



Office of Inspector General

Audit Report

UNDERGROUND STORAGE TANK

Leaking Underground Storage Tank
Cooperative Agreement Nos. L006515-91
and L006515-04 and Interim Audit of
Cooperative Agreement No. L006515-05
Awarded to the Texas Natural
Resource Conservation Commission

Report No. E3LLL7-06-0031-8100040

January 22, 1988

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**Inspector General Division
Conducting the Audit**

**Central Audit Division
Dallas, Texas**

Region Covered

Region 6

Program Office Involved

**Office of Solid Waste and
Emergency Response**

EPA

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January 22, 1998

MEMORANDUM

SUBJECT: Report on Final Audit of Leaking
Underground Storage Tank Cooperative
Agreement Nos. L006515-91 and L006515-04
and Interim Audit of Cooperative Agreement
No. L006515-05 Awarded to the Texas Natural
Resource Conservation Commission
Audit Report No. E3LLL7-06-0031-8100040

FROM: Bennie S. Salem Bennie Salem
Divisional Inspector General

TO: Jerry M. Clifford
Acting Regional Administrator
Region 6

Information Resources Center
US EPA (MPO)
401 M Street SW
Washington, DC 20460

Attached is our audit report concerning the Leaking Underground Storage Tank (LUST) Cooperative Agreement Nos. L006515-91, L006515-04, and L006515-05 awarded to the Texas Natural Resource Conservation Commission (TNRCC). The primary objectives of this audit were to determine whether TNRCC adequately accounted for the LUST Trust Fund monies and complied with the LUST cooperative agreement special conditions. This report contains findings and recommendations that are important to both the Environmental Protection Agency (EPA) and TNRCC.

This audit report contains findings that describe problems the Office of Inspector General (OIG) has identified and corrective actions OIG recommends. The report represents the opinion of OIG, and the findings contained in this report do not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

In accordance with EPA Order 2750, you, as the action official, are required to provide us within 90 days, a report on the actions you plan or have taken as a result of our



recommendations. Your response and the TNRCC response to the draft report were sufficient to satisfy this requirement. Consequently, we are closing this report upon issuance.

If you wish to discuss this report, please contact me at (913) 551-7831 or Dave Boyce, Audit Manager in our Dallas office, at (214) 665-6620. Please refer to the report number on all related correspondence.

Attachment

EXECUTIVE SUMMARY

PURPOSE

The primary objectives of our audit were to determine whether:

- costs claimed were allowable, allocable, and reasonable under the cooperative agreements; and
- TNRCC complied with federal laws, regulations, and cooperative agreement special conditions.

BACKGROUND

The Superfund Amendments and Reauthorization Act (SARA) of 1986, Section 205, amended the Solid Waste Disposal Act and established the Leaking Underground Storage Tank (LUST) Trust Fund to finance the cleanup of petroleum releases from underground storage tanks.

SARA authorized EPA to provide LUST trust funds to the states for the cleanup of leaking underground storage tanks through cooperative agreements. The agreements identify the amount of funds allocated to each state and establish LUST program performance requirements. States may use the trust fund to finance:

- the cost of site corrective action;
- enforcement action taken to compel owners and operators (responsible parties) to take corrective action;
- oversight of responsible party lead cleanups;

**Audit of LUST Cooperative Agreements Awarded to the
Texas Natural Resource Conservation Commission**

- cost recovery efforts of trust fund expenditures from responsible parties; and
- reasonable and necessary administrative expenses directly related to the above activities.

RESULTS IN BRIEF

In our opinion, the \$19.8 million of costs claimed were allowable, allocable, and reasonable under the cooperative agreements.

In general, TNRCC complied with applicable federal laws, regulations, and cooperative agreement special conditions. However, TNRCC has not recovered any of the \$32 million of federal funds spent on approximately 1139 sites since 1987. Funds were not recovered by TNRCC primarily because the funds were used at sites that resulted in minimal recovery potential; i.e., sites with multiple responsible parties, financially incapable responsible parties, or unknown responsible parties. Secondly, TNRCC had not established an effective cost recovery program. We identified several deficiencies hindering the effectiveness of TNRCC's cost recovery program, including the lack of adequate procedures for:

- accounting for complete site-specific cost;
- issuance, tracking, and followup of demand letters; and
- documenting decisions regarding cost recovery actions.

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RECOMMENDATION

We recommend that the Acting Regional Administrator work with TNRCC to develop and implement an effective cost recovery program that a minimum includes procedures that ensure:

- site-specific accounting for all identifiable costs;
- issuance, tracking, and followup of demand letters; and
- formal documentation of cost recovery decisions.

