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EPA

Report of Audit

CONSOLIDATED REPORT ON
EPA'S COST RECOVERY ACTIONS AGAINST
POTENTIAL RESPONSIBLE PARTIES

E5EH4-11-0066-61534

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CONSOLIDATED REPORT ON EPA'S COST RECOVERY ACTIONS AGAINST POTENTIAL RESPONSIBLE PARTIES

TABLE OF CONTENTS

TABLE OF CONTENTS
(CONT'D)

PAGE

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

OFFICE OF
THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Audit Report No. E5EH4-11-0066-61534
Consolidated Report On EPA's Cost Recovery
Actions Against Potential Responsible Parties

FROM: Ernest E. Bradley III
Assistant Inspector General for Audit (A-109)

TO: J. Winston Porter
Assistant Administrator for Solid Waste and
Emergency Response (WH-562A)

SCOPE AND OBJECTIVES

We have completed a review of the Environmental Protection Agency's (EPA) efforts to have potential responsible parties clean up hazardous waste sites or pay for the cleanup performed by the Federal government under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. CERCLA provides that the parties responsible for the hazardous waste conditions at disposal sites should either perform cleanups themselves or reimburse the Government for cleaning up the sites. The objectives of our review were to: (1) identify the problems associated with obtaining reimbursement for removal actions that were funded by the Hazardous Substance Response Trust Fund (Trust Fund); and (2) determine whether internal controls were adequate to ensure that EPA was pursuing all enforcement actions necessary to achieve cost recovery.

We conducted our review at EPA Headquarters and EPA Regions 3 and 4. Our review covered EPA's cost recovery actions from December 11, 1980 (inception of CERCLA) through September 30, 1985; and Agency policies, procedures and new initiatives through May 30, 1986. Our scope included:

1. Reviewing CERCLA policies, procedures, guidance documents and other information related to the enforcement of CERCLA;

2. Interviewing senior EPA Headquarters and Regional officials, key contractor officials, and attorneys from the Department of Justice to obtain their views on EPA's hazardous waste site cleanup programs;

3. Reviewing monthly financial management reports, quarterly management accountability reports, the legal enforcement docket system, and quarterly enforcement accomplishments to determine how effective EPA efforts were in having potential responsible parties clean up hazardous waste sites or recover cleanup costs; and

4. Examining selected case files to determine delays affecting sites from progressing towards settlement or cost recovery.

Our review was performed in accordance with the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions (1981 Revision), as promulgated by the Comptroller General of the United States. Accordingly, our examination included tests of accounting records and other auditing procedures we considered necessary in the circumstances. Deficiencies disclosed as a result of our review are included in the Findings and Recommendations section of this report. We have no indication that items not tested would disclose further weaknesses beyond those described in the Findings and Recommendations section.

This report consolidates the results of our reviews at EPA Headquarters, Region 3, and Region 4 conducted by the Internal, Mid-Atlantic and Southern Audit Divisions of the Office of Inspector General. We issued individual reports to each of the two Regional Administrators. The findings and recommendations developed during our audits of Regions 3 and 4 were previously discussed with and provided to the appropriate Regional Administrator for comment. In addition, the findings and recommendations developed in our Regional reports and at Headquarters were discussed with appropriate Headquarters officials. Also, we issued a flash report, on September 5, 1984, alerting the Agency to problems with its enforcement activities.

SUMMARY OF FINDINGS

As of September 30, 1985, EPA had obligated $1.3 billion in Trust Fund monies. During this same time period, the Agency had negotiated 84 cost recovery cases, totaling $26 million, which resulted in the Trust Fund being reimbursed $14 million from 72 cases. This represents a cost recovery ratio of 1.1 percent of total Trust Fund obligations. This does not include the Agency efforts in negotiating clean up actions to be performed by responsible parties, or responsible parties who were not technically capable of performing a cleanup who paid into the Trust Fund to finance the work ("cash out"). Unless EPA becomes more aggressive in pursuing cost recovery actions, its ability to clean up the nation's worst hazardous waste sites could be impeded because the Trust Fund will not be sufficiently replenished.

