



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Early Warning Report

Making Better Use of Stringfellow Superfund Special Accounts

Report No. 08-P-0196

July 9, 2008



Report Contributors:

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Cover photo: The northern former disposal area in Zone 1 for the Stringfellow Superfund site. Drainage gutters and extraction wells are also visible. Also, in the center of the photo, well maintenance activities are being performed. (EPA photo)



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

In February 2006, the Office of Inspector General recommended that the U.S. Environmental Protection Agency (EPA) timely review Superfund special accounts to ensure funds are used consistent with its guidance. We followed up on EPA's progress in implementing this recommendation by evaluating EPA's use of special accounts that had high available balances or were at least 10 years old. The special accounts for the Stringfellow Superfund site have a high available balance of \$117.8 million.

Background

Section 122(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to retain and use funds received in settlements to address CERCLA response actions contemplated in the settlement agreements. EPA retains these funds in site-specific accounts, called "special accounts," which are sub accounts within the EPA Hazardous Substance Superfund Trust Fund (Trust Fund).

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/2008/20080709-08-P-0196.pdf

Making Better Use of Stringfellow Superfund Special Accounts

What We Found

By Fiscal Year 2010, EPA Region 9 could reclassify, or transfer to the Trust Fund, up to \$47.8 million in special account funds for the Stringfellow Superfund site, located near Glen Avon, California. Reclassifying or transferring is consistent with EPA guidance and would potentially allow \$47.8 million to be available for better use in Region 9's Superfund program or elsewhere in the Nation.

In response to our draft report, Region 9 agreed to reclassify \$20 million of the \$47.8 million by the end of Fiscal Year 2008. It also stated it would review the remaining amount (\$27.8 million) in annual reviews and when it achieves a record of decision and settlement for the remaining site work in Fiscal Year 2010.

The Stringfellow special accounts had a balance of approximately \$117.8 million as of June 11, 2008. The \$70 million remaining in the accounts are to cover potential EPA cleanup costs if the responsible party (the State of California) is unable to pay. The OIG will address EPA's management of funds held back for these purposes in a future report.

What We Recommend

We recommend that the Region 9 Administrator reclassify or transfer to the Superfund Trust Fund, as appropriate, \$47.8 million of the Stringfellow special accounts. In response to our draft report, EPA agreed to reclassify \$20 million of the \$47.8 million by the end of Fiscal Year 2008.

The Agency stated that the remaining amount (up to \$27.8 million) was a "buffer for unknowns," some amount of which will be needed for oversight costs, and indicated that it could potentially reclassify or transfer this remaining amount (\$27.8 million) to the Superfund Trust Fund (plus any earned interest) by the end of Fiscal Year 2010.



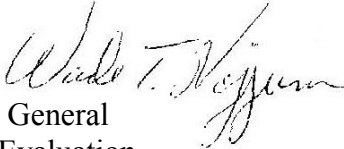
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

July 9, 2008

MEMORANDUM

SUBJECT: Making Better Use of Stringfellow Superfund Special Accounts
Report No. 08-P-0196

FROM: Wade T. Najjum 
Assistant Inspector General
Office of Program Evaluation

TO: Wayne Nastri
Region 9 Administrator

This report is to inform you of findings by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) that require immediate action regarding EPA Region 9's management of several Superfund special accounts. The purpose of the OIG work was to evaluate (1) EPA regions' utilization of special account funds for a sample of accounts with high available balances, and (2) EPA regions' utilization of special account funds for accounts that are at least 10 years old.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We visited Region 9 in July 2007 to conduct interviews with staff and managers, and followed up with regional staff on various issues until June 2008. In April 2008, we interviewed staff from the State of California's Department of Toxic Substances Control who are responsible for developing the cleanup estimates for the Stringfellow site. More details on scope and methodology will be included in a separate final report that will discuss other OIG findings on EPA's management of Superfund special accounts.

Background

Section 122(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes EPA to retain and use funds received in settlements to address CERCLA response actions contemplated in the settlement agreements. EPA retains these funds in site-specific accounts, called “special accounts,” which are sub accounts within the EPA Hazardous Substance Superfund Trust Fund (Trust Fund).

