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Office of Inspector General
Report of Review

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**Region 5's Use of Allocation Tools And
Mixed Funding Under The
Superfund Administrative Improvements Initiatives**

E1SFG4-05-0175-4400092

July 29, 1994

**Inspector General Division
Conducting the Audit:**

**Northern Audit Division
Chicago, Illinois**

Region Covered:

Region 5

Program Offices Involved:

**Waste Management Division,
Office of Superfund**

Office of Regional Counsel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF THE INSPECTOR GENERAL
NORTHERN DIVISION
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

July 29, 1994

MEMORANDUM

SUBJECT: Report of Review No. E1SFG4-05-0175-4400092
Region 5's Use of Allocation Tools and
Mixed Funding Under the Superfund Administrative
Improvements Initiatives

FROM: Anthony C. Carrollo *AC*
Divisional Inspector General for Audits
Northern Division

TO: Valdas V. Adamkus
Regional Administrator
Region 5

A copy of the subject final report is attached. This report provides the status of Region 5's work under the allocation tools and mixed funding Superfund Administrative Improvements initiatives.

We appreciate the cooperation we received from your staff in conducting this review. The open lines of communication from the Region throughout this effort have enabled us to recommend actions that we believe can benefit the program.

This report represents the opinion of the OIG. Final determinations on matters in the report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this report do not necessarily represent the final EPA position.

ACTION REQUIRED

In responding to our draft report, your office agreed with the recommendations; however, no milestone dates were included. In accordance with EPA Order 2750, you, as the action official, are required to provide this office a written response to this report within 90 days. For corrective actions planned, reference to specific milestone dates will assist this office in deciding whether to close this report. All action plans and milestone dates must be tracked in the Management Audit Tracking System.

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We have no objections to the further release of this report to the public. Should you have any questions regarding this report, please contact Kimberly O'Lone, Audit Manager, at (312) 886-3186.

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Allocation Tools and Mixed Funding Initiatives

EXECUTIVE SUMMARY

PURPOSE

The Office of Inspector General (OIG) has completed a special review of Region 5's use of allocation tools and mixed funding under the Superfund Administrative Improvements (SFAI) initiatives. We performed this review to obtain information about the Region's experience with these initiatives. This information could influence Congressional Superfund reauthorization decisions. Our objectives were to:

- gain an understanding of the work performed using allocation tools and mixed funding,
- determine how performance of the initiatives was measured, and
- determine the status of the communication network between the following parties: the Region, Headquarters program offices, and the Superfund Revitalization Office (SRO).

BACKGROUND

In July 1993, the Environmental Protection Agency (EPA) announced plans to improve the Superfund program within the current statutory authority. The plan, known as the "Superfund Administrative Improvements," focused attention on the four areas of most concern to the Administration, Congress, and the public. Each of the four areas contained individual "initiatives" that called for specific actions designed to improve the program. The two initiatives addressed in this special review, allocation tools and mixed funding, fall under the first area of concern, enhancing enforcement fairness and reducing transaction costs.

Allocation Tools Initiative

The Superfund law makes potentially responsible parties (PRPs) connected with pollution at hazardous waste sites liable for their cleanup costs. PRPs also incur transaction costs, including legal expenses while allocating responsibility for cleanups, settling with the government, or litigating liability for cleanups. The Superfund law provides the EPA with allocation tools to help reduce the transaction costs.

Allocation Tools and Mixed Funding Initiatives

Several allocation tools exist to promote settlement and reduce the transaction costs associated with reaching a settlement. Two tools Region 5 used were Alternative Dispute Resolution (ADR) and Non-binding Allocation of Responsibility (NBAR). Under ADR, a neutral third party coordinates with the PRPs for negotiation, facilitates settlement deliberations, and, in some cases, provides an opinion to the PRPs. The neutral party serves at the discretion of the PRPs. NBARs allocate 100 percent of response costs among PRPs and are meant to promote settlement, thus reducing transaction costs.

Mixed Funding Initiative

EPA encourages the use of mixed funding to promote settlements and hazardous waste site cleanups. EPA can use mixed funding in situations where it is appropriate to recover less than 100 percent of the site costs in a settlement. Mixed funding involves using both Superfund and private resources to clean up a site. EPA can then pursue cost recovery cases against any non-settling PRPs to try to recover the Government's share of the mixed funding cleanup costs.

