



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA Can Better Manage Superfund Resources

Report No. 2006-P-00013

February 28, 2006

Report Contributors:

Carolyn Copper
Patrick Milligan
Tina Lovingood
Pankaj Arora
Katherine Beam
Bryan Holtrop
Jee Kim

Chad Kincheloe
Jessica Knight
Barry Parker
Laura Tam
Katherine Thompson

Abbreviations

AOA	Advice of Allowance
ATSDR	Agency for Toxic Substances and Disease Registry
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Act Information System
EPA	U.S. Environmental Protection Agency
EPM	Environmental Programs and Management
FTE	Full-Time Equivalent
FY	Fiscal Year
GAO	Government Accountability Office
IFMS	Integrated Financial Management System
NIEHS	National Institute of Environmental Health Sciences
NPL	National Priorities List
OARM	Office of Administration and Resource Management
OCFO	Office of the Chief Financial Officer
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
ORD	Office of Research and Development
OSRE	Office of Site Remediation Enforcement
OSWER	Office of Solid Waste and Emergency Response
RP	Responsible Party



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We performed this review in response to a congressional request to evaluate Superfund expenditures at headquarters and the regions.

Background

The Superfund program was created in 1980, and since that time and through FY 2003, over 1,500 of the Nation's highest priority hazardous waste sites have been cleaned up or are undergoing cleanup. However, the Superfund Trust Fund has decreased over the years, and in FY 2004 and FY 2005, all Superfund appropriations came from general tax revenue rather than the Trust Fund. Recent studies have reported shortages in funding needs for Superfund, and have identified needed improvements in how the program is managed.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:

www.epa.gov/oig/reports/2006/20060228-2006-P-00013.pdf

EPA Can Better Manage Superfund Resources

What We Found

We provide answers to congressional questions about EPA's Superfund program expenditures. We also identify numerous opportunities for EPA to more effectively manage its existing Superfund resources, its program, and direct more resources to cleanup. EPA needs to overcome challenges in accounting for Superfund resources, understanding the program's resource needs, and decentralized management of the Superfund program.

Several obstacles have prevented EPA from efficiently and effectively managing the Superfund program for performance and adequately accounting for Superfund resources. EPA has been unable to allocate and manage Superfund resources for cleanup as efficiently and effectively as possible because of the way the Agency accounts for program resources, manages by functions, supplements the program with other funds, relies on an outdated workload model, and maintains unliquidated Superfund obligations and funds in special accounts. Closely aligning offices that support the Superfund program, and producing program performance and cost data, have been limited because EPA disperses the responsibility for allocating and managing program resources.

What We Recommend

We recommend changes that will help EPA overcome these obstacles and better manage its Superfund resources. We recommend actions that enable the Agency to direct additional funds to Superfund cleanup. We recommend a specific action Congress could take to help improve the Superfund program. The Agency is developing a plan to implement our recommendations.



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

THE INSPECTOR GENERAL

February 28, 2006

MEMORANDUM

SUBJECT: EPA Can Better Manage Superfund Resources
Report No. 2006-P-00013

TO: Susan Parker Bodine
Assistant Administrator for Solid Waste and Emergency Response

This is the final report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This evaluation report contains our findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This represents the opinion of the OIG; the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this evaluation report will be made by EPA managers in accordance with established procedures.

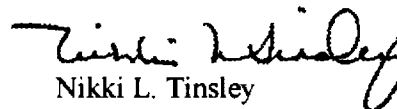
We received EPA's written comments on our draft report on August 18, 2005. We met with EPA officials on October 20, 2005, to discuss their comments, and received additional comments on February 10, 2006, after the Agency indicated it was developing an implementation plan to respond to our recommendations.

Action Required

In accordance with EPA Manual 2750, as the action official, you are required to provide this office a written response to this report within 90 days of the final report date. Your response should address all recommendations and must include your concurrence or nonconcurrence with all recommendations. For corrective actions planned but not completed by the response date, please describe the actions that are ongoing and provide a timetable for completion. If you do not concur with a recommendation, please provide alternative actions that address the findings reported. We have also provided a copy of this report to the Assistant Administrators of the other Offices that receive Superfund funding. We ask that should these officials choose to provide a response to the final report, that you as the action official consolidate those responses. For your convenience, this report will be available at <http://www.epa.gov/oig>. Please e-mail an electronic version of your response to Milligan.Patrick@epa.gov.

If you or your staff have any questions regarding this report, please contact Rick Linthurst at 919-541-4909, or Carolyn Copper at 202-566-0829.

Sincerely,


Nikki L. Tinsley

cc: Assistant Administrator for Research and Development
Assistant Administrator for Air and Radiation
Assistant Administrator for Administration and Resources Management
Assistant Administrator for Enforcement and Compliance Assurance
Acting Assistant Administrator, Office of Environmental Information
Chief Financial Officer
General Counsel
Audit Liaison, Office of Solid Waste and Emergency Response
Audit Liaison, Office of Research and Development
Audit Liaison, Office of Air and Radiation
Office of General Counsel, Director of Resources Management
Audit Liaison, Office of Administration and Resources Management
Audit Liaison, Office of Enforcement and Compliance Assurance
Congressional Liaison, Congressional and Intergovernmental Relations,
Office of the Administrator
Audit Liaison, Office of Environmental Information

Table of Contents

At a Glance

Chapters

1	Introduction	1
	Purpose	1
	Background	1
	Scope and Methodology	6
	Agency Response to the Draft Report and OIG Evaluation	6
2	Obstacles Impact EPA's Ability to Efficiently and Effectively Manage Superfund Resources	7
	Superfund Managers Disagreed About How to Classify Administrative Expenses	7
	Decentralized Management of Superfund Resources Limits Ability to Manage Resources to Benefit Cleanup	8
	Incomplete Information on Superfund Costs Prevents Accurate Estimates of Program Needs	10
	Outdated EPA Workload Model Used to Distribute Superfund Resources	10
	EPA Does Not Have a Fully Effective Process to Guide Decisions to Deobligate Unliquidated or Use Special Account Funds	13
	Portions of \$174 Million in Unliquidated Superfund Obligations Might Be Available	13
	Portions of \$465 Million in Special Account Funds Are Potentially Transferable to the Trust Fund	14
	Conclusions	16
	Recommendations	17
	Agency Response to the Draft Report and OIG Evaluation	18

Appendices

A	Details on Scope and Methodology	19
B	Definitions of Administrative and Programmatic Costs	22
C	Details on Removal Activities	23
D	February 10, 2006 Agency Response	24
E	OIG Evaluation of Agency Response	29
F	Distribution	35

Figures and Tables

Figure 1-1	Federal Spending for Discretionary Programs Has Decreased	2
Figure 1-2	Expenditures Greater Than Appropriation, FY 1999 – 2003	3
Figure 1-3	Regional and Headquarters Expenditures, FY 1999 – 2003	4
Figure 1-4	Programmatic and Administrative Expenditures, FY 1999 – 2003	5
Table 2-1	Superfund Carryover for FY 1999 – 2005	9
Figure 2-1	Status of Proposed, Final, and Deleted NPL Superfund Sites, FY 1987 – 2003	11
Figure 2-2	Change in Proposed, Final, and Deleted NPL Superfund Site Status by Region, FY 1987 – 2003	12

Chapter 1

Introduction

Purpose

We performed this review in response to a congressional request specified in the conference report that accompanied H.R. 2673 (Consolidated Appropriations Act of 2004, page 1128). The U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG) was asked to evaluate Superfund expenditures and recommend options to increase resources directed to extramural cleanup while minimizing administrative costs. Extramural funds are commonly understood to be "cleanup funds."

We addressed four questions, developed in agreement with Senate and House Appropriations Committee staff:

- 1) What have headquarters and regional Superfund expenditures been for the last 5 years (Fiscal Years 1999 to 2003)?
- 2) How effective are the processes and criteria for determining, allocating, and optimizing regional and headquarters' Superfund administrative and support resources?
- 3) How effective are the processes and criteria for allocating Superfund program dollars to program needs?
- 4) How effective are EPA's procedures for integrating efficiency and effectiveness information into the Superfund program?

In September 2004, we reported on the first two questions.¹ This report answers portions of these questions.

Background

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) established the Superfund program in 1980. Superfund is the Federal Government's program to clean up the Nation's uncontrolled hazardous waste sites. According to EPA, through Fiscal Year (FY) 2005, work had been completed at 62 percent of the highest priority sites in the Nation - those on the National Priorities List (NPL) - and EPA had deleted 308 sites from the NPL. Underscoring EPA's commitment to the "polluter pays" principle, the Agency indicated it secured over \$1.1 billion for FY 2005 in cleanup commitments and cost recoveries from the parties responsible for toxic waste sites, for a cumulative

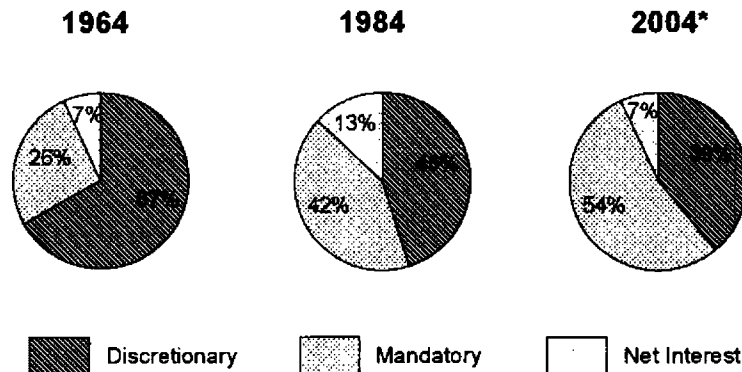
¹U.S. Environmental Protection Agency, Office of Inspector General, *OIG Response to Congressional Request on Superfund Administrative Costs*, Report No. 2004-S-00004, September 15, 2004.

total of over \$23 billion. According to the Agency, about 70 percent of Superfund cleanups are performed by responsible parties as a result of EPA's enforcement program.