The Stringfellow Superfund site is a former hazardous waste landfill located near Glen Avon, California. Currently, there are six operable units at the site, and according to the most recent 5-year review, Region 9 has completed construction at five of the six operable units. A record of decision is expected in 2009 to address the perchlorate contamination at the sixth and final operable unit. The record of decision is also expected to require additional work at some of the other operable units at the site. Specifically, it may include construction of a new pump and treat system, a final landfill cap placement, additional ground water barrier wall construction, and aquifer dewatering.

EPA deposited proceeds it received from several settlements that primarily reimbursed EPA for its past costs at the site into six special accounts. Beginning in 2002, Region 9 reclassified approximately \$10 million of the Stringfellow special accounts. As of June 11, 2008,¹ the Stringfellow accounts’ net balance was approximately \$117.8 million, including approximately \$24.6 million in interest.

EPA Can Better Use \$47.8 Million of the Stringfellow Special Account Funds

By Fiscal Year 2010, Region 9 could reclassify, or transfer to the Trust Fund, up to \$47.8 million from the Stringfellow special accounts. In response to our draft report, EPA agreed to reclassify \$20 million of the \$47.8 million by the end of Fiscal Year 2008. It also stated it would review the remaining amount (\$27.8 million) in annual reviews and when it achieves a record of decision and settlement for the work in Fiscal Year 2010. Reclassification or transfer would be consistent with EPA guidance on managing Superfund special accounts.

During our review of selected Region 9 accounts with high available balances, we found the following for the Stringfellow Superfund site.

- **The State of California is the primary responsible party.** In 2001 the State reimbursed EPA approximately \$99 million for costs it had at the site through December 2000. EPA deposited these funds into a special account in the event that the State became unable to pay for the agreed-to cleanup costs.

EPA has considered other uses of the Stringfellow special account funds since 2001, and has also reclassified some account funds. When EPA initially received settlement funds from the State in 2001, various amounts, including \$30 million, were suggested as possible amounts to put in the Trust Fund instead of a special account. However, the entire settlement (approximately \$99 million) was deposited into one of the six special

¹ June 11, 2008, was the date of our exit conference with the Agency on our draft report.

accounts because a final remedy had not been selected at the site. EPA also had concerns about the State's financial fitness and its ability to pay for the cleanup. In 2002, Region 9 and EPA Headquarters staff in the Office of Enforcement and Compliance Assurance (OECA) and Office of the Chief Financial Officer (OCFO) discussed the Region's request for potential 2-year investment of \$30 million of the Stringfellow special account funds. EPA viewed this investment as an opportunity to potentially maximize earned interest within a limited time period, and at an early stage in the cleanup. However, OCFO and OECA did not believe the 2-year investment was a good idea. They suggested that if the Region did not need the money at the site, the money should be put into the Trust Fund and not an investment instrument. OCFO and OECA were concerned that such investments had not been done before. Headquarters was also concerned about related guidance it would need to issue and the perception oversight bodies would have of the investment. Consequently, the Region took no action to invest or transfer the \$30 million it had previously considered investing, although it did initiate the reclassification of \$10 million.

In July 2007, a Region 9 manager decided to reclassify \$30 million after determining these funds were in excess of anticipated needs at the site. However, in September 2007, we met with EPA Headquarters staff and management in OECA and the Office of Solid Waste and Emergency Response to determine the status of the Region's reclassification request. At that time, the reclassification had not been implemented. Personnel in both offices expressed concern about reclassifying any funds due to uncertainties, including the State's cleanup estimate for perchlorate contamination at Stringfellow. A Superfund program director was concerned because a final perchlorate remedy had not been selected and the State had recently issued a perchlorate standard. The director believed the new perchlorate standard had not been figured into the cleanup estimate. However, we determined that although a final remedy has not been selected, the State and Region did factor a perchlorate remedy into the site cleanup estimate. Further, the potential remedy used the perchlorate standard issued by the State in October 2007. On April 1, 2008, we interviewed the California Department of Toxic Substances Control staff who had developed the perchlorate cleanup estimate, and they confirmed the estimate is still valid.

- **As of June 2008, EPA may reclassify up to \$47.8 million using a phased approach.** In response to our draft report, the Region indicated it plans to reclassify, using a phased approach, as much as \$47.8 million from the Stringfellow special accounts by Fiscal Year 2010.

The excess Stringfellow funds are calculated as shown in Table 1.