RESULTS-IN-BRIEF

Region 5 made progress under the allocation tools and mixed funding SFAI initiatives. For example, the Region had initiated an NBAR under the allocation tools initiative. Under the mixed funding initiative, Region 5 was negotiating two settlements. However, the Region was prevented from making much progress on the allocation tools initiative, because factors outside its control limited use of ADR.

All of the projects the Region had initiated were progressing successfully, according to Regional staff. However, the Region did not have measures of success for the mixed funding initiative. Without these measures, the Region will not be able to evaluate the success of this initiative. Because work under both of the initiatives was still in progress, it was premature for us to comment on either of the initiatives' success.

Region 5 needed to include more comprehensive information in its quarterly progress reports to the SRO. For example, Region 5 did not keep the SRO informed of the status of its mixed funding cases in the fiscal 1994 first and second quarter progress reports. Several misunderstandings, about

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what information the Region needed to include in the reports and who was responsible for reporting it, resulted in the Region not providing complete information to the SRO.

PRINCIPAL FINDINGS

Factors Outside Region 5's Control Prevented Most Progress Under The Allocation Tools Initiative

Region 5 proposed to use two types of non-binding allocation tools, Alternative Dispute Resolution and Non-binding Allocation of Responsibility, under the SFAI initiative. The Region made progress with the NBAR, but was unable to proceed with ADR due to contracting delays outside its control. Because no projects had been completed under the initiative, we were not able to comment on its success.

Region 5 Was Proceeding With The Mixed Funding Initiative

Region 5 was proceeding with its projects under the mixed funding initiative. The initiative consisted of using mixed funding to encourage settlements for Superfund site cleanups. Because the work under the initiative was still in progress, it was premature for us to comment on the initiative's success. Although Region 5 did not have written measures of success for this initiative, the staff members involved with it agreed that the initiative was progressing successfully.

During our review, Region 5 was using mixed funding on two projects. Both projects were still in the negotiation process. Region 5 staff members on both projects stated that, without using mixed funding, they did not think the cases would reach voluntary settlements.

Region 5's Progress Reports Did Not Contain Comprehensive Information

Region 5 did not include comprehensive information in its fiscal 1994 quarterly progress reports to the SRO. For example, the Region did not provide updates on the settlements under the mixed funding initiative in the first quarter. Several misunderstandings, between the Region and the SRO, and between two Region 5 offices, caused the reporting problems. As a result, the SRO did not have complete information about Region 5's progress under the SFAI initiatives.

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RECOMMENDATIONS

We recommend that the Region 5 Administrator direct the Office of Superfund and the Office of Regional Counsel to:

1. Evaluate the success of the allocation tools and mixed funding initiatives once the projects are completed.
2. Work with EPA Headquarters to develop measures of success for the mixed funding initiative.
3. Coordinate on future quarterly progress reports to include complete and accurate information on the initiatives.
4. Work with the Superfund Revitalization Office to be sure the Regional officials responsible for the quarterly progress reports have a clear understanding of what information they are expected to report.

REGION 5 ACTIONS AND COMMENTS

Region 5 provided a written response to our draft report on July 15, 1994. The Region agreed with the recommendations in the report and stated that it would work together with Headquarters to further strengthen the program.

In regard to the recommendations concerning the progress reports, Region 5 stated it had already made the necessary contacts to assure the fiscal 1994 third quarter report met Headquarters' needs. The Region provided us with a copy of the third quarter progress report that addressed both the allocation tools and mixed funding initiatives.

Also, in regard to the progress reports, Region 5 pointed out that the principal users of the information contained in the reports have been well satisfied with the reports. The Region stated in its response that Headquarters had consistently been satisfied with the reports and had been complimentary. Region 5 also commented that some initiatives crossed program lines and, therefore, tended to duplicate other reporting protocols.

We have included a summary of Region 5's comments in appropriate sections throughout the report. Appendix 1 contains a copy of Region 5's written response to our draft report.

Allocation Tools and Mixed Funding Initiatives

OIG EVALUATION

Region 5's actions, when completed, will address the findings in the report. Region 5 needs to provide milestone dates for completion of the corrective actions.

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Allocation Tools and Mixed Funding Initiatives

CHAPTER 1

INTRODUCTION

PURPOSE

The Office of Inspector General (OIG) has completed a special review of Region 5's use of allocation tools and mixed funding under the Superfund Administrative Improvements (SFAI) initiatives. We performed this review to obtain information about the Region's experience with these initiatives. This information could influence Congressional Superfund reauthorization decisions. Our objectives were to:

- gain an understanding of the work performed using allocation tools and mixed funding,
- determine how performance of the initiatives was measured, and
- determine the status of the communication network between the following parties: the Region, Headquarters program offices, and the Superfund Revitalization Office (SRO).