An issue of primary and current concern in the Superfund program is the sufficiency of funding for cleanups. According to the Government Accountability Office (GAO), until 1995, dedicated taxes on petroleum, chemical feedstocks, and corporate income provided the majority of the Superfund program's income through the Hazardous Substance Superfund Trust Fund, the account designated to provide funding to these sites. However, the Trust Fund has decreased over the years, to the extent that in FY 2004² and 2005, all Superfund appropriations came from general tax revenue rather than the Trust Fund. The Superfund program must compete for revenue along with other discretionary programs, which have received decreasing portions of Federal dollars over time. As shown in Figure 1-1, discretionary funding decreased from 67 percent of Federal spending in 1964 to 39 percent in 2004, while mandatory Federal spending was more than half of all Federal spending in 2004. As a result of the overall decline of the Superfund budget and the identified shortfalls associated with the Superfund Trust Fund, questions about the program's efficiency and effectiveness have been asked.

Figure 1-1. Federal Spending for Discretionary Programs Has Decreased

Federal Spending for Discretionary Programs



* Current services estimate
Source: Budget of the United States Government FY 2005, Office of Management and Budget

Source: GAO presentation, American Institute of Certified Public Accounts (AICPA) National Governmental Accounting and Auditing Update, August 2004.

² According to the *Final Report of the Superfund Subcommittee of the National Advisory Council for Environmental Policy and Technology*, April 12, 2004.

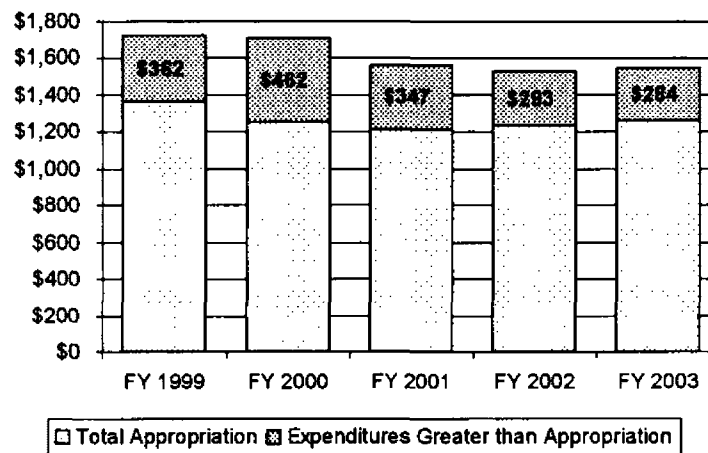
Superfund Appropriations

The Superfund program experienced an overall decline in appropriations from approximately \$1.367 billion³ in FY 1999 to approximately \$1.265 billion in FY 2003,⁴ a decline of about 7.5 percent.

Superfund Expenditures

As summarized in Figure 1-2, between FY 1999 - 2003, total Superfund expenditures were greater than their corresponding appropriation. A key reason for this is that EPA expends prior year funding to pay for current needs. Total Superfund expenditures declined about 11 percent since FY 1999, down from about \$1.73 billion in FY 1999 to \$1.55 billion in FY 2003.⁵ As summarized in Figure 1-3, the majority of Superfund expenditures occurred in the EPA regions, which averaged about 75 percent of total expenditures during FY 1999 - 2003.

Figure 1-2. Expenditures Greater Than Appropriation, FY 1999 – 2003
Constant 2003 Dollars in Millions



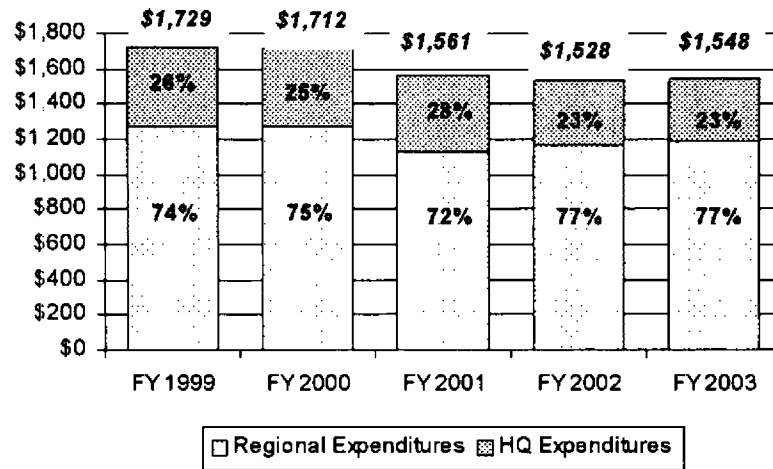
Source: OIG Analysis of EPA data.

³ All financial data have been adjusted to constant 2003 dollars using the Gross Domestic Product Chained-Price index.

⁴ Excludes allocations for the Agency for Toxic Substances and Disease Registry (ATSDR), National Institute of Environmental Health Sciences (NIEHS), and the Brownfields program.

⁵ Our analysis of Superfund expenditures excludes expenses incurred by EPA OIG, ATSDR, NIEHS; does not include any dollars appropriated to the Office of Research and Development (ORD) prior to 1998; and includes expenditures for the Brownfields program. The Brownfields program, prior to FY 2003, was funded under the Superfund appropriation and thus is included in the Superfund expenditure data.

Figure 1-3. Regional and Headquarters Expenditures, FY 1999 – 2003
Constant 2003 Dollars in Millions



Source: OIG analysis of EPA data.

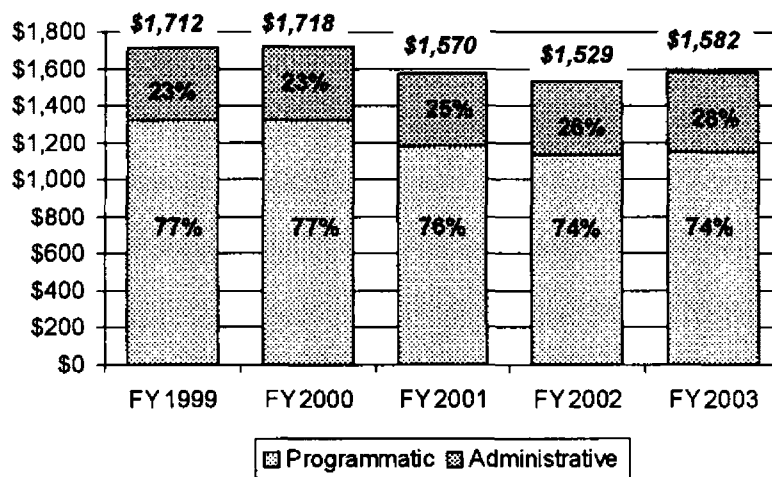
Superfund Programmatic and Administrative Expenditures

Superfund *programmatic* expenditures are those uniquely related to programmatic work, including extramural expenses, special use facilities, and items with limited application or unique use.⁶ Superfund program managers believe that personnel-related costs directly associated with site-specific cleanup activities should be included in programmatic costs, although they are not.

Superfund *administrative* expenditures are generally categorized as personnel-related costs and non-personnel-related costs. Personnel-related costs consist of wages and benefits; non-personnel-related costs consist of rent, utilities, travel, equipment, and other overhead-related costs.

⁶ We used the definitions of administrative and programmatic costs as outlined in chapter 4 of the *Administrative Control of Appropriated Funds Manual*, used by EPA's Office of the Chief Financial Officer (OCFO). See Appendix B for definitions.

Figure 1-4. Programmatic and Administrative Expenditures, FY 1999 – 2003
Constant 2003 Dollars in Millions



Source: OIG analysis of EPA data.⁷

As Figure 1-4 shows, administrative costs increased from about 23 percent to about 28 percent, while programmatic costs decreased from about 77 percent to about 74 percent from FY 1999 - 2003. During this time, programmatic expenditures decreased about \$171 million, or 13 percent, and administrative expenditures increased about \$41 million, or 11 percent. Total Superfund expenditures averaged approximately 75 percent programmatic and 25 percent administrative from FY 1999 to 2003.⁸

Personnel-related (Superfund staff) expenditures averaged nearly 80 percent of total known administrative expenditures over FY 1999 - 2003.⁹ The number of Superfund staff declined from 3,330 staff in 1999 to 3,088 staff in 2003. Overall, non-personnel administrative costs decreased over the 5 years. This indicates that the increase in administrative costs was due to increases in personnel-related expenses. According to an EPA official, cost-of-living increases and other pay

⁷ Percentages and totals of programmatic and administrative expenditures in the charts, figures, and tables in this report may not add up to 100 percent because (1) a relatively insignificant amount of expenditures were not coded as either programmatic or administrative, resulting in an amount lower than 100 percent of total expenditures; (2) the Agency had deductions from total expenditures, which are reflected in total expenditures so they are not overstated, that were not coded as programmatic or administrative, so we could not deduct these amounts from either expenditure category (resulting in programmatic and administrative expenditures of greater than 100 percent of total expenditures); in these cases, we could not adjust programmatic and administrative expenditures. Percentages may also not add up to 100 percent due to rounding.

⁸ The data may underestimate the true administrative cost associated with the Superfund program. Our analysis of Superfund expenditures excludes expenses incurred by EPA OIG, ATSDR, and NIEHS. The expenditure data do not include expenses from the Environmental Programs and Management appropriation subsidy (discussed later in our report).

⁹ Staff data do not include staff from EPA Office of Research and Development (ORD), EPA OIG, ATSDR, and NIEHS.

and benefit increases associated with personnel appear to be the primary cause of the administrative cost increase. As discussed later in the report, the Office of Solid Waste and Emergency Response (OSWER), the office accountable for achieving Superfund goals, has limited control over these costs because it does not manage all Superfund personnel functions.

