compliance with established guidance. OSWER needs to act expeditiously to clarify its guidance and ensure regions follow it.

Recommendations

We recommend that the Assistant Administrators for OSWER and OARM:

- 2-1 Require that regional offices develop an EPA independent cost estimate for the Corp's oversight of IAGs.
- 2-2 Require that regional offices conduct a cost analysis of alternatives when determining whether to award an IAG and evaluate the analysis against an EPA-developed cost estimate.
- 2-3 Develop a process for holding regional offices and RPMs accountable for complying with OSWER's 2003 policy for assigning remedial work, and OARM's 2002 guidance to document in decision memorandums justifications for IAGs based on an analysis of alternatives and EPA-developed cost estimates.

Agency Comments and OIG Evaluation

EPA concurred with our recommendations and is revising the OSWER May 2003 policy to ensure that, prior to entering an IAG with the Corps, regional offices will prepare their own estimates for Corps in-house cost. The updated policy will require regional offices to conduct a cost analysis when determining whether to award an IAG to the Corps versus another alternative. The revised policy will also require improved documentation of regional decisions to award IAGs to the Corps versus other mechanisms. This documentation will include specific information on alternatives considered, why the IAG was selected, why the costs are considered reasonable based on an independent EPA estimate of Corps in-house costs, other factors considered, and what involvement regional management had in the decision.

Instituting these requirements in a revised OSWER policy meets the intent of our recommendations. However, OSWER needs to ensure the new policy has a mechanism to hold regional offices accountable for compliance.

EPA's complete response is in Appendix B. OSWER's response to this final report should include milestone dates indicating when its planned actions will be completed.

Chapter 3

EPA Needs to Improve Monitoring of Superfund IAGs Awarded to the Corps

EPA needs to improve its monitoring of IAGs awarded to the Corps to better manage cost, timeliness, and quality. In October 2005, EPA recognized the need to improve its monitoring of Superfund IAGs awarded to the Corps and made changes to do so. However, the Agency still needs to:

- Ensure the Corps improves the quality and timeliness of monthly invoices and progress reports it submits to EPA.
- Ensure it knows what services the Corps is being paid for and that the amount billed is based on clear supporting documentation.
- Include terms and conditions in IAGs that establish criteria against which the Corps' performance will be evaluated.

The need to improve monitoring of IAGs awarded to the Corps still exists because EPA generally believes the Corps is another Federal agency that is more qualified to manage Superfund construction projects than EPA. EPA regions indicated they were generally very satisfied with the majority of the work performed by the Corps. Nonetheless, EPA needs to better monitor the more than \$250 million it pays to the Corps each fiscal year to clean up Superfund sites. Improved monitoring would also eliminate \$2.5 million in excess Management and Support fees that EPA paid the Corps.

Timeliness of Corps Monthly Reports Needs Improvement

EPA Resources Management Directive 2550D, *Financial Management of the Superfund Program Superfund Interagency Agreements*, issued in 1988, requires EPA to obtain from the Corps monthly progress reports, within the first 10 days of the following month. The reports are to include information about timeliness, cost, and quality of cleanups. The directive also requires the Corps to provide documentation that supports all direct and indirect costs.

The EPA *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059, issued in 1995, states that the Corps is to provide monthly progress reports to RPMs as a tool for gauging site progress. EPA implemented this guidance in statements of work we reviewed by specifying that the Corps must submit monthly reports to EPA. For example, the terms and conditions in the statement of work for one IAG we reviewed, valued at over \$178 million, specified that each month the Corps must provide the RPM:

- Summaries of work performed for the current period.
- Estimates of the percentage of the project completed.
- An accounting of funds expended for the reporting period and project to date.
- Summaries of all problems or potential problems encountered.
- Projected work for the next month.
- Copies of all ... requests for reimbursement (SF 1080) for all Corps in-house costs submitted to EPA for payment that month.

We reviewed monthly reports for 17 of the IAGs in our sample. For eight of these IAGs, the Corps submitted late monthly reports to EPA, with some reports submitted as late as a year after the Corps performed the work (see Table 3-1). In total, we reviewed 40 monthly reports for the 17 IAGs and found that the Corps submitted 19 of them to EPA late.