The special review was part of an OIG-wide effort to review all of the SFAI initiatives. It was coordinated through the OIG Headquarters Audit Division.

BACKGROUND

The Environmental Protection Agency's (EPA) Superfund program has generated considerable criticism both from internal and external reviews. This criticism stems from the pace and cost of cleanup, the degree to which sites are cleaned, the fairness of the program, the role of the States in the process, and the role of the community, particularly minority communities.

In July 1993, the EPA Deputy Administrator testified before the House Ways and Means Committee regarding the pace and cost of Superfund cleanups. During this testimony, the Deputy Administrator announced EPA's plan to improve the Superfund program within the current statutory authority. The plan, known as the "Superfund Administrative Improvements," focused attention on the four areas of most concern to the Administration, Congress, and the public. Each of the four areas contained individual "initiatives" which called for specific actions designed to improve the

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program. The two initiatives addressed in this special review, allocation tools and mixed funding, fall under the first area of concern, enhancing enforcement fairness and reducing transaction costs. Beginning in fiscal 1994, EPA planned to fully implement the initiatives.

Allocation Tools Initiative

The Superfund law makes potentially responsible parties (PRPs) connected with pollution at hazardous waste sites liable for their cleanup costs. PRPs also incur transaction costs, including legal expenses while allocating responsibility for cleanups, settling with the government, or litigating liability for cleanups. The Superfund law provides the EPA with allocation tools to help reduce the transaction costs.

Several allocation tools exist to promote settlement and reduce the transaction costs associated with reaching a settlement. Two tools Region 5 used were Alternative Dispute Resolution (ADR) and Non-binding Allocation of Responsibility (NBAR). Under ADR, a neutral third party coordinates with the PRPs for negotiation, facilitates settlement deliberations, and, in some cases, provides an opinion to the PRPs. The neutral party serves at the discretion of the PRPs. NBARs allocate 100 percent of response costs among PRPs and are meant to promote settlement, thus reducing transaction costs.

Mixed Funding Initiative

EPA encourages the use of mixed funding to promote settlements and hazardous waste site cleanups. EPA can use mixed funding in situations where it is appropriate to recover less than 100 percent of the site costs in a settlement. Mixed funding involves using both Superfund and private resources to clean up a site. EPA can then pursue cost recovery cases against any non-settling PRPs to try to recover the Government's share of the mixed funding cleanup costs.

SCOPE AND METHODOLOGY

Our first objective was to gain an understanding of the work performed using allocation tools and mixed funding under the SFAI initiatives. To accomplish this objective, we reviewed guidance documents for both initiatives. We also obtained and reviewed Region 5's plan for implementing the

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initiatives. We interviewed officials from the Office of Regional Counsel (ORC) and Office of Superfund (OSF) who were handling the projects under the initiatives. In addition, we obtained information about Region 5's prior experiences using allocation tools and mixed funding for background purposes.

Our second objective was to determine how performance of the initiatives was measured. To accomplish this objective, we obtained available documents explaining the standards for measuring success or failure of the initiatives. We interviewed Region 5 staff members from ORC and OSF to obtain their views on the success of the initiatives. Because the projects under the initiatives were not completed, we were not able to fully accomplish this objective.

Our third objective was to evaluate the communication between parties involved in the projects under the initiatives. To accomplish this objective, we reviewed the guidance and background documents for guidelines on communication between the parties. We interviewed Region 5 staff members to determine how the communication network functioned. We also reviewed Region 5's quarterly progress reports to the SRO and interviewed the staff members responsible for completing the reports. Because no problems were noted regarding communication with Headquarters program offices, we took no further action on that part of the objective. Because we did note some issues with reports to SRO, we asked the OIG Headquarters Audit Division to interview officials from the SRO. They provided us with the information obtained.

We reviewed the fiscal 1993 annual reports on management controls from Region 5, the Waste Management Division (OSF is part of this division), and ORC. These reports did not identify any weaknesses in the management controls over allocation tools or mixed funding. Likewise, we did not identify any significant management control weaknesses during our review.

We conducted this review from March 8 to June 3, 1994. We distributed position papers to Region 5 on May 19, 1994. We discussed the position papers with Regional officials on June 2, 1994. Their comments were incorporated into the draft report.