Cost recovery activities are becoming increasingly more important in the cleanup process. According to a General Accounting Office (GAO) report dated May 6, 1986, EPA may need to spend as much as $80 billion to clean up 4,000 of the worst hazardous waste sites over the next 30 years. EPA estimates that about half of these sites will be cleaned up or financed by responsible parties, while the remaining sites will be cleaned up by using Trust Fund monies. EPA can replenish the Trust Fund by obtaining reimbursement for work it has completed at hazardous waste sites. The

funds recovered will allow EPA to increase the number of sites that will receive attention. By increasing the number of sites to be cleaned up, EPA will alleviate the ever increasing hazardous waste threats to the public and environment.

We found EPA had encountered various problems in replenishing the Trust Fund, because it was not taking aggressive cost recovery actions. However, some of the problems encountered were outside EPA's immediate control. The issues outside of EPA's control may eventually need to be resolved by Congress and the courts. We also found EPA's recovery activities were hampered because it did not have a coordinated comprehensive systematic structure for overseeing cost recovery actions.

We found EPA was not aggressively pursuing cost recovery actions against potential responsible parties where funds expended for cleanup were under $200,000. Based on Agency records, we identified 182 completed removal actions under $200,000, totaling $6,130,209, where cost recovery actions were not being pursued by EPA. In addition, we calculated that EPA could potentially lose over $60 million in the next 20 years if cost recoveries for removal actions are not pursued. EPA officials attributed the overall lack of cost recovery action primarily on resource constraints, and the fact that the expenditures required to recover costs may approach the costs of the cleanup itself. The expenditures incurred by the Agency in preparing and pursuing a cost recovery action are potentially recoverable from the responsible parties. We recognize resource constraints may limit the number of cost recovery actions. However, failure to undertake minimal cost recovery activities or explore alternative methods for recovering costs on sites under $200,000 would adversely affect the Congressional goal of cleaning up hazardous waste sites.

An issue which was somewhat outside the control of the Agency was potential responsible parties filing for bankruptcy. As of September 30, 1985, bankruptcy claims totaled over $65 million. Of the $65 million, EPA actually recovered $27,165. We found that the Agency was not taking aggressive and timely action in filing for cost recovery when the potential reponsible party filed for bankruptcy. This could jeopardize the Agency's ability to preserve its right as a creditor. Also, it is especially important for EPA to establish itself as a creditor, since the courts have been leaning towards giving Government units first priority after secured creditors. EPA, by increasing its efforts, may stand in a better position to recover funds and be recognized as a first priority creditor.

Even though the Agency had a policy prescribing a 60-day cut-off period for negotiations, we found 67 percent (276 of 411) of the negotiations lasted an average of 279 days. Fifteen of the site negotiations over 60 days, amounting to $3,598,700 in clean-up costs, were concluded without a settlement or cost recovery reached with potential responsible parties. Agency officials informed us that the 60-day cut-off period was not realistic and negotiations are usually lengthy when several responsible parties were involved. EPA can improve its monitoring of negotiations with responsible parties by requiring regional offices to maintain documentation supporting the continuation of a negotiation and tracking

milestone dates in an information system. Also, to ensure that established milestones are met, EPA needs to inform the responsible parties of the negotiation timeframes. Thus, if a reasonable settlement did not appear feasible, negotiations can be broken off and cost recovery pursued through civil action after EPA cleans up the site.

Historically, there has been considerable confusion over whether a statute of limitations (SOL) will apply to CERCLA cases. The Congress may resolve this issue in the CERCLA reauthorization bill. However, until this issue is resolved by Congress or the Federal courts, EPA is at risk. We identified 65 completed removal actions, totaling $2,917,200, which may violate "tort law" if not filed on or before December 31, 1986. EPA officials believe that this area presents a low risk to the Agency.