Table 3-1: IAGs with Late Monthly Reports

IAG	Number of Late Reports	Lateness of Reports (in Months)
944216-01-0	1	2
944170-01-0	5	2 – 6
944173-01-0	4	1 – 12
944162-01-0	1	5
944174-01-0	4	5 – 7
941732-01-0	1	2
934141-01-0	2	1 – 3
934140-01-0	1	3

Source: Monthly Reports Regions Received from the Corps

While five of the eight IAGs with late reports were awarded by Region 3, it was not because that region did not attempt to rectify the condition. Interviews with the RPMs responsible for the six IAGs awarded by Region 3 disclosed all were dissatisfied with the Corps' monthly reports. Further, documentation in these RPM files contained correspondence expressing this dissatisfaction. For example, in a September 2005 email to the Corps, the RPM states:

It seems that no matter how we at EPA plead, cajole, beg, and point out [the Corps' reporting requirements under the IAGs], [the Corps'] financial reporting to the RPMs continues to be abominable.

In feedback reports, Region 9 RPMs also expressed frustration with the timeliness of the Corps' reports. For example, they wrote in feedback reports that the Corps sometimes went a year without submitting reports. They also noted they did not always get billings or monthly reports. Further examples of displeasure noted in feedback reports from Region 2, 3, and 9 RPMs are included in Appendix A.

Quality of Corps Monthly Reports Also Needs Improvement

Our review of the monthly reports that the Corps submitted to Regions 1, 2, and 3 disclosed problems with quality. Regions 2 and 3, along with Region 9, had previously noted these problems in feedback reports.

RPMs routinely identified in feedback reports problems with the Corps' monthly reports. RPMs did not always understand the charges on the Corps's monthly invoices because reports did not give detailed information for labor billings. These same RPMs expressed concern over an inability to determine from the reports who charged to the project and what work they performed. For example, one feedback report, for an IAG valued at almost \$109 million, stated: "The reports do not give very detailed cost breakdowns, for example I cannot determine who is charging to the project and what work is accomplished by those who charge to the project." See Appendix A for more examples.

Besides labor, the Corps' invoices include many other charges, such as departmental overhead, general and administrative overhead, and a headquarters' Management and Support fee. Despite Agency requirements to verify indirect Corps costs, EPA could not provide any evidence to indicate that any audit organizations reviewed how the Corps developed its indirect costs. Moreover, EPA did not prepare detailed estimates for the cost of the Corps' staff hours and associated overhead and compare them to the actual costs billed. EPA policy requires program offices to prepare cost estimates for IAGs and ensure that all direct and indirect costs are supported.

While the composition of these Corps indirect costs could not be clearly accounted for and explained, some headquarters and regional personnel indicated they were not concerned with the ambiguity because the Corps is another Federal agency. They said the Corps, like EPA, is responsible for efficiently managing Federal funds and is not in business to make money.

Without timely and quality progress reports, EPA cannot effectively assess work progress, as well as evaluate the reasonableness of the Corps' actual costs.

Payment Process Needs Change

There is no incentive for the Corps to provide EPA clear, detailed monthly reports in a timely manner because it is paid for the work performed before the reports are submitted. Except for final payments, the RPM does not approve the Corps' invoice before or after payment is made. EPA's payment office reimburses the Corps solely based on the invoice submitted by the Corps. The statement of work for one IAG stated, "Upon receipt of the [Corps] certified bill, [Cincinnati Finance Center] processes payment to [the Corps]. Payment will be made within 5 days of receipt and without certification by the EPA Regional program offices except for final billings."

The current payment process is unique within EPA and is only used for Corps Superfund IAGs. Under this process, EPA cannot charge back payments the program office disputes once the payments have already been made to the Corps. Instead, credits must be made against future Corps billings.

All other EPA IAGs with other Federal agencies, including those for Superfund, are paid using the Intra-governmental Payment and Collection (IPAC) System. Under IPAC, the RPMs would approve payments to the Corps after payment is made. However, IPAC provides a more effective process to dispute payments. The process allows the RPM to input a “chargeback” (refund) if it is determined the payment was unjustified. As part of its fiduciary responsibility, EPA needs to ensure payments for Corps IAGs using its Superfund trust fund are justified. Therefore, EPA should use the more effective IPAC system for Corps IAGs.

EPA Needs to Improve Oversight of Management and Support Fees

EPA headquarters has shifted oversight of Management and Support (M&S) fees to the Corps. EPA pays the Corps for managing cleanups on a monthly basis, as work is performed. Each monthly invoice contains billings for the work the Corps district office performed managing the cleanup, and includes an M&S fee based on the project costs billed. This M&S fee is currently set at 1.8 percent, and is placed into a revolving fund that is managed by the Corps. These funds are used to pay the Corps for work it performs at the request of EPA headquarters, such as:

- Resolving issues between Corps district offices.
- Assisting with 5-year reviews.
- Developing and providing technical guidance for EPA and the Corps.
- Conducting annual joint EPA and Corps Superfund conferences.
- Preparing and managing the M&S budget.