On June 10, 1994, we issued our draft report. Region 5 provided us with written comments on July 15, 1994. We held an exit conference with Region 5 officials on July 20, 1994. After reviewing the response and conducting the exit conference, we made appropriate changes and finalized the

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report. The Regional Administrator's written response is included as Appendix 1.

This review, like all special reviews, was a short term study of EPA activities. It was not designed to be a statistical research study or a detailed audit. Rather, it was an information gathering study that sought to determine the status of Region 5's progress under the SFAI initiatives. Thus, it was more limited in scope than an audit, and as such, did not necessarily encompass all generally accepted governmental auditing standards. Alternatively, this review was conducted in accordance with the provisions of OIG Manual Chapter 150, Special Reports.

PRIOR AUDIT COVERAGE

There were no prior audits of Region 5's SFAI allocation tools or mixed funding initiatives that applied to our objectives.

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CHAPTER 2

FACTORS OUTSIDE REGION 5'S CONTROL PREVENTED MOST PROGRESS UNDER THE ALLOCATION TOOLS INITIATIVE

Region 5 proposed to use two types of non-binding allocation tools, Alternative Dispute Resolution and Non-binding Allocation of Responsibility, under the SFAI initiative. The Region made progress with the NBAR, but was unable to proceed with ADR due to contracting delays outside its control. Because no projects had been completed under the initiative, we were not able to comment on its success.

BACKGROUND

According to Region 5's SFAI plan, the Region would use one of the allocation tools, ADR, on a more routine basis to facilitate allocating responsibility at sites. Under ADR, a neutral third party coordinates with the PRPs for negotiation, facilitates settlement deliberations, and, in some cases, provides an opinion to the PRPs. The neutral party serves at the discretion of the PRPs.

The ADR process consists of four methods that aid in resolving disputes. The Region has used only the mediation method on its cases so far. Region 5 officials said that they have not yet encountered cases where other ADR methods would be appropriate. The four ADR methods are:

- Mediation: A neutral party facilitates negotiations to assist the PRPs in reaching a settlement. Mediation is a voluntary, non-binding process.
- Arbitration: A neutral party makes a binding or non-binding decision about factual, legal, or remedial issues that the PRPs specify.
- Mini-trials: PRPs present their case, or an agreed upon portion of it, to principals who have the authority to settle the dispute.
- Fact-finding: A neutral party investigates disputed factual or technical issues that the PRPs select.

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Another non-binding allocation tool used to promote settlement is the NBAR. NBARs allocate 100 percent of response costs among PRPs and are meant to promote settlement, thus reducing transaction costs. In general, EPA's policy is that PRPs should work out among themselves questions of how much each will pay toward the cleanup costs at a site. EPA considers preparing an NBAR to promote settlement when it may help to unite an unorganized group of PRPs. In addition, EPA will consider an NBAR whenever a significant percentage of PRPs at a site request one.

USE OF ADR IN REGION 5

Even before the SFAI allocation tools initiative, Region 5 was a leader with ADR. In a June 1990 memorandum, the Deputy Administrator praised Region 5 for its success with its ADR pilot program using ADR in enforcement actions. A January 1994 General Accounting Office report showed that Region 5 used ADR at more sites than any other Region.¹ In fiscal 1993, the Region settled three ADR cases: Muskego, HOD Landfill, and Spiegelberg.

Under the allocation tools initiative, Region 5 was prevented from making progress with ADR due to contract delays at Headquarters. The EPA contract to hire neutral third parties for the ADR process lapsed in November 1993. A new contract was not signed until March 1994. Because of the delay, Region 5 was unable to hire the neutral third parties to begin the ADR process. After the new ADR contract was signed at the end of March 1994, Region 5 proposed the Waste, Inc. site for ADR. The Region may propose other sites as well. It expects to use the non-binding mediation process in all of its ADR projects under the initiative.

USE OF NBARS IN REGION 5

Region 5 executed an NBAR at the Arrowhead Refinery site in Minnesota under the allocation tools initiative. The purpose of the NBAR was to encourage the PRPs to reach a settlement. In this case, the PRPs appeared to be reluctant in developing an allocation method on their own. After Region 5 began computing the allocation percentages in the NBAR, the PRPs began working on their own allocations. As a result, the

¹Further EPA Management Action Is Needed To Reduce Legal Expenses, Report No. GAO\RCED-94-90, January 1994.