Table 1: Calculation of Excess Stringfellow Funds

	Estimate
Combined Balance of All EPA Stringfellow Accounts as of June 11, 2008	\$117.8 million
Less: Final State's Remedy Estimate for Specific Remaining Work Not Yet Funded by the State (includes addressing perchlorate and other work)	70 million
Total of Excess Funds	\$47.8 million
Less: Planned Reclassification of funds by 9/30/08	20 million
Funds Remaining Available for Phased Reclassification	\$27.8 million

Source: OIG analysis of EPA data from ORBIT and from interviews with EPA staff and managers.

In response to our draft report, EPA agreed to reclassify \$20 million of the \$47.8 million by the end of Fiscal Year 2008. Of the \$20 million; \$5 million is expected to stay in the Region to be used for Superfund pipeline (site study) and Superfund remedial (cleanup) activities, and \$15 million is expected to go to the national remedial action pool. All of the funds are not being reclassified in the Region because the Region could not use all of the funds before the end of Fiscal Year 2008.

The Region is maintaining the additional amount (updated to \$27.8 million per Table 1 above) of \$47.8 million as a "buffer for unknowns" and is not maintaining these funds for any specific planned activities. The Region also estimates approximately \$300,000 in annual oversight costs will be needed for an unstated period of time. EPA said it will review the special account for opportunities to reclassify on an annual basis. It will also consider reclassifying funds at upcoming milestones such as December 2009 when the record of decision is achieved, and later in Fiscal Year 2010 when EPA expects to achieve a settlement for the remaining work. The remaining \$27.8 million will continue to earn interest, likely raising the amount of funds available for reclassification or transfer beyond \$27.8 million. So far in Fiscal Year 2008 (as of April 2008), EPA has earned approximately \$2.7 million in interest on the total account balance. We estimate that EPA will have earned approximately \$4 million by the end of Fiscal Year 2008. EPA has not factored pending interest into the total amount of Stringfellow funds that are available for transfer or reclassification.

Conclusions

By Fiscal Year 2010, Region 9 could reclassify, or transfer to the Trust Fund, up to \$47.8 million in special account funds for the Stringfellow Superfund site. Region 9 has demonstrated the appropriateness of reclassifying funds from the Stringfellow special accounts by previously reclassifying approximately \$10 million. Reclassification or transfer of the \$47.8 million is consistent with EPA guidance. The State has included a perchlorate remedy in its current cleanup estimate, and no change in the remedy estimate based on a new standard is expected. The remaining \$70 million of Stringfellow funds are being held in reserve for "potential future" EPA work. That EPA work may never occur if California continues its practice of funding its agreed-to cleanup costs. The OIG will discuss EPA's practice of holding special account funds in reserves in a separate future report.

Region 9 has other requirements that would put idle funds to better use. For example, the funds could be used to start new construction for a Superfund site. Also, the funds could be used to supplement site assessment and study, records center, and enforcement activities. Since Region 9 would have the use of its reclassified funding, EPA could reallocate some portion of its other Trust Fund dollars to other priority sites or needs. Alternatively, if funds are transferred to the Trust Fund, there are numerous Superfund requirements and priorities elsewhere in the Nation that could be addressed by putting these idle funds to better use.

Recommendations

We recommend that the Region 9 Administrator:

- 1) reclassify \$20 million of the Stringfellow special accounts by the end of Fiscal Year 2008 as planned.
- 2) reclassify or transfer to the Trust Fund, as appropriate, up to \$27.8 million (plus any earned interest less oversight costs) of the Stringfellow special accounts in annual reviews, and at other milestones including the end of Fiscal Year 2010, when the record of decision is signed and the final settlement is achieved.

Agency Response and OIG Evaluation

We reviewed the Agency's comments and made changes to the report, as appropriate. In response to our draft report, the Agency agreed to reclassify \$20 million by the end of Fiscal Year 2008. The Agency said it would use \$5 million of these funds in the Region and \$15 million would be used by the national remedial action pool. We revised Recommendation 1 to reflect the Agency's planned actions. Recommendation 1 will remain open until the reclassification is complete and the reclassified amount is confirmed. In 90 days, the Region should provide the OIG documentation detailing the \$20 million in unreimbursed EPA past site expenditures at Stringfellow to support its recertification process. In addition, the Region's 90-day response should include the milestone completion date for the \$20 million reclassification.

