

*Review of Region 5 Accounts Receivable Process*  
*January 2001*

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## **SUPERFUND PROGRAM REVIEW**

**Accounts Receivable Process**

**Region 5**

**Joint OECA/OCFO/OIG Review**

**Review # 2001-S-4**

**January 2001**

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

JAN 19 2001

**MEMORANDUM**

SUBJECT: Superfund: Joint OECA/OCFO/OIG Review  
Region 5 Final Report on Superfund Accounts Receivable Management

FROM: *for* Paul N. Connor, Director *N. Senjalia*  
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The purpose of this memorandum is to transmit our attached "Superfund: Regional Accounts Receivable Management Practices" Region 5 final report. As you know, a headquarters team from the Office of Enforcement and Compliance Assurance (OECA), the Office of the Chief Financial Officer (OCFO), and the Office of Inspector General (OIG) jointly conducted the review in your region. This final report incorporates comments received from your staff. It cites several areas where the Region could improve their Superfund accounts receivable process and also includes recommendations to address areas needing improvement.

We thank you for your time and attention during our visit and your comments and actions taken as a result of this review. Should you or your staff have any further questions or concerns about this report, please contact Bruce Pumphrey on 202-564-6076.

Attachment

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## **CHAPTER 1**

### **INTRODUCTION**

This report summarizes the results of our review of Region 5's procedures for managing Superfund accounts receivable from establishment through collection. The review focused on tracking and collection of overdue accounts receivable, and was conducted as a joint effort involving three EPA offices: the Office of Enforcement and Compliance Assurance's Office of Site Remediation Enforcement (OSRE), the Office of the Chief Financial Officer's Financial Management Division (FMD), and the Office of Inspector General (OIG).

The review highlights the importance that the Agency, as well as the Department of Justice (DOJ), places on the management of its Superfund accounts receivable, and the many issues challenging both Headquarters and Regional offices. The results of this review will benefit the EPA Superfund and financial management programs by highlighting the issues raised by representative Headquarters and Regional EPA managers and staff, reinforcing positive existing practices and proposing recommendations for improving future collection activities.

### **BACKGROUND**

In 1980, Congress established the Superfund program by passing the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and amended it in 1986 with the Superfund Amendments and Reauthorization Act (SARA.) The Superfund program provides Federal clean-up authority and funds to address the problems posed by abandoned or uncontrolled hazardous waste sites. Under CERCLA, a Trust Fund (Superfund Trust Fund) was established to help finance the costs of cleaning up these sites. CERCLA also provides the President with authority to pursue Potentially Responsible Parties (PRPs) to perform or pay for the study and clean up of Superfund sites.

Section 107 of CERCLA gives EPA the authority to recover all Federal costs (including oversight) associated with cleaning up a Superfund site. This authority is instrumental in replenishing the Trust Fund and also provides incentives to PRPs to perform the cleanup themselves. Recovery is initiated through negotiation with or legal action against a Superfund PRP. DOJ has responsibilities for entering into cost recovery settlements on behalf of the United States, as well as enforcing and collecting debts arising from Superfund cost recovery actions.

Since the beginning of the Superfund program, EPA has obtained approximately \$4 billion in commitments/settlements from PRPs or court-ordered judgments against PRPs to reimburse the Agency for past costs, bills to pay oversight costs, fines, penalties and cash-out

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settlements for future response work. Of that amount, over \$2.8 billion has been collected and returned to the Superfund Trust Fund. Approximately \$200 million has been written off as uncollectible, primarily the result of judgements against insolvent parties. Approximately \$976 million remains uncollected, some of which has yet to come due.

## **PURPOSE**

The Agency is currently working on several initiatives to improve its fiscal management of the Superfund enforcement program. During 1998-1999, both OSRE and FMD made a concerted effort to achieve an up-to-date billing for Superfund oversight costs to be paid to EPA pursuant to settlement agreements. After improving the billing process, their attention shifted to the collection of outstanding accounts receivable (i.e., cost recovery, fines and penalties, and cashouts) to return monies to the Superfund Trust Fund to make more funds available for future site cleanups.

In April 2000, an analysis based on data in EPA's Integrated Financial Management System (IFMS) indicated that nationally there was approximately \$527.0 million in total outstanding accounts receivable greater than 120 days delinquent (\$125.6 million at EPA and \$401.4 million at DOJ). Of that total amount, \$252.2 million was considered potentially collectible, \$206.2 million was under appeal at DOJ, and \$68.6 million was doubtful for collection. At that time Region 5 reported approximately \$63.3 million in total accounts receivable greater than 120 days delinquent.

Because of the importance of the Superfund program and the large amount of dollars involved in cost recovery, the OIG, at the request of OSRE, joined with OSRE and FMD to review EPA's Superfund accounts receivable management process. The purpose of this review was to identify accounts receivable management issues and best practices that facilitate the management and collection of outstanding Superfund receivables, and to develop recommendations for improving the process at EPA Regions, EPA Headquarters, and DOJ.



## **SCOPE AND METHODOLOGY**

To accomplish the review objectives, OSRE, FMD, and the OIG formed a team<sup>1</sup> to develop a methodology for the joint review. The team concluded that the most effective approach for accomplishing the objectives would be to conduct on-site reviews in several regions. Specifically, the intent of the on-site reviews was (1) to determine the effectiveness of the region's policies and procedures for managing Superfund accounts receivable and collections, and (2) to identify areas in the regional and national process which could be improved, including areas in which Headquarters could provide better guidance and support. The team selected three regions to review, Regions 1, 5, and 6. Region 5 was selected because it manages a large number of Superfund accounts receivable compared with the other regions. The review results for Regions 1 and 6 will be reported separately and a consolidated report summarizing the results in all three Regions will be distributed to all Regions as well as DOJ.

