



Office of Inspector General
AUDIT REPORT

**LEAKING UNDERGROUND STORAGE
TANK COOPERATIVE AGREEMENT
L008655-01 AWARDED TO COLORADO
DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT**

E3LLL6-08-0031-7100144

March 31, 1997

Inspector General Division
Conducting the Audit:

Central Audit Division
Kansas City, Kansas

Region Covered:

Region 8

Program Office
Involved:

Office of Pollution Prevention, State
and Tribal Assistance

EPA

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March 31, 1997

MEMORANDUM

SUBJECT: Audit of Colorado Leaking Underground
Storage Tank Cooperative Agreement L008655-01
Report Number E3LLL6-08-0031-7100144

FROM: Bennie S. Salem *Bennie Salem*
Divisional Inspector General

TO: Jack W. McGraw
Acting Regional Administrator
Region 8

We performed an audit of the Environmental Protection Agency (EPA) Leaking Underground Storage Tank (LUST) Cooperative Agreement (CA) L008655-01 awarded to the Colorado Department of Public Health and Environment (CDPHE). The purpose of our review was to determine whether CDPHE had adequately accounted for the LUST Trust Fund monies and complied with the LUST CA special conditions. We found that CDPHE claimed \$16,277 (\$14,649 EPA share) of ineligible costs. In general, CDPHE complied with the CA terms and conditions. However, CDPHE did not comply with two significant special conditions. In addition, Region 8 project officers needed to review the LUST CA special conditions and delete or modify unnecessary or excessive requirements.

ACTION REQUIRED

In accordance with EPA Order 2750, you, as the action official, are required to issue a final determination on the costs questioned to the auditee within 150 days of the final audit report date. A copy of the final determination should be provided to our office when issued. In addition, you are required to provide us with a written response to the other recommendations in this report within 150 days of the final audit report. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist us in deciding whether to close this report.

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.

We have no objection to the release of this report to any member of the public upon request. This report contains no confidential business or proprietary information that cannot be released to the public.

If you have any questions, please call me at (913) 551-7831 or Jeff Hart, Audit Manager in our Denver office, at 312-6872. Please refer to audit control number E3LLL6-08-0031 on any correspondence.

EXECUTIVE SUMMARY

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 (UST). SARA authorized the Environmental Protection Agency (EPA) to provide LUST Trust Fund monies to states for the cleanup of leaking underground storage tanks through cooperative agreements (CA). Region 8 awarded the Colorado Department of Public Health and Environment (CDPHE) LUST CA L008655-01 on May 10, 1990. On July 1, 1995, the Colorado State Legislature transferred its UST and LUST programs from CDPHE to the Colorado Department of Labor and Employment (CDOLE). EPA's Region 8 UST program office requested that the Office of Inspector General perform a financial audit of the CDPHE CA in order to close out the agreement. Also, Region 8 staff wanted to confirm that CDPHE had properly transferred LUST program equipment to CDOL.

WE FOUND THAT

CDPHE claimed \$16,277 (\$14,649 EPA share) of ineligible costs. Other than the costs questioned, we found that the costs claimed under the CA were fairly presented in accordance with applicable EPA regulations, other federal and state requirements, and the CA terms. In general, we found that the CDPHE LUST program complied with the CA terms and special conditions. However, we found that CDPHE's Hazardous Materials and Waste Management Division staff did not document its practice of periodically reviewing and adjusting budget estimates for distribution of paid leave as part of its policies and procedures. Also, CDPHE did not comply with two significant special conditions. The Region 8 project officer needed to review and change the LUST CA special conditions to better reflect actual LUST program activities. CDPHE and CDOL staff needed to coordinate and document each department's responsibility related to future cost recovery efforts for sites that were previously under CDPHE cognizance. Also, we determined that CDPHE appropriately transferred the LUST program equipment to CDOL.

WE RECOMMENDED THAT

The Acting Regional Administrator recover the \$14,649 federal share of ineligible costs claimed by CDPHE under LUST CA L008655-01. He should require CDPHE and CDOL to fully comply with federal laws, regulations, and CA special conditions. He should instruct Region 8 UST/LUST project officers to review and modify the LUST CA special conditions and establish a date for a Management Assistance Program review of CDOL's compliance with its LUST

CA. The Acting Regional Administrator should also require CDPHE and CDOLE to coordinate and document each department's responsibility related to future cost recovery efforts.