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Region suspended work on the NBAR without having to use additional resources to complete it.

According to the Region 5 case attorney for Arrowhead, the project was successful. The Region's goal in using the NBAR was to help the PRPs reach an agreement on a method of allocating responsibility, whether it was EPA's method under the NBAR or the PRPs' method. Since the PRPs decided to develop their own allocation method, the Region considered the project successful.

MEASURES OF SUCCESS

Region 5 had measures of success for the allocation tools initiative. Unfortunately, because none of the cases had been completed, we were unable to use these measures to evaluate the initiative's success. For the NBARS, the Region had its own informal measure of success: bringing the PRPs together to reach an agreement on allocating costs. According to the Region 5 case attorney for Arrowhead, the NBAR met this informal measure.

CONCLUSION

Region 5 made some progress under the allocation tools initiative. For example, the Region executed an NBAR at a site and considered it successful. However, it did not begin work with any of its ADR cases due to contracting delays. Since the Region had not completed any projects under the initiative, we were unable to evaluate its success.

RECOMMENDATION

We recommend that the Region 5 Administrator direct the Office of Superfund and the Office of Regional Counsel to evaluate the success of the allocation tools initiative once the projects are completed.

REGION 5 COMMENTS AND ACTIONS

The Regional Administrator agreed with the recommendation. However, he did not provide a milestone date for completing the corrective action.

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OIG EVALUATION

The Region's actions, when completed, will address the recommendations in this chapter. Region 5 needs to provide a milestone date for completing the corrective action.

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CHAPTER 3

REGION 5 WAS PROCEEDING WITH THE MIXED FUNDING INITIATIVE

Region 5 was proceeding with its projects under the mixed funding initiative. The initiative consisted of using mixed funding to encourage settlements for Superfund site cleanups. Because the work under the initiative was still in progress, it was premature for us to comment on the initiative's success. Although Region 5 did not have written measures of success for this initiative, the staff members involved with it agreed that the initiative was progressing successfully.

During our review, Region 5 was using mixed funding on two projects. Both projects were still in the negotiation process. Region 5 staff members on both projects stated that, without using mixed funding, they did not think the cases would reach voluntary settlements.

BACKGROUND

EPA encourages the use of mixed funding to promote settlements and hazardous waste site cleanups. EPA can use mixed funding in situations where it is appropriate to recover less than 100 percent of the site costs in a settlement. Mixed funding involves using both Superfund and private resources to clean up a site. For example, EPA can use mixed funding to reach an agreement when only some of the PRPs are willing to settle. This practice allows the settling PRPs to begin cleaning up the site rather than waiting while EPA tries to reach an agreement with non-settling PRPs. EPA can then pursue cost recovery cases against any non-settling PRPs to try to recover the Government's share of the mixed funding cleanup costs.

EPA has identified three types of mixed funding:

- Mixed Work: The PRPs and EPA perform different aspects of the cleanup, each paying the costs of their own work. The Region can approve this method without going through Headquarters.
- Preauthorization: The PRPs conduct the work and EPA agrees to reimburse them for a portion of the costs. EPA Headquarters must approve preauthorization cases.

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- Cashouts: The PRPs fund a portion of the work which EPA performs. EPA Headquarters' approval is not required.

Prior to the new EPA-wide Superfund initiatives, Region 5 had entered into mixed funding agreements on four sites: (1) Marion (Bragg) Dump, Indiana (1991), (2) Carter Industrial, Inc., Michigan (1993), (3) Kummer Sanitary Landfill, Minnesota (1994), and (4) Onalaska Municipal Landfill, Wisconsin.²

In 1993, under the SFAI, the Headquarters Office of Waste Programs Enforcement (OWPE) planned to evaluate the mixed funding policy. It conducted an extensive screening process to select the most appropriate cases for mixed funding. The EPA regional offices initially proposed 23 sites for the mixed funding initiative. OWPE screened the proposed sites against five criteria:

- Date by which negotiations would be completed,
- EPA's share of the costs,
- The benefits of the settlement to the government,
- Type of mixed funding settlement (preauthorization, mixed work, cashout), and
- The type of concern that the pilot would address (municipal share, divisibility of harm, innovative technology).

Based on these criteria, OWPE determined that seven sites would be candidates for the mixed funding demonstration pilots. Two of these sites were in Region 5: (1) Arrowhead Refinery, Minnesota, and (2) Kysor/Northernaire, Michigan.