AUDITEE'S COMMENTS

TNRCC generally agreed with our findings and recommendations and provided that a task force had been created on its own initiative, during the summer of 1997. The task force recommended an entire process for cost recovery, for which TNRCC is currently adopting formal cost recovery procedures and is developing the baseline data that will be used to measure future cost recovery efforts.

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Abbreviations

EPA	Environmental Protection Agency
FSR	Financial Status Report
LUST	Leaking Underground Storage Tank
OIG	Office of Inspector General
OSWER	Office of Solid Waste and Emergency Response
SARA	Superfund Amendments and Reauthorization Act
TNRCC	Texas Natural Resource Conservation Commission

INTRODUCTION

The Superfund Amendments and Reauthorization Act (SARA) of 1986, Section 205, amended the Solid Waste Disposal Act and established the Leaking Underground Storage Tank (LUST) Trust Fund to finance the cleanup of petroleum releases from underground storage tanks.

SARA authorized the Environmental Protection Agency (EPA) to provide LUST trust funds to the states for the cleanup of leaking underground storage tanks through cooperative agreements. The agreements identify the amount of funds allocated to each state and establish LUST program performance requirements. States may use the trust fund to finance:

- the cost of site corrective action,
- enforcement action taken to compel owners and operators (responsible parties) to take corrective action,
- oversight of responsible party lead cleanups,
- cost recovery efforts of trust fund expenditures from responsible parties, and
- reasonable and necessary administrative expenses directly related to the above activities.

Based on the results of our survey of LUST cooperative agreements awarded by Region 6, we initiated a financial and compliance audit of the Texas Natural Resource Conservation Commission (TNRCC) LUST cooperative agreement nos. L006515-91, L006515-04, and L006515-05. These cooperative agreements were selected because they had not been subject to prior review.

Audit of LUST Cooperative Agreements Awarded to the
Texas Natural Resource Conservation Commission

OBJECTIVES

The primary objectives of our audit were to determine whether:

- costs claimed were allowable, allocable, and reasonable under the cooperative agreements; and
- TNRCC complied with federal laws, regulations, and cooperative agreement special conditions.

**RESULTS OF AUDIT
OPINION**

In our opinion, the costs claimed were allowable, allocable, and reasonable under the cooperative agreements. The results of our analysis are summarized below.

<u>Cooperative Agreement No.</u>	<u>Costs Claimed and Accepted</u> (Note 1)
L006515-91	\$12,907,780
L006515-04	3,877,975
L006515-05	<u>3,022,755</u>
Total	<u>\$19,808,510</u>
EPA Payments as of October 24, 1996	\$19,808,510
Allowable EPA Share	<u>19,808,510</u>
Balance Due	<u>\$ 0</u>

Note 1. This column represents costs TNRCC claimed on its final Financial Status Reports (FSR), dated November 22, 1994, for cooperative agreement no. L006515-91 and December 3, 1996, for cooperative agreement no. L006515-04. The amount shown for cooperative agreement no. L006515-05 represents costs claimed on TNRCC's interim FSR, dated October 24, 1996.

**REPORT ON
COMPLIANCE AND
INTERNAL CONTROLS**

In general, TNRCC complied with applicable federal laws, regulations, and cooperative agreement special conditions. However, TNRCC had not recovered any of the \$32 million of federal funds spent on approximately 1139 sites since 1987. Funds were not recovered by TNRCC for two primary reasons. First, funds were used at sites with minimal recovery potential; i.e., sites with unknown responsible parties, financially incapable responsible parties, or multiple responsible parties for whom responsibility could not be clearly determined. Second, TNRCC had not established an effective cost recovery program.

**TNRCC Needed an
Effective Cost Recovery
Program**

Our review disclosed several deficiencies hindering the effectiveness of TNRCC's cost recovery program, including the lack of adequate procedures for:

- accounting for complete site-specific cost;
- issuance, tracking, and followup of demand letters; and
- documenting decisions regarding cost recovery actions.

Office of Solid Waste and Emergency Response (OSWER) Directive 9610.10A, as referenced in the cooperative agreements, require states to maintain site-specific accounting for all costs of corrective and enforcement actions and to contact responsible parties about their liability and demand payment. Further, EPA guidance requires states to fully document all decisions regarding cost recovery.