This cycle continues throughout the year, and the Corps maintains the accounting of the M&S fees it holds for EPA. When we requested information from EPA staff about how much was in the M&S revolving account, they needed to obtain that information from the Corps. After we obtained this information, we determined that more than \$2.5 million remained in the fund at the end of Fiscal Year 2006. Even though the funding may eventually be used, it represents funds that are sitting idle. Therefore, the \$2.5 million represents idle funds that could be put to better use. The balance in this account will continue to grow unless annual plans are developed for using the funds. As of October 2006, EPA had not established any specific plans for how and when the excess M&S fees would be used. EPA headquarters needs to improve its oversight for these funds. This will enable EPA to manage the M&S fund balance fees and ensure excess funds are not provided to the Corps.

EPA Needs Criteria to Evaluate Corps Performance

In 2003, EPA issued the *Evaluation of the Performance of the Corps of Engineers In Support of EPA's Superfund Program* (referred to as the "Quigley report"). This report recommended including criteria in IAGs to evaluate the Corps' performance. The suggested criteria included elements for cost control, quality, timeliness of reporting, and project completion.

Subsequent observations in EPA's 2004 report, *Superfund: Building on the Past, Looking to the Future* (referred to as the "120-Day Study"), further supported the evaluation criteria called for in the Quigley report. Specifically, it included findings and recommendations that indicated:

- EPA needs to manage IAGs better, particularly billing and oversight.
- The overhead rates charged by the Corps appear to vary widely.
- Frustration with the IAG billing process is widespread.
- OSWER and OARM should analyze how much EPA is paying other Federal agencies for indirect costs and other costs. For Corps IAGs, these costs should be analyzed at the district level, not just the national level.

In October 2005, in lieu of including criteria in the IAGs as recommend in the Quigley report, EPA instituted feedback reports that RPMs can complete to assess the cost, timeliness, and quality of the Corps' work. However, EPA has not defined or formalized how the feedback reports will be used. The Corps' performance will be difficult to evaluate until EPA develops a formalized plan on how to use feedback reports.

For example, according to documentation in an award fee review report, one of the 26 IAGs we reviewed, valued at almost \$88 million, experienced poor Corps' oversight of its contractor. This resulted in a small corner of a building foundation collapsing due to over excavation. In addition, poor oversight resulted in problems with the contractor's performance regarding the bypass of sewer lines, poor planning, inaccurate costs estimates, and untimely work. Although the Corps and its contractor performed poorly, the Corps' contractor received over \$400,000 in questionable award fees during periods of poor performance. EPA also paid the Corps over \$3 million despite insufficient oversight of its contractor.

As a result of the lack of performance criteria in the IAGs, the Corps can perform poorly with no consequences. Further, other EPA offices may not be aware of the problems being experienced. Without a method to record occurrence of problems, the potential for a reoccurrence exists. This type of information is essential to manage IAGs.

Recommendations

We recommend that the Assistant Administrators for OSWER and OARM:

- 3-1 Require the Corps to improve the format of its monthly reports so that costs and activities correlate and can be clearly understood. RPMs must be able to determine who in the Corps worked on the IAG, for how long, the costs charged EPA, and what work was accomplished and remains to be completed.
- 3-2 Use the IPAC system to reimburse the Corps' in-house costs for work accomplished under IAGs.
- 3-3 Develop a specific plan for using the \$2.5 million in M&S fees held by the Corps or require the Corps to refund these fees to EPA, and continue to develop plans on an annual basis to address future fees.
- 3-4 Require future IAGs awarded to the Corps to include terms and conditions that will enable RPMs to monitor the Corps' cost, quality, and timeliness.
- 3-5 Develop a policy on how and when the feedback reports will be used as an oversight tool to monitor and improve the cost, quality, and timeliness of the Corps' performance.

Agency Comments and OIG Evaluation

OSWER concurred with all recommendations except for Recommendation 3-2. OSWER formed a joint EPA/Corps workgroup to improve, among other potential areas, format and timeliness of the Corps' monthly reports. EPA developed a plan for using the \$2.5 million in M&S fees that is anticipated to use the remaining balance by September 2008. OSWER and OARM will jointly determine whether generic terms and conditions should be added to improve monitoring cost, quality, and timeliness of Superfund IAGs awarded to the Corps. Moreover, OSWER is developing a plan for how and when the feedback reports will be used to improve monitoring the cost, quality, and timeliness of the Corps' performance.

Concerning Recommendation 3-2, OSWER explained that it will assess whether IPAC should be used to reimburse the Corps for its in-house costs for the work its staff performed under the IAGs. However, OSWER does not intend to use IPAC to reimburse the Corps' contractors.