AUDITEE COMMENTS AND OIG EVALUATION

Region 8, CDPHE, and CDOLE agreed with our findings and recommendations.

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PURPOSE

On July 1, 1995, the Colorado State Legislature (hereinafter known as the Legislature) transferred the Underground Storage Tank (UST) and the Leaking Underground Storage Tank (LUST) programs from the Colorado Department of Public Health and Environment (CDPHE) to the Colorado Department of Labor and Employment (CDOLE). The Environmental Protection Agency's (EPA) Region 8 UST program office requested that the Office of Inspector General (OIG) perform a financial audit of the Colorado LUST Cooperative Agreement (CA) L008655-01 awarded to CDPHE in order to close out the agreement. Also, Region 8 staff wanted to confirm that CDPHE had properly transferred LUST program equipment to CDOL.

The purpose of our review was to determine whether CDPHE had adequately accounted for the LUST Trust Fund monies and complied with CA special conditions. Our specific objectives were to determine whether:

- o Costs claimed were eligible, allocable, and reasonable under the LUST CA;
- o CDPHE complied with federal laws, regulations, and the CA special conditions; and
- o CDPHE appropriately transferred all LUST equipment to CDOL.

BACKGROUND

Congress passed UST legislation in 1984 and 1986. In 1984, the Hazardous and Solid Waste Amendments established the UST program under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Superfund Amendments and Reauthorization Act (SARA) of 1986, Section 205, amended the Solid Waste Disposal Act and established the LUST Trust Fund to finance the cleanup of petroleum releases from USTs.

SARA authorizes EPA to provide LUST Trust Fund monies to states for the cleanup of leaking underground storage tanks through CAs. These agreements between EPA and states provide the basis for EPA's oversight and management of LUST Trust Fund monies. The agreements identify the amount of funds that have been allocated to each state and establish LUST program performance requirements. States may use LUST funds to pay for costs of site corrective actions, enforcement actions against owners and operators (i.e., responsible parties), cost recovery of LUST expenditures, and reasonable and necessary administrative expenses directly related to these activities.

EPA Region 8 awarded LUST CA L008655-01 to CDPHE on May 10, 1990. The CA purpose was to provide funding for CDPHE to conduct timely and appropriate corrective action at LUST sites and implement cost recovery procedures at sites where LUST Trust Fund monies had been expended for cleanup. CDPHE submitted its final financial status report (FSR) on September 25,

1995. Total project costs under the agreement were \$2,712,519. EPA provided \$2,440,267 of the total project costs.

During the time period of LUST CA L008655-01, CDPHE's Hazardous Materials and Waste Management Division (HMWMD) administered the state LUST program. HMWMD also administered the Storage Tank Remediation and Solid Waste Program. This program was responsible for responding to UST incidents where a leak or release occurred which had or could have impacted human health or the environment.

SCOPE AND METHODOLOGY

We conducted a financial and compliance audit of LUST CA L008655-01 to determine if the costs incurred and claimed were eligible, reasonable, and allocable under the CA terms and conditions and in accordance with laws and regulations. The audit represented a final audit of costs claimed under the agreement. Our financial and compliance audit covered the period May 10, 1990, through September 30, 1995. We performed our fieldwork from August to December 1996 at EPA Region 8, CDPHE, and CDOLE offices in Denver, Colorado.

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.

As part of our review, we obtained an understanding of CDPHE's internal control structure in order to determine the nature, timing, and extent of our testing. We relied on the Statewide Single Audit Report of the State of Colorado for the fiscal year ended June 30, 1995, to the extent possible. We analyzed a sample of incurred costs and related internal controls to assure compliance with federal statutory and regulatory criteria and with CDPHE's policies and procedures. Because of the inherent limitations in any system of internal accounting control, errors or irregularities may occur and not be detected. Except for the questioned costs and issues discussed in this report, nothing came to our attention which would cause us to believe that CDPHE's procedures were not adequate for our purposes.