Overall, EPA could have a better managed CERCLA enforcement program if it had a comprehensive management information system (MIS) which would consolidate the data now contained in other Agency MISs. In addition, the new system should include information on SOL dates, and negotiation milestone dates which currently are not being collected. As the number of enforcement actions increase in the future, this system will be crucial to monitor enforcement activities and ensure all significant milestones are being met. EPA will not have the resources or time to manually search through individual regional project site files or review various MIS reports to determine the status of enforcement activities. Realizing the need for a comprehensive MIS to improve monitoring of CERCLA enforcement activities, EPA is in the process of developing such a system.

The above audit results are discussed in detail in the "Findings and Recommendations" section of the report.

The Assistant Administrator (AA) for Solid Waste and Emergency Response provided formal written comments on our draft audit report in a memorandum dated September 10, 1986. The AA generally agreed with our recommendations and indicated that over the next several months the Agency will be reviewing and revising its Superfund policies and procedures. We have summarized the AA's position to appropriate locations in the report and included the complete response as Appendix 1. We also discussed the results of our audit with senior officials of the Office of Solid Waste and Emergency Response and the Office of Enforcement and Compliance Monitoring on July 10, 1986.

We realize that the proposed Superfund bill will bring about some changes regarding the issues discussed in the report. However, EPA would continue to have responsibility to clean up hazardous waste sites. Therefore, we believe that EPA will continue to need a sound enforcement program. We made this review to determine how the Agency could more effectively manage its CERCLA enforcement program.

ACTION REQUIRED

In accordance with EPA Directive 2750, the action official is required to provide this office a written response to the audit report within 90 days of the audit report date. The Action Official's response should include an action plan with specific milestone dates for each corrective action that was not fully implemented.

BACKGROUND

On December 11, 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510). This Act, commonly known as Superfund, provides for liability, compensation, cleanup, and emergency response for hazardous substances released into the environment and uncontrolled and abandoned hazardous waste sites. Superfund broadly defines two types of response actions: removal and remedial. The former term represents relatively short-term responses, while the latter represents actions of longer duration leading to permanent resolution.

To fund removal and remedial actions, title II, subtitle B, established a $1.6 billion Trust Fund to help clean up these sites. The Trust Fund was to be collected over a 5-year period from taxes on petroleum and certain chemicals and from Federal appropriations. Further, CERCLA requires that parties responsible for the hazardous conditions at the sites either perform the cleanups themselves or reimburse the Government for cleaning up the sites.

EPA's enforcement authority to recover the costs of cleanup activities performed by the Government comes from sections 106 and 107 of CERCLA. Section 106(a) of CERCLA authorizes the issuance of ". . . such orders as may be necessary to protect public health and welfare and the environment." Section 107 provides that, "past and present owners and operators of a site, and generators and transporters who contributed hazardous substance to a site, shall be liable for all costs incurred by the U.S. Government, a state, or any other person, and for damages to or loss of natural resources."

The Office of Waste Programs Enforcement (OWPE) and the Office of Enforcement and Compliance Monitoring (OECM) are the Headquarters offices responsible for overall management of the CERCLA enforcement programs. OWPE provides policy direction to the regions for waste enforcement activities. In addition, OWPE develops objectives, strategy, programs, and evaluation criteria for regional enforcement programs. OECM is responsible for: (1) developing national policies and procedures for uniform, fair and appropriate enforcement of the environmental statutes and regulations; (2) monitoring implementation of national policy by the regional offices; and (3) reviewing for quality the legal and factual development of those cases which, because of national or precedential significance, are referred to Headquarters from the regions prior to referral to the Department of Justice. Because EPA is decentralized, the majority of EPA CERCLA actions are the responsibility of the regions. Thus, Headquarters plays more of an oversight role while the regions actually carry out the program objectives.

CERCLA enforcement actions can occur at different points in the cleanup process and involve both regional and Headquarters program offices. This creates difficulty in identifying and tracking milestones of CERCLA enforcement activities. In general, the following actions occur once a responsible party is identified: (1) EPA attempts to negotiate with the responsible party(ies) in order to reach a settlement for cleaning up the site; and (2) if a settlement was not reached, EPA can cleanup the site with Federal funds funds and seek to recover the cost of cleanup later.

