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TITLE: Ensuring the Adequacy of Cost Share
Provisions in Superfund State Contracts

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

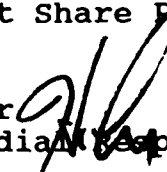
OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MAR 29 1993

OERR DIRECTIVE 9375.7-01

MEMORANDUM

SUBJECT: Ensuring the Adequacy of Cost Share Provisions
in Superfund State Contracts

FROM: Henry L. Longest II, Director 
Office of Emergency and Remedial Response

TO: Director, Waste Management Division
Regions I, IV, V, VII
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Region III, VI, VIII, IX
Director, Hazardous Waste Division
Region X
Director, Environmental Services Division
Regions I, VI, VII, X

PURPOSE

This memorandum requests Regional Offices to re-examine existing Superfund State Contracts (SSCs) for Fund-financed remedial actions to verify that they adequately reflect incurred and projected remedial action costs. Specifically, you should evaluate the adequacy of State cost share assurances with respect to change orders or other likely additional costs. Furthermore, you should also re-evaluate your tracking systems for remedial action costs to assure that they provide timely site-specific expenditure information which allows you to amend SSCs before cost share provisions become inadequate.

BACKGROUND

Regional Offices have recently sought Headquarters assistance in at least two instances where EPA-lead remedial action costs were exceeding the amounts provided in the corresponding SSCs. Such excess expenditures may constitute breaches of the SSCs and may represent violations of existing statutes and regulations which, in turn, could prevent EPA from continuing remedial action at a site. Avoidance of these

problems is especially important in light of the Administrator's concern that the Agency manage Federal resources well, as expressed in her recent testimony before the Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce (copy attached).

Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), prohibits EPA from "provid[ing] any [Fund-financed] remedial actions" unless the State "first enters into a contract or cooperative agreement" with the Agency in which the State makes certain, specified assurances. Section 300.510(a) of the National Contingency Plan provides that a fund-financed remedial action undertaken pursuant to CERCLA Section 104(a) cannot proceed unless a State provides its applicable, required assurances. Section 35.6800(a) of Subpart O further clarifies that an SSC "is required before EPA can obligate or transfer funds for an EPA-lead remedial action." Thus, EPA is precluded from initiating an EPA-lead, Fund-financed remedial action until a valid SSC is in place containing the necessary assurances.

This memorandum concerns the assurance that a State will share in the cost of the remedial action. The SSC contains the remedial action cost estimate, as well as the State's cost share percentage/amount (among other assurances), and governs the amount of funds the State is obligated to pay. **Once all of the funds identified in the SSC are obligated, EPA must not obligate more funds until the SSC has been amended.** Any expenditure by EPA in excess of the estimated cost would be beyond the terms of the SSC, and the State may not be contractually bound to share in paying the additional cost. Without having the adequate cost share provision in the SSC, EPA may have to interrupt an ongoing cleanup and may also be in violation of CERCLA for conducting remedial action without having a valid SSC.

In contrast, where EPA and the State have entered into a State-lead, site-specific, cooperative agreement, such potential problems do not exist. Under a cooperative agreement, the State pays for the remedial action and EPA reimburses the State for only the Federal portion of eligible costs. However, at an EPA-lead site, where the Agency and the State enter into an SSC, EPA pays for the remedial action, and the State subsequently pays EPA its share of the cost.

Whether due to change orders or other factors, the SSC's estimated project costs will sometimes prove to be too low. Regional Offices have also reported that the length of time States require to secure all required approvals for revision to an SSC varies greatly, with some States needing as long as six months. Because of the difficulty in accurately estimating project costs and the time required to negotiate a revised SSC, **Regional Offices must anticipate the need and begin the process for negotiating SSC revisions as soon as it becomes clear that the State cost share amount will be exceeded.**

IMPLEMENTATION

Regional Offices should take one immediate and one future action to ensure that cost share assurances in SSCs are, and continue to be, adequate:

Immediate. Review cost share assurances in SSCs for all ongoing remedial actions to verify that current and projected contract obligations (including contingencies) are within the amounts specified in the SSCs.