To determine the eligibility, allocability, and reasonableness of the costs claimed under the CA, we judgmentally selected a sample of costs claimed for testing. We selected 92 personnel transactions and 106 non-personnel transactions. We reviewed the source documentation for all sampled transactions including purchase orders, payment invoices, travel authorizations, travel vouchers, and timesheets.

In addition to the audit of accounting transactions, we selected and tested transactions to determine CDPHE's compliance with federal laws, regulations, and the LUST CA special conditions. We

reviewed CDPHE's compliance with the CA's program and financial reporting requirements and interviewed CDPHE administrative and program staff to determine whether policies and procedures were appropriately implemented. In addition, we interviewed the Region 8 project officer to determine whether the project officer provided sufficient oversight of the program's compliance with the CA terms and special conditions.

Also, we reviewed the LUST CA L998395-01 awarded to CDOLE on July 12, 1995, and interviewed CDOLE LUST program and finance staff. We reviewed the CDOLE LUST CA special conditions to determine whether the terms and special conditions changed when CDOLE assumed responsibility for the LUST program. We interviewed CDOLE LUST program staff to determine whether LUST program equipment was properly transferred, and we inspected the transferred LUST program equipment. We reviewed and reconciled CDPHE's equipment property records to the equipment transferred to CDOLE. In addition, we interviewed CDOLE LUST program and finance staff to determine how coordination with CDPHE would occur for future cost recovery actions on sites for which CDPHE still retained cost documentation.

We performed followup work on prior audit findings at CDPHE and determined that CDPHE had implemented corrective action. However, we identified additional improvements needed in CDPHE's controls.

PRIOR AUDIT COVERAGE

We reported several internal control and compliance issues in a January 1994 audit report of CDPHE's Superfund CAs. We found that: (1) reported expenditures in FSRs were not supported by accounting records; (2) document processing errors were overstating expenditures; and (3) methods used to allocate expenditures, including paid leave were not documented, not properly supported, and not in accordance with the Office of Management and Budget (OMB) Circular A-87 methodology.

RESULTS OF AUDIT

OPINION

We found that CDPHE claimed \$16,277 (\$14,649 EPA share) of ineligible costs. We questioned \$7,965 indirect costs, \$7,886 personnel costs, and \$426 contractual costs, as ineligible under LUST CA L008655-01. Other than the costs questioned, we found that the costs claimed under the CA were fairly presented in accordance with applicable EPA regulations, other federal and state requirements, and the CA terms and special conditions. OMB Circular A-87 establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with state and local governments. The results of our analysis are summarized in Exhibit A. CDPHE staff agreed with all of our questioned costs.

REPORT ON COMPLIANCE AND INTERNAL CONTROLS

In general, we found that the CDPHE LUST program complied with the CA terms and special conditions. However, we found that HMWMD staff did not document its practice of periodically reviewing and adjusting budget estimates for distribution of paid leave as part of its policies and procedures. Also, CDPHE did not comply with two significant special conditions. The Region 8 project officer needed to review and change the LUST CA special conditions to better reflect actual program activities. CDPHE maintained the cost documentation required for future LUST cost recovery actions, but CDPHE staff stated that they did not have the resources to prepare the cost recovery documentation packages after the the Legislature transferred the LUST program to CDOLE. Also, we determined that CDPHE appropriately transferred LUST program equipment to CDOLE.

HMWMD Needed to Document Its Procedures for Distributing Paid Absences

Although we found that HMWMD's practice of periodically reviewing and adjusting budget estimates provided an equitable distribution of paid leave costs, it had not documented this practice as part of its policies and procedures. The HMWMD LUST program and administrative staff charged paid absences to the LUST CA based on budget estimates. HMWMD periodically evaluated these budget estimates and revised them for future pay periods when significant variances existed between budgeted and actual activities. Although CDPHE's policy was for employees to charge paid leave as budgeted, HMWMD staff stated that not all CDPHE divisions reviewed and adjusted budget estimates during the year. Neither HMWMD or CDPHE had included this policy in written policies and procedures.

OMB Circular A-87, Attachment B, dated January 15, 1981, states that paid absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, are allowable if they are:

- (1) provided pursuant to an approved leave system; and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

HMWMD documented its time and effort reporting procedures, but had not documented its practice of reviewing and adjusting budget estimates as part of its policy and procedures. HMWMD needed to document this review and modification process as part of its time and effort allocation methodology to ensure that it was instituted and paid absences continued to be equitably distributed in accordance with federal cost principles.