**Accounting for
Site-Specific Costs**

TNRCC had not established adequate procedures to account for all site-specific costs paid with LUST trust funds. Site-specific records primarily documented the costs of cleanup activities performed by contractors, but in general, did not include TNRCC's salary costs for program activities, such as administration, corrective action, inspection, enforcement, and responsible party remediation.

By not accounting for all site-specific costs, TNRCC reduced the total recoverable costs.

The cooperative agreements specifically required and provided funds for the organization and maintenance of site-specific information on activities and costs funded by the LUST trust fund. Additionally, OSWER Directive No. 9610.10A, dated May 24, 1994, requires site-specific accounting for :

...all costs of corrective action and enforcement, including interest, indirect and "management and support" costs associated with these activities that are paid for by the Trust Fund...

We found that, although a majority of the work performed by program staff represented corrective action and enforcement activities, only two employees charged their time as site-specific. All other employee time charges were to more general project cost allocations.

We were informed by TNRCC management at the conclusion of our fieldwork that new timekeeping procedures requiring the use of site-specific project cost allocations by all petroleum storage tank staff were being implemented.

**Issuance, Tracking, and
Followup of Demand
Letters**

TNRCC had not established adequate procedures for the issuance, tracking, and subsequent followup of demand letters issued to responsible parties for payment of costs incurred for corrective action and enforcement activities. As a result, demand letters were rarely issued.

Cost recovery efforts mainly consisted of initial notification letters to potentially responsible parties to advise them that their facility might be a source of contamination and they might be liable for cleanup costs incurred. Even though \$32 million had been spent on approximately 1139 sites, we learned from program staff that fewer than 10 demand letters had been issued since the program inception in 1987.

OSWER Directive 9610.10A provides that in each case states should make reasonable efforts to contact owners and operators who are liable for releases, notify them of their liability for enforcement and corrective action costs, and demand payment.

On November 8, 1994, EPA issued a memorandum providing clarification of OSWER Directive 9610.10A. The memorandum provided that demand letters should be issued if a responsible party is located. If a responsible party is determined to be financially unable and a formal determination of insolvency is made, the determination may be used to document that a demand letter is not necessary.

At the conclusion of our audit fieldwork, we learned that new procedures requiring the issuance, tracking, and followup of demand letters are under consideration by TNRCC. In the case of multiple responsible parties, the procedures would require demand letters be issued to all parties, requesting the individuals work out their respective liability. Alternately, TNRCC would retain the authority to request the Attorney General take action to determine liability in instances where the parties could not come to some agreement.

**Documenting Cost
Recovery Actions**

TNRCC had not established procedures for adequately documenting cost recovery actions. Therefore, project records did not always reflect decisions made on cost recovery actions. While the project records sometimes indicated the reasons for not pursuing cost recovery, no formal documentation of cost recovery decisions was included.

In its November 8, 1994 memorandum discussing the LUST cost recovery policy, EPA acknowledged that certain situations would warrant a state not issuing a demand letter. In those cases, however, the states should ensure that the bases for any compromise or termination of trust fund claims were adequately supported in the records of the state and reflected the efficient use of trust fund resources. The

memorandum further provided that regardless of the action taken by the state in exercising its discretion in cost recovery cases, the state is required to fully document its decision and to formally close out all cases.

CONCLUSION

An effective cost recovery system is important to ensure that funds are available to pay for future LUST cleanup activities. Specific procedures such as site-specific accounting; the issuance, tracking, and followup of demand letters; and the documentation of cost recovery actions are vital elements to the development of an effective cost recovery program and to maximizing the amount of funds that can be recovered.

Recognizing the need to establish an effective cost recovery system, TNRCC has begun instituting procedures to address weaknesses in its cost recovery program.

RECOMMENDATION

We recommend that the Acting Regional Administrator, Region 6, work with TNRCC to develop and implement an effective cost recovery program that at a minimum includes procedures that ensure:

- accounting for all identifiable site-specific costs;
- issuance, tracking, and followup of demand letters; and
- formal documentation of cost recovery decisions.

AUDITEE COMMENTS

TNRCC generally agreed with our findings and recommendations and provided that a task force had been created during the summer of 1997. The task force recommended a process for cost recovery. TNRCC is currently adopting formal cost recovery procedures and is developing the baseline data that will be used to measure future cost recovery efforts.

TNRCC's specific comments to the individual findings and recommendations are summarized as follows.