Future. Evaluate tracking systems to ensure that they have: 1) effective monitoring of actual, planned, and projected estimates of remedial action costs against the State cost share specified in each site's SSC; and 2) effective early-warning mechanisms to enable initiation of timely negotiations of any SSC revisions necessary to conduct uninterrupted cleanups. (You may wish to consult with your policy and management office to assure the effectiveness of your tracking systems.)

Your knowledge of, and experience with, your States' SSC approval processes will dictate how far ahead SSC revision negotiations should begin. To allow greater flexibility than earlier SSCs had, most SSCs now include a reasonable cost contingency provision to accommodate change orders during the construction process. The use of contingency amounts must be closely monitored, but it may help provide a buffer to allow time for any necessary negotiations for SSC revisions to take place.

Please refer any questions on this memorandum to Murray Newton, Chief of the State and Local Coordination Branch, Hazardous Site Control Division (Mail Code 5203G), or Carolyn Offutt, Chief of the State Involvement Section. Both may be reached at 703/603-8840 (voice) or 703/603-9100 (facsimile).

Attachment

**cc: Regional Waste Management Branch Chiefs
Regional Removal Managers
Assistant Regional Administrator for Management
Regions I - X
Regional Counsels
Earl Salo, OGC (LE-132S)
Steven Pressman, OGC (LE-132G)
William Cooke, FMD (PM-226F)**

STATEMENT OF
CAROL M. BROWNER
ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE HOUSE ENERGY AND COMMERCE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

MARCH 10, 1993

Mr. Chairman, I appreciate your invitation to testify today about contract mismanagement at the Environmental Protection Agency.

We have a very serious problem -- this problem goes far beyond just contracts management. It goes to the very heart of how the Agency operates.

Not only is taxpayer money being wasted, but the American people's faith in their government is being undermined.

If we are to meet the demands of the public we serve, we must go beyond mere compliance with the letter of the law. We must do more than merely relieve the symptoms of government mismanagement. We must go to the root of the problem, reinvigorate the ideal of public service in all EPA employees, and through this one Agency begin to restore people's faith in the effectiveness and accountability of their government.

I came to EPA from the state of Florida, where I managed a large state agency. Because of my experiences there I believe that government, if it is to be successful over the long run, if it is to retain public trust, must be accountable to the people it serves.

I am appalled by what I have learned about EPA's total lack of management, accountability, and discipline. I have reviewed audit reports and received briefings from staff that clearly describe poor management practices, serious violations of rules, and intolerable waste of taxpayers' money.

Last year this Subcommittee did much to illuminate EPA's failure to manage its contracts. A number of recent audit reports and surveys indicate similar mismanagement in the Agency's assistance management programs, grants, cooperative agreements, and interagency agreements. Internal assessments have noted areas of weakness in our financial system as well. In other words, accountability is in disrepair. Mismanagement of extramural resources is widespread and deeply embedded.

While efforts have begun to redress many of these problems, it is apparent to me that much more remains to be done. I am committed to carrying out the recommendations of the Standing Committee on Contracts Management. But creation of the Standing Committee and implementation of its recommendations is only a first step.

We must go beyond the procurement and management of contracts. Good government principles and basic protection of taxpayers' dollars demand that all extramural resources be well managed. I am committed to fundamentally changing business-as-usual at the Agency and rebuilding the ethic of good management Agency-wide.

It is clear to me, Mr. Chairman, that if we are to solve the problem facing this agency and change the culture that has developed then we must pursue three courses of action. One, construction of a rigorous system of accountability for the management of our resources. Two, establishment of clear standards for disciplinary action. Failure to meet these standards must result in immediate discipline. And three, development of an overall management scheme based on clear goals, work plans and milestones for measuring success.

Let me detail some of my initiatives.

I. Accountability

Integrated Financial Management System

- o We must remain committed to putting in place the systems improvements that are needed. The Agency has been criticized repeatedly because its integrated financial management system does not provide managers with key information needed to make decisions, evaluate program benefits, and ensure sound financial management practices. We are committed to achieving these enhancements.