The Region Needed to
Enforce and Improve
Special CA Conditions

In general, the CDPHE LUST program complied with the LUST CA terms and special conditions. However, CDPHE did not provide required certifications for two special conditions. In addition, the Region 8 project officer identified several of the other LUST CA special conditions as too prescriptive. However, these same conditions were included in the new LUST CA awarded to CDOLE. The project officer planned to review the special conditions in the CDOLE LUST CA and eliminate those that were too prescriptive and no longer appropriate or necessary. The project officer had also requested that Region 8's grants staff perform a Management Assistance Program (MAP) review of CDOLE's compliance with EPA requirements under its LUST CA.

CDPHE had not provided Region 8 with the required certification for its utilization of minority-owned businesses (MBE) and women-owned businesses (WBE) when awarding contracts. The CA required CDPHE to submit its certification within 30 days of each federal fiscal yearend. The purpose of the required certification was to ensure that CDPHE made federal funds available to organizations owned or controlled by socially and economically disadvantaged individuals, women, and historically black colleges and universities. Although CDPHE staff stated that several of the contractors working at LUST sites were either MBE or WBE firms, the Region 8 Small Business Officer could not locate any certifications for the LUST CA.

Neither the current Region 8 project officer nor CDPHE staff could provide supporting documentation that CDPHE provided Region 8 with the required certification for its cost recovery authority. The LUST CA required that CDPHE delay taking cost recovery action until it provided EPA with certification of its legislative authority for cost recovery or certification that Colorado law permitted it to exercise the RCRA Section 9003(h)(6) authorities. The only evidence that the current Region 8 project officer could provide relating to the cost recovery certification was a copy of an internal document dated December 28, 1988, in which a prior Region 8 project officer had documented the State's cost recovery status. The prior project officer had written that the State could seek cost recovery for actions taken in response to certain emergency situations under the State's Hazardous Substance Incidents statute. In addition, potential legislation for introduction into the 1989 legislative session would expand the State's cost recovery authorities to include any LUST Trust Fund activities. However, the current project officer could not find any evidence that the State passed such a law. The LUST program staff was currently working with the Colorado Attorney General's Office to determine if a prior Attorney General had provided EPA with certification. Although CDPHE did not take any cost recovery actions, CDOLE had taken a cost recovery action under the new CA.

Also, the current Region 8 project officer did not know that one of the special conditions required CDPHE to submit specific information to the project officer for review and comment prior to any site-specific corrective action. The condition required that prior to any site-specific corrective action utilizing LUST Trust Fund monies, CDPHE was to provide justification for using the monies

(i.e., potentially responsible party inability to pay or recalcitrance, emergency conditions, etc.), the proposed level of cleanup, and the estimated cost of cleanup.

Once the project officer became aware of the condition, she stated that it was too prescriptive. A prior Region 8 project officer had included this condition and some of the other more prescriptive special conditions in the CA when the LUST program was relatively new, according to the current project officer. This condition was included in the new CA awarded to CDOLE on July 12, 1995, as well as the audited CA and other Region 8 states' CAs. She planned to work with the other Region 8 project officers to review all LUST CAs for appropriateness of special conditions. She stated that any unnecessary conditions should be taken out of the LUST CAs.

The project officer stated that a MAP review would be especially useful now to ensure that CDOLE proceeded appropriately with the new CA. A MAP review would provide Region 8 with a means of assessing the recipient's grants management capabilities by evaluating: (1) compliance with regulations and CA terms and conditions; (2) adequacy of internal controls; and (3) appropriateness of accounting, reporting, and cost documentation standards and practices. CDOLE staff stated that they were interested in any feedback or input into how they could improve their processes and procedures. The current Region 8 project officer had requested in fiscal 1996 that Region 8's grants management staff perform a MAP review of CDOLE's compliance with the LUST CA.