Prior Superfund Studies

Since 1995, over 120 internal and external audits, reviews, and evaluations about the Superfund program have been conducted by independent groups, including the EPA OIG, the GAO, the National Academy of Public Administration, Resources for the Future, and the National Advisory Council on Environmental Policy and Technology. In April 2004, EPA released an internal study, *SUPERFUND: Building on the Past, Looking to the Future*, commonly known as the *120-Day Study* that made over 100 recommendations for improving Superfund. We found the *120-Day Study* findings informative and reference some of its recommendations in this report.

Scope and Methodology

We performed this evaluation from February 2004 to January 2005, generally in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States (limitations and a more extensive discussion of this section are in Appendix A). Subsequent to completing our fieldwork, we received limited updates on unliquidated obligations, special accounts, ORD expenditures, site-specific payroll charging information, and Superfund carryover.

Agency Response to the Draft Report and OIG Evaluation

We considered and reviewed the Agency's comments we received in August 2005, met with the Agency in October 2005, and received additional comments in February 2006, after the Agency indicated it was developing an implementation plan to respond to our recommendations. In its February 2006 response, the Agency indicated nonconcurrence with some of the recommendations. We met with the Agency to discuss its nonconcurrence with some of the recommendations. Where appropriate, we incorporated the Agency's comments into the final report.

Chapter 2

Obstacles Impact EPA's Ability to Efficiently and Effectively Manage Superfund Resources

Several organizational and accounting obstacles prevented EPA from efficiently and effectively managing the Superfund program for performance and adequately accounting for Superfund resources. For example, EPA has been unable to allocate and manage Superfund resources for cleanup as efficiently and effectively as possible because of disagreements about how to classify Superfund administrative expenses, decentralized Superfund management, incomplete information on program costs, an outdated process for allocating resources, and continuing to maintain unliquidated Superfund obligations and money in special accounts, as a "hedge against tough financial times."

Superfund Managers Disagreed About How to Classify Administrative Expenses

While Congress asked us to review Superfund administrative expenses to identify economies to enable EPA to allocate additional funds to cleanup, we found that Superfund managers did not agree on the definition of these costs. EPA did not account for funds in a manner that allows managers to easily compare Superfund cleanup costs with Superfund program support costs. Similarly, EPA's accounting system did not provide reports that connect the costs of program support with the activities supporting the program. These factors prevent the Agency from accurately determining its administrative costs and needs, and effectively managing them.

The Office of the Chief Financial Officer (OCFO), which manages the Agency's accounting system, defined administrative costs differently than OSWER, which manages most aspects of the Superfund cleanup and response program. OCFO uses a budgetary definition of administrative costs that includes all payroll expenses, even though some activities such as direct oversight of site cleanup may not be considered administrative. OSWER does not agree that all personnel-related costs should be considered administrative, noting that those directly associated with site-specific work should be categorized as non-administrative, or programmatic.

By analyzing activities and related costs, EPA could identify opportunities to shift funds from support to cleanup activities. To maximize costs devoted to cleanup, EPA would need to categorize costs for Superfund-related activities and determine appropriate funding levels for the activities. An approach, called activity based costing, would allow managers to assess the cost/benefit of specific activities and take steps to reduce costs where necessary.

EPA's *120-Day Study* identified the need for improvements in site-specific cost accounting to improve Superfund program management and benefit cost recovery efforts. This improvement could help reduce overhead costs and provide more detailed information on actual site costs.

Decentralized Management of Superfund Resources Limits Ability to Manage Resources to Benefit Cleanup

EPA's decentralized management of Superfund contributes to allocation and resource management problems. EPA spreads its Superfund appropriation across a variety of offices that provide the program's administrative support and cleanup activities, limiting EPA's opportunities to more effectively manage Superfund resources for cleanup and impeding close alignment and integration among EPA offices that receive some portion of the Superfund appropriation. The Agency's own internal review of the Superfund program (*120-Day Study*) identified this problem. It found that

With resources spread broadly across multiple EPA headquarters offices and the Regions, efforts end up less focused and less mutually supportive because different parts of the organization see themselves as beholden to their own program areas, rather than responsible for achieving overarching programmatic goals and mandates.

As a result of this decentralized management of Superfund administrative and programmatic resources, no single program office had, or perceived it had, overall responsibility and authority for these resources. For example, EPA allocates Superfund response and cleanup resources to OSWER, research and development funding to ORD, and enforcement funding to the Office of Enforcement and Compliance Assurance (OECA). Superfund management and support resources have been allocated to several organizations, but largely to the Office of Administration and Resources Management (OARM) and OCFO.

Decentralized management of Superfund resources virtually eliminated any integrated analysis of Superfund program costs across these offices. It also impacted EPA's ability to redirect some administrative resources to Superfund cleanups. For example, personnel, compensation, and benefits funding is managed by each EPA program office. In FY 2003, annual personnel, compensation, and benefits carryover from the Superfund Management and Support, Response, and Enforcement function was approximately \$10 million (the carryover amount varies each year). However, EPA did not reprogram approximately \$6 million of the 2003 carryover, and lost an opportunity to reallocate these funds to Superfund cleanups. EPA continues to lose opportunities

because its policy is to return Superfund carryover to the offices or functions to which it was originally appropriated.¹⁰

Consequently, when Superfund support or enforcement payroll carryover was available, as it was in FY 1999 - 2005, EPA did not reprogram it to alternative program functions with greater needs, such as Superfund cleanup. Annual amounts were:

Table 2-1. Superfund Carryover for FY 1999 – 2005

Fiscal Year	Carryover¹¹ (in millions)
1999	\$103.1
2000	\$57.3
2001	\$53.9
2002	\$50.8
2003	\$47.6 ¹²
2004	\$27.6 ¹³
2005	\$38.0

The data in Table 2.1 demonstrate a trend of carryover funds in the Superfund program. Because the program has a policy of returning all carryover funds to their original functions, and not reprogramming Superfund funds, the data suggest that, in addition to the known case for FY 2003, EPA has potentially lost other opportunities to reprogram some carryover funds to priority areas and needs. The carryover data we received from the Agency did not allow us to determine the amounts attributable to specific Superfund functions (e.g., enforcement, research, cleanup). In addition, we were unable to determine whether carryover returned to its original function (per EPA policy) directly benefited the cleanup function in some way.

¹⁰ In FY 1997 and 1998, Congress mandated that all Superfund carryover, regardless of the function, be reallocated to Superfund remedial work. Except when directed to do so by Congress, OCFO has maintained that reallocating among function caps is not consistent with its policies. For FY 2006, Congress did not designate offices or function caps in the Superfund appropriation.

¹¹ These amounts include funds that were deobligated during a fiscal year and were not obligated again by the end of the same fiscal year.

¹² The amount of personnel, compensation, and benefits carryover cited in the example above is included in this amount.

¹³ The carryover amount provided by the Agency for FY 2004 was \$75.2 million because the carryover from FY 2003 was not issued until the Trust Fund balance was sufficient to support it. To prevent duplication, we deducted the FY 2003 carryover from the amount provided by the Agency.

Incomplete Information on Superfund Costs Prevents Accurate Estimates of Program Needs

EPA's lack of an accurate estimate of Superfund administrative costs prevents the Agency from accurately estimating Superfund program needs. The Agency's Environmental Programs and Management (EPM) appropriation pays for a wide range of EPA costs, including those that cannot be attributed to a specific program or appropriation. In part, these costs included overhead such as facilities, computers, information technology support, health and safety, and training. The cumulative amount of EPM funds that subsidized Superfund activities, as reported in the Agency's FY 1999 - 2003 annual reports, was approximately \$360 million dollars. EPA did not record the EPM subsidy to Superfund in the Agency's accounting system for Superfund or for any of the other appropriations, and allocated the EPM subsidy only for financial statement purposes. Full costing for Superfund should include those costs subsidized by the EPM appropriation.

Outdated EPA Workload Model Used to Distribute Superfund Resources

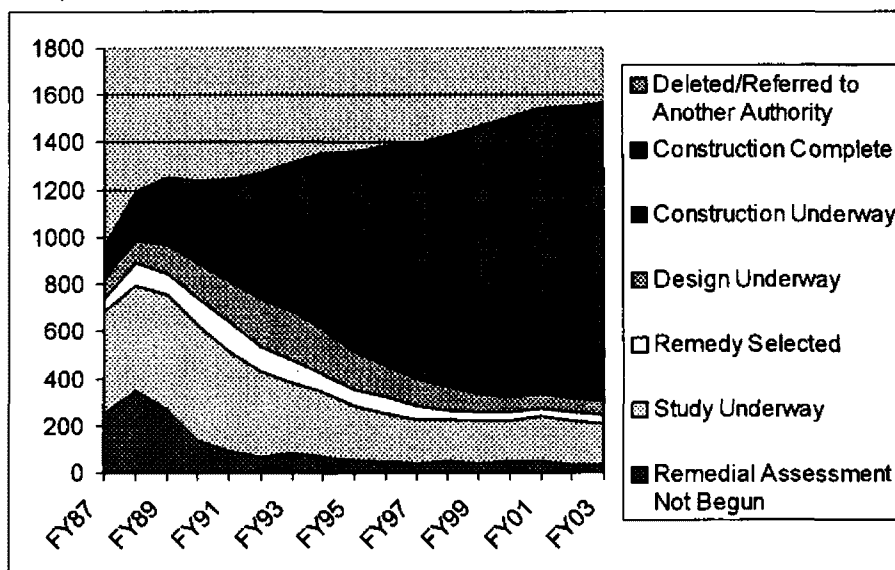
EPA allocated Superfund personnel and resources based on an outdated workload model,¹⁴ which can result in potential misallocations. The Agency acknowledged that the model is "massively out of date" and it took them over a year to provide us with documentation on the model.¹⁵ Because the Superfund program changed substantially since the model was last updated, EPA could not demonstrate that current personnel or other administrative activity allocations are reasonable, efficient, and commensurate with current program requirements.