### **Interviews with Program, ORC and FMO Staff**

The team held a meeting with personnel within the Superfund Division (referred to herein as the Regional Program Office (RPO)), the Superfund Branch of the Office of Regional Counsel (ORC), and the Financial Management Office (FMO) to discuss the overall policies and procedures supporting the regional Superfund accounts receivable process. Prior to our visit, we provided the Region with a questionnaire which formed the basis of our discussions. The questionnaire was a global survey regarding the accounts receivable process with subjects ranging from establishing and recording accounts receivable through billing and handling of overdue and uncollectible debts.

### **Site Specific Review of Selected Accounts Receivable**

To further facilitate the analysis of regional policy for handling of accounts receivable, we selected a representative sample of overdue accounts receivable for site-specific reviews. We included at least one receivable from each IFMS status code category entered by the region, focusing on those having large past due amounts that were also significantly overdue.

Our interviews were conducted with the staff responsible for tracking and collection follow up activities for receivables, in most cases the ORC and FMO. Our expectations were to

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<sup>1</sup>This Joint Management Review was conducted by a team of Agency personnel not all of whom were auditors, and subsequently, was not done according to generally accepted government auditing standards as described in the June 1994 Revision of GAO's *Government Auditing Standards*. However, some auditing techniques were used by the joint management review team.

identify the reasons for the delinquency, actions taken by the Region to obtain payment or resolution, and any future efforts to be undertaken. In addition, we hoped to identify common problems across the range of delinquent receivables which could be addressed and improved through future EPA, DOJ, and regional actions. The results of our review are discussed in Chapter 3.

## **RECONCILIATION OF REGIONAL DATA IN IFMS AND DOJ TRACKING SYSTEMS**

As part of this initiative, EPA is working in conjunction with DOJ to reconcile all Superfund open accounts receivable information (i.e. cost recovery, fines and penalties, and cashouts) recorded in IFMS with the data found in DOJ's tracking systems. This will determine if amounts EPA has determined as DOJ's collection responsibility are consistent with those recorded in DOJ's tracking systems and to ensure that there is mutual understanding of each agency's respective collection responsibilities. Discussions held with Region 5 staff in April 2000 identified nine cases totaling \$847,000 in receivables that, based on information from DOJ, could be closed out in IFMS. We also identified 16 cases totaling \$5.8 million in IFMS in which we could not reconcile with reports generated from DOJ systems. We referred the discrepancies to DOJ and they have researched them. The result was then provided to Region 5 for their information and review.

Over the next year EPA intends to conduct this same reconciliation between IFMS and DOJ data systems for all of the regions. Upon completion of the national reconciliation, we will present the results of the review to DOJ and work with them to develop procedures for enhancing the tracking of Superfund receivables.

## **CHAPTER 2**

### **ROLES AND RESPONSIBILITIES**

In Region 5, the Program Office (RPO), Office of Regional Counsel (ORC), and Financial Management Office (FMO) have responsibilities for Superfund accounts receivable. Through interviews and the site-specific reviews, we learned that each office has a distinct role in ensuring that accounts receivable documentation is prepared and/or forwarded timely; accounts receivable are properly recorded and tracked; changes in accounts receivable status are communicated among offices; and proper follow-up actions for disputed and delinquent accounts receivable are initiated, as required.

In March 1990, Region 5 adopted a Memorandum of Understanding (MOU) to formalize the accounts receivable establishment, cost recovery, and collection process between the ORC, RPO, and FMO. The latest amendments to the MOU were incorporated in October 1997. While this MOU establishes roles and responsibilities for each office with respect to cost recovery, the MOU primarily addresses areas related to preparation of cost and work performed documentation in support of litigation, settlement negotiations, and oversight bills. The MOU also contains provisions related to post settlement/judgement accounts receivable management and collections. The MOU places responsibility on ORC to provide the FMO source documents necessary to establish a receivable and to accept referrals for collection of debts greater than 120 days delinquent. The FMO is primarily responsible for establishment of the receivable, tracking payments, issuance of dunning letters for overdue receivables, and referral of uncollected debts to ORC for collection. Based on our discussions with each office and review of the above reference 1997 MOU, the roles and responsibilities in the accounts receivable process are as follows:

#### **Office of Regional Counsel**

- When received from DOJ, forwards copies of judicial consent decrees and judicial orders to the Program Accounting and Analysis Section (PAAS) in FMO and to the Remedial Enforcement Support Section (RESS) in RPO for eventual receivable establishment.
- Follows up with DOJ to determine the status of delinquent judicial debts.
- Follows up on bankruptcy cases, and cases where DOJ files proof claim on behalf of EPA.

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- Makes decisions concerning the referral of delinquent debts to DOJ for enforcement/collection.
- Develops and assesses liability evidence.
- Evaluates cost documentation to provide advice on redaction requirements.
- Reviews draft dunning letters.
- Accepts referrals for collection of accounts receivable greater than 120 days delinquent for enforcement decision.
- Notifies FMO of enforcement/collection activities taken as follow up of referral.

**Program Office**

- Forwards copies of Administrative Orders originating within the Agency to FMO for eventual receivable establishment.
- Reviews and approves oversight bills for collection.
- Follows up with delinquent parties on an as-needed basis. (Dunning letters are issued in accordance with FMD's guidance and do not ordinarily require approval).
- Documents work performed on site.
- Keeps cost recovery targets on schedule.
- Assists ORC with settlement negotiations, and assess ability-to-pay claims.
- Reviews and approves cost recovery packages.
- Issues demand letters and information requests.
- Provides FMO with current status of all outstanding cases to enable the FMO to record allowances for doubtful accounts.

**Financial Management Office**

- Provides accounting information and documentation pertinent to cost recovery actions.
- Coordinates the establishment of accounts receivable, prepares and tracks the billings, tracks payments, and issues dunning notices as needed.
- Provides financial expert witness services as necessary.
- Works with ORC and RPO to support the financial aspects of the negotiation and settlement processes.
- Tracks and reports cost-recovery-related activities.
- Assigns accounts receivable status codes and updates codes, as appropriate.
- Researches unidentified payments that come in prior to receiving the source documents necessary to establish accounts receivable, and procures those documents.
- Forwards all collections to Headquarters within 24 hours.