State Agencies Needed to Coordinate Future Cost Recovery Actions

CDPHE and CDOLE needed an action plan for future cost recovery actions at sites for which CDPHE had prepared the cost documentation. After transfer of the LUST program to CDOLE, CDPHE continued to maintain the cost documentation required for future LUST cost recovery actions, but CDPHE staff stated that they did not have the resources to prepare future cost recovery documentation packages for these past sites. During the time period that CDPHE administered the LUST program, it complied with the LUST cost recovery documentation requirements. However, when the Legislature transferred the LUST program to CDOLE, the two agencies did not formalize plans to address future cost recovery issues involving cost documentation maintained by CDPHE. CDPHE staff were considering transferring all cost documentation to CDOLE, if CDPHE would be relieved of any responsibility related to future cost recovery at these past sites.

Each state entering into a LUST CA must comply with certain financial management and cost documentation requirements specific to the LUST Trust Fund. Office of Solid Waste and Emergency Response Directive 9610.10A, *Cost Recovery Policy for the Leaking Underground Storage Tank Trust Fund*, states that:

States must maintain accounting and recordkeeping systems that will document all Trust Fund expenditures, support cost recovery with site-specific records, and

demonstrate that recovered funds are retained and used for additional eligible activities under their cooperative agreements.

CDPHE and CDOLE staff were currently working on a Memorandum of Agreement (MOA) that could be used to coordinate future cost recovery efforts. Staff were using the MOA to document each department's role on various joint activities but had not included the future cost recoveries issue. The MOA would be an appropriate mechanism for CDPHE and CDOLE to document the responsibilities of each department related to future cost recovery actions on sites for which CDPHE still retained cost documentation. In addition, if the two departments agree to transfer all of the cost documentation related to prior years' efforts to CDOLE, then the MOA would also provide the mechanism to document the transfer of responsibility for the documentation maintenance for future cost recovery actions from CDPHE to CDOLE.

CDPHE Properly Transferred Equipment to CDOLE

CDPHE properly transferred equipment acquired through the LUST program to CDOLE. In some instances, CDPHE provided equivalent equipment instead of the actual item the LUST program purchased. When the Legislature transferred the LUST program from CDPHE to CDOLE, Region 8 and CDOLE program staff were concerned that CDPHE may not have transferred all of the program's equipment with the program. The majority of the equipment costs claimed under the LUST CA were for computer hardware and software. We reviewed the equipment purchased under LUST CA L008655-01 and reconciled it to the equipment CDPHE transferred to CDOLE. The results of our review satisfied Region 8 and CDOLE LUST program staff that the LUST program had obtained all appropriate equipment from CDPHE.

CONCLUSION

CDPHE claimed \$16,277 (\$14,649 EPA share) of ineligible costs under LUST CA L008655-01. In general, CDPHE complied with the CA terms and special conditions. However, HMWMD did not document its paid absences distribution procedures. Although the majority of CDPHE's claimed costs were contractor costs, CDPHE had not provided Region 8 with required certifications for its MBE and WBE utilization. It also had not provided certification for its cost recovery authority. Also, Region 8 continued to require special conditions in its LUST CAs which were too prescriptive or no longer appropriate or necessary. The Region 8 project officer planned to review all LUST CAs to update the special conditions. The Region 8 project officer also planned to request a MAP review of CDOLE's compliance with its LUST CA. In addition, CDPHE and CDOLE needed to coordinate responsibilities for future cost recovery actions.

RECOMMENDATIONS

We recommend that the Acting Regional Administrator:

1. Recover the \$14,649 federal share of ineligible costs claimed by CDPHE under LUST CA L008655-01.
2. Instruct Region 8 UST/LUST project officers to enforce appropriate controls to ensure LUST Trust Fund recipients comply with grant terms and conditions, including documented cost allocation procedures and submission of any required certifications.
3. Require CDOLE to provide certification as to the State's cost recovery authority.
4. Instruct Region 8 UST/LUST project officers to review and evaluate the special conditions in the LUST CAs, and where appropriate, modify or delete excessive conditions.
5. Establish a date for the MAP review of CDOLE's compliance with its LUST CA.
6. Require CDPHE and CDOLE to coordinate and document each department's responsibility related to future cost recovery efforts for sites that were previously under CDPHE cognizance.