MIXED FUNDING PILOT PROJECTS

Region 5 has made progress on both of the mixed funding pilot projects. At the time of our review, both sites were in the initial stages of the mixed funding process. Although it would be premature for us to evaluate the final outcome of these cases, at both sites, the Regional staff agreed that mixed funding was speeding up the settlement process.

²Onalaska Municipal Landfill was in the final stages in July 1994.

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Arrowhead Refinery

The Arrowhead Refinery site was set on ten acres of land in St. Louis County, Minnesota. The Arrowhead Refinery Company had conducted waste oil refining activities and sold recycled oils. The primary contamination at the site was a sludge lagoon. The soil, surface water, and groundwater were also contaminated. The Arrowhead site was placed on the National Priorities List (NPL) in August 1983. Region 5 signed the Record of Decision (ROD) in September 1986.

The PRPs for this site requested mixed funding as part of their settlement, because the site had a large percentage of orphan shares.³ The PRPs proposed a mixed work method of mixed funding. They agreed to clean up the worst part of the contamination (a black sludge lagoon), if EPA would clean up the contaminated soil. The ORC attorney and the Remedial Project Manager (RPM) both stated that they did not think a voluntary settlement would be possible without using mixed funding. EPA and the PRPs agreed on what work each party would do (scope of work). As of July 20, 1994, the PRPs and EPA had reached an agreement in principle. EPA planned to have the consent decree, which includes the covenant not-to-sue, and the scope of work documents in circulation for signature in early August 1994.

Kysor/Northernnaire

The Kysor/Northernnaire site consisted of two separate companies, both located in an approximate one-square-mile industrial park in Wexford County, Michigan. The Kysor Industrial Corporation was a large manufacturer of truck parts. Kysor was proposed for the NPL in September 1985. Northernnaire Plating, a former electroplating facility, was included on the NPL, separately from Kysor, in July 1982. Because the groundwater contamination from both sites was commingled, Region 5 combined the two sites for cleanup. The ROD for the Kysor/Northernnaire site was signed in September 1989 and, as of July 1994, a settlement still had not been reached for the final remedial action.

The PRPs requested mixed funding, using the preauthorization method, as part of their settlement with Region 5. They asked for mixed funding because a now bankrupt PRP generated

³When unknown or nonviable PRPs caused parts of the contamination, EPA refers to these parts as orphan shares.

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some of the waste at the site. According to Region 5 staff, the waste that the bankrupt PRP generated (contaminated groundwater) was easy to separate from other waste at the site. Region 5 could pay for the groundwater cleanup with Superfund money, while the PRPs paid for the rest of the cleanup. The PRPs submitted their mixed funding application to Region 5 at the end of March 1994. As of July 20, 1994, the PRPs were revising the mixed funding package, based on Headquarters' comments. Region 5 plans to complete the mixed funding negotiations by November 1994. Again, both the RPM and the ORC attorney agreed that, without mixed funding, it would be difficult to reach a settlement with the PRPs.

MEASURES OF SUCCESS

Measures of success did not exist for the mixed funding initiative. However, Region 5 staff agreed on an obvious measure of success for the settlements using mixed funding. If the cases reached settlement before they went to trial, then using mixed funding was worthwhile. Because the mixed funding settlements were not completed, we did not evaluate the success of the mixed funding initiative.

CONCLUSION

Region 5 had made progress under the mixed funding initiative. We found that work was underway on all of the Region's pilot projects. However, none of the projects were far enough along to allow us to evaluate them. As a result, we were unable to express an opinion on the success of the mixed funding initiative. Region 5 also will not be able to evaluate the success of the initiative until it develops measures of success.

RECOMMENDATIONS

We recommend that the Region 5 Administrator direct the Office of Superfund and the Office of Regional Counsel to:

1. Work with EPA Headquarters to develop measures of success for the mixed funding initiative.
2. Evaluate the success of the initiative, based on these criteria once the projects are completed.

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REGION 5 COMMENTS AND ACTIONS

The Regional Administrator agreed with the recommendations made in the draft report. However, he did not provide milestone dates for completing the corrective actions.

OIG EVALUATION

The Region's actions, when completed, will address the recommendations in this chapter. Region 5 needs to provide milestone dates for completing the corrective actions.