While Region 5 officials were able to identify the respective roles and responsibilities of the RPO, FMO and ORC, their MOU tended to only establish the framework for the accounts receivable process with respect to Superfund cost recovery. The content for the vast majority of the information documented in the MOU related only to the roles and responsibilities for the preparation of cost and work performed documentation in support of cost recovery negotiations, litigation, and issuance of bills for "future response costs" (e.g., oversight costs).

## CHAPTER 3

### SUPERFUND ACCOUNTS RECEIVABLE MANAGEMENT PROCESS IN REGION 5

The Region 5 MOU indicated that its accounts receivable process follows procedures outlined in EPA Management Directives 2540, Chapter 9, *Receivables and Billings* and Directive 2550D, Chapter 14, *Superfund Accounts Receivable and Billings*. Although Chapter 14 specifically addresses the management of Superfund accounts receivable, the document cross references applicable sections in Chapter 9.

#### ESTABLISHMENT OF SUPERFUND ACCOUNTS RECEIVABLE

Accounts receivable arise from claims to cash or other assets. Although the Agency establishes and records many types of accounts receivable, typical Superfund receivables consist of either cost recoveries/past cost, future response costs, or cashout settlements. Under the accrual basis of accounting, accounts receivable may be recorded as an asset from the time of the event establishing a legally enforceable claim to cash or other assets against other entities until such time as the amount claimed is either collected or determined to be uncollectible.

The Agency does not record Superfund accounts receivable in its accounting system (i.e., the Integrated Financial Management System (IFMS)) until legal liability has been proven/established in the form of a settlement agreement or judgment. Accordingly, accounts receivable may be recorded in IFMS upon receiving one of the following documents: (1) an Entered Consent Decree (CD) approved by a judge which establishes a PRP's liability to EPA for past costs, future costs, and/or cashouts; (2) a Judgment or unilateral decision made by a judge which formally establishes a PRP's liability to EPA for certain costs or punitive damages that compels a PRP to perform a certain action; (3) an Administrative Order on Consent (AOC) similar to CDs, when a PRP agrees in writing to undertake certain actions and/or pay EPA for past costs, future costs, and cashouts; and, (4) a Bill for Collection when future costs (e.g., oversight costs) are owed EPA, and a bill with corresponding cost summary is sent to the PRP.

Region 5 expressed concern over delays in receiving documentation from DOJ. Delays in receiving this information can have the following impact on the accounts receivable process:

- Accounts receivable are not established/recorded in a timely manner.
- Payment may be received by the Region, but due to the delay in establishing the receivable there is no record against which to post payment. The payment will then go

into EPA's "Suspense account" until the supporting documentation is received to establish the account receivable. While these amounts are in suspense, they cannot be deposited in the Superfund Trust Fund and do not accrue interest.

- Where source documents are not provided in a timely manner, the Region may be unaware that a receivable exists and is already delinquent; consequently, they cannot accurately calculate interest related to the delinquency.

In addition, on occasion, DOJ has failed to forward sufficient documentation or correspondence advising the Agency of changes in the status of debts or closeouts. When DOJ fails to notify EPA of changes in the status of debts or when they close their claims files, these debts will continue to languish unnecessarily on the Agency's books and accrue compounded interest which then inflates the Agency's assets as reported in its financial statements.

#### **SUPERFUND ACCOUNTS RECEIVABLE TRACKING**

The ORC, RPO, and FMO share responsibility for coordinating the administration of Superfund accounts receivable within Region 5. The Region uses two separate information systems to track aging accounts receivables. The primary tracking system is EPA's IFMS located at EPA Headquarters, and the Region's Cost Recovery Collection Tracking System (CTS) which tracks all open receivables. As described in Chapter 2, receivables are established in IFMS by the Financial Management Officer and his staff in the Resource Management Division. As the Agency's official accounting system, IFMS is also the Agency's official system for tracking accounts receivable. However, retrieving data from IFMS in a report format that meets the Region's accounts receivable tracking needs is difficult. Although the OCFO has made substantial strides in this area by making accounts receivable data available through the Data Warehouse on EPA's Intranet site, additional work in this area would be helpful in meeting the Region's data needs.

The Region has started tracking the status of receivables which includes providing a quarterly report to ORC of payments and open receivables that are over 120 days old. The accounts receivable status codes are periodically reviewed and updated at ad hoc reviews by using FMO's 120-day accounts receivable report. In addition, FMO tracks the overall receivables and routinely updates the status codes when notified by ORC when there has been a change in the status of a receivable. The FMO also tracks payment of enforcement obligations and informs both ORC and RPO of PRP failures to make timely payments. While the RPO does not do any separate tracking of accounts receivable, the Region, through its MOU, established a Superfund Cost Recovery Task Force that includes members from all three offices. Through the Task Force, the Region plans to: (a) meet and identify sites that require cost recovery actions; (b) identify and

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discuss programmatic and site specific problems; and, (c) use the task force to focus on accounts receivable issues and concerns. However, the Task Force had only met once prior to our review, and had been inactive for quite some time prior to our visit.

Maintaining a separate system to meet the Region's needs can result in the inefficiency of all of the regional systems and may result in data quality problems inherent with duplicative or parallel data entry. The Region requires information from all of these systems in order to effectively track and report on Superfund accounts receivable. Although these systems generally contain a common identifier (i.e., EPA SSID number) that could be used to link the data, the data resides on different platforms and is written in different software applications making it difficult to integrate. Although the ability to use the common identifier exists, it has not always been required in DOJ's systems and is not necessarily available when trying to reconcile data.

During our site specific interviews, we found several instances where the IFMS status codes were coded incorrectly or receivables had not been reviewed and were no longer valid. For example, Waste Inc. RD/RA Group (Case #6 - Appendix A) represented a demand for payment under an Unilateral Administrative Order (UAO) and should not have been recorded as a receivable in IFMS. In accordance with OCFO policy, demands for payments under UAOs should be recorded in IFMS as memo entries and not as accounts receivable. The review also identified cases where the receivable was no longer valid because the debt had been discharged as the result of bankruptcy proceedings (Case #10 - Faste, Swift, Collins and Smith/Verona Well Field) or the outstanding receivable had been subsumed within a subsequent settlement.