AUDITEE COMMENTS AND OIG EVALUATION

Region 8, CDPHE, and CDOLE agreed with our findings and recommendations. The Region and CDPHE agreed that the ineligible costs claimed by CDPHE should be repaid to EPA. The regional project officers reevaluated the grant terms and conditions and plan to take appropriate action to ensure compliance. Regional project officers will modify those conditions deemed unnecessary or too prescriptive and not driven by guidance or regulatory requirements. The regional program staff will ensure that CDOLE provides a cost recovery certification and will withhold a portion of the LUST grant award if necessary until this special condition has been met. Also, the regional program staff will ensure that responsibility for future cost recovery actions at sites previously under CDPHE control are properly handled and substantiated with appropriate documentation. The Region scheduled a MAP review of CDOLE for the fourth quarter of fiscal 1997.

The planned actions, if initiated timely, should satisfy the intent of OIG's recommendations.

SCHEDULE OF COSTS CLAIMED AND QUESTIONED
LUST COOPERATIVE AGREEMENT L008655-01
May 10, 1990, to September 30, 1995

<u>Cost Category</u>	<u>Total Costs Claimed</u>	<u>Amount Questioned As Ineligible</u>	<u>Notes</u>
Personnel	\$ 792,656	\$ 7,886	1
Travel	6,350	-0-	
Capital Outlay	10,388	-0-	
Contractual	1,701,403	426	2
Operating	32,866	-0-	
Indirect	<u>167,745</u>	<u>7,965</u>	3
TOTAL	<u>\$2,711,408</u>	<u>\$16,277</u>	
SHOWN ON FSR	<u>\$2,712,519</u>		
EPA SHARE(90%)	\$2,440,267	\$ 14,649	
EPA Share Claimed (90%)			\$2,440,267
Less: EPA Share Questioned			<u>14,649</u>
Allowable Federal Share			2,425,618
Payments As of September 26, 1995			<u>2,440,267</u>
Balance Due EPA			<u>\$ 14,649</u>

Notes

1. We questioned \$7,886 for personnel time charges as ineligible. The staff timesheets did not support the time distribution charged to the LUST CA. EPA Audit Resolution Board Decision Number ARB-8, dated November 3, 1981, held that:

Costs which a grantee cannot properly support pursuant to 40 CFR [Code of Federal Regulation] 30.800 and 30.805 shall not be allowable for reimbursement with EPA funds.

2. We questioned \$426 resulting from a contractor inappropriately claiming a 10 percent markup on all of its nonscheduled costs on an invoice. The contract required that equipment and supplies, disposal costs, all subcontracted work and related costs be reimbursed to the contractor at invoice cost.
3. We questioned a total of \$7,965 in indirect costs: (1) \$1,522 of indirect costs as being allocable to direct costs we have questioned, and (2) \$6,443 for indirect costs that CDPHE claimed for ineligible contractual costs.

We questioned \$1,522 of indirect costs as ineligible because CDPHE claimed indirect costs related to the personnel costs we questioned.

We questioned \$6,443 of indirect costs as ineligible because CDPHE applied and claimed a 1.7 percent indirect flow-thru rate on contractual costs classified as capital construction costs. Although CDPHE was allowed to claim an indirect flow-thru rate on costs classified as contractual costs, costs classified as capital construction costs were exempt from application of any indirect rate. The Legislature classified the contractual costs under the LUST CA as capital construction costs. CDPHE claimed the indirect flow-thru rate on its capital construction costs for fiscal 1991 and 1992.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

APPENDIX I

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REGION VIII

999 18th STREET - SUITE 500
DENVER, COLORADO 80202-2466

MAR 20 1997

8TMS-G

MEMORANDUM

SUBJECT: Response to Draft Audit Report of Colorado
Leaking Underground Storage Tank Program
Cooperative Agreement No. L008655-01
Report Number E3LLL6-08-0031-XXXXXXX

FROM: 
Jack W. McGraw
Acting Regional Administrator

TO: Bennie S. Salem
Divisional Inspector General

. As you may know, the Region 8 UST/LUST Program requested this audit because the administration responsibility of this program was transferred from the Colorado Department of Public Health and Environment (CDPHE) to the Colorado Department of Labor and Employment (CDOLE), Oil Inspection Section (OIS). This transfer occurred on July 1, 1995 and the UST/LUST Program wanted to ensure that Cooperative Agreement (CA) No. L008655-01 was properly closed out and the OIS had the grants management capabilities to manage the new CA. As required by EPA Order 2750, the Region's response to the draft audit report of the Colorado Leaking Underground Storage Tank Program (LUST) is outlined below.

