



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

OFFICE OF
INSPECTOR GENERAL

October 30, 2006

MEMORANDUM

SUBJECT: Information Concerning Superfund Cooperative Agreements with New York and New Jersey
Report No. 2007-2-00003

FROM: Paul C. Curtis 
Director, Financial Statement Audits

TO: Barnes Johnson
Acting Director, Office of Superfund Remediation and Technology Innovation

The Office of Superfund Remediation and Technology Innovation (OSRTI) requested that the Office of Inspector General obtain information involving obligations for Superfund Cooperative Agreements. Specifically, OSRTI requested that we (1) inquire into the status of funds obligated for Superfund Cooperative Agreements with the States of New York and New Jersey, (2) determine if the States had billed EPA promptly for Cooperative Agreement funds, and (3) obtain information on practices employed by other regions with lower unliquidated balances. The attachment provides the results of our work.

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 \$307,000.

Action Required

Because this report does not contain any recommendations, we are closing it upon issuance. However, we would appreciate your office informing us of any actions taken as a result of this report.

Should you have any questions, please contact me at (202) 566-2523 or Curtis.Paul@epa.gov, or Meg Bastin of my staff at (513) 487-2366 or Bastin.Margaret@epa.gov.

Attachment

cc: Susan Parker Bodine, Assistant Administrator for Solid Waste and Emergency Response
Luis Luna, Assistant Administrator for Administration and Resources Management
Howard Corcoran, Director, Office of Grants and Debarment
John Svec, Audit Liaison, EPA Region 2
Kathy Finazzo, Audit Liaison, EPA Region 7
Roch Baamonde, Chief of Grants & Contracts Management Branch, EPA Region 2
Alan J. Steinberg, Regional Administrator, EPA Region 2
Lisa P. Jackson, Commissioner, New Jersey Department of Environmental Protection
Ed Putnam, Assistant Director, New Jersey Department of Environmental Protection Site
Remediation
Theresa Kell, Manager, New Jersey Department of Environmental Protection Federal
Funds Administration
Denise M. Sheehan, Commissioner, New York State Department of Environmental
Conservation
Dale Desnoyers, Director, New York State Department of Environmental Conservation
Division of Environmental Remediation
Rick Bean, Chief for Bureau of Environmental Remediation, Kansas Department of Health
and Environment

Scope and Results of Work Performed

We obtained a universe of grants from EPA's Grants Information Control System (GICS) using the Catalog of Federal Domestic Assistance numbers applicable to Cooperative Agreements (CAs), Hazardous Waste Management Program Support 66.801, and Superfund State Site Specific CAs 66.802 awarded to the States of New York and New Jersey. We noted that the GICS indicated that as of September 2005, New York and New Jersey – the States that make up EPA Region 2 – accounted for \$28 million in unliquidated obligations, while the States in EPA Region 7 – Iowa, Kansas, Missouri, and Nebraska – had only \$5.2 million in unliquidated obligations.

Using the GICS list, we statistically selected 11 Superfund CAs from a universe of 34 active New York and New Jersey agreements. Of the 11 CAs sampled, 8 were agreements with New Jersey and 3 were agreements with New York. We then interviewed EPA Project Officers and State personnel administering the CAs, and reviewed project files at Region 2, at the New Jersey Department of Environmental Protection (NJDEP), and at the New York State Department of Environmental Conservation (NYSDEC).

At OSRTI's request, we also contacted Region 7 and the Kansas Department of Health and Environment to discuss how they managed CAs. During our discussions, OSRTI indicated that New York and New Jersey had high levels of unliquidated obligations for CAs, while the States in EPA Region 7 had relatively small amounts.

Given its limitations, the work we performed does not constitute an audit conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. The results of our work are summarized below.

1. Status of Funds Obligated for Superfund Cooperative Agreements with New York and New Jersey

New York – \$486,744 Could Be Deobligated

One of three CAs we reviewed had funds that could have been deobligated. For this CA, a Multi-Site Cooperative Agreement (MSCA), NYSDEC did not initiate closeout because not all the site activities were completed. EPA and NYSDEC utilized this MSCA, No. 2643870, to fund management support activities at 14 Superfund sites. EPA continued to amend and extend the project period and award amounts for the agreement, even though some sites were completed. This agreement, awarded in 1987 for an initial period of 18 months, was amended 21 times.

As of September 19, 2006, we identified \$518,846 remaining for the 14 sites covered by the MSCA. Of this amount, \$486,744 remained for 13 sites where work had been completed and the sites were in the Site Management phase. The 13 sites are listed in Table 1.

Table 1: Sites with Balances Available for Deobligation as of September 19, 2006

Site Name	Balance Available for Deobligation
Amer Thermo	\$86,750
Byron and Barrel & Drum	46,644
Facet Enterprise	6,523
Katonah	7,610
Kenmark	24,519
Niagara	48,771
Pasley Solvents	38,123
Port Washington	35,426
Preferred Plating	73,890
Ramapo Landfill	0
Sarney Farm	55,131
SMS Instruments	54,291
Tronic Plating Co.	9,066
Total of the 13 Sites	\$486,744

Source: MSCA No. 2643870

On April 25, 2006, NYSDEC sent EPA a letter which proposed closing out the MSCA. In a letter dated July 12, 2006, EPA provided to NYSDEC a list of reports required to close out the MSCA. NYSDEC will submit an application for a single site agreement for Solvent Savers, which is the last site in the Remedial Design phase. This proposal to close out the MSCA, deobligate funds, and apply for a single site agreement, is a partial result of the OIG work performed, as indicated in the NYSDEC letter.