In addition, other cases (refer to individual write-ups in Appendix A, i.e. Case #11 - Town of Onalaska) were identified that have incorrect status codes such as instances where a receivable was recorded as overdue when it was, in fact, an installment payment that was not yet due. Based on our review, we believe that the Region needs to conduct a detailed review of all codes to ensure that the correct codes are assigned. According to Regional officials, a review was initiated on all overdue accounts receivable.



## **SUPERFUND ACCOUNTS RECEIVABLE BILLING AND COLLECTION PROCESS**

### **Accounts Receivable Based on a Sum Certain Due on a Certain Date and Future Response Costs**

Amounts collectable under judicial settlement agreements which specify a sum certain which is due by a specific date are not billed since the settlement document acts as the billing document. It is DOJ's Financial Litigation Unit's responsibility to enforce and collect these sums without notice from EPA. Similarly, when an accounts receivable based on a sum certain due on a certain date arising from an administrative action is established, the administrative order serves as official notice of payment obligation. It is EPA's responsibility to initiate enforcement and collection of these administrative debts by first issuing warning letters to the debtors and then referring the debts for collection to DOJ. (See "Interim Guidance on the Referral Process and Timing for Collection of Delinquent Debts Arising under Superfund Judicial or Administrative Settlements" dated April 6, 2000).

For consent decrees and administrative settlements which have a future response cost reimbursement provision, it is EPA's responsibility to create the accounts receivable, establish the amount due, and prepare and send a bill to the settling parties. Region 5 sends out approximately 160 oversight bills per year averaging between \$60,000 and \$70,000 each. For ongoing oversight work, the FMO is responsible for tracking when a bill is to be sent out and preparing the bill to send to the PRPs. For newly settled cases, the process for establishing an accounts receivable for these bills starts when the RPO forwards the appropriate billing documents which are required to establish the accounts receivable. The FMO establishes a receivable and assigns an status code based on documents provided by the program office. These codes are periodically reviewed and updated at ad hoc reviews and included in the 120-day report. Under the current MOU, the ORC is responsible for notifying FMO when there is a change in the status of an open accounts receivable. ORC also resolves disputes with PRPs and solicits assistance from the DOJ to enforce Consent Decrees. If there are disputes from previous bills, the Region should continue to bill the PRPs.

The FMO is responsible for tracking overdue receivables and issuing the quarterly reports on the status of aging accounts receivable. The ORC is responsible for notifying the FMO if there is a change in the status of an accounts receivable (per DOJ referrals), which is addressed in general terms in the MOU. The Region uses coding sheets to reflect changes in IFMS and CTS

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on the status of overdue accounts receivable, and information included in the two systems are reconciled to ensure the accuracy of the information being recorded.

The FMO issues a 120-day tracking report on aging accounts receivable based on information recorded in both the Agency's IFMS and the Region's CTS. The information includes narrative comments by the attorney assigned to the account receivable. Region 5 officials stated that while attempts are periodically made to reconcile billing and collections information recorded between EPA's and DOJ's respective systems, presently there is no clear way to identify differences between the agencies' accounting data. We were also told by Regional officials that, currently, there is limited communication and followup with DOJ on the status of overdue accounts receivable, and that discussions are generally held on a case-by-case basis involving staff attorneys.

#### **Dispute Resolution**

When a settling party formally invokes the dispute resolution provision under a settlement agreement, the agreement will usually control the length of time and the manner in which the parties have to dispute the issue. In Region 5, the most common types of disputed receivables are contractor costs and state cooperative agreements.

Region 5 officials stated that most dispute resolutions are informal with the ORC resolving disputes directly with the PRP. However, if the dispute cannot be resolved in this manner, the PRP can invoke a formal dispute. Once the formal dispute has been invoked, the PRP has a set period, usually 10 days, to file a written statement of position. If a cost dispute is resolved, adjustments are then made to the outstanding bill. The length of time that it takes to resolve a dispute usually varies on a case-by-case basis.

#### **Writing off Delinquent Accounts Receivable**

Region 5 follows the guidance described in RDMS 2540 for writeoffs of uncollectible accounts receivable. The local threshold for writeoffs is \$13,000, and the Director of EPA's FMD can authorize writeoffs between \$13,000 and \$20,000. An EPA claims officer is authorized to write off amounts from \$20,000 to \$100,000. We were informed by regional officials that write offs for judicial actions require DOJ approval. We identified overdue accounts which needed to be written off during our case specific reviews; the results of which are discussed on the following page.

Both FMO and ORC officials acknowledged the need for a more collaborative effort in order to generate and maintain an accurate status of delinquent and aging accounts receivable.

The Region 5 FMO Chief stated that his office will be working towards determining which overdue accounts receivable are legitimate versus those which need to be written off the books, referred to DOJ, or are under appeal. However, he indicated the need for documentation from ORC to support writing off the remaining balances for some of the delinquent accounts receivable and issuing an IRS form 1099 to the debtor for the remaining balance. The ORC indicated that an assertive effort will be made to inform FMO of referrals status and internal actions generated within the Region, which may require adjustments to the Region's accounts receivable ledger. Since we found many of our 21 site specific cases which needed some action from regional officials, we believe the Region should examine all outstanding receivables to determine what additional actions are necessary.

#### **RESULTS FROM JOINT REVIEW CASE SPECIFIC ANALYSIS OF OVERDUE ACCOUNTS RECEIVABLE**

We obtained information from the IFMS data warehouse (data as of 04/06/00) to select a sample of overdue accounts receivable to discuss with the Region. Our intentions were to discuss our sample cases with Region 5 officials in order to make recommendations, where necessary, for improvements to EPA's collection of Superfund cost recoveries, cashouts, and fines and penalties. Region 5's total outstanding accounts receivable amount was \$63,331,196, of which \$51,326,569 were reported as outstanding receivables that were EPA's collection responsibility and \$12,004,626 were reported as DOJ's collection responsibility. In addition, \$36,615,823 (58%) of the cases identified were categorized as doubtful outstanding receivables, \$16,310,412 (25.7%) were listed as collectible at EPA, \$10,333,595 (16.0%) were listed as collectible at DOJ, and \$71,366 (0.1%) were under judicial appeal.