Recommendation #1: Recover the \$16,154 of ineligible costs claimed by CDPHE under LUST Cooperative Agreement No. L008655-01.

The Region agrees with this recommendation.

Recommendation #2: Instruct Region 8 UST/LUST Project Officers to enforce appropriate controls to ensure LUST Trust Fund recipients comply with grant terms and conditions.

The Region agrees with this recommendation. The regional Project Officers have reevaluated the grant terms and conditions and will pursue appropriate actions when necessary.



Recommendation #3: Require CDOLE to provide certification as to the State's cost recovery authority.

The Region agrees with this recommendation. The regional program staff is aware of the cost recovery certification issue and has been working and will continue to work with OIS and the Colorado Attorney General to ensure that the State can meet the required certification requirements. This certification is a special condition of the LUST CA and, therefore, must be met in order for the State to receive LUST award monies. The regional program staff will work with the State to ensure that this condition is met in a timely manner. If the State cannot meet this condition in a timely manner, the Region 8 UST/LUST Program will consider taking action against the State by withholding a portion of the LUST award until the special condition has been met.

Recommendation #4: Instruct Region 8 UST/LUST Project Officers to review and evaluate the special conditions in the LUST Cooperative Agreements, and where appropriate, modify and delete excessive conditions.

The Region agrees with this recommendation. The regional program staff discussed the specific modifications to the special conditions with other Region 8 states during an "All States Meeting" held in Denver in February 1997. Those special conditions deemed unnecessary or too prescriptive and not driven by guidance or regulatory requirements will be modified.

Recommendation #5: Establish a date for the MAP review of CDOLE's compliance with its LUST Cooperative Agreement.

The Region agrees with this recommendation. The Region 8 UST/LUST program staff requested a Management Assistance Program (MAP) review of OIS in January 1996 to ensure and document that the State grants management capabilities required to manage the LUST CA. A MAP review has been scheduled for the fourth quarter in FY 97.

Recommendation #6: Require CDPHE and CDOLE to coordinate and document each department's responsibility related to future cost recovery efforts for sites that were previously under CDPHE cognizance.

The Region agrees with this recommendation. The Region 8 UST/LUST program staff will work with CDPHE and CDOLE to ensure that responsibility for future cost recovery actions at sites previously under CDPHE control are properly handled and substantiated with appropriate documentation.

Thank you for the opportunity to comment on the draft report. If you have any questions, please call Barbara Rodriguez, Regional Audit Coordinator, at (303) 312-6360.

cc: Jeff Hart, 8OIG Dave Schachterle, 8RC
 Steve Tuber, 8P2-W Sandy Stavnes, 8P2-W-GW
 Barbara Rodriguez, 8TMS-G



STATE OF COLORADO

Roy Romer, Governor
Patti Shwayder, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

March 12, 1997

Bennie S. Salem
Divisional Inspector General
United States Environmental Protection Agency
Office of Inspector General
Central Audit Division
726 Minnesota Avenue
Kansas City, Kansas 66101

Re: Audit of Colorado Leaking Underground Storage Tank Program
Cooperative Agreement No. L008655-01
Report Number E31116-08-0031-XXXXXXX

Dear Ms. Salem:

Thank you for the opportunity to provide comments on the above referenced draft audit report. We have appreciated the cooperative spirit in which your staff have worked with us on this audit.

With a few exceptions we agree with the findings in the draft report. Our relatively minor disagreements are as follows;

1. HMWMD Needed to Document Its Procedures for Distributing Paid Absences (page 5):

The text of this comment states that prior audits of the Colorado Department of Public Health and Environment's (CDPHE) divisions identified that CDPHE did not have a consistent method or policy with regard to allocating paid leave costs to various funding sources. CDPHE has had a policy in effect for several years in regard to allocating paid leave costs between funding sources. CDPHE policy is to charge paid leave as budgeted for employees in the Department.