FINDINGS AND RECOMMENDATIONS

1. EPA NEEDS TO ACTIVELY PURSUE SITES UNDER $200,000

The Agency was not aggressively pursuing cost recovery actions against potential responsible parties where funds expended for cleanup were under $200,000. Despite a recent policy authorizing the regions to negotiate with potential responsible parties for settlements, the extent of EPA's pursuing these cases was questionable due to the higher priority given to large dollar sites. As of September 30, 1985, we identified 182 non-National Priority List (NPL) completed removal actions, totaling $6,130,209, where funds may never be recovered if cost recovery actions are not pursued. EPA officials believe that the costs associated with these site costs may never be recovered because the Agency resources needed to recover the expenditures may outweigh the actual costs recovered. We understand that resource constraints may limit EPA's pursuit of all hazardous waste sites. However, EPA's failure to pursue sites under $200,000 would ultimately impact on EPA's replenishing the Trust Fund and would send a signal to potential responsible parties that the Agency was not serious about recovering site cleanup costs. We calculated that EPA could potentially lose over $60 million in the next 20 years if cost recoveries for removal actions are not pursued. In addition, projected increases in hazardous waste sites may only increase the likelihood of cost recovery efforts not being taken on sites under $200,000. EPA's policy could adversely affect the Congressional goal of cleaning up hazardous waste sites.

EPA Needs To Take Aggressive Action To Recover Over $6.1 Million In Trust Fund Expenditures

We identified the total number of completed Superfund sites with expenditures under $200,000, from the inception of CERCLA through September 30, 1985. Also, we reviewed EPA's efforts to pursue cost recovery actions for these sites. We limited our analysis to removal sites since these sites are generally intended for shorter-term responses to releases of hazardous substances and are generally limited by CERCLA section 104 to six months in duration and $1 million. We requested and received from the Emergency Response Division (ERD) and the Office of Program Management (OPM) the names of all sites with completed removal actions on or before September 30, 1985. We found that EPA had completed 376 non-NPL removal actions, totaling $76,534,439 in obligations, through September 30, 1985. Of the 376 removal actions, we found 248 removal actions (66 percent), totaling $11,474,856, which were under $200,000 in cleanup costs (refer to Exhibit A). Our review further disclosed that 182 of the 248 sites were not being pursued by EPA for cost recovery.

Section 107 of CERCLA provides that past and present owners and operators of a site, and generators and transporters who contributed hazardous substances to a site, may be held liable for all costs of removal and remedial actions undertaken by the United States, a state or any other person. The Federal government can attempt to recover cleanup costs in a lawsuit or, if the circumstances favor it, can agree to a settlement with the responsible parties. The settlement would normally require the responsible parties to voluntarily reimburse the Trust Fund (and possibly others) for cleanup costs incurred.

Based on the data reflected in the Agency's information systems, we reviewed the extent of EPA's pursuit of cost recovery on sites under $200,000. During our review of Region 3, we identified 63 sites (as of September 30, 1984), totaling $2,240,134, where cleanup costs were under $200,000. In determining whether EPA was actively pursuing cost recovery for these sites, we found that 18 of the 63 sites were completed non-NPL removal actions costing under $200,000.

Our review of the 18 completed removal actions disclosed that Region 3 had taken action to recover cleanup costs from responsible parties in four instances. For two of these four actions, Agency expenditures totaled $71,340 while the settlements resulted in recoveries of $58,504. The Region referred to Headquarters for action the remaining two removal sites, totaling $255,756. Regional personnel informed us that no actions were currently planned to recover any costs from responsible parties for the remaining 14 completed sites, totaling $728,822.