We selected 21 overdue receivable cases that totaled about \$37.8 million. Our selections included cases from a majority of the accounts receivable status codes, focusing mainly on those receivables having large past due amounts that were significantly overdue. The age of the receivables ranged from 309 days to 2,744 days delinquent, and the amounts outstanding from \$13,786 to \$10,541,462. We interviewed regional staff responsible for overseeing accounts receivable within ORC and FMO to determine the causes for the overdue accounts and/or action that may have been taken by the region to either obtain payment or resolve outstanding issues. Appendix A contains the case summaries of the delinquent accounts receivable we reviewed.

Overall, the results indicated a need for better coordination and communication between FMO and ORC to ensure the status of the collectibility of accounts receivable (i.e., what is a legitimate outstanding accounts receivable versus what needs to be written off the books as an uncollectible account) is known to all parties and is accurately reported in IFMS. We also noted the need for the Region to ensure that information which changes the status of an accounts

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receivable based on a decision by DOJ be disseminated from ORC to the FMO for timely processing. Furthermore, our case specific reviews revealed the need for the region to make adjustment to the total balance of overdue accounts receivable. Our conclusions for the cases reviewed were based on (1) the PRPs inability to pay, (2) subsequent judicial enforcement actions (e.g. Bankruptcy Discharges, delinquent costs rolled over into subsequent consent decree), or (3) oversight costs demanded under Unilateral Administrative Orders (UAO's) that were mistakenly established as accounts receivable.

Some notable issues identified during our case specific reviews were:

- An overdue receivable for costs incurred at the Twin City Army Ammunition Plant (TCAAP) has not been resolved. This case is based on an Office of Management and Budget (OMB) ruling which the Army cites as reason why they are not obligated to pay an outstanding accounts receivable because it would constitute an unauthorized augmentation of EPA's appropriation (Case #13 - Appendix A). Thus, the Army contends that the OMB ruling precludes them from paying the \$7,170,718 in costs owed to EPA.
- Three separate accounts receivable totaling \$1,113,578 and another receivable under dispute (with a yet to be determined amount) which resulted from demands for payment under a UAO, but which were carried on the books as overdue accounts receivable:

Waste Inc. RD/RA Group.....	\$540,018 (Case # 6 - Appendix A)
McBride, Baker & Coles....	328,565 (Case #7)
Allied Chemical/Coke.....	244,995 (Case #18)
	<u>\$1,113,578</u>

Since demands made under UAOs are not legally binding claims, they are tracked in IFMS as memo entries and not as receivables. Region 5 should void these receivables and establish the receivable amounts as memo entries within IFMS.

- Five cases totaling \$24,797,141 which, based on the debtor's insolvency or inability to pay, should be written off (see Appendix A).

MacGillis & Gibbs.....	\$13,365,831 (Case #4 - Appendix A)
Fast, Swift, Collins & Smith.....	10,541,462 (Case #10)
Brighton Township .....	490,948 (Case #14)
John C. Haines .....	148,900 (Case #15)
MacGillis & Gibbs .....	<u>250,000 (Case #17)</u>
	<u>\$24,797,141</u>

Based on these case-specific reviews, it was determined that a number of cases totaling over \$25 million were erroneously coded in IFMS and should be closed out or written off. These cases were easily identified during the case specific discussions with the Regional staff involved, however it was clear that prior discussions on these receivables had not occurred or were not effective. More routine case specific discussions focused on overdue receivables amongst the FMO, ORC and RPO may have identified these issues earlier and would be useful in the future. In addition, having these receivables which are invalid or no longer collectable, may inadvertently focus the Regions' attention on that which is not collectible and divert attention away from receivables with a greater potential for collection.

In addition, while the joint review team in conjunction with the Region identified about \$26 million in receivables during our visit to the region, the data in IFMS does not reflect a commensurate reduction in their delinquent receivables balance as of yet. Rather preliminary data indicates that the Regions total delinquent receivables balance actually increased by \$3 million. This reflects a need by Region 5 to further address this issue.

## **RECOMMENDATIONS**

### **Region 5**

- The Region should establish a process in their MOU that provides for notification to ORC of delinquent accounts receivable more frequently than every 6 months.
- The Region should provide for more frequent, direct communications between the RPO, ORC and FMO to discuss delinquent accounts receivable and evaluate whether the terms and conditions of the MOU are being met.
- More direct involvement and frequent discussions with all three Region 5 offices on aging accounts receivable should occur to coordinate and resolve any concerns. This could be done at the Cost Recovery Task Force meetings. While the Region has re-established its Cost Recovery Task Force to focus on accounts receivable issues, it had only met one time prior to the review. It is imperative that this Task Force meet frequently to discuss outstanding accounts receivable until such time as the Region's balance of overdue receivables has been substantially reduced or action taken to enforce (i.e. referral to DOJ) or write off the delinquent debts.
- Based on information obtained through routine communications during meetings of the Cost Recovery Task Force, the FMO should update IFMS to reflect changes in the status

of the collectibility of debts and close out debts that have been discharged through bankruptcy proceedings or written off or subsumed with subsequent settlements. During the site specific reviews, the Region indicated that receivables established under UAOs would be removed from the IFMS and that bankruptcies that had been discharged would be closed out. However, previous data from IFMS indicated that one bankruptcy that was discharged remains open in IFMS (Shenango Group Inc. - Buckeye Reclamation) and a demand to pay oversight costs issued under a UAO remains coded as a receivable (McBride, Baker and Coles - BD05299T065A) and not a memo entry per OCFO policy. Finally, the receivable for the Town of Onalaska remains reported as overdue when the Region indicated that this is an installment payment and is current. Based on these examples, the Region must make extra effort to review their overdue receivables frequently and ensure that their correct status is accurately reflected in IFMS in a timely fashion.