The Agency stated that \$26 million (updated to \$27.8 million per Table 1 above) was a "buffer for unknowns" and indicated that it could potentially reclassify or transfer as much as the remaining amount to the Superfund Trust Fund (plus any earned interest) by the end of Fiscal Year 2010. The Agency also stated that it estimated annual oversight costs of approximately \$300,000 for an unspecified period of time. Therefore, we added Recommendation 2 and provided Region 9 with another opportunity to review the report. The Region's response described actions it plans to take that will meet the intent of Recommendation 2. However, the Region did not agree on a specific amount that it will reclassify or transfer to the Trust Fund. Recommendation 2 will remain open until reclassification or transfer of these funds is complete and confirmed. The Region's 90-day response should include an action plan, with milestone completion dates, for implementing Recommendation 2.

Within 90 days of this report date, please e-mail an electronic version of your response that complies with Section 508 of the Rehabilitation Act to Carolyn Copper at copper.carolyn@epa.gov.

We will issue a final report that will discuss other OIG findings on EPA's management of Superfund special accounts. If there are questions, please contact Carolyn Copper at (202) 566-0829 or copper.carolyn@epa.gov, or Tina Lovingood at (202) 566-2906 or lovingood.tina@epa.gov.

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 (000)	Agreed To Amount
1	5	Reclassify \$20 million of the Stringfellow special accounts by the end of Fiscal Year 2008 as planned.	O	Region 9 Administrator	9/30/08	\$20,000	\$20,000
2	5	Reclassify or transfer to the Trust Fund, as appropriate, \$27.8 million (plus any earned interest less oversight costs) of the Stringfellow special accounts in annual reviews, and at other milestones including the end of Fiscal Year 2010, when the record of decision is signed and the final settlement is achieved.	O	Region 9 Administrator		\$27,800	

¹ O = 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

Appendix A

Agency Responses to Draft Report

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, CA 94105

May 29, 2008

MEMORANDUM

SUBJECT: Draft Early Warning Report:
 Making Better Use of Stringfellow Superfund Special Accounts
 Assignment No. 2007-000727

FROM: Jane Diamond
 Assistant Regional Administrator
 Management and Technical Services Division

TO: Carolyn Copper
 Director for Program Evaluation, Hazardous Waste Issues
 Office of Program Evaluation
 Office of Inspector General

Thank you for the opportunity to review the draft report entitled, *Making Better Use of Stringfellow Superfund Special Accounts*. Per the transmittal, dated April 28, 2008, our Region has reviewed the draft report and we have specific comments. There are various factual inaccuracies in the report that affect the recommendations, which we have clarified in the attached comments.

Per EPA Order 2750, please let me know within 15 calendar days whether you find this response acceptable. Should you or your staff have any comments, questions, or concerns, please contact Rich Hennecke, Regional Audit Follow-up Coordinator at (415) 972-3760.

Attachment

cc: Tina Lovingood, OIG, EPA-HQ
 Keith Takata, Director, Superfund Division (SFD-1)
 Nancy Marvel, Regional Counsel (ORC-1)
 Nancy Lindsay, Deputy Director, Superfund Division (SFD-1)
 Kathleen Salyer, Chief, Site Cleanup Branch (SFD-7)
 Roberta Blank, Chief, Site Cleanup Section 1 (SFD-7-1)
 Elizabeth Cox, Chief, Case Development & Cost Recovery Section (SFD-7-5)
 Andrew Helmlinger, Attorney, Office of Regional Counsel (ORC-3)
 Richard Hennecke, Audit Follow-up Coordinator (MTS-4)
 David Wood, Chief, Accounting Section (MTS-4-3)
 Richard Jeng, OSWER, OSRTI, HQ
 Gary Worthman, OECA, OSRE, RSD