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CHAPTER 4

REGION 5'S PROGRESS REPORTS WERE NOT COMPREHENSIVE

Region 5 did not include comprehensive information in its fiscal 1994 quarterly progress reports to the SRO. For example, the Region did not provide updates on the settlements under the mixed funding initiative in the first quarter. Several misunderstandings, between the Region and the SRO, and between two Region 5 offices, caused the reporting problems. As a result, the SRO did not have complete information about Region 5's progress under the SFAI initiatives.

BACKGROUND

The EPA planned to fully implement successful streamlining measures, including piloting allocation tool and mixed funding projects, beginning in fiscal 1994. Also in 1994, Congress is expected to consider reauthorization of the Comprehensive Environmental Response, Compensation and Liability Act. Information about EPA's experience with these streamlined measures could greatly influence Congressional reauthorization decisions. The SRO is tasked with reporting to Congress on EPA's progress under the initiatives.

To monitor progress nationwide, each quarter, the SRO requests that the Regions report their SFAI activities. In Region 5, the OSF is responsible for consolidating information from several staff members into one Regional report, which is sent to the SRO.⁴

PROGRESS REPORTS WERE NOT COMPREHENSIVE

Region 5's first and second quarter progress reports of fiscal 1994 did not show the status of all proposed work under the mixed funding and allocation tools initiatives. For example, the reports did not:

⁴Region 5's progress reports cover all 17 SFAI initiatives. Our review included only 2 of the 17 initiatives: allocation tools and mixed funding. Therefore, our evaluation of the progress reports was limited to these initiatives.

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- contain information about the delays the Region 5 allocation tools initiative had experienced. As explained in Chapter 2, contract delays at Headquarters prevented Region 5 from proceeding with ADR cases.
- include information about the NBAR case that the Region executed under the allocation tools initiative.
- provide the status of all of the settlements the Region was negotiating under the mixed funding initiative.

As a result of these reporting issues, the SRO may not be aware of the complete status of Region 5's work under the initiatives.

MISUNDERSTANDINGS CAUSED REPORTING PROBLEMS

Three misunderstandings combined to cause problems with the quarterly progress reports. First, Region 5 misunderstood the SRO's instructions about information needed in the report. Second, there was a lack of coordination between two Region 5 offices, because each office's responsibilities for the quarterly report were not clear. Third, Region 5 did not realize it was unable to change the pilot projects under the mixed funding initiative, since EPA Headquarters had specifically selected the projects.⁵

In the first instance, Region 5 officials thought that they did not need to include information about the allocation tools initiative in the quarterly report. The SRO's request for the quarterly report stated that the Regions did not need to submit information about another SFAI initiative for de minimis settlements, because the SRO had an alternate way of collecting that information. The Regional officials misinterpreted this to include work being done under the allocation tools initiative as well.

In the second instance, a misunderstanding between the OSF and the ORC contributed to the reporting problems. OSF was responsible for compiling the quarterly report. ORC did not realize it needed to provide OSF with updates on the

⁵See Chapter 3 for a description of how the pilot projects for the mixed funding initiative were selected.

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allocation tools and mixed funding cases that it was working on. When OSF did not receive updates, it assumed no progress had been made and did not provide an update in the quarterly report.

In the third instance, Region 5's misunderstanding of the sites officially selected for the mixed funding initiative caused problems in progress reporting. EPA Headquarters had selected sites that met specific criteria in an attempt to evaluate the mixed funding policy in several different circumstances. However, Regional officials were not aware that EPA Headquarters had specifically selected certain sites. Instead, they thought they should include all successfully settled mixed funding sites as part of the initiative. Therefore, Region 5 included an update in the second quarterly report about a successfully settled site, Kummer Sanitary Landfill, that was not officially included under the initiative. The Region also did not include an update in the same quarterly report on the Kysor/Northernaire site, one officially under the initiative that had not yet reached settlement.

OTHER MATTERS

Region 5 officials agreed that there were misunderstandings concerning these initiatives. They stated that EPA Headquarters' instructions about the initiatives were not clearly communicated to them. For example, the Region did not know that EPA Headquarters had selected the mixed funding sites and that the Region should only include those sites under the initiative. Also, according to Regional officials, EPA Headquarters had not given them any negative feedback on the quarterly progress reports. Instead, the officials said Headquarters had complimented them on the reports. Other OIG reports, such as the Special Review of Superfund Revitalization Office (SRO) Administration of Enforcement Pilot Projects⁶, have also discussed communication problems. We have referred this issue to our Headquarters Audit Division.

CONCLUSION

Several misunderstandings combined to cause Region 5's quarterly progress reports about the SFAI initiatives to not

⁶Report Number 4400037, dated March 9, 1994.