- Conduct annually a comprehensive review of open accounts receivable. The Region should ensure that allowances for doubtful accounts are established and/or revised, as needed. This action requires the FMO and RPO to review the status of delinquent accounts receivable to determine the likelihood of collecting and establishing, or adjusting, allowances for amounts deemed to be uncollectible.
- Where needed, ORC and RPO should provide timely information to FMO through the review of the 120 day tracking report so that necessary changes can be made on the status codes for overdue accounts receivable.
- The Regional MOU should be updated to accurately reflect current roles and responsibilities and actions among the three offices.
- RPO, FMO, and ORC should research the availability and access to other accounts receivable reporting resources such as the Data Warehouse and other reporting tools to supplement existing reporting capabilities.
- Make necessary adjustments to the outstanding accounts receivable ledger to reflect overdue amounts discovered that need to be written off or adjusted due to the debtors' inability to pay.
- Establish more communication with DOJ on the status of delinquent accounts receivable.

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- Implement Headquarters "Interim Guidance on the Referral Process and Timing for Collection of Delinquent Debts Arising under Superfund Judicial or Administrative Settlements" dated April 6, 2000.

**Headquarters - OCFO/OSRE**

- Revise provisions of the EPA/DOJ Memorandum of Understanding (and associated portions of the EPA/DOJ IAG) to ensure that documents necessary to establish accounts receivable and update changes in the status are transmitted to EPA by DOJ in a timely fashion.
- Conduct an analysis of the lag time between: 1) the entry of the consent decree and receipt of the documentation by EPA and 2) the receipt of the consent decree by EPA and the establishment of the associated account receivable in order to identify specific instances where accounts receivable are not being established in a timely manner.
- Examine the resulting information to identify: 1) which accounts receivable are not being established in a timely manner because EPA or DOJ did not provide the necessary documentation 2) any EPA regions or U.S. Attorneys Offices regularly experiencing significant delays. Provide the findings to FMD for review and discussion with DOJ at quarterly meetings.
- Explore the options and legal ramifications of establishing accounts receivable through the electronic notification process or other alternative means (e.g., electronic facsimile of info, email). Region 5 reported that the information currently provided in electronic form at (the DOJ "Debts Assessed Report") has been useful.
- Examine the feasibility of integrating data from existing information systems (i.e., IFMS, CERCLIS, and DOJ systems) to meet Regional information needs for effective receivables management.

**Headquarters - OCFO**

- Based on input from Regions and existing Regional practices, identify and implement short term enhancements to the IFMS Data Warehouse that would facilitate and enhance accounts receivable management in the regions.
- Review existing IFMS accounts receivable status codes to eliminate any overlap and ambiguity in interpretation. Add new or revised codes, as necessary. Review existing

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accounts receivable Status Code definitions to determine if it is necessary that they be clarified or revised to ensure that they can be properly applied and recorded in IFMS.

- Revise Chapter 14 - Superfund Accounts Receivable and Billing to conform to the April 6, 2000 Guidance.

**Department of Justice**

- Notify EPA in writing (e.g., Debt Closeout and Surveillance Letters) and provide source documents (e.g., bankruptcy settlements and associated discharge notices) concerning changes affecting the collectibility or final disposition of debts. EPA recommends that the IAG be modified to require DOJ to provide such documents to the ORC and FMO within 30 days of any action which formally changes the status of the collectibility of the debt.
- Establish single point of contact for judicial source documents at DOJ.
- Provide the Region with the newly created payment report on a quarterly basis.
- Determine if DOJ would provide EPA to access its TALON and CLASS systems similar to its now defunct Lands Docket Tracking System in order to facilitate regional access to DOJ receivable and payment information.
- When an adjustment is made that reflects a change in a receivable, DOJ needs to provide information, such as CDs and Court Orders, to ORC and FMO in a more timely basis and to share decree tracking information as needed.
- Establish better communication with regional offices on overdue receivables.
- Provide the region with timely reports on payments.

**Headquarters-OCFO/OSRE/OGC/DOJ**

- Develop a policy on the authorities and procedures for writing-off CERCLA debt. OSRE is currently researching this issue. Guidelines should also be developed to specifically address procedures for writing off de minimis amounts of unpaid interest.



## **CONCLUSION**

While the Region has taken steps to improve accounts receivable, in Chapter 3 we have identified additional actions the Region can take to further improve the overall management of its accounts receivable. For example, the Region could significantly improve the way it manages its accounts receivable by simply improving the way the offices involved in the accounts receivable process interact and communicate. The ability to establish, track, and effectively communicate and discuss changes concerning the status of accounts receivable is the key to successfully managing accounts receivable. Without routine communication, open accounts receivable that should be closed or referred to DOJ might languish unnecessarily for extended periods of time and will subsequently inflate Agency assets as reported in its annual financial statements. These accounts also could divert attention from receivables that are truly collectible.

With this thought in mind, we believe that the three Region 5 offices should engage in routine discussions concerning changes in accounts receivable and the status of delinquent debts to determine appropriate follow up actions of any uncollectible amounts. Routine follow up on these delinquencies will enable the Agency to enforce and collect debts when possible, and to more accurately report the status of its assets.