Region 3, in its response to our Regional report, indicated that the remaining removals were not referred for cost recovery because there were no viable responsible parties associated with the removals. We requested Region 3 to provide us with documentation that no viable responsible parties existed. On July 28, 1986, the Regional Administrator (RA) responded to our Region 3 report with a follow-up memorandum. In his response the RA indicated that action is still ongoing at approximately half of the sites which originally had no viable parties.

In Region 4, we identified 37 removal sites (as of September 30, 1984), totaling $1,726,888, where site expenditures would not exceed $200,000. We reviewed the Agency's records and found that 24 of 37 sites, totaling $958,288, were completed removal actions under $200,000. Cleanup activity at the 24 sites had been completed for several months. However, negotiations with the responsible parties for cost recovery were not scheduled. For example, removal activity was completed at J&L Drum, TN in October 1982 at a cost of $44,015. Removal work at Caldwell County, NC was completed in July 1983 at a cost of $39,990. However, cost recovery action had not been initiated or planned at these sites at the time our fieldwork was completed.

Regional officials attributed the overall lack of cost recovery action on sites under $200,000 primarily to resource constraints and existing policy guidance which discouraged cost recovery action on sites under $200,000. Regional officials further explained that other factors such as strength of evidence, financial viability of the responsible party, risk of litigation and amount of funds involved also influenced their decisions regarding pursuit of cost recovery actions.

We reviewed the Office of Waste Programs Enforcement (OWPE) and the Office of Enforcement and Compliance Monitoring (OECM) management reports to determine whether the Agency was pursuing cost recovery actions on the 248 removal actions we identified as of September 30, 1985. Our review of the OECM's Docket System, OWPE's Case Management System, Superfund Comprehensive Accomplishment Plan (SCAP) and the Removal Tracking System disclosed that the Agency was not pursuing cost recovery actions on 182 removal sites EPA-wide, amounting to $6,130,209. (Refer to Exhibit B.)

Confusion Exists Over How to Handle Small Cost Recovery Cleanup Actions

To provide more cost effective methods of settling cost recovery claims, EPA issued a policy entitled "Interim CERCLA Settlement Policy," dated December 5, 1984, which stated, in part that:

> "The Regions are authorized to conclude settlements in certain types of hazardous waste cases on their own, without prior review by Headquarters or DOJ. Cases selected for this treatment would normally have lower priority for litigation. Categories of cases not subject to Headquarters review include negotiation for cost recovery cases under $200,000, and negotiation of claims filed in bankruptcy. In cost recovery cases, the Regions should pay particular attention to weighing the resources necessary to conduct negotiations and litigation against the amounts that may be recovered, and the prospects for recovery. . ."
>
> "Specific details concerning these authorizations will be addressed in delegations that will be forwarded to the Regions under separate cover. Headquarters is conducting an evaluation of the effectiveness of existing delegations and is assessing the possibility of additional delegations."

Prior to issuing the Settlement Policy, the Agency generally pursued cost recovery actions only on sites where total cleanup costs exceeded $200,000. While the December 5, 1984, Settlement Policy authorized the regions to negotiate settlements with potential responsible parties where total cleanup costs did not exceed $200,000, Headquarters never delegated authority to the regions to actually approve and sign settlement agreements. We also noted that the Settlement Policy stated that priority should be given to sites where cleanup costs exceed $200,000.

In our review of Region 3, CERCLA Removal Enforcement Section personnel stated there was a target on case referrals sent to Headquarters annually for cost recovery, and these referrals were limited to sites over $200,000. This target was established in the Agency's Strategic Planning and Management System (SPMS). As a result, the Enforcement Section's priority was to refer sites over $200,000 to Regional Counsel for review and subsequent referral to Headquarters. Furthermore, Region 3 personnel stated that sites under $200,000 were not referred to Regional Counsel because the OECM and the Department of Justice (DOJ) normally will not pursue cost recovery actions on any site under that amount. However, OECM personnel told us that SPMS does not limit case referrals to sites over $200,000 and they had never refused to pursue a case for cost recovery, although they admitted that higher priority is placed on sites over $200,000.