2. Additional Resolution of Questioned Costs Subsequent to the Issuance of this Draft Audit Report. I understand that, subsequent to the release of this draft report, additional discussions between CDPHE staff and Environmental Protection Agency, Office of Inspector General (EPA-OIG) staff have reduced the questioned cost amounts (pp 12-13 as follows:

A. Personal Services Questioned Costs of \$8,027. This amount would be reduced to \$7,886, along with a corresponding reduction in questioned indirect costs from \$7,992 to \$7,965.

March 12, 1997

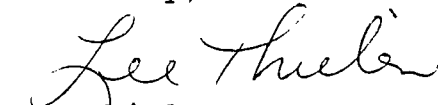
Page 2

B. Contractual Questioned costs of \$1,930. We have provided your audit staff with additional documentation which should allow you to reduce this amount by \$1,504 to \$426.

The adjusted questioned cost total would be \$16,277, with the EPA share being \$14,469. Again, it is our understanding that your staff concur with these changes.

We look forward to receiving your final report and resolving the outstanding issues with Region 8 personnel. Thank you again for the professional and cooperative manner in which your staff have conducted this audit.

Sincerely,



Lee Thielen
Associate Director

cc: Howard Roitman, HMWMD
Richard Piper, DOLE
Barbara Rodriguez, EPA Region 8
Sandy Stavnes, EPA Region 8

ROY ROMER
Governor

JOHN J. DONLON
Executive Director

RICHARD O. PIPER
State Inspector of Oils



DEPARTMENT OF LABOR AND EMPLOYMENT

Oil Inspection Section

Tower 3, Suite 525
1515 Arapahoe Street
Denver CO 80202-2117
(303) 620-4300; Fax (303) 620-4303

March 10, 1997

Mr. Bennie S. Salem, Divisional Inspector General
United States Environmental Protection Agency
Office of Inspector General
726 Minnesota Avenue
Kansas City, KS 66101

Re: Audit of Colorado Leaking Underground Storage Tank Program Cooperative Agreement No. L008655-01 Report Number E31116-08-0031-XXXXXXX

Dear Mr. Salem:

This is to reply to subject draft audit report dated February 6, 1997. From a program perspective, our comments will deal with the recommendations listed on page 11.

Recommendation number 3: Require CDOLE to provide certification as to the State's cost recovery authority.

Response: Agree.

Colorado Department of Labor and Employment does certify that it does have the State's costs recovery authority. Colorado Revised Statutes sections 8-20.5-209(1) and (3) give the State Inspector of Oils the authority to recovery costs when the Oil Inspection Section incurs costs in performing investigations and environmental corrective actions related to underground storage tanks.

Recommendation number 6: Require CDPHE and CDLE to coordinate and document each department's responsibility related to future cost recovery efforts for sites that were previously under CDPHE cognizance.

Response: Agree.

The Department of Labor and Employment assumes cost recovery responsibility, where appropriate, for all LUST site expenditures since the program was transferred here on July 1, 1995. Additionally, the Department of Labor and Employment will request accounting records from the Department of Public Health and Environment for previous LUST site expenditures made while the program was at the Health Department in order to attempt cost recovery for those appropriate sites also.

Sincerely,

John J. Donlon, Executive Director
Colorado Department of Labor and Employment

cc: Jeff Hart US EPA Region VIII

ABBREVIATIONS

CA	Cooperative Agreement
CDOLE	Colorado Department of Labor and Employment
CDPHE	Colorado Department of Public Health and Environment
EPA	Environmental Protection Agency
FSR	Financial Status Report
HMWMD	Hazardous Materials and Waste Management Division
LUST	Leaking Underground Storage Tank
MAP	Management Assistance Program
MBE	Minority-owned Business Enterprise
MOA	Memorandum of Agreement
OIG	Office of Inspector General
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act
SARA	Superfund Amendments and Reauthorization Act
the Legislature	Colorado State Legislature
UST	Underground Storage Tank
WBE	Women-owned Business Enterprise

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Administrative Manager, Hazardous Materials and Waste
Management Division

Colorado Department of Labor and Employment

Executive Director
Associate Director for Finance
State Inspector of Oils, Oil Inspection Section