Region 9 comments on the OIG draft report

1. The Region has decided to reclassify \$20 million dollars at this time. Twenty million dollars is an appropriate value to reclassify based on several factors: there is no final remedy yet to address remaining sites risks; cost estimates of the remedy are not finalized; and a final settlement agreement is not in place to implement the remedy. EPA also believes there is a need to retain an appropriate funding contingency, based on experience with this complex site where the possibility of unknowns and delays in remedy selection could lead to increased costs. When the remedy and costs are determined in the final Record of Decision (ROD), and there is a final settlement agreement in place, EPA will then consider further reclassification of additional special account funds.
2. Throughout the OIG report, the status of remaining work at the site is not accurately described. While the work under each Operable Unit (OU) ROD was completed, the final site-wide ROD will contain a significant amount of additional work without those OUs. The Final ROD will not simply address perchlorate contamination. The final ROD is anticipated to include construction of an extensive new pump and treat system, the final landfill CAP placement, additional ground water barrier wall construction and aquifer dewatering. We suggest expanding the description of remaining work in the report, particularly in the Background and Conclusions sections.
3. The draft report states that there is only \$70 million in additional work needed, when in fact the estimated cost of additional work is a larger sum of \$116 million. Of that, the state already obligated \$4 million for remedial design and requested \$42 million for the treatment plant construction (through the state's budget process). Therefore, the \$70 million figure is an estimate of potentially unfunded work, based on best estimates at this time, as opposed to the actual remaining work needed.
4. EPA requests that the report not include statements affecting enforcement strategies or positions. Any such comments EPA has made to the OIG should be deleted from the report, as enforcement confidential information.²
5. The last bullet on page 2 of the report is not a complete description of the facts and could be misleading. The report discusses options deliberated by HQ and the Region in regards to managing Stringfellow settlement funds. The long-term investment mentioned in the report was two-year treasury notes. This investment tool could have been used to maximize interest during a limited window of time. This option was discussed due to the early stage of site work. Regardless of the deliberations, the decision made was to deposit the entire settlement recovery into the special account. The special account was invested in the usual one-year treasury notes. EPA does not see the relevance of these discussions to the report's findings. EPA views the act of deliberation as appropriate to the active management of any special account funds. We request that if this discussion is retained in the final report, additional context and outcome be provided for clarification.

² Paragraph 4 is an OIG restatement of the Agency's comment.

6/10/08 Response to OIG Questions regarding EPAs comments on the draft Stringfellow audit:

1. The Region did not actually “change” the amount it intends to reclassify; our proposal has consistently been to reclassify in phases. In our comments, we say we will reclassify \$20 million dollars at this time and then after the final ROD and consent decree we will reevaluate additional funds to reclassify. In our exit interview with the OIG we said that from our cleanup estimate, we had decided we could reclassify up to \$30 million dollars, but since we did not have a final ROD yet we needed to further evaluate whether we should reclassify in one lump sum or in phases. After the exit interview we requested to review the OIGs record of our conversation to ensure that our position was correctly presented; but the record was not made available to us.
2. The estimate for the \$20 million reclassification at this time is based on several factors: the current special account balance is approximately \$116 million dollars. If the State gets the funding for the treatment plant it has requested, there is an estimated remaining \$70 million dollars needed for the cleanup. If EPA had to pay for that work in the case of the State failing to do so, we would then have approximately \$46 million dollars left in the special account and if we reclassify \$20 million, that leaves a buffer for unknowns of \$26 million dollars. Again, without the site investigation being completed, the feasibility study released, and a decision document in place, there are considerable unknowns in the ultimate cleanup cost. EPA did not include pending interest on the account in its estimate.
3. The reclassification of \$20 million dollars will result in \$5 million dollars being recertified back to the Region for use in regional pipeline and remedial action activities and \$15 million dollars recertified back to headquarters for use in funding national remedial action activities.
4. The correct date for the ROD is the end of the calendar year, December 2009, not the fiscal year. This date has not changed.

Appendix B***Distribution***

Office of the Administrator
Regional Administrator, Region 9
Assistant Administrator, Office of Enforcement and Compliance Assurance
Assistant Administrator, Office of Solid Waste and Emergency Response
Chief Financial Officer
Agency Follow-up Official (the CFO)
Agency Follow-up Coordinator
Office of General Counsel
Principal Deputy Assistant Administrator, Office of Solid Waste and Emergency Response
Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
Director, Office of Superfund Remediation and Technology Innovation
Acting Director, Office of Site Remediation Enforcement
Director, Office of Administration and Policy
Director, Superfund Division, Region 9
Chief, Site Cleanup Branch, Superfund Division, Region 9
Audit Follow-up Coordinator, Region 9
Audit Follow-up Coordinator, Office of Enforcement and Compliance Assurance
Audit Follow-up Coordinator, Office of Solid Waste and Emergency Response
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Deputy Inspector General