## **APPENDIX A**

### **Summary of Issues At Selected Sites**

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
1. Lemberger Fly-Ash	919 (days)	\$2,355,302	This receivable was comprised of amounts from 5 CDs. The original CD was entered in 1992 and two more CDs were entered in 1996 and in 1997. A total of \$1,129,837 has been collected for the Trust Fund. The regional attorney concluded that the amount currently outstanding is valid and collectable. According to the attorney, collection is being held up due to a diminimis PRP situation.	At the time of our review, the attorney for the case indicated the Region had referred the receivable to DOJ. However, in ORC's response to the draft report, they indicated all amounts due have been paid. They indicated there was a mistaken double entry for one of the settlements, but clarification was provided; and this erroneous receivable has been removed from the books.
2. Conrail Rail Yard	360	\$84,411	This receivable is overdue because of an informal dispute over the outstanding amount due. Some work at the site involved a State Coop Agreement of which \$25,000 has been billed by the State, as well as by EPA. The overpayment was refunded to the PRP; however, the PRP will not lift the informal dispute until they get a written assurance from the State not to bill under the Coop Agreement. Further the PRP will not pay future bills until such an assurance has transpired.	The regional attorney recently sent a letter to the State to execute this assurance in order to complete the collection process. The attorney will await State action on the PRP's request not to bill under the Cooperative Agreement. Once this confirmation from the State is received, the attorney will submit a request for debt collection.

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
3. Thermo Chem	328	\$1,729,704	This receivable is overdue due to interpretation differences regarding recovery of RI/FS vs. RD/RA costs. A recommended solution has been adopted to parse out the RD/RA costs from the RI/FS costs based on the language of the CD. This would allow the RI/FS portion to be recoverable. There is also a UAO portion which has also been recommended to parse out separately.	Once the recommended solution is implemented, the corresponding bills for collection will be divided among the parties and then billed accordingly.
4. McGillis & Gibb	1,871	\$13,365,831	The ORC has exhausted all legal remedies to collect from the debtor, and an "Ability to Pay" determination has been finalized.	The ORC will provide Region 5 Finance with documentation as to the PRP ability to pay. There is a possibility that EPA may receive \$250,000 of \$4.9 million outstanding under one receivable, and the remainder would be submitted for write-off.

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
5. Buckeye Reclamation Landfill	1,608	\$764,775	<p>This receivable was overdue as a result of the PRP entering a petition for Reorganization in December 1992. In July 1993, DOJ filed a proof of claim which was finalized in March of 1994.</p> <p>A settlement agreement was entered in July of 1995 for \$800,000 between EPA and the PRP after the Agency was deemed a Class 5 claimant which is considered impaired. A portion of the settlement was designated to Region 3; the Region 5 portion came to \$163,319 after the pro rata share distribution.</p>	<p>The \$800,000 receivable amount should be removed from the books, along with the corresponding outstanding amount. Due to the bankruptcy discharge, an IRS Form 1099 is not necessary. Subsequently, a new installment receivable will be created for the \$163,319 in accordance with the new settlement.</p>
6. Waste Inc. RD/RA Group	2,254	\$540,018	<p>These amounts are currently outstanding under a UAO, however the PRPs have been referred under a 107 Action. Some PRPs will not be pursued under the 107 Action due to litigation risk. There is currently over a \$1 million in an Orphan Share that will not be pursued or compromised. DOJ will make that determination.</p>	<p>DOJ needs to make a final determination regarding any amount to pursue or compromise. Once this determination is made, the outstanding UAO billing documents will be moved within IFMS to a Memo Entry thereby reclassifying them to a non-receivable category as a result of the bilateral UAO.</p>

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
7. McBride, Baker and Coles	732	\$328,565	These amounts are currently outstanding under a UAO.	Once documentation from ORC is received by Region 5 Finance, these amounts will be moved from receivable amounts to memo entries within IFMS for internal tracking purposes, and will not be reflected as receivables.
8. Outboard Marine Corp	2,744	\$224,012 \$530,382	These actions include oversight costs from 1988. The Region sent a bill in 1989 which the PRPs paid; however, over the course of the decade, only one other bill was paid in 1996. The attorney came to an agreement to resolve the disputes for the entire decade which would roll all costs into one agreement. The agreement was never finalized. This amount, approximately \$1.1M, would cover all response costs.	In the next several months, the region hopes to finalize the agreement and obtain DOJ concurrence since this will be a compromise of the costs.

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
9. Cowles Media Co.	383	\$1,350,000	This is a judgment entered for \$1.85M and reduced by \$500K.	The only assets available at this site were from insurance proceeds (10% of the proceeds are attorney fees). On April 26, 2000, EPA was wired \$677,423 which was full payment plus interest. Because we agreed to use insurance proceeds, the balance of the bill will need to be adjusted to the amount received. No decision document is required; the 10-point settlement document addressed the unrecovered amount.

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
10. Faste, Swift, Collins & Smith	2,744	\$10,541,462	<p>The outstanding amount is for Thomas Solvent and Richard Thomas. Richard Thomas does not have the money to pay the amount due. Mr. Thomas filed bankruptcy; the region believes they obtained all the money they think they are able to get.</p> <p>Lawsuit #1 settled with Thomas Solvent for \$11M. Assets only worth \$2M. The balance is being held in abeyance until PRP sues his insurers. Insurer paid EPA \$4.5M which the region used to continue insurance litigation.</p> <p>Lawsuit #2 settled with Grand Trunk for \$4.7M; Lawsuit #3 was against the generators/transporters (a de minimis settlement with 65 parties and 4 majors) resulting in \$2.6M. Lawsuit #4 was against some generators/transporters for Raymond Road facility. This lawsuit was thrown out of court on arranger issues.</p>	<p>The region determines this debt as not collectible. They believe there are no assets remaining. Upon completion of insurance litigation and after discharge notices are issued, remaining debt should be closed out.</p>
11. Town of Onalaska	873	\$71,366	<p>This amount is for two consent decrees: 1) for \$482K which was paid; 2) \$500K to be paid over a three-year installment payment. The total collection was for \$678,000.</p>	<p>This receivable is not overdue. All payments have been made. The outstanding amount is for interest.</p>