EPA's actions taken and planned, including for Recommendation 3-2, should help improve its monitoring of IAGs awarded to the Corps. Our recommendation to use IPAC was intended to improve the monthly reports the Corps submits to EPA.

The IPAC system has better controls than the current method of reimbursement to ensure such monthly reports are provided to the regions.

EPA's complete response is in Appendix B. OSWER's response to this final report should include milestone dates indicating when its planned actions will be completed.

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
2-1	9	Require that regional offices develop an EPA independent cost estimate for the Corp's oversight of IAGs.	O	Assistant Administrators for OSWER and OARM			
2-2	9	Require that regional offices conduct a cost analysis of alternatives when determining whether to award an IAG and evaluate the analysis against an EPA-developed cost estimate.	O	Assistant Administrators for OSWER and OARM			
2-3	9	Develop a process for holding regional offices and RPMs accountable for complying with OSWER's 2003 policy for assigning remedial work, and OARM's 2002 guidance to document in decision memorandums justifications for IAGs based on an analysis of alternatives and EPA-developed cost estimates.	O	Assistant Administrators for OSWER and OARM			
3-1	15	Require the Corps to improve the format of its monthly reports so that costs and activities correlate and can be clearly understood. RPMs must be able to determine who in the Corps worked on the IAG, for how long, the costs charged EPA, and what work was accomplished and remains to be completed.	O	Assistant Administrators for OSWER and OARM			
3-2	15	Use the IPAC system to reimburse the Corps for work accomplished under IAGs.	O	Assistant Administrators for OSWER and OARM			
3-3	15	Develop a specific plan for using the \$2.5 million in M&S fees held by the Corps or require the Corps to refund these fees to EPA, and continue to develop plans on an annual basis to address future fees.	O	Assistant Administrators for OSWER and OARM	09/30/2008	\$2,500	\$2,500
3-4	15	Require future IAGs awarded to the Corps to include terms and conditions that will enable RPMs to monitor the Corps' cost, quality, and timeliness.	O	Assistant Administrators for OSWER and OARM			
3-5	15	Develop a policy on how and when the feedback reports will be used as an oversight tool to monitor and improve the cost, quality, and timeliness of the Corps' performance.	O	Assistant Administrators for OSWER and OARM			

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

Feedback Reports

IAG Number	Region	\$ Value	RPM Comment
1. DW96934140	2	\$108,763,660	The reports do not give very detailed cost breakdowns, for example I cannot determine who is charging to the project and what work is accomplished by those who charge to the project.
2. DW96934141	2	93,400,000	I cannot determine who is charging to the project and what work they have accomplished.
3. DW96943877	3	15,108,613	We need to have status reports submitted monthly.
4. DW96943802	3	287,207	If you don't know how to do a detailed cost estimate with net present worth calculations, don't tell us you can.
5. DW96943841	3	340,000	Revise the financial reporting at least to the level of mere adequacy!
6. DW96943873	3	375,000	PPMD (Project Planning and Management Division) support non-existent at times. In-house District costs too high (vs. field support costs which were very reasonable).
7. DW96944085	3	61,059	Other than cost tracking for the IAG, the monthly report narratives are not extremely useful. Reports are consistently late.
8. DW96944162	3	306,145	Monthly reports are continuously submitted late. Currently the reports are four months behind.
9. DW96955430	9	3,470,000	The format of the monthly reports provided to me by the [Corps] is not very informative. I think monthly written reporting overall is the major weakness of the [Corps]. A new format is needed to solve this weakness.
10. DW96955441	9	9,010,175	I didn't get any monthly reports. In spite of repeated requests, including above mentioned visit, no reports. The [Corps] went a year without submitting any reports then delivered a data dump: coded printouts about 2-inches thick, and that was supposed to explain all expenditures for last year.
11. DW96955635	9	120,000	Provide useful financial reports in a timely manner, on a monthly basis. The reports need to specify the Corps personnel who charged time to the project, the number of hours charged, and the cost of those hours. The reports also need to state what was done during the reporting period.
12. DW96955584	9	526,444	There seems to be a huge amount of overhead expended in tracking down the accounting and resolving accounting issues.
13. DW96955587	9	247,193	Never got a billing. The amount we were originally told this project would cost (\$80 - 100 K) turned into 340 K.
14. DW96955588	9	250,000	Given how tight Superfund dollars are the Corps needs to assist EPA in projecting, monitoring, and controlling costs.