The EPA Administrator, in a February 13, 1985, speech indicated that EPA must pursue cost recovery actions. The following indicated the direction he planned:

"Let's remember that EPA's mission is progress in achieving environmental improvement. We achieve that progress by setting sound standards and enforcing them. The regulated community must know that we are committed to assuring this progress. We encourage them to help us move forward on a voluntary basis. But where they are unwilling, we will vigorously enforce our laws and our standards. . . . It will be our policy to take action to recover all costs incurred by government in Superfund response actions."

On July 12, 1985, OECM and the Office of Solid Waste and Emergency Response (OSWER) jointly issued a memo to the regions addressing small cost recovery referrals. The memo stated:

"Based on discussions among our staff and Regional enforcement personnel, it appears that confusion exists regarding Agency policy on referring CERCLA cost recovery cases valued at less than $200,000. . . . Although the Agency has placed a higher priority on referring cost recovery cases with expenditures in excess of $200,000, there are situations where referring small cost recovery actions is entirely appropriate. For example, where we have initiated settlement discussions which have failed to produce a settlement because of the recalcitrance of the responsible parties, referral would generally be appropriate to demonstrate the Agency's commitment toward enforcement as a vehicle to compel private party response at CERCLA sites. In addition, where a region has no case for more than $200,000, where an enforcement presence would serve a deterrent effect, where a Region's other enforcement priorities allow for the expenditure of resources to support a small cost recovery case, or where the circumstances are ripe for testing some important aspect of law, referral of such as case would be appropriate."

While this memo showed that Headquarters intended the regions to pursue small cost recovery cases under $200,000, at the time of our review the regions had not received formal delegation from Headquarters to implement this guidance. In addition, Region 4 stated in its response to our April 18, 1986 audit report:

"As, OIG is aware, the Headquarters policy has been and continues to be that, generally cost recovery referrals are a low priority at sites where "minor" costs have been incurred (previously $200,000, now proposed as $500,000 under the October 4, 1985 draft CERCLA settlement policy). The basis for this policy, including resource constraints and cost-effectiveness has been articulated in several Headquarters policy documents."

Apparently, from these comments confusion still exists as to how to handle sites under $200,000. EPA plans to raise the dollar limit to $500,000 for small case recovery cleanups. In our opinion, this would further compound the problem since the number of completed sites and the resulting dollar values would increase. For example, as of September 30, 1985, the number of completed removals between $200,000 and $500,000 totaled 19, with a dollar value of $5,761,002, that may not be recovered (Refer to Exhibit C.)

A major obstacle faced by EPA was that it could not compromise Section 107 cost recovery actions if they exceed $20,000 or if the settlement resulted in the Agency recovering less than 100 percent of incurred costs. CERCLA does not authorize EPA to compromise cost recovery claims. The only other statutory authority under which EPA may compromise claims of the United States is the Federal Claims Collection Act of 1966. According to the law, if EPA wants to settle a claim for less than 100 percent, or that is over $20,000, the settlement must be referred to DOJ for final approval. For this type of recovery action the regions must refer the settlement package to EPA Headquarters for concurrence and then Headquarters will refer the package to the DOJ. In discussions with an OECM official he stated that this procedure was causing an added burden to the Headquarters staff.

As previously mentioned, EPA was not actively pursuing sites where costs expended from the Trust Fund were under $200,000. We discussed this issue with both Regional and Headquarters senior management. Region 3 officials emphasized that OSWER personnel had verbally instructed them not to pursue sites under $200,000. OWPE informed us that some sites either do not have a viable responsible party or a potential responsible party can not always be found. In addition, senior Headquarters representatives from both OWPE and OECM informed us that these costs were not actively pursued since resource constraints often limited EPA's cleanup efforts to higher priority or large dollar (over $200,000) sites. In the early years of the Superfund program, EPA was faced with a huge number of existing and threatening hazardous substance releases and the need to conserve and use Trust Fund resources most efficiently. As a result, EPA targeted its enforcement resources on