Accounting for Site Specific Costs. TNRCC responded that detailed site information was kept for the direct costs of site investigations and emergency actions. Additionally, TNRCC stated that it is in the process of creating specific program cost account numbers for capturing indirect costs. Program cost account numbers had only been used in a limited number of cases until recently. TNRCC anticipates that the indirect costs will represent only a fraction of total site costs.

Issuance, Tracking and Followup of Demand Letters. TNRCC acknowledged that only a limited number of demand letters had been mailed to responsible parties. The process for the issuance and followup of demand letters was considered as part of the task force recommendations and subsequent procedures.

Documenting Cost Recovery Actions. TNRCC acknowledged that a formal memorandum documenting cost recovery actions had not been prepared for each site. However, it emphasized that there was no statute of limitations to complete this process and that TNRCC had plans to pursue this action further and to fully document the cost recovery position for each site where federal grant dollars were used. In addition, TNRCC has been prioritizing its sites for cost recovery. This prioritization will be used as a basis for TNRCC's decision for cost recovery actions.

OIG EVALUATION

We acknowledge TNRCC's comments and commend their planned actions. However, we wish to clarify TNRCC's use of the terms direct and indirect cost in the section on Accounting for Site-Specific Costs. Through discussions with TNRCC subsequent to receipt of their response, we determined that their use of the term direct cost refers to contractor costs, while the term indirect cost refers to TNRCC salary costs. The finding, as presented in this report, addresses contractor and TNRCC salary costs, rather than direct and indirect costs.

BACKGROUND

In 1984 and 1986, Congress passed Underground Storage Tank legislation under Subtitle I of the Resource Conservation and Recovery Act. SARA, Section 205 authorized EPA to provide LUST trust funds through cooperative agreements with the states to clean up leaking underground storage tanks.

These agreements provide the basis for EPA's oversight and management of the LUST trust fund. The agreements identify the amount of funds that have been allocated to each state and establish LUST program performance requirements. In Texas, the LUST program is administered by TNRCC located in Austin, Texas.

Region 6 awarded LUST cooperative agreement no. L006515-91 to TNRCC on September 14, 1990. The objective of the agreement was to provide funding to implement cleanup actions at sites contaminated by regulated substances stored in underground storage tanks. The agreement, with six amendments, totaled \$14,341,979 and covered the period September 1, 1990, through August 31, 1994. TNRCC submitted a final FSR on November 22, 1994.

Cooperative agreement no. L006515-04 was awarded on September 21, 1994. The purpose of the agreement was to provide continued funding for administration of the LUST

**Audit of LUST Cooperative Agreements Awarded to the
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program. The agreement, with four amendments, totaled \$4,452,836 and covered the period September 1, 1994, through August 31, 1996. TNRCC submitted a final FSR on December 3, 1996.

Cooperative agreement no. L006515-05 was awarded on August 30, 1995. The purpose of the agreement was to provide continued funding for administration of the LUST program. The agreement, with two amendments, totaled \$3,428,888 and covered the period September 26, 1995, through August 31, 1997. A final FSR is due upon completion.

**SCOPE AND
METHODOLOGY**

We conducted a financial and compliance audit of LUST cooperative agreement nos. L006515-91, L006515-04, and L006515-05 to determine if the costs incurred and claimed were allowable, allocable, and reasonable under the cooperative agreement terms and conditions and in accordance with laws and regulations. The audit represented a final audit of costs claimed under cooperative agreement nos. L006515-91 and L006515-04 and an interim audit of cooperative agreement no. L006515-05. The audit included review of costs incurred during the period September 14, 1990, through September 30, 1996. We performed our fieldwork from May 1997 to September 1997 at EPA Region 6 and TNRCC offices in Austin, Texas.

We conducted the audit in accordance with the Government Auditing Standards (1994 Revision) issued by the Comptroller General of the United States. Accordingly, the review included tests of the accounting records and other auditing procedures as we considered necessary. Other than the issues discussed in this report, no other significant issues came to our attention that warranted expanding the scope of our audit.

The audit did not include a complete review of the grantee's

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system of internal controls; rather we focused our attention on the key systems in place to control and manage the cooperative agreement. Additionally, we relied on the Statewide Single Audit Report of the State of Texas for the fiscal year ended August 31, 1994, to the extent possible. We reviewed the original agreement justifications and language to determine the purpose of the agreement and requirements. We looked at FSRs and cash drawdowns and compared them to original authorizations, amendments, certifications, and obligations. Grant expenditure worksheets were used to confirm what payments of authorized levels were actually made.