Source: EPA Feedback Reports Completed by RPMs

Agency Response to Draft Report

March 28, 2007

MEMORANDUM

SUBJECT: OSWER Response to Draft Audit Report “EPA Can Improve its Managing of Superfund Interagency Agreements with U.S. Army Corps of Engineers” Project No. 2006-001265

FROM: Susan Parker Bodine/s/
Assistant Administrator

TO: Bill A. Roderick
Acting Inspector General

Thank you for your evaluation of Superfund Interagency Agreements (IAGs) with the U.S. Army Corps of Engineers (USACE) and for the opportunity to review the draft audit report “EPA Can Improve its Managing of Superfund Interagency Agreements with U.S. Army Corps of Engineers.” We will use your recommendations to continue to improve the IAG award and monitoring process.

The comments below represent a consolidated response from the Office of Administration and Resources Management (OARM) and the Office of Solid Waste and Emergency Response (OSWER). First, we provide historical context to EPA’s use of the USACE for Superfund work. Second, we address each of the recommendations and provide information about planned or initiated actions related to those recommendations. Third, we provide additional comments to ensure that the final audit report contains accurate and current information.

I. Background:

We would first like to provide historical context to EPA’s use of the USACE for Superfund work. At the inception of the Superfund, EPA recognized the need to develop a construction program to address site cleanup projects. EPA determined that developing and maintaining the infrastructure of construction expertise (including cost estimators, contract administrators, and contract and claims attorneys) would be expensive, and that construction expertise was available through the use of another federal agency – the Army Corps of Engineers. The process of obtaining construction expertise from the USACE and their contractors was revisited as part of the Superfund Contracts 2000 Strategy, and workgroup members again found that the cost of developing this expertise within EPA was prohibitive. Thus, for over 25 years, EPA has partnered with the USACE to provide Superfund with construction expertise.

In addition to the USACE, EPA also uses EPA awarded contracts for smaller projects. These contracts, currently named the Remedial Action Contracts (RACs), are primarily used for smaller and less complex projects. As projects increase in scope and complexity, EPA has found that in most cases a Federal construction manager is necessary. Thus the USACE, with their ability to maintain a federal presence on site, are selected for these projects. The Regions are delegated authority to enter into IAGs with the USACE for the management of site-specific work, and the bulk of the funds awarded under IAGs to the USACE are Regional IAGs. The EPA/USACE partnership has been integral in helping EPA accomplish over 1000 construction completions at Superfund sites.

II. OIG RECOMMENDATIONS AND EPA RESPONSE:

OIG Recommendation 2-1: Require that regional offices develop an EPA independent cost estimate for the USACE oversight of IAGs.

EPA Response:

OSWER agrees that EPA should prepare and document an estimate of anticipated USACE staff hours and costs prior to entering into an IAG with USACE.

OSWER will reissue EPA's May 2003 policy on assigning work to USACE. In this updated policy, OSWER will require that Regions prepare a budget for anticipated USACE Full Time Equivalent (FTE) hours/costs, travel and other direct costs prior to entering into an IAG with USACE. This budget estimate would be prepared by the remedial project managers (RPMs) or project officers before commencing IAG scoping discussions with USACE (e.g., before USACE procures a contractor for remedial design (RD) or remedial action (RA) work). This estimate is limited to anticipated USACE staff hours and costs for USACE in-house design or construction services. This estimate is separate from the detailed Independent Government Cost Estimate (IGCE) that will be prepared by USACE and reviewed by EPA for work performed by contractors on site-specific RD or RA projects, or for technical support (e.g., PRP oversight, real estate acquisitions, etc.). The IGCE would be prepared by skilled USACE cost estimators before procuring the RD or RA contractor.

OIG Recommendation 2-2 Require that regional offices conduct a cost analysis of alternatives when determining whether to award an IAG and evaluate the analysis against an EPA-developed cost estimate.

EPA Response:

OSWER has agreed that EPA Regions should prepare and document an estimate of anticipated USACE staff hours and costs prior to entering into an IAG with USACE to let and manage design or construction contracts under Superfund.

When OSWER updates the May 2003 policy on assigning work to USACE, OSWER will require that Regions prepare a budget for anticipated USACE Full Time Equivalent (FTE) hours/costs, travel and other direct costs prior to entering into an IAG with USACE. OSWER also will require improved documentation of Regional decisions regarding use of USACE vs. other mechanisms in this updated policy. This updated policy should bring Regions into compliance with Office of Administration and Resources Management's (OARM) 2002 guidance for documenting justifications for IAGs based on an analysis of alternatives and EPA-developed cost estimates.

OIG Recommendation 2-3: Develop a process for holding regional offices and RPMs accountable for complying with OSWER's 2003 policy for assigning remedial work, and the Office of Administration and Resources Management's (OARM) 2002 guidance to document in decision memorandums justifications for IAGs based on an analysis of alternatives and EPA-developed cost estimates.

