



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

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MEMORANDUM

SUBJECT: Use of CERCLA § 122(b)(3) Special Accounts at RCRA Corrective Action Sites

FROM: Special Accounts Senior Management Committee

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In recent years there has been discussion concerning whether the EPA can deposit funds received under Resource Conservation and Recovery Act (RCRA) settlements into special accounts, to enhance EPA's ability to oversee cleanups conducted at sites subject to corrective action under RCRA with the goal of expediting those cleanups. The Superfund Special Accounts Senior Management Committee (SASMC), which serves as the oversight body for the Environmental Protection Agency's management and use of special account, has developed this memorandum, in consultation with the Office of General Counsel, to provide direction to EPA Regions on the scope of EPA's ability to retain and use funds in special accounts for the oversight of RCRA cleanups.

Special accounts are site-specific, interest bearing sub-accounts within the Superfund Trust Fund established through settlement agreements and used to fund site-specific work. Special accounts should continue to be used only to retain funds received pursuant to agreements under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Additionally, special account funds should continue to be used only to undertake CERCLA response actions at a site. As further described below, EPA can use special account funds to conduct a CERCLA response action at a site, or at a portion of a site, that is subject to corrective action under RCRA.



The Miscellaneous Receipts Act (MRA) requires that “money for the Government from any source” in the possession or custody of a federal official be deposited in the General Fund of the Treasury unless another statute authorizes a different disposition of the funds.¹ Section 122(b)(3) of CERCLA is an exception to the MRA, as it authorizes EPA to “retain and use” funds received pursuant to an agreement “for purposes of carrying out the agreement,” if EPA will be carrying out “any action” as part of that agreement.

An analysis of § 122(b)(3) confirms that special account funds should not be used to fund non-CERCLA actions. When read in context with the rest of CERCLA § 122 (titled, “Settlements”), the term “any action” referred to in § 122(b)(3) is properly applied only to “response actions” taken under CERCLA. Interpreting “any action” to encompass actions taken pursuant to statutes besides CERCLA would create a broad exception to the MRA, which would be in direct conflict with the principle that exceptions to the MRA be strictly construed.²

In some cases, work conducted under RCRA could meet the definition of a “response action” under CERCLA. However, actions conducted under RCRA, and actions conducted under CERCLA, are funded from different Congressional appropriations. Allowing special account funds, which are authorized under CERCLA, to be used to conduct RCRA work would constitute an augmentation of the Agency’s RCRA appropriation. Such augmentation is allowed only if there is statutory authority to do so. Neither the legislative history of CERCLA nor direct statutory authorities provide such permission. EPA cannot improperly augment its appropriations and must comply with fiscal laws when retaining and using funds in special accounts.

There are two situations where EPA can establish and use special account funds at a site subject to corrective action under RCRA. The first is where EPA has determined that it will conduct the response action at the site under CERCLA. EPA would need to enter into an agreement under CERCLA and establish a special account to retain the funds to carry out the terms of the agreement. EPA would be using the special account funds to undertake a CERCLA response action at the site.

Additionally, EPA could do the same for just a portion of a site subject to corrective action under RCRA. Again, EPA could use special account funds if EPA enters into an agreement under CERCLA concerning a portion of the site, and the special account funds would only be used to undertake a CERCLA response action at that portion of the site, and the rest of the site would continue to be addressed under RCRA.

Both of these options are consistent with the memorandum “Coordination Between RCRA Corrective Action and Closure and CERCLA Site Activities” (Sept. 24, 1996).³ This memorandum provides possible approaches where CERCLA and RCRA can both be used to effect cleanup at a site if cleanup responsibilities are divided between the two authorities, or if timing sequences are set up to allow for work to be conducted under one statute prior to work beginning under the other.

¹ 31 U.S.C. §§ 3302(a) & (b)

² 19 Comp. Gen 791 (1940)

³ The memorandum can be found at:

http://www.epa.gov/epawaste/hazard/correctiveaction/resources/guidance/gen_ca/coordmem.pdf

Finally, Regions are still able to enter into agreements using joint statutory authority. However, special accounts can only be used to “retain and use” funds pursuant to an agreement using joint statutory authority if the agreement is an agreement under CERCLA § 122 and the funds will be used to conduct a CERCLA action at the site.

In accordance with the Office of Site Remediation Enforcement (OSRE) “Roles Chart,”⁴ Regions should consult with OSRE prior to retaining funds in a special account for a CERCLA response action at a RCRA facility.

If you have any questions concerning this memorandum, please contact Manuel Ronquillo (OECA/OSRE) at (202) 564-6065.

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⁴ See Category C35 of the Roles Chart, which can be found on the EPA intranet at: <http://intranet.epa.gov/oeca/osre/documents/roles.html#c>