



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

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MEMORANDUM

SUBJECT: Use of Special Account Funds to Facilitate Work Settlements with Potentially Responsible Parties and to Expedite the Cleanup of Superfund Sites

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PURPOSE

The purpose of this memorandum is to re-emphasize the importance of providing special account funds to potentially responsible parties (PRPs) as an incentive for those parties to enter into work settlements. This strategy accomplishes several goals, including expediting settlement negotiations, expediting work, avoiding the use of Congressional appropriations, and promoting enforcement fairness. The success of this approach was recently demonstrated in the Davis Liquid Waste pilot as part of the Integrated Cleanup Initiative, where use of this strategy resulted in RD/RA negotiations being conducted in less than half the average time for negotiations in Region 1 and cleanup is scheduled to be completed a year earlier than previously expected.¹ The Office of Site Remediation Enforcement (OSRE) and the Office of Superfund Remediation and Technology Innovation (OSRTI) understand that although such a strategy may not be appropriate in all instances, the Regions should conduct a thorough analysis of potential candidates and take steps to implement this strategy whenever practicable.

BACKGROUND

Special accounts are site-specific, interest bearing sub-accounts within the EPA Hazardous Substance Superfund (Trust Fund). Special accounts are used to fund response actions conducted pursuant to CERCLA. The legal authority for establishing special accounts is found at section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), which authorizes the government to

¹ More information about the Davis Liquid Waste pilot can be found under Action #17 of the OSWER ICI web page at <http://www.epa.gov/oswer/integratedcleanupactions.htm>

retain and use monies received from PRPs to carry out response actions contemplated by an agreement. This authority enables EPA to use special account funds for EPA-financed cleanup at a site, or to provide those funds to a PRP who agrees to perform a response action at a site under a settlement agreement. EPA guidance provides that using special account funds to facilitate settlement with PRPs for response actions is the first priority of use for special account funds.² Regions should determine the amount of funds that can be provided to a PRP based on the amount of risk assumed by that PRP.³

BENEFITS AND ADVANTAGES

Some of the advantages of providing special account funds to PRPs who enter into settlement agreements to conduct work are:

- Expediting settlement. Making special account funds available to a PRP is a significant incentive for PRPs to enter into settlement agreements for the performance of work. PRPs may be more willing to enter into settlements and transaction costs can be reduced if PRPs are made aware that: (a) funds are available to help defray the cost of implementing the response action, and (b) funds can be made unavailable if the PRPs delay negotiations.
- Conservation of Congressionally appropriated resources. Ensuring that PRPs agree to conduct work pursuant to a settlement helps EPA conserve its Congressionally-appropriated resources and use those resources at other sites. Providing special account funds can help to convince PRPs to sign up for work, rather than simply entering into a “cash out” settlement.
- Expediting work. Providing special account funds to PRPs to encourage settlement can help to expedite work at sites since, depending on the timing of the settlement, work may be able to begin sooner than previously anticipated. Another way to expedite work would be to make special account funds available upon the PRP reaching expedited work milestones, incentivizing the PRP to conduct work expeditiously if it wishes to attain the special account funding.

CONCLUSION

Providing special account funds to PRPs can be a useful part of the strategy to attain site cleanup. The availability of funds can incentivize PRPs to reach settlement, and to conduct work on expedited schedules. EPA benefits by ensuring that a PRP will conduct the response action, leaving EPA and its resources available to address other sites.

If you have any questions regarding providing special account funds to PRPs, please contact Manuel Ronquillo (OSRE) at (202) 564-6065.

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² See “Guidance on the Planning and Use of Special Accounts,” Sept. 28, 2010 (OSWER Directive # 9275.1-20).

³ See “Interim Final Guidance on Disbursement of Funds from EPA Special Accounts to CERCLA Potentially Responsible Parties,” Nov. 3, 1998.

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