EPA Response:

OSWER agrees that improvements are needed in documenting decisions on assigning remedial work. OSWER will reissue EPA's May 2003 policy on assigning work to USACE, and will include the following requirements for improving documentation of Regional decisions regarding use of USACE vs. other mechanisms:

- Regions should document all alternatives to the IAG considered by the Regions, why the IAG mechanism with the USACE was selected, and why estimated USACE staff hours and costs for the proposed work are considered to be reasonable, based on an EPA estimate of anticipated USACE staff hours and costs developed for use in negotiating the IAG with the USACE.
- Regions normally consider several selection factors when making these decisions; these factors will be further described in the policy to be reissued.
- Regions shall document Regional management involvement in decisions.

OIG Recommendation 3-1: Require the Corps to improve the format of its monthly reports so that costs and activities correlate and can be clearly understood. RPMs must be able to determine who in the Corps worked on the IAG, for how long, the costs charged EPA, and what work was accomplished and remains to be completed.

EPA Response:

OSWER agrees that the format and timeliness of USACE monthly reports should be improved. A joint EPA/USACE workgroup has recently been formed which will further assess issues associated with monthly reports and invoices, areas for improvement, and recommended follow-up actions.

OIG Recommendation 3-2: Use the IPAC system to reimburse the Corps for work accomplished under IAGs.

EPA Response:

OSWER does not agree that the Intra-governmental Payment and Collection (IPAC) system should be used to reimburse contractors under the Direct Cite Process for work accomplished under IAGs. OSWER will further assess and consider whether to use the IPAC system to reimburse the USACE for payment of USACE staff work accomplished under IAGs.

In the report, the OIG does not, but should, distinguish between EPA direct payments to the USACE construction contractor under the Direct Cite Process, and payment of USACE invoices for USACE in-house costs.

Regarding the Direct Cite Process, as the project manager and holder of the contract, the USACE reviews contractor invoices and approves the charges. If the USACE has issues with the invoice, the USACE follows standard contracting procedures and may suspend or disallow costs. The USACE forwards request for payment to the EPA Cincinnati Finance Center for prompt payment using Superfund funds. Payment of the contractor invoice by the EPA Cincinnati Finance Center constitutes the Direct Cite Process.

Regarding payment of USACE in-house invoices for staff work accomplished under IAGs, OSWER will further assess and consider whether to change to the IPAC system to reimburse the USACE for these costs. As discussed earlier, the USACE in-house invoices to be reviewed in this assessment would not include invoices for payments to contractors, since such payments are considered part of the Direct Cite Process.

OSWER also recognizes the need to improve the timely receipt of appropriate documentation associated with monthly invoices for work conducted under site-specific IAGs. A joint EPA/USACE workgroup has recently been formed which will further assess issues associated with monthly reports and invoices, areas for improvement, and recommended follow-up actions.

OIG Recommendation 3-3: Develop a specific plan for using the \$2.5 million in Management and Support (M&S) fees held by the Corps or require the Corps to refund these fees to EPA, and continue to develop plans on an annual basis to address future fees.

EPA Response:

OSWER has an established plan in place for use of the \$2.5 million in M&S fees held by USACE and will update this plan to address expanded technical support activities to be funded with these fees. The accrual of \$2.5 million in M&S fees was a one-time occurrence in the first year of converting from a centrally managed M&S fee system to a fee system that distributed M&S fees to individual IAGs. The collection and use of M&S fees is carefully monitored by OSWER on a quarterly basis, and the annual M&S budget is reviewed and compared against actual expenditures. OSWER plans to draw down the remaining M&S fees through funding work that would normally be paid for from Superfund's annual budget. To date, less than \$1.6 million of the \$2.5 million remains to be distributed. OSWER anticipates that these remaining funds will be completely utilized by the end of FY-08.

OIG Recommendation 3-4: Require future IAGs awarded to the Corps include terms and conditions that will enable RPMs to monitor the Corps' costs, quality, and timeliness.

EPA Response:

OSWER and OARM agree with this recommendation. We are committed to ensuring that our RPM's and project officers have the tools necessary to properly oversee USACE work. OSWER will work with OARM to review current IAGs for terms and conditions relating to EPA monitoring of USACE costs, quality, and timeliness. Upon review of these IAGs, OSWER and OARM will consider whether to recommend development of generic Superfund terms and conditions.

OIG Recommendation 3-5 Develop a policy on how and when the feedback reports will be used as an oversight tool to monitor and improve the cost, quality, and timeliness of the Corps' performance.