Senior Resource Officials

- o I will replace Senior Procurement Officials with Senior Resources Officials (SROs) who are not only accountable for contacts management, but for management of all extramural resources in their Program or Region. SROs will:

- Be selected jointly by the Assistant or Associate Administrator (AA) or the Regional Administrator (RA) and by the Chief Financial Officer (CFO).
- Trained, along with their AAs and RAs, in their responsibilities, including:
 - the rules and regulations governing the use and management of extramural resources;
 - which aspects of their authorities can be delegated and to whom; and
 - the disciplinary penalties for violations of the rules and regulations, both for themselves and those to whom they delegate.
- Required, along with their AAs or RAs to sign forms that they have received SRO training, they understand the rules, regulations, discipline, authorities and delegations.
- Report directly to the AA or RA, in an SES position such as the Deputy Assistant or Associate Administrator or the Assistant Regional Administrator. Any exceptions must be approved by the Administrator, and approvals must be renewed annually.
- The SRO may delegate appropriate functions, but not accountability, to one individual reporting directly to the SRO. Delegations of SRO

authorities must be approved by the AA or RA and the CFO.

II. Discipline

- o Our current disciplinary system does not send a clear message to EPA managers and staff about the gravity of resource management violations. We will establish guidelines on deciding cases, determine who has official responsibility, and speed up the process. The disciplinary system, and the penalties for these types of violations will be communicated clearly to every employee so that EPA employees will be accountable for resource management violations.

III. Management

We will undertake a Base Review.

- o The Agency has over 17,000 full-time employees and a budget of over \$6 billion. These are not trivial resources. Given my recent experiences in developing the 1993 stimulus package as well as the 1994 President's budget, we intend to perform a thorough review of how our money and FTEs are allocated as part of the FY 1995 budget process. This review will help me determine if there are areas in our current base budget that can be redirected to help us solve some of the problems discussed here today.

Senior Management Strategy Council

- o Because EPA's past actions often have been tactical rather than strategic, I will establish a high-level council of senior managers to not only integrate management with mission, but also to integrate use of all our various resource management tools. This council will provide Agency-wide leadership and an all-encompassing approach to the resolution of resource management issues and dangers.

Senior Management Education

- o Once my senior management team is in place, I will establish an educational program for them to ensure they are aware that good management is integral to our mission, and to familiarize them with the rules and regulations of all aspects of financial management. In establishing this program, we will consult with the General Accounting Office and our Office of Inspector General to request their assistance.

Human Resources Initiatives

- o To attract and retain good staff to jobs in which a significant amount of time is dedicated to extramural resources management, we will:
 - Make extramural resources management a desirable ranking factor for promoting staff to GM-13s and above.

- Assure that full-time project officers and other program extramural resources managers have promotion potential beyond the GS-13 level.

Employee Orientation

- o Finally, we want to strengthen EPA's employee orientation program by including a strong component emphasizing the importance, responsibility, and accountability of public service. It's not enough for new EPA employees to understand our organization structure and the laws we administer. They also have to understand that they fill positions of public trust, and that the public expects ethical behavior and accountability. If we can begin inculcating these values into EPA employees from their first day of employment, then we will take a big step toward solving our long-time problems.

Independent Public Policy Group

- o We plan to commission an independent public policy group to assess the balance between our intramural and extramural resources. I expect this group to examine how leveraged we are in the application and use of extramural resources; determine, in the use of these resources, the potential for performance of inherently governmental functions; and identify Agency resource requirements to adequately manage extramural resources.

I am committed to taking this Agency to the point where our management and use of outside support not only follow prescribed rules but is beyond reproach. I want it to be a model of efficiency and accountability. Management integrity will be a cornerstone of my administration. The country's taxpayers expect -- and deserve -- no less than that.

Mr. Chairman, I look forward to working with you and members of this subcommittee as we move forward in our efforts to solve these very serious problems.