SITE	AGE	AMOUNT	ISSUES	RESOLUTION
12. General Die Cast Co.	309	\$392,279	Oversight bill issued under an AOC. This site is in informal dispute. The PRP has requested work-performed contractor costs documents. The ORC requested work performed documents from FMO several months ago. Work performed documents should come from the program office, not FMO.	The region needs to follow up with the program office to obtain the work performed documents.
13. Twin City Army Ammunition Plan (TCAAP)	1,855	\$7,170,718	This was one of the first Federal Facility agreements done under section 120 of CERCLA for NPL sites which included a provision for EPA to recover oversight costs. Therefore, the Agency has been regularly billing the military (Army) for reimbursement of costs incurred. However, a later ruling by OMB stated that one federal agency (EPA in this case) could not collect oversight costs from another Government agency (the Army) because it would constitute an unauthorized augmentation of the former's appropriation. However, some Agency officials believe this situation is similar to when EPA enters into an agreement with the Army Corps of Engineers to agree to reimburse them for the services rendered.	<p>Based on the recent OMB ruling, the Army believes that any reimbursement of the outstanding balance would be an augmentation of EPA's appropriation; and therefore, they should not be obligated to pay.</p> <p>This particular case presents unique problems for the Agency since it applies to every NPL facility on the TCAAP. The Agency will seek an opinion from OMB on this issue.</p>

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
14. Brighton Township	523	\$490,948	<p>On March 10, 1994, the Agency filed a complaint against the Brighton Township and Jack Collett (he owned a small dump which he leased to the township for income) for recovery of response costs. In 1995, Jack Collett filed for bankruptcy. The case went to trial in March 1996 where, in the absence of Mr. Collett, the judge found the township liable for all incurred costs. The township appealed the ruling and the case went to the Sixth Circuit Court of Appeals in 1997, which again ruled that the Brighton Township was liable for costs incurred by the Agency. The township again filed an appeal in the District Court which vacated the original judgement against the Brighton Township. In March 2000, Mr. Collett was found to be in default, but was still named as a responsible party in the judgement for \$490,000.</p>	<p>The Agency has filed an appeal with the Justice Department and is seeking a joint and several status in an effort to receive some sort of payment towards the outstanding balance, possibly from the Township. Aside from referring the case to the DOJ, the Agency has been talking with the Township in an effort to resolve the outstanding receivables balance.</p>

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
15. John C. Haines	2,744	\$148,900	<p>The original judgement was for incurred costs totaling \$300,000. However, the owner of the lab (the PRP) had criminal charges filed against him and, as part of his probation, he agreed to pay EPA a portion of the amount due (\$148,900). The PRP was later determined to be insolvent; and rather than sue, the Agency decided in July 1997 to write off the remaining outstanding balance and issue a close-out memo. The ORC attorney stated that to the best of his knowledge, a closeout memo was drafted in September 1997 and sent to the regional claims office indicating the outstanding balance was to be written of the books.</p>	<p>A follow-up review by Headquarters OCFO officials revealed that Headquarters Counsel were awaiting further documentation on the debtor's status from Region 5. However, this receivable is not overdue and action has been taken to remove it from the books, based on the insolvency of the PRP.</p>

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
16. Hawthorne Realty	383	\$359,556	<p>Unbeknownst to the Agency, the court issued a consent decree (CD) for Hawthorne in February prior to EPA going to the court for a request of stay on the case. In March, the Agency asked for a motion on the CD because of Region 5 lab data quality problems. EPA subsequently resolved the issue and withdrew its motion of stay. The effective date of the CD was February 2000, but for purposes of the CD, the effective date was revised; and Hawthorne paid the first \$200,000 installment in April 2000. Therefore, this receivable is no longer on the books as being past due and the AR status code is now 1.</p>	This case has been taken off the books and is no longer considered an overdue receivable.

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
17. MacGillis & Gibbs	649	\$5,539,167	<p>The Agency shows three entries as outstanding - a civil action (code 107) resulting in two consent decrees in which the Agency agreed to settlement for \$6.4 million plus future costs, and two bankruptcy items together totaling \$6.7 million. A total of \$4.9 million remains from the original settlement of \$6.4 million under the civil action.</p> <p>Existing insurance claims against a MacGillis &amp; Gibbs company (Central Labs) have rendered them insolvent and unable to pay on the outstanding balance of \$4.9 million. The ORC lawyer stated the Agency may only get back \$250,000 of the remaining outstanding balance (of \$4.9 million) under a prospective purchaser agreement. He added there could be more, but he is pessimistic about the Agency's chances. Also, FMO officials stated a 1099 will be issued to MacGillis &amp; Gibbs (dating back to 1994) for the remaining outstanding balance, and they will have to pay taxes on the amount not paid as income. The FMO official also stated they are taking steps to begin resolving the status of the two bankruptcy items.</p>	<p>FMO officials stated they would need an official legal document indicating that the outstanding balance will be reduced to \$250,000 before a 1099 can be issued. The Agency has a future response cost clause in the consent decree that allows us to continue billing. If we get an amended consent decree (which is unlikely), we would adjust the large amount owed down to a new dollar amount. This would be similar to an ability-to-pay settlement.</p>

SITE	AGE	AMOUNT	ISSUES	RESOLUTION
18. Allied Chemical and Allied Coke	524	\$244,995	<p>Although the original oversights billings were generated from two UAOs, the status code was changed (presumably by the Office of Regional Counsel) to an AR 15 (referral to treasury) even though UAOs are not legal receivables and should not be in the ledger. Furthermore, the Financial Management Division (FMD) does not have anything in their records which indicates the current status code had changed, and inquired how the status code could be changed without their knowledge.</p> <p>The FMD chief stated that more that likely, dunning letters were issued, but he had to check his records for confirmation. The Office of Regional Counsel stated that they have referred the case to the Department of Justice (DOJ) under a section 107 referral within the last six months for collection.</p>	<p>First, the region is not sure why the outstanding receivable is on the books, since the original oversight billings were based on two UAOs which are not a valid collectable.</p> <p>Second, Honeywell did not believe that they were the appropriate PRP and petitioned the courts for a decision in the matter. The case was tried in 1995 and the judge retired without rendering a decision. A legal opinion is still pending and Honeywell has deferred payment until judgement.</p> <p>Lastly, the Office of Regional Counsel referred the case to the Justice Department under a section 10 referral for collection action.</p>