EPA Response:

OSWER will develop a plan for how and when the feedback reports will be used as an oversight tool to monitor and improve the cost, quality, and timeliness of USACE performance.

OSWER developed the feedback system as a means to collect performance data on active IAG projects assigned to USACE by EPA Regions. OSWER has been working on ways to more fully utilize the data and believes that this new tool will provide useful information on areas that are working well and will help to pinpoint the relatively few individual projects that need improvement. Review of all feedback reports, beyond the negative reports presented by the IG,

shows that currently most respondents are very satisfied with the overall project management of USACE and with the quality of products or services provided by USACE contractors.

III. OTHER EPA COMMENTS:

Prior to this OIG report, OSWER identified a number of the areas for improvement in EPA's use of USACE and efforts have begun to help address these areas. This OIG report will reinforce these ongoing efforts.

Specific Comments

Chapter 1, Introduction:

1) Pages 1 and 2, third paragraph under 'Background':

“Remedial Project Managers (RPMs) in regional offices manage Superfund IAGs. RPMs recommend the mechanisms (e.g., another Federal agency such as the Corps) for cleaning up the site. RPMs have to work with EPA contracting officers and contractors when using EPA contracts. When RPMs use the Corps via IAGs, they have less work because they transfer most administrative tasks to the Corps for awarding and managing the cleanup contracts. EPA explained the Corps also offers unique strengths to the Agency in areas of design, construction, claims, and independent government cost estimates. Also, RPMs have to monitor the contractor's cost and work when EPA contracts are used, while the Corps monitors cost and work of the contractors when IAGs are used. The RPM is responsible for monitoring the cost and work of the Corps through site visits, monthly reports, and conference calls...”

EPA Response:

We recommend that the fourth sentence in the above paragraph be changed to read, “When RPMs use the Corps via IAGs, they have **fewer contracting duties** ~~less work~~ because they transfer most administrative tasks to the Corps for awarding and managing the cleanup contracts.”

The above paragraph incorrectly states that RPMs have less work when they use the USACE under an IAG. The amount of work that RPMs have is unrelated to whether they are using the USACE under an IAG. Use of the USACE relieves the RPM of many of the contracting duties, freeing up the RPM to focus on other responsibilities in the site remediation process. RPMs are generally assigned a large amount of work that is commensurate with their skills, expertise and experience.

Even when using the USACE, the work can be substantial. After the initial planning is completed and the RD/ RA begins, the RPM is responsible for ensuring that the project

progresses on schedule and within budget. To do so, the RPM manages and monitors USACE activities through a multitude of activities, including:

- Initiating and maintaining frequent communications with project participants via conference calls
- Conducting regular meetings to discuss RD and RA progress
- Identifying issues and taking corrective actions as necessary
- Documenting meetings and conference calls
- Ensuring timely review of key deliverables
- Organizing and managing activities of a Technical Review Team within EPA that will assist in the review of project deliverables
- Establishing a communications strategy for the site
- Coordinating with the state and the public regarding site progress
- Helping to ensure that all applicable or relevant and appropriate requirements (ARARs) are identified and incorporated into RD and RA activities
- Helping to ensure that the record of decision’s remedial action objectives, environmental and health-based requirements, and cleanup goals are met during RD/RA activities
- Helping to ensure that quality assurance/quality control requirements for data collection and analyses, and documentation within deliverables are followed

Upon completion of the RD/RA, the RPM also helps to ensure that all appropriate procedures for closing out the IAG with USACE are followed.

2) Page 2, fourth paragraph under ‘Background’:

“In Fiscal Years 2005 and 2006, EPA paid the Corps over \$261 million and \$255 million, respectively for Superfund IAGs (see Table 1-2). These payments were for costs of the Corps oversight (in-house) as well as the cost for the Corps’ contractor that performed the work.

Table 1-2: Superfund IAG Payments to the Corps

<u>Fiscal Year 2005</u>		
<i>In-House</i>	\$86,591,000	33%
<i>Contractor</i>	\$174,652,000	67%
<i>Total</i>	\$261,243,000	
<u>Fiscal Year 2006</u>		
<i>In-House</i>	\$74,759,000	29%
<i>Contractor</i>	\$180,905,000	71%
<i>Total</i>	\$255,664,000	

Source: EPA Cincinnati Finance Center”

EPA Response:

The above text description and Table 1-2 regarding “Superfund IAG Payments to the Corps” is inaccurate.