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reflect the actual progress the Region had made. Region 5 needs to resolve these misunderstandings to ensure that future quarterly progress reports contain all information on the allocation tools and mixed funding initiatives. The SRO would then have comprehensive information on Region 5's progress under both initiatives.

RECOMMENDATIONS

We recommend that the Region 5 Administrator direct the Office of Superfund and the Office of Regional Counsel to:

1. Coordinate on future quarterly progress reports to include comprehensive information on the initiatives.
2. Work with the Superfund Revitalization Office to be sure the Regional officials responsible for the quarterly progress reports have a clear understanding of what information they are expected to report.

REGION 5 COMMENTS AND ACTIONS

In the response to the draft report, the Regional Administrator agreed with our recommendations. Region 5 staff members provided us with a copy of the fiscal 1994 third quarter progress report. It included complete information on the allocation tools and mixed funding initiatives. This showed that ORC and OSF coordinated to develop a comprehensive report, as recommended in the draft report.

The Regional Administrator stated in the response that the Region would work together with Headquarters to further strengthen the program. In fact, he stated that the Region had already made the necessary contacts to assure the third quarter report precisely met Headquarters' needs.

In regard to the progress reports, Region 5 pointed out that the principal users of the information contained in the reports have been well satisfied with the reports. The Region stated in its response that Headquarters had consistently been satisfied with the reports and had been complimentary. Region 5 also commented that some initiatives crossed program lines and, therefore, tended to duplicate other reporting protocols.

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OIG EVALUATION

The Region's actions have addressed the recommendations in this chapter.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 15 1994

REPLY TO THE ATTENTION OF
R-19J

MEMORANDUM

SUBJECT: Draft Report E1SFG4-05-0175
Region 5's Use of Allocation Tools and Mixed
Funding Under the Superfund Administrative
Improvements Initiatives

FROM: Valdas V. Adamkus
Regional Administrator

TO: Anthony C. Carrollo, Divisional Inspector General
for Audits, Northern Division

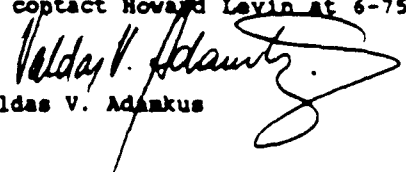
Thank you for the opportunity to comment on the draft report on Region 5's Use of Allocation Tools and Mixed Funding Under the Superfund Administrative Improvements Initiatives. We agree with the recommendations in the report and will work together with Headquarters to further strengthen our program. We appreciate that the report acknowledges that the Region has made progress in the use of allocation tools, as evidenced by Region 5's performance in obtaining more settlements through the use of Alternative Dispute Resolution (ADR) and de minimis than any other region. In regard to the reporting requirements, the Region has already made the necessary contacts to assure the third quarter report precisely meets Headquarters' needs. We will provide this report to your office at the July 20, 1994 exit conference.

As a footnote, we must raise a concern relative to the Findings on the Administrative Improvement Plan reporting requirements. This Plan consolidates many different program elements which cross program lines both regionally and nationally, and therefore, has a tendency to duplicate other reporting protocols. Reporting requirements have evolved since the Plan was devised and the Region has always complied with those changes. Headquarters has consistently been satisfied with the reports and has been complimentary. Certain reporting, such as on de minimis settlements, has not always been in the report because it was duplicative of other detailed reports provided by ORC. However, it is now included in a summary fashion. In conclusion, the principal users of the information contained in the report are well satisfied with the reports and we believe this should be noted in your final report.

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If you have any questions, please contact Howard Levin at 6-7522.


Valdas V. Adankus

ABBREVIATIONS

ADR	Alternative Dispute Resolution
EPA	Environmental Protection Agency
NBAR	Non-Binding Allocation of Responsibility
NPL	National Priorities List
OIG	Office of Inspector General
ORC	Office of Regional Counsel
OSF	Office of Superfund
OWPE	Office of Waste Programs Enforcement
PRP	Potentially Responsible Party
ROD	Record of Decision
RPM	Remedial Project Manager
SFAI	Superfund Administrative Improvements
SRO	Superfund Revitalization Office

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APPENDIX 3
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Headquarters Library (3404)

Regional Administrator, Region 5 (R-19J)

Region 5 Audit Followup Coordinator (MFA-10J)

Attention: Chief, Financial Accounting Section

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