In evaluating the adequacy of these systems, we focused our attention on assuming that procedures were adequate to comply with the legal and regulatory criteria set forth in EPA, federal, and state guidance cited in the Office of Inspector General audit guide.

Because of the inherent limitations in any system of internal accounting control, errors or irregularities may occur and not be detected. Except for the deficiencies discussed in the section of this report entitled *Report on Compliance and Internal Controls*, nothing came to our attention which would cause us to believe that TNRCC's procedures were not adequate for our purposes.

In addition to the audit of accounting transactions, we selected and tested transactions to determine TNRCC's compliance with federal laws, regulations, and cooperative agreement special conditions. We reviewed TNRCC's compliance with the cooperative agreements program and financial reporting requirements and interviewed TNRCC administrative and program staff to determine whether policies and procedures were appropriately implemented.



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Protecting Texas by Reducing and Preventing Pollution

December 09, 1997

Bennie S. Salem
Divisional Inspector General
Office of Inspector General
U.S. Environmental Protection Agency
726 Minnesota Avenue
Kansas City, Kansas 66101

RE: Draft Leaking Underground Storage Tank Report
Cooperative Agreement Nos. L006515-91, L006515-04 and L006515-05
Audit Report No. #3LLL7-06-0031-XXXXXX

Dear Mr. Salem:

We appreciate this opportunity of receiving and commenting on the draft audit report of the Texas Natural Resource Conservation Commission's (TNRCC) underground storage tank program. We hope the comments from the TNRCC can be incorporated into the final audit report.

The stated objectives of the audit were to evaluate grant costs claimed by the TNRCC and compliance with federal laws, regulations, and cooperative agreement conditions. While the TNRCC was found in compliance with these objectives, the only deficiencies noted were related to cost recovery.

The draft audit states the "TNRCC had not established adequate procedures to account for all site-specific costs paid with LUST trust funds". In response, the TNRCC keeps detailed information on the direct costs associated with each site where site investigations and emergency actions are funded by federal grant dollars. The TNRCC also has a process of creating specific program cost account (PCA) numbers for capturing indirect costs for sites where federal grant dollars were used; however, this practice was only used in a limited number of cases until recently. The TNRCC has already implemented steps to improve record keeping for indirect costs at these sites even though they are expected to be only a fraction of the costs associated with each site.

The audit report mentions a deficiency in issuing and subsequent follow up of cost recovery demand letters. The TNRCC acknowledges that only a limited number of demand letters were mailed prior to this audit. In fact, the TNRCC created a task force on its own initiative, during the summer of

Mr. Bennie S. Salem
Re: Draft Leaking Underground Storage Tank Report
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1997, which recommended an entire process for cost recovery. A procedure for issuing initial demand letters and follow up letters was also considered. This cost recovery process is defined in a report dated July 7, 1997, and a copy is enclosed for your review. The TNRCC is currently adopting formal cost recovery procedures and is developing the baseline data that will be used to measure future cost recovery efforts.

Finally, the audit determined that the TNRCC was not documenting its decisions made on cost recovery actions and that formal closure for cost recovery was required at all sites. The TNRCC shared with the auditors copies of sample memorandums used to document the agency's decision not to pursue cost recovery at a site. While it is recognized that such a memorandum has not been prepared for each site; there is no statute of limitations for this action. The TNRCC has plans on pursuing this action further and will fully document its cost recovery position for each site where federal grant dollars were used. Furthermore, within the last twelve months, the TNRCC has made progress in prioritizing its sites for cost recovery which will be the basis for the TNRCC's decision on seeking cost recovery or not.

The auditors' recommendation that the Regional Administrator work with the TNRCC on a cost recovery program is well appreciated. In fact, the TNRCC has already opened discussions with the region staff and has shared with them the direction the TNRCC is planning on cost recovery. These discussions were fruitful and well received by EPA's regional staff. We will make a conscientious effort to continue these discussions to further improve our cost recovery program.

Thank you again for this opportunity to comment on the audit findings. I assure you that efforts are underway to address the three areas where some deficiencies were found. If elaboration on any of these comments are needed, please feel free to contact me or Ms. Jacqueline Hardee, Manager of the Petroleum Storage Tank Division's State Lead Remediation Section at (512) 239-2120.

Sincerely,



Joe D. Woodard, Director
Petroleum Storage Tank Division
Texas Natural Resource Conservation Commission

Enclosure: 1 report

cc: Ron Pedde, Office of Waste Management, MC 122 (ref: ED #10267)
Dan Pearson, Executive Director, MC 102

APPENDIX II

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