- Table 1-2 should label “In-house” as “Non Direct Cite Charges”
USACE’s “In-house” charges noted in Table 1-2 include payments for a number of activities in addition to USACE contractor oversight for RD/RA projects. These activities include USACE staff work in conducting project management, field investigations, remedial investigation / feasibility studies (RI/FS), enforcement oversight support, operation and maintenance, real estate relocations and acquisitions, cost estimating and Five-Year Reviews. These activities also include USACE contractor work on ‘non-construction’ activities (such as contractor support on RI/FS, operation and maintenance, laboratory analyses, site access support, property acquisition and relocation activities, litigation support, radiological waste disposal, and field investigation activities).
- Table 1-2 should label “Contractor” as “EPA Direct Cite Payments to USACE contractors”

Chapter 2, IAG Award Process Could be Further Improved

1) Page 5, first paragraph:

“EPA needs to better justify and support its decisions to enter into Superfund IAGs with the Corps. Eleven of the 12 decision memorandums we reviewed for projects awarded to the Corps contained no comparisons of alternatives. Further, EPA did not develop its own independent cost estimates. This occurred because EPA generally believes that the Corps is more capable of managing Superfund projects. Also, OSWER and OARM did not hold regions accountable to follow policies for awarding and justifying IAGs. As a result...”

EPA Response:

We recommend that the fourth sentence be deleted and the fifth sentence modified to read: *“This occurred because OSWER and OARM did not hold the regions accountable to follow policies for awarding and justifying IAGs.”*

The fourth sentence as currently written does not accurately reflect the reasons why the EPA often decides to use the Corps. It is the Corp's construction and contracting expertise, not their Superfund project management expertise that often makes the Corps an attractive alternative in the Superfund program.

Chapter 3, EPA Needs to Improve Monitoring of Superfund IAGs Awarded to the Corps:

1) Page 14, fourth paragraph:

“For example according to documentation in an award fee review report, 1 of the 26 IAGs we reviewed, valued at almost \$88 million, experienced poor Corps’ oversight of its contractor that resulted in the collapse of a building due to over excavation. In addition, poor oversight resulted in sewer lines being broken, poor planning, inaccurate costs estimates, and untimely work. Although the Corps and its contractor performed poorly, the Corps’ contractor received over \$400,000 in questionable award fees during periods of poor performance. EPA also paid the Corps over \$3 million for insufficient oversight of its contractor.”

EPA Response:

First sentence in above text:

This sentence is not accurate. A small corner of the building foundation collapsed. USACE severely reprimanded the RA contractor. The contractor did not bill the Government for the repair of the building.

Second sentence in above text:

This sentence is not accurate. The sewer system in this area was over 75 years old and in very poor condition. There were some problems with the RA contractor’s performance regarding the bypass of the sewer lines. Numerous quality control deficiencies were reported and letters were issued to the contractor by the USACE requesting improved performance (see comment below). Furthermore, as a consequence of the contractor’s poor performance, the contractor performance award fee for the period was significantly reduced.

Third sentence in above text:

This sentence is not accurate, and EPA strongly disagrees that the USACE performed poorly. USACE identified the performance problems with the RA contractor in a very timely manner. USACE’s first step was to request a change in the RA contractor’s site superintendent, then a few months later, the RA contractor’s site project manager. After the project manager was replaced, the RA contractor’s performance significantly improved. Because of their poor performance, the RA contractor lost over \$660,000 in potential award fees.

Fourth sentence in above text:

This sentence noting that USACE can perform poorly with no consequences is not accurate.

As discussed further in comments to Chapter 1, EPA’s RPMs manage and monitor USACE’s activities and performance on IAGs through a number of other mechanisms, and issues that arise are usually worked out through a variety of mechanisms.

- If issues arise regarding poor USACE performance, RPMs usually communicate these issues

directly to USACE project managers and discuss options to resolve these issues on a day-to-day basis.

- RPMs conduct a variety of oversight functions when managing IAGs, including the following activities:
 - Initiate and maintain frequent communications with project participants via conference calls
 - Conduct regular meetings to discuss RD and RA progress
 - Identify issues and corrective actions as necessary
 - Document meetings and conference calls
 - Ensure timely review of key deliverables
 - Organize and manage activities of a Technical Review Team within EPA who assist in the review of project deliverables.
- If issues are not resolved at the RPM/USACE project manager level, RPMs elevate the issue to EPA Regional and USACE District office management. USACE and EPA Headquarters staff may also be contacted to help resolve issues.
- If EPA Regions remain dissatisfied with USACE performance, Regions may choose to transfer work to RACs contractors, States, or to in-house EPA contracting mechanisms.

Thank you for the opportunity to review the draft report. If you have any questions regarding our comments please contact Ken Skahn at 703-603-8801, Barbara McDonough at 703-603-9042 or Johnsie Webster, OSWER Audit Liaison at (202) 566-1912.

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