Legislation, agency responsibilities, and the status of sites changed cleanup requirements and Superfund during the last 16 years. For example, according to the Agency, EPA created the Brownfields program, which Congress later removed from the Superfund program and now funds separately. Also, the Agency stated that Presidential Decision Directives have added Homeland Security responsibilities. EPA's "enforcement first" policy has impacted the program by limiting the amount of time spent litigating cases and saving the resources of the Trust Fund for responding to "orphan" sites where no viable responsible party can be found. Importantly, the status of proposed, final, and deleted NPL sites changed. As shown in Figure 2-1, a majority of the sites are "construction complete."

¹⁴ According to EPA, it has discontinued its effort to collect, evaluate, and run model outputs on an annual basis, and instead has dealt with annual marginal changes to personnel ceilings according to program priorities.

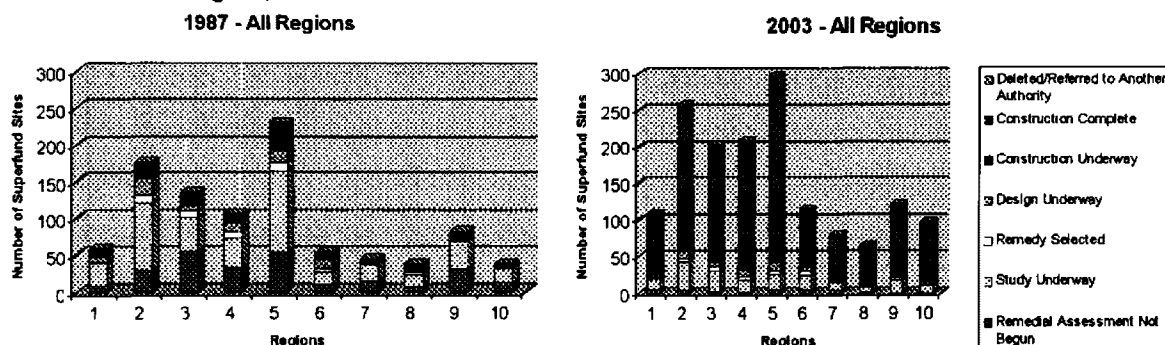
¹⁵ EPA did not provide important workload model information in a timely manner. We requested a copy of the workload model in July 2004 but were told that EPA no longer had any documents related to the workload models. We did not fully assess the workload model documents EPA provided due to the late submission of the documents and our timeframes. EPA agrees with our recommendation to conduct a workforce assessment of headquarters and regional Superfund staff levels and allocations.

Figure 2-1. Status of Proposed, Final, and Deleted NPL Superfund Sites, FY 1987 – 2003



As reported in a March 2004 EPA analysis of the regional workforce, the current regional workforce distribution was heavily influenced by the historic number of Superfund sites per region. However, as shown in Figure 2-2, the number of proposed, final, and deleted NPL sites managed by each region changed between FY 1987 and FY 2003. For example, in FY 1987, Region 4 had 107 sites; by FY 2003 that number had almost doubled to 209 sites. The distribution of site activity within stages of the Superfund process also changed. For example, in FY 1987, the majority of sites in Region 5 were classified as “study underway” or “remedial assessment not begun,” whereas in FY 2003, a majority of sites were “construction complete.”

Figure 2-2. Change in Proposed, Final, and Deleted NPL Superfund Site Status by Region, FY 1987 – 2003



Important differences exist in the nature of the current workload across regions, emphasizing the need for accurate resource allocation. In our survey of EPA regions, 9 of 10 EPA regions indicated they redirect some portion of their Superfund personnel outside Superfund offices to other regional activities, such as community involvement, public affairs, and the Regional Administrator's office.¹⁶ We identified eight staff that charged 100 percent of their time to Superfund, but devoted some time to work as project officers for EPA's Brownfields program in FY 2003 - 2004.

Regional workload can differ in areas such as managing megasites (sites estimated to cost over \$50 million to clean up) and Superfund removals. For example, as of the third quarter, FY 2004, Region 2 managed 24 megasites and Region 9 managed 25, while Region 7 managed 5. Megasites can differ from nonmegasites in that they can require more resources over the long term to address complexities associated with developing remedies and cleaning up contamination that can cover many square miles, involve multiple communities, responsible parties, Indian Tribes, or States.

During FY 1999 - 2003, while the initial annual allocation of Superfund removal funding to the regions was mostly constant, the actual workload, or need, was not (see Appendix C for detailed information). Regions adapted to the fixed allocation system by managing their workload according to the funding received, which means some removal work may have gone unaddressed. For example, in FY 2004, Regions 2 and 3 reported backlogs of approximately 12 and 25 removal assessments, respectively.¹⁷ According to EPA, it began an effort to redefine the

¹⁶ We did not verify whether these activities were related to Superfund or not.

¹⁷ EPA attempted to alleviate removal funding shortages by keeping a national pool of additional removal funds that regions can request. In FY 2004, OSWER provided approximately \$3.75 million from this pool to fund removal needs at four sites. However, the amount in the pool was less than the amount for the removal actions that the regions requested.

baseline activities of the Superfund program¹⁸ and is reviewing the allocation methodology for Superfund removal activities.¹⁹

EPA Does Not Have a Fully Effective Process to Guide Decisions to Deobligate Unliquidated Funds or Use Special Account Funds

EPA maintains unliquidated obligations for longer than 2 years, and appears to lack information that will allow it to proactively and timely manage and account for Superfund obligations. Lacking a fully effective approach for deobligating unliquidated Superfund obligations, the Agency was unable to state when and how much will be available. However, in response to our requests, the Agency is analyzing the unliquidated obligations. EPA has reclassified (or transferred) some special account funds from sites that were not construction complete, while hesitating to transfer funds to the Trust Fund from sites where construction was complete.

Portions of \$174 Million in Unliquidated Superfund Obligations Might Be Available

Between FY 2001 - 2005 (June), EPA deobligated approximately \$685 million; portions of \$174 million more remain available to deobligate. While EPA has taken significant steps in deobligating Superfund resources, the Agency may not have been timely in its review or action on the remaining \$174 million in obligations; other studies also found problems with EPA's management of unspent funds like these. As the Agency works to better manage and account for Superfund resources, timely and fully effective processes are key for identifying valid Superfund obligations that could be made available for cleanup actions.

While EPA indicated that funds should be expended within 2 years of obligation, the \$174 million represented unexpended obligations initiated from FY 1989 through FY 2002 minus funds reserved for mixed funding accounts and funds held pending an OIG review. EPA told us that not all of the \$174 million may be immediately available, or available at all, to deobligate, due to various issues such as additional unplanned work, late billing invoices, and litigation issues. In response to the draft report, the Agency is analyzing how much of the \$174 million might be available; it has thus far concluded that \$38 million might be

¹⁸ The Agency will use this information to evaluate whether significant shifts in resource allocations are necessary, and whether modeling or some other approach will be helpful to make resource allocation decisions.

¹⁹ Determining needs and priorities for Superfund removal funding may never achieve precision because removals can be unpredictable. However, reasonable factors to consider in estimating removal needs include: regional or State capacity to conduct removal actions, nature of prior removal actions in regions/States, nature of regulated facilities and businesses in regions and States, and type and volume of hazardous material transportation that occurs in regions and States.

available to deobligate. The Agency is continuing to explore opportunities to deobligate additional funds.²⁰

EPA's management of unspent funds like these was reported in the Agency's *120-Day Study* and prior EPA OIG reports. According to the *120-Day Study*, closeouts of completed contracts and interagency agreements continue to be delayed, resulting in EPA not deobligating funds promptly. The study indicated that some regions appear to be holding money "as a hedge against tough financial times." Other research reported that regions are obligating funds for Response Action Contracts and Army Corps of Engineers interagency agreements in excess of 2-year future funding needs (the amount determined prudent for future funding). Also, expenditure and obligation data showed long time lags between obligating and expending funds, which indicates that EPA is not maximizing its resource use.

Portions of \$465 Million in Special Account Funds Are Potentially Transferable to the Trust Fund

While special accounts are a useful tool that can help the Agency negotiate settlements with responsible parties, EPA may be losing the opportunity to better use portions of these funds because the Agency has been slow to identify potentially available funds and implement protocols for the management of special accounts. By maintaining past costs recovered in special accounts and by maintaining funds in accounts where construction is complete, EPA is not maximizing the use of special account funds. The Agency acknowledged that no systematic approach exists for capturing and reporting decisions about using special accounts, or for determining when special account resources may be returned to the Trust Fund. As with unliquidated Superfund obligations, EPA's *120-Day Study* found that funds in special accounts are potentially being held "as a hedge against tough financial times." Agency officials are working to improve guidance on special accounts.

Under the terms of settlement agreements, special accounts are used to collect funds from responsible parties (RPs) to pay cleanup costs at specific Superfund sites. Special accounts can hold funds when RPs who are unable or unwilling to perform a response action make "cash out" payments to address their past and future liability at the site. As of September 2005, approximately \$465 million in special accounts was potentially available for transfer to the Trust Fund, though not all of these funds may be available immediately. The majority of these funds

²⁰ The Agency's analysis of amounts available for deobligation is based on 80 percent of the total amount analyzed, or \$133 million.

(\$390 million²¹) are past costs reimbursed to EPA while the remainder (\$75 million²²) are funds associated with sites that are "construction complete."

In the past, the \$390 million in past costs in special accounts would have been deposited into the Trust Fund and become available for congressional appropriation. However, in 2000, EPA's Office of Site Remediation Enforcement (OSRE) issued a guidance memorandum stating that past cost recoveries could be deposited into special accounts using model language in the settlement agreement. Importantly, the OSRE memo also reported that EPA had the option of stating in agreements that past costs recovered could also be transferred by EPA to the Superfund Trust Fund. Circumstances do exist under which special account funds cannot be transferred to the Trust Fund, such as those created by terms of settlement agreements.

Through guidance, EPA has established priorities for the use of special account funds. The first priority is to use the funds as a settlement incentive for responsible parties; second is to conduct EPA-led cleanups; third is to apply the funds toward previous EPA expenditures at a site, which will allow funds previously reserved for the site to be "deobligated" for use at other sites (also known as reclassification); and fourth is to replenish the Trust Fund. EPA has made limited use of the option to reclassify special account funds; it has reclassified approximately \$23 million (out of approximately \$536 million in past costs special accounts) to other sites as of September 30, 2005. EPA has also expressed hesitancy to transfer funds from sites that are "construction complete" due to concerns about unexpected future costs.

EPA is evaluating its options to conduct further transfers of special account funds to the Trust Fund. The *120-Day Study* recommended that EPA revisit its special account guidance to determine whether additional clarification is necessary to maximize using special account dollars and free up money for current work. The study reported that:

...in some cases special account dollars remain unobligated or unspent, even after a significant time beyond when work at a site has been completed. At present, there does not appear to be particular attention or pressure to identify and take the necessary steps to mobilize these funds to help complete priority work.

²¹ The past costs potentially available for transfer were estimated by comparing, for each account, the past costs available (receipts minus disbursements) to the total available balance. The total available balance represented the amounts received, plus interest minus disbursements and open obligations. It also includes Agency data on special account funds promised to RPs (about \$25.5 million) and a \$14.6 million transfer to another special account.

²² The amount potentially available for transfer to the Trust Fund for "construction complete" sites was estimated by subtracting the past costs available from the available balance to avoid duplication of reporting potential amounts available for transfer to the Trust Fund. It also reflects Agency data on special account funds promised to RPs less transfers to other accounts.

Agency officials have recognized the need to nationally manage special accounts and, in August 2005, asked the regions to provide estimates of future needs for each special account. Headquarters has received the regional estimates, is analyzing them, and will consider them in future decisions regarding special accounts.

Conclusions

Because EPA has dispersed Superfund management and resources, no single EPA office, including the office accountable for Superfund cleanup goals (OSWER) has full responsibility or control over EPA's Superfund appropriation. Managing the Superfund appropriation across offices limits EPA's control and visibility of Superfund resources and has impacted EPA's ability to maximize resource utilization and cleanup activities.

Additional obstacles to the Agency's ability to direct all potentially underutilized resources to cleanups and better manage Superfund administrative and support resources include

- not managing Superfund administrative costs, unliquidated obligations, and/or special accounts to maximize funds devoted to cleanup activities; and
- using an outdated workload model to allocate funds.

Importantly, because many obstacles stem from not managing administrative costs at an activity-level, EPA

- lacks information on how administrative staff spend their time and contribute to cleanup,
- is losing opportunities to be more efficient, and
- is losing opportunities to assess the workload and distribute funds as needed, because it does not know how much the different activities cost.

These limitations in EPA's managing its Superfund resources are also significant internal control weaknesses requiring corrective action because they impact EPA's ability to fully account for its funds.

Given the increasing demands on shrinking discretionary funding, the current system of managing resources should no longer be considered an option. The Agency's ability to optimize its Superfund resources for cleanups will depend on reducing organizational impediments to resource management, realigning its staffing commensurate with its workload, fully accounting for its Superfund administrative burden, making a long-term commitment to comprehensively manage the Agency's administrative and support resources, and using all available funds. Closer alignment and integration of offices that receive Superfund resources could prevent lost opportunities in applying underutilized funds to cleanup, optimizing resources, and gaining efficiencies. Flexibility to

reprogram Superfund resources can help overcome the current management and financial obstacles and facilitate more effective and efficient achievement of Superfund cleanup goals.

EPA is attempting to address some of the limitations associated with managing its Superfund resources by creating a Superfund Board of Directors. The Board is functioning and is planned to be in place for about 2 years, after which time it will evaluate the need for the Board to continue.

Recommendations

We identified opportunities for congressional and EPA action to improve Superfund resources management.

For Congressional Action	
No.	Recommendations
2-1	Reprogramming Carryover: Similar to actions Congress took in FY 1997 and 1998, Congress could direct EPA to monitor all Superfund carryover before each fiscal year expires, and demonstrate how reprogrammed or non-reprogrammed Superfund carryover directly benefits Superfund response and cleanup activities. When implemented, this recommendation supersedes recommendation 2-4.

For EPA Action	
No.	Recommendations
2-2	Accountable Entity: EPA offices should more closely align themselves in support of an accountable entity (e.g., a Board, a National Program Manager) to effectively allocate and manage Superfund resources across the Agency according to the program's demonstrated needs and goals.
2-3	Accounting Definitions: EPA should agree to define costs in a manner that supports management decisionmaking and improve their accounting of such resources to maximize achieving program goals.
2-4	Reprogramming Carryover: EPA should monitor all Superfund carryover before each fiscal year expires, evaluate the need to reprogram carryover for extramural cleanup, and reprogram as appropriate (with approval from Congress as appropriate), so that EPA can ensure that funding is strategically aligned to meet the highest priority needs.
2-5	Determining Superfund Resource Needs and Allocations: EPA should conduct a workforce assessment and/or develop a workload model, comprehensively re-evaluate regional and headquarters Superfund personnel levels and allocations, and develop and communicate a schedule to regularly evaluate Superfund workload models. Superfund removal needs and current allocations should be reviewed. Consideration of factors including regional/State capacity to conduct removals, nature of prior removal actions in regions/States, nature of regulated businesses/activities in regions/States, and the type or volume of hazardous

	material transport that occurs in regions/States may assist need or allocation decisions.
2-6	Unliquidated Obligations: EPA should deobligate the \$38 million it has identified. EPA should also continue to review and deobligate unliquidated obligations, as appropriate. EPA should set up a process to ensure that funding is deobligated more quickly than we found in the current system. Such a system would include: developing management reports and performance measures that identify unspent obligations, along with the status of contracts, grants, and interagency agreements; and reviewing contracting and invoicing procedures to determine whether the time lag associated with the expending of funds can be decreased.
2-7	Special Accounts: As of September 2005, approximately \$465 million in special accounts was potentially available for reallocation. EPA should timely review special account dollars and set up a formal process and schedule to ensure special account funds are used consistently according to the hierarchy specified in its guidance. This can include (1) using the funds as a settlement incentive for responsible parties; (2) conducting EPA-led cleanups; (3) applying the funds toward previous EPA expenditures at a site, which will allow funds previously reserved for the site to be "deobligated" for use at other sites (also known as reclassification); and (4) replenishing the Trust Fund.
2-8	Internal Controls: EPA should declare its accounting for administrative and supporting activities, and its lack of a current workload model, as internal control weaknesses.

Agency Response to the Draft Report and OIG Evaluation

We met with the Agency in October 2005 to discuss their written comments, and received additional comments in February 2006, after the Agency indicated it was developing an implementation plan to respond to our recommendations. In its February 2006 written comments, the Agency nonconcurred with recommendations 2-6 and 2-7. The Agency also made comments on findings, and we made changes as appropriate.

Details on Scope and Methodology

To analyze Superfund expenditure data, we extracted data from EPA's Integrated Financial Management System (herein referred to as EPA's accounting system), and adjusted it to constant 2003 dollars using the Gross Domestic Product Chained-Price Index. We analyzed trends in Superfund expenditures according to their administrative and programmatic components. Because the Agency's accounting system does not track transactions at the activity level consistent with the definition of administrative and programmatic costs preferred by OSWER,²³ we used the official EPA definition of administrative and programmatic expenditures.

Due to data quality concerns, we excluded ORD expenditure data from the draft report. ORD had concerns about the exclusion and requested the opportunity to submit new data. Subsequent to issuing the draft report, ORD provided additional expenditure data, which we analyzed and include in the final report. Also, the EPA OIG receives a portion of the Superfund appropriation for program operations and reviews. Our analysis did not include funds that the OIG received or expended.

In evaluating the effectiveness of EPA's process for managing its Superfund administrative costs, we focused on the personnel- and non-personnel-related components of those costs. We considered how EPA used the workload model to manage the personnel-related costs, which compose the majority of administrative costs. Early in our review, we learned that significant limitations existed in information available on these costs and EPA's managing them. As a result, we focused on evaluating how the limitations we discovered affected the Agency's ability to effectively manage its administrative costs. Also, we surveyed EPA's regions regarding how they allocated Superfund administrative and support costs. We surveyed Regions 3 and 5 to identify the estimated actual work activities of staff who charge to Superfund, and compared the results from Regions 3 and 5 to time-charging data supplied by OCFO for FY 2003. We also included data collected from a separate OIG evaluation of Brownfields resources.

In evaluating the effectiveness of EPA's process for managing its Superfund programmatic costs, we reviewed programmatic expenditures that are made pursuant to achieving the human health and environmental protection goals of the cleanup program (e.g., activities supported by Superfund remedial, removal, and pipeline dollars, which compose a majority of the "Superfund Response/Cleanup Actions" portion of the FY 2003 Superfund appropriation). Further, we reviewed prior internal and external studies that had shown that programmatic activities, if improved, could result in allocating more resources to the cleanup program, such as deobligation processes and managing Superfund Special Accounts.

²³ EPA's Office of the Chief Financial Officer (OCFO) categorizes all Full-Time Equivalent (FTE) costs as administrative. OSWER officials do not fully agree with this definition, because they believe certain personnel costs are programmatic. For example, according to OSWER, work conducted by remedial project managers and on-scene coordinators is specifically site-related and thus programmatic. However, although the Agency can identify site-specific and non-site specific costs, these do not necessarily indicate administrative and programmatic costs because the Agency indicates that some site-specific activities are administrative.

We identified the human health and environmental protection goals of the Superfund program in EPA Strategic Plan Goal 3, Objective 3.2²⁴ and related performance measures. To help achieve the goals, EPA allocates dollars to Superfund removal activities, Superfund remedial activities, and Superfund pipeline activities²⁵ using a specific "Advice of Allowance" (AOA) for each category of activity. We identified and reviewed the AOA funding process at headquarters and the allocating process at the EPA regional level (Regions 2 and 3).

We considered over 120 studies about the Superfund program conducted by external organizations since 1995, including EPA OIG, GAO, Resources for the Future, the Superfund Subcommittee of the National Advisory Council for Environmental Policy and Technology, and internal EPA studies, including the *120-Day Study*. We also obtained internal policy memos, guidance, and draft action plans from EPA headquarters and regional officials.

Limitations

We complied with *Government Auditing Standards*, with limitations as follows:

- (1) We relied on EPA's new accounting system (the Integrated Financial Management System, or IFMS), as the primary system for determining Superfund expenditures. An OIG report has indicated weak system controls.²⁶ We reported that

... a general breakdown of security controls ... could undermine the integrity of IFMS software libraries and financial system data. Duties were not adequately segregated, individuals used an inappropriate ID or continued to have system access after no longer needing it, and contractor personnel were granted access to IFMS without a successful background security check. Numerous accountability and contractual issues contributed to this, including OCFO not having a system for identifying employee responsibilities related to IFMS security, and management not performing a risk assessment of IFMS's general support system. As a result ... [there was] a high risk that system programmers could make unauthorized or unapproved changes to system software and data used for EPA's accounting and financial reporting.

²⁴ In the *FY 2003 – 2008 EPA Strategic Plan: Directions for the Future*, EPA Strategic Goal 3, Objective 3.2, says "control the risk to human health and the environment ... by cleaning up and restoring contaminated sites or properties to appropriate levels," p. 64, September 30, 2003.

²⁵ Removal activities include removal actions (such as emergency or time-sensitive cleanup actions). Remedial activities include long-term cleanup actions and other cleanup actions. Pipeline activities include preconstruction activities such as remedial investigation/feasibility study, selecting the remedy, designing the construction work, community involvement activities, records management, and State program development.

²⁶ U.S. Environmental Protection Agency, Office of Inspector General, *EPA Needs to Improve Change Controls for Integrated Financial Management System*, Report No. 2004-P-00026, August 24, 2004. Though this report was closed out by the OIG in May 2005, the findings were relevant for the period of our review.

- (2) We did not test internal controls.
- (3) We relied on data gathered by third parties, such as Resources for the Future, but did not test the data it used to reach its conclusions.
- (4) We did not test the accuracy of data from EPA's Comprehensive Environmental Response, Compensation, and Liability Act Information System (CERCLIS).

Due to limited time and resources, we did not evaluate every option to improve Superfund program management. We could not determine overall savings for all recommended options, nor the potential investments that may be required to implement them. We conducted a limited analysis for potential fraud in the Superfund program. These limitations could have resulted in decreased reliability of the data and findings reported.

We were limited in our ability to both identify options for redirecting more money to extramural cleanup while also minimizing administrative costs. IFMS does not provide detailed activity-level data for administrative costs nor could we timely estimate administrative costs. Therefore, we were limited in our ability to recommend options that both minimized these costs and at the same time provided more dollars for cleanup.

Definitions of Administrative and Programmatic Costs

We used OCFO's definitions of administrative and programmatic costs as cited in chapter 4 of the *Administrative Control of Appropriated Funds Manual*.

Administrative Costs are:	
Staff-Related	Include all payroll ²⁷ and items for groups of employees, such as rent for space and consumable office supplies that would not be incurred if the Agency did not have a workforce.
Support-Related	Include all of the Agency's major support contracts for general-use facilities, maintenance, etc. Also include costs associated with Program Office management staff activities, administration, and management.
Individual-Related	Include personal desktop office equipment and general staff training (as opposed to technical program-specific training) that provides knowledge that can be utilized by the employee upon leaving present position.
Overhead-Related	Include management and administrative functions that all government and business organizations have and which are not related to environmentally-mandated programs.

Programmatic Costs are:	
Environmental Mission-Related	Include costs specifically driven by environmental statute and program activities rather than in-house office staff involved with programs. Regulation development and water quality monitoring activities are examples.
Acquisition or Assistance-Related	Include items historically termed as "extramural" that are directly related to activities outlined by environmental statute and are traditionally obligated through contracts/interagency agreements or grants/cooperative agreements.
Field-Related	Include program activities such as hazardous waste cleanup, environmental emergencies, field sampling, and testing and monitoring, etc.
Special-Use Facility-Related	Include infrastructure operating costs (rent, utilities, etc.) associated with dedicated single-purpose special use facilities, including regional Emission Standards Division labs.
Unique and Limited Use-Related	Include cost of items with limited application or unique use for specific programs that have no general use elsewhere. Examples would include cost recovery data collection and enforcement efforts unique to Superfund.

²⁷ Chapter 4 of the *Administrative Control of Appropriated Funds Manual* does not specifically address payroll costs. It was confirmed through an OCFO official that all payroll costs are considered administrative.

Details on Removal Activities

The following table shows removal action starts by type of action and region for FYs 1999-2003.

		FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Region 1	Emergency Response	3	0	0	0	0
	Time-Critical	18	25	13	15	18
	Non-Time-Critical	3	2	0	1	0
	Total Starts	24	27	13	16	18
Region 2	Emergency Response	4	9	8	9	9
	Time-Critical	26	25	15	13	12
	Non-Time-Critical	1	0	0	0	0
	Total Starts	31	34	23	22	21
Region 3	Emergency Response	11	12	5	4	4
	Time-Critical	4	3	8	6	4
	Non-Time-Critical	1	2	0	0	1
	Not Coded	0	0	0	0	4
	Total Starts	16	17	13	10	13
Region 4	Emergency Response	22	17	20	23	23
	Time-Critical	26	16	15	9	10
	Non-Time-Critical	0	0	0	0	0
	Total Starts	48	33	35	32	33
Region 5	Emergency Response	11	30	24	16	23
	Time-Critical	27	13	16	32	22
	Non-Time-Critical	3	0	1	0	0
	Total Starts	41	43	41	48	45
Region 6	Emergency Response	9	8	6	8	1
	Time-Critical	7	13	14	3	3
	Non-Time-Critical	7	1	0	1	1
	Not Coded	0	0	0	0	2
	Total Starts	23	22	20	12	7
Region 7	Emergency Response	12	13	10	17	14
	Time-Critical	14	17	13	8	10
	Non-Time-Critical	0	1	5	2	1
	Total Starts	26	31	28	27	25
Region 8	Emergency Response	8	6	6	7	4
	Time-Critical	15	17	11	10	8
	Non-Time-Critical	1	2	2	0	1
	Total Starts	24	25	19	17	13
Region 9	Emergency Response	0	0	2	2	1
	Time-Critical	12	10	9	12	13
	Non-Time-Critical	1	0	0	0	1
	Total Starts	13	10	11	14	15
Region 10	Emergency Response	0	1	1	0	0
	Time-Critical	10	11	7	11	10
	Non-Time-Critical	0	0	0	2	0
	Not Coded	0	5	0	0	0
	Total Starts	10	17	8	13	10

(Source: EPA)

February 10, 2006 Agency Response

MEMORANDUM

SUBJECT: Inspector General's Evaluation Report Entitled "EPA Can Better Manage Superfund Resources" Assignment No. 2004-000709, February 16, 2006

FROM: Susan Parker Bodine
Assistant Administrator
Office of Solid Waste and Emergency Response

TO: Nikki Tinsley
Inspector General

Thank you for the opportunity to review the final draft report of the EPA Office of Inspector General, "EPA Can Better Manage Superfund Resources." We appreciate your consideration of the comments made in the August 18, 2005, Memorandum to you from Tom Dunne, and the revisions you made based on those comments.

We believe that your office now has a somewhat better understanding of how the Superfund program operates. This understanding will help both OSWER and OIG as we work together to address the challenges that face the Superfund program.

However, there remain a number of areas of apparent confusion that we would hope could be corrected before the final draft. In particular, your staff still appears to misunderstand the congressional appropriations process and the operations of the Superfund Trust Fund and the benefits that accrue from Special Accounts. The Superfund Trust Fund has always been an on-budget trust fund. Any appropriations out of the Trust Fund are subject to the same discretionary spending caps that apply to all discretionary programs. Similarly, any deposits into the Trust Fund can be used to off-set any federal spending, not just spending on the Superfund program. The Trust Fund is an account, not a fund of available dollars. In addition, because Congress can appropriate funds into, as well as out of, the Trust Fund, the level of appropriations out of the Trust Fund has never been related to the balance of the Trust Fund.

Special Account funds are available for cleanup activities. If EPA were to deposit funds received from potentially responsible parties (PRPs) in settlement of their liability under CERCLA into the Trust Fund, then those funds are not available to EPA to use to support cleanup activities unless appropriated for that purpose. Because those receipts into the Treasury could offset any other federal spending, these funds could be used to offset spending such as appropriations for Corps of Engineers flood control projects or Department of the Interior park maintenance activities, instead of appropriations from the Trust Fund for EPA Superfund cleanup activities. So, it is mistaken to suggest that depositing monies into the Trust Fund increases funding for Superfund cleanup activities. Where EPA has another mechanism for

keeping and using those funds, such as Special Accounts, then transferring PRP settlement dollars to the Trust Fund *decreases* funds available for cleanup activities.

In addition, the OIG appears to misunderstand the timing of the use of Special Account funds. OIG's methodology for calculating the amount of past costs in Special Accounts that are potentially available for transfer is described in footnote 15 of page 13. This footnote makes clear that OIG considers funds to be potentially available if not already disbursed or obligated. This methodology completely ignores the fact that Superfund cleanups take place over a period of years and Special Account funds need to be kept available for future obligation until the site is completely cleaned up. For this reason, we do not concur with the Report's recommendation that "EPA transfer that portion of \$465 million available special account funds to the Trust Fund" (Recommendation 2-7).

We also are concerned about the report's treatment of unliquidated obligations. The \$174 million identified by the EPA as Superfund unexpended obligations represents a snap-shot in time and does not reflect the current situation regarding unliquidated obligations. In fact, analysis conducted by the Superfund program characterizing \$133 million out of the \$174 million indicates that \$95 million is not available for deobligation and \$38 million is potentially available for deobligation. We are currently analyzing the remainder to determine if opportunities exist to deobligate additional funds. EPA is continuing its efforts to deobligate those funds to make available for use. Because we believe the Report misrepresents the funds available for deobligation, we do not concur with the Report's recommendation on this subject (Recommendation 2-6).

While we continue to have some concern with many of the recommendations which we will discuss in a formal written response to the report following its release, Attachment 1 provides a list of those recommendations, including the two recommendations cited above, with which we do not concur.

In addition, we have recommended some specific additions in wording to address some of the key issues. These are provided in Attachment 2.

We look forward to working with the Office of Inspector General on this and other matters in the future.

Attachments

Cc: OSWER Office Directors
Office of Chief Financial Officer
Office of Site Remediation Enforcement

Attachment 2

Suggested Language Additions in Key Areas

Page 1: In the first paragraph under the heading "Background," please insert **"in FY 2005, for a cumulative total of over \$23 billion"** at the end of the third sentence.

Page 2: In the first full paragraph, at the beginning of the fourth sentence please add: **"Whether its appropriations are from the Trust Fund or from general revenues, the"**

Page 9: The discussion of the workload model implies that FTE and resource allocations are made solely based on that model. It is also not accurate to say that the Brownfields and Homeland Security legislation have added new requirements to the Superfund program.

Please change the first sentence of the second full paragraph to say: **"EPA allocated some Superfund personnel and resources based on an outdated workload model, which can result in potential misallocations."**

In the second sentence of the second full paragraph, please strike **"—which EPA cannot find—"**
" Copies of the workload models related to Superfund are referenced in Attachment 2 A-E."

Please strike the first two sentences of the third full paragraph and replace them with the following:

"Legislation, agency responsibilities, and the status of sites changed cleanup requirements and Superfund during the last 16 years. For example, the Agency created the Brownfields program, which Congress later removed from the Superfund program and now funds separately. Presidential Decision Directives have added Homeland Security responsibilities."

At the end of the third full paragraph, please add the following in a footnote:

"The workload is one factor underlying FTE allocations. As its mission has evolved and grown through legislative or administrative mandates, EPA has adapted, as necessary, by reorganizing, reevaluating its needs, and requesting sufficient resources to meet its new and changing responsibilities. The workload model in existence in 1989, which was used to assign FTE among the Regions for baseline activities that are still drivers of the Superfund program today, is not used to respond to these new priorities. Because of the disruptive effect of shifting personnel on an annual basis to address marginal programmatic changes, EPA discontinued its effort to collect, evaluate, and run model outputs on an annual basis, and instead has dealt with annual marginal changes to FTE ceilings according to program priorities. In FY 2005, EPA commenced a new effort to redefine the baseline activities of the Superfund program, and the Agency will use this information to evaluate whether significant shifts in resource allocations are necessary, and whether modeling or some other approach will be helpful to make resource allocation decisions."

Page 11, in the last line replace the word "deobligated" with "reclassified"
(These funds are available for obligation, but are not obligated.)

Page 12, in the first line, replace the word "deobligate" with "reclassify"
(These funds are available for obligation, but are not obligated.)

Page 12: The \$174 million in unliquidated obligations the OIG uses to demonstrate potential deobligations is misleading. Please replace the language in footnote 14 with the following:

"We [OIG] did not determine whether any of the \$174 million was available for deobligation. Analysis conducted by the Superfund program characterizing \$133 million out of the \$174 million indicates that \$95 million is not available for deobligation and \$38 million is potentially available for deobligation. EPA is currently analyzing the rest of the \$174 million (\$41 million) to determine if opportunities exist to deobligate additional funds, and is continuing its efforts to deobligate those funds to supplement Superfund appropriated funding."

Page 13: The discussion concerns managing the process for tracking special accounts and depositing them in the Trust fund to make them available for congressional appropriation and EPA use (3rd paragraph). This section needs a discussion of how EPA does use special accounts to perform additional cleanups. Please add the following new paragraph after the second full paragraph on the page:

"EPA takes advantage of its ability to reclassify (or apply) special account funds to previous expenditures from appropriated Superfund Trust Fund dollars and make those funds immediately available, without further appropriation, for Superfund clean-ups. There is an established process to reclassify and then return unused special account funds to the Trust Fund. First, EPA reclassifies (or applies) site-specific special account funds from PRPs to previous expenditures from appropriated Trust Fund dollars. Second, any remaining, unused special account funds are then returned to the Trust Fund essentially as a cost recovery. Cost recoveries deposited into the Trust Fund are not available to be used at other sites. Funds must first be appropriated by Congress to be available to the Agency to spend for Superfund clean-ups and appropriated funds from Congress are subject to discretionary spending caps. EPA's policy for using special accounts maximizes the dollars available to EPA for Superfund cleanups from both special accounts and appropriated Trust Fund resources."

Attachments 2 A-E

Description of Attachments of Superfund Workload Models

Attachment 2 A: 9/27/91 Report from Superfund Resource Models Project Team

This report provides a brief narrative of the updated 1991 Superfund workload model.

Attachment 2B: Output from FY 1992 Superfund workload model

This collection of spreadsheets provides output of the FY 1992 Superfund workload model. FTE allocations for pre-remedial, remedial, removal, laboratory, and management and support functions are provided in the spreadsheets.

Attachment 2C: Technical Documentation for FY 1992 Superfund workload model

This report provides the methodology for the FY 1992 Superfund workload model, including function of the model, activities included in the model, and pricing factors.

Attachment 2D: FY 1987 Superfund workload model

EPA's FY 1987 Superfund workload model outputs are described in two memos written in February 1987:

- a) The 2/12/87 memo provides the FY87 model output (Regional FTE distributions broken down by pipeline activity).
- b) The 2/25/87 memo provides methodology for the FY 1987 model.

Attachment 2E: EPA's Superfund Federal Facilities Response Workload Model

This attachment describes EPA's Superfund federal facilities response workload model, including a description of the history of the modeling effort (workgroup activities began in 1999), scope of the model, and current activities.

OIG Evaluation of Agency Response

The Agency's response to the draft report (Appendix D) included comments to portions of the draft report that no longer exist in the final version. As a result, we have included the relevant portions of Attachment 1 of the Agency's response and our evaluation of those comments.

OIG Recommendation	Agency Comments and OIG Evaluation
<p>2-6 Unliquidated Obligations: EPA should continue to promptly review \$174 million and deobligate unliquidated obligations, as appropriate; develop management reports and performance measures that identify unspent obligations, along with the status of contracts, grants, and interagency agreements; and review contracting and invoicing procedures to determine whether the time lag associated with the expending of funds can be decreased.</p>	<p>Agency Comments</p> <p>Non Concur: The Agency disagrees with the accuracy of this recommendation's estimate of potential savings. In addition, the Agency already has a process in place for identifying money available for deobligation. The program has reallocated over \$550M in funds over the past four fiscal years through very aggressive efforts to review unliquidated obligations in contracts, grants, IAGs, and cooperative agreements. These efforts have yielded a large amount of deobligations out of the Response budget since 2001: \$165M in FY 2001, \$214M in FY 2002, \$101M in FY 2003, and \$73M in FY 2004.</p> <p>In looking at unliquidated obligations through FY 2002, which is the basis for the OIG's \$174 million number, the Agency identified only \$38 million that could potentially be deobligated at this time. The remaining funds are currently being used for ongoing cleanup, are subject to legal issues, are needed for close-out purposes associated with final audits, rate adjustments and invoice reconciliations.</p> <p>Factual Accuracy: The Agency has concerns regarding the potential amount available for deobligation. The Agency does conduct annual reviews of unliquidated obligations of contracts, interagency agreements and grants. Reports are sent to headquarter Senior Budget Officers and Regional Assistant Regional Administrators to identify funds that are no longer needed and take the necessary action to deobligate the funds for other uses. Explanations are required when the determination is made that the funds are still necessary. This process commences in April (with</p>

	<p>data current up through March) and a follow-up review in August is conducted to assure the deobligations occurred. These individuals certify in October that the deobligations were processed. Verification of these certifications occurs during Quality Assurance reviews.</p> <p>There is no set pattern to determine when obligations should be liquidated. Cost reimbursable contracts cannot be closed until an audit is performed and final indirect costs are identified and paid. EPA may have to wait three or more years to receive audit results and final payment data. Estimates are made of the maximum amount that can be charged once the contract is complete and amounts in excess of the estimate are available for immediate deobligation.</p> <p>No material audit issues on obligation controls were raised in the Agency's recent annual financial statement audits. Despite the Agency's thorough review, the Agency agrees that it should continue to strive to improve in this area because of the importance of deobligated funding to the Agency's Superfund program.</p> <p>Alternative Action. The Agency will continue to assure that its report process has the ability to create management reports for EPA and Congress. The Agency will develop financial performance measures.</p>
	<p>OIG Evaluation</p> <p>The OIG recognizes that the \$174 million may not be immediately available to the Agency. The unliquidated obligations dollar value was provided by OSWER officials. Specifically, the \$174 million is the total amount of Superfund obligations that were obligated before FY 2003 but not expended, minus amounts for mixed funding accounts and funds held pending an OIG review. According to EPA, Superfund funds should be expended within 2 years of being obligated. Therefore, based on the Agency's own criteria, these obligations warrant review.</p> <p>After the issuance of the draft report, the Agency provided us with an analysis of part of the \$174 million in obligations. EPA analyzed approximately 80 percent of the \$174 million and found that approximately \$38 million was potentially available for deobligation. Because this information was provided after the issuance of the draft report, the OIG has not verified the accuracy of the Agency's analysis.</p>

	<p>The OIG's annual audit of the Agency's financial statements, including a review of the Agency's obligation controls, did not report any material audit issues on obligation controls. However, during the fiscal 2004 financial statement audit, we found inactive unliquidated obligations that were not deobligated in a timely manner. While the amounts reported are not material to the financial statements, when compared with the billions of dollars in outstanding obligations, the internal controls and processes that allow such obligations and deobligations to go undetected by the Agency, if not corrected, would allow for potential material misstatements in the future.</p> <p>We have modified the recommendation to read "EPA should deobligate the \$38 million it has identified. EPA should also continue to review and deobligate unliquidated obligations, as appropriate. EPA should set up a process to ensure that funding is deobligated more quickly than we found in the current system. Such a system would include developing management reports and performance measures that identify unspent obligations, along with the status of contracts, grants, and interagency agreements; and reviewing contracting and invoicing procedures to determine whether the time lag associated with the expending of funds can be decreased."</p>
<p>2-7 Special Accounts: EPA should transfer that portion of \$465 million available special account funds to the Trust Fund, consistent with settlement agreements and other authorities, so once appropriated by Congress, these funds can be used to clean up priority Superfund sites.</p>	<p>Agency Comments</p> <p>Non Concur: EPA disagrees that transferring funds in special accounts to the Superfund Trust Fund would result in more clean ups than if those funds remain available for use at those sites. In fact, EPA's policy for using special accounts maximizes the dollars available to EPA for Superfund cleanups from both special accounts and appropriated Trust Fund resources. Even if funds were transferred to the Trust Fund, they are not available for cleanups unless and until Congress appropriates those funds to EPA.</p> <p>Funds in special accounts may be used as an incentive for PRPs to step up and do work, consistent with EPA's "Enforcement First" approach, enable EPA to clean up sites, and ultimately limit the need for spending additional appropriated dollars, saving them for sites without viable or liable PRPs. When a special account is established at a site, it is part of a settlement of liability for cleanup costs associated with that site, and is the mechanism for holding the funds that will be used to clean up that site. To prematurely move that money to the Trust Fund as a cost recovery not only is inconsistent with the expectations and the legal agreements, but calls into question whether those sites would be cleaned up.</p>

EPA places funds into special accounts if and only if those funds will be needed to fund future cleanup activity at that Superfund site. OIG acknowledges that EPA is limited by the terms of settlements that established the accounts (that is, EPA may be legally obligated to provide funds to PRPs for the work), yet continues to leave the impression that a significant amount of these funds are in fact available for transfer. EPA guidance helps prioritize use of the funds -- as a settlement incentive to get PRPs to commit to performing cleanup, funding EPA-led clean-up, reimbursing government costs, and, finally, as the IG recommends, transfer to the Trust Fund as a cost recovery. EPA's policy calls for transfer of any remaining funds to the Trust Fund as a cost recovery when all site obligations are funded and EPA's costs are reimbursed.

The Agency has an established process to reclassify and then return unused special account funds to the Trust Fund. First, the Agency reclassifies (or applies) site-specific special account funds from PRPs to previous expenditures from appropriated Trust Fund dollars. Second, any remaining, unused special account funds are then returned to the Trust Fund essentially as a cost recovery. Cost recoveries must first be appropriated by Congress to be available to the Agency to spend for Superfund clean-ups. As you know, appropriated funds from Congress are subject to detailed spending constraints by appropriations sub-committee. Even if receipts (in this case cost recoveries) increase to the Federal government, all receipts are not necessarily appropriated due to discretionary spending constraints. (For example, in FY 2005, about \$189 M in receipts were deposited into the LUST Trust Fund, but less than 40 percent of those receipts were appropriated by Congress to EPA in FY 2005.)

Thus, the Agency already has the ability to reclassify (or apply) special account funds to previous expenditures from appropriated Superfund Trust Fund dollars and make those funds immediately available, without further appropriation, for Superfund clean-ups. The Agency believes that this is an important procedure that the Agency should fully utilize to achieve the maximum number of Superfund clean-ups possible as allowed by legally binding settlement agreements with PRPs.

Finally, the Agency's ability to effect Superfund cleanups to protect human health and the environment depend heavily on both appropriated funds from the Federal government and special account funds from PRPs to fund clean-ups and minimize the backlog of clean-up projects. To suggest that funds from one source (special accounts funds) should be redirected to another

	<p>source (appropriated funds) to augment funding for Superfund clean-ups would not necessarily reflect a net gain of total funding available for Superfund clean-ups or result in more clean-ups. The Agency's primary concern is that the OIG's recommendation would ultimately decrease total funding available for Superfund cleanups, actually resulting in fewer cleanups, due to Congressional discretionary spending constraints on appropriated resources.</p>
	<p>OIG Evaluation</p> <p>The OIG recognizes that the \$465 million in special accounts, cited in the report, and undisputed by the Agency, may not be immediately available to the Agency. However, this does not mean that some portions of \$465 million are not available, and if the Agency abides by its own guidance, could transfer some portion to the Trust Fund, therefore making it available for appropriation.</p> <p>In response to one of the <i>120-Day Study</i> recommendations, EPA issued an April 2005 memorandum to regional officials stating that "First, with the decline in funding available for the Superfund program, it is now more important than ever that we aggressively pursue cost recovery claims to replenish the Superfund Trust Fund "The Fund." These recovered funds go back into The Fund where they can be re-appropriated and used at other sites, particularly those where there are no viable/liable PRPs or where PRPs are recalcitrant."</p> <p>The OIG continues to believe that transferring funds (or reclassifying them as appropriate) would result in more, not fewer, cleanups than if those funds remained available in special accounts. For example, the Agency provided documentation showing that one special account alone had approximately \$100 million in past recovery costs. In this case, EPA has a consent decree with the PRP to "implement all Site cleanup actions in a future settlement." Such a settlement would include applicable financial assurance to cover the costs of cleanup should the PRP become recalcitrant or become unable to pay for cleanup. Under the Agency's policy, as much as the full \$100 million could be reclassified to clean up the priority Superfund sites; or consistent with the consent decree for the site, the funds could be transferred to the Trust Fund. Thus, this is an example where EPA could be losing the opportunity to address other priority Superfund sites.</p> <p>Trust Fund resources must be appropriated by Congress before they are available to EPA. The</p>

Agency believes this process is not necessary to put transferred or reclassified special account funds into productive use. According to the Agency, the reclassification process does not require going through the Trust Fund appropriation process; the Agency can apply "site-specific special account funds from PRPs to previous expenditures from appropriated Trust Fund dollars" for cleanup at other sites.

Depositing some of EPA's recovered past costs into special accounts may be inconsistent with EPA's "polluter pays" principle, meaning the polluters pay for the problems they create and taxpayer money is used when there are no viable PRPs. While the PRP is reimbursing the EPA for its past costs, these funds could be maximized either by (1) funding other priority Superfund cleanups where there is no viable PRP or where the human health exposure environmental indicator is classified as "not under control," or (2) depositing the funds into the Trust Fund where they can potentially offset any contributions for the appropriation from general revenues which are paid by the general taxpayer. Since the general revenue funded the Superfund appropriations for FY 2004 and 2005, this shifted the burden to the taxpayers, not the "polluters."

Our recommendation would not deplete special accounts of all of their funding. Even if all available funds we identified were transferred or reclassified, as of September 30, 2005, approximately \$365 million would still be remaining in special accounts for PRP incentives and to reimburse Government costs. In addition, the Agency has tools to ensure sites are cleaned up, regardless of special account funds. Consistent with EPA's "Enforcement First" approach and Polluter Pays principle, EPA retains the opportunity to issue a unilateral administrative order to require PRPs to clean up a site should they become recalcitrant.

We have modified the recommendation to "As of September 2005, approximately \$465 million in special accounts was potentially available for reallocation. EPA should timely review special account dollars and set up a formal process and schedule to ensure special account funds are used consistently according to the hierarchy specified in its guidance. This can include (1) using the funds as a settlement incentive for responsible parties; (2) conducting EPA-led cleanups; (3) applying the funds toward previous EPA expenditures at a site, which will allow funds previously reserved for the site to be "deobligated" for use at other sites (also known as reclassification); and (4) replenishing the Trust Fund."

Distribution

Office of the Administrator
Assistant Administrator for Solid Waste and Emergency Response
Assistant Administrator for Research and Development
Assistant Administrator for Air and Radiation
Assistant Administrator for Administration and Resources Management
Assistant Administrator for Enforcement and Compliance Assurance
Acting Assistant Administrator, Office of Environmental Information
Audit Liaison, Office of Solid Waste and Emergency Response
Audit Liaison, Office of Research and Development
Audit Liaison, Office of Air and Radiation
Audit Liaison, Office of Administration and Resources Management
Audit Liaison, Office of Enforcement and Compliance Assurance
Audit Liaison, Office of Environmental Information
Agency Followup Official (the CFO)
Agency Followup Coordinator
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Inspector General