New Jersey – \$9.1 Million Identified for Deobligation

Funds that could have been deobligated remained on five of the eight CAs we reviewed. NJDEP did not submit Financial Status Reports (FSRs) timely for these five single site agreements. Region 2's Grants and Contracts Management Branch advised us that they hold periodic discussions with the State on the status of the agreements, including FSR submissions. However, the State's FSRs are still not current.

NJDEP officials cited two reasons for not timely submitting the FSRs: (1) lack of staff – three staff members work on preparing FSRs in addition to their other responsibilities; and (2) one staff member, who usually prepares FSRs, was reassigned to assist the Department of Justice gather information for a lawsuit.

The latest FSRs submitted for these five sites covered the periods ending either June 30, 2003, June 30, 2004, or September 30, 2004.

Each year, the Office of Solid Waste and Emergency Response sends out a memo in July or August requesting the regional offices prepare a deobligation plan, which is due in November. EPA officials then create a list of Interagency Agreements, Grants, Contracts, and Superfund State Contracts with estimated deobligation amounts. EPA Region 2

Emergency and Remedial Response Division officials explained that the amount available for deobligation was based on the work that had been completed at each site.

We concurred with EPA Region 2's Fiscal Year 2006 deobligation plan, prepared in November 2005. The plan identified \$9.1 million in potential deobligations for five NJDEP agreements, listed in Table 2.

Table 2: Potential Deobligations for Five NJDEP Agreements

Agreement No.	Site Name	Amount
2550840	Burnt Fly Bog	\$1,000,000
2555840	Combe Fill South	2,000,000
247083	Syncon Resins	600,000
2515840	Imperial Oil	5,000,000
253584	Ellis Property	500,000
Total of the Five Agreements		\$9,100,000

Source: Region 2 Fiscal Year 2006 Deobligation Plan

As of September 19, 2006, the funds for these sites had not been deobligated.

2. Timeliness of New York and New Jersey Billings

New York – Municipality Found Not to Bill Timely

For one of three CAs we reviewed, costs incurred were not billed timely. EPA awarded CA No. 99280000 to NYSDEC for remedial action activities related to implementing a long-term response action. The NYSDEC awarded a municipal agreement (subagreement) to the Town of Oyster Bay, New York (Municipality). This subagreement required the Municipality to submit payment requests no more often than quarterly, and no less often than biannually.

The Municipality had not complied with the subagreement billing terms since 2000. In 2003, the Municipality submitted reimbursement requests to NYSDEC for costs incurred in calendar years 2000 and 2001. In 2004, the Municipality submitted reimbursement requests for 2002 and 2003 incurred costs. Further, the Municipality had not submitted requests for any subsequent year. Although the monitoring data indicated the planned facility was operating and functioning as planned, the Municipality had not yet provided fiscal 2004 and 2005 incurred costs. When NYSDEC contacted the Municipality to advise it that it was behind, the Municipality responded that it thought it was only 1 year behind. NYSDEC told us it had made verbal requests for the overdue costs incurred. In a letter to EPA dated March 29, 2006, NYSDEC indicated that it had contacted the Municipality and requested it to submit requests for reimbursement as soon as possible for the periods January 1, 2004, to December 31, 2004, and January 1, 2005, to December 31, 2005.

According to condition 14(a) of the CA, NYSDEC agreed to draw cash only for actual disbursements. Since the Municipality had not submitted payment requests to NYSDEC for actual costs incurred, the NYSDEC had been prohibited from billing EPA. As a result, costs

incurred totaling approximately \$3 million had not been billed timely, and the unused obligated funds remained idle.

New Jersey – Multi-Site Cooperative Agreements Not Billed Timely

EPA awarded two MSCAs to NJDEP on September 29, 1998, which together totaled \$3,377,382. EPA awarded the agreements for ongoing management assistance support, which extended 12 expiring agreements through September 30, 2007. EPA included new grant conditions on these two replacement CAs that prevented NJDEP from drawing down funds until FSRs on the older agreements were updated and closed out. The 12 previous agreements had not been closed out timely because NJDEP has been consistently late submitting FSRs. As with funds that could have been deobligated, NJDEP officials cited two reasons for not timely submitting the FSRs: (1) lack of staff – three staff members work on preparing FSRs in addition to their other responsibilities; and (2) one staff member, who usually prepares FSRs, was reassigned to assist the Department of Justice gather information for a lawsuit.

In addition to including the grant conditions on the new CA agreements, EPA's program office advised us that it holds periodic discussions with the State on the status of the agreements, including FSRs. NJDEP submitted its final FSRs for the older CAs on March 16, 2005. EPA closed out the final preexisting CAs on April 3, 2006. EPA officials acknowledged that NJDEP does not timely submit their FSRs and sees it as a workload issue within NJDEP. As a result of NJDEP's untimeliness, funds that could have been used for other priorities remained idle on the current two CAs for 8 years.

3. Practices Employed by EPA Region 7 and Kansas

In our discussions with EPA Region 7 and the Kansas Department of Health and Environment, personnel told us that they used the following practices to limit their amounts of unliquidated obligations.

Region 7

- Utilize limited resources efficiently by funding agreements incrementally. This approach avoids large amounts of deobligations at the end of the CA period.
- Ensure that the workplan is project specific, with clearly defined tasks and limited periods of performance.
- Monitor CAs closely, using methods such as tracking time schedules, reviewing quarterly progress reports, and performing programmatic reviews.
- Communicate frequently with recipients on resolving technical and financial issues.
- Limit periods of performance to two years to provide an incentive for grantees to draw down timely.

Kansas Department of Health and Environment

- Limit the use of subagreements.

- Communicate frequently with recipients on resolving technical and financial issues.
- Utilize a financial person in the State program office to monitor the financial issues.
- Monitor funds on a regular basis.

OSRTI should consider whether expanding such practices to other regions might reduce the amount of funds that need to be deobligated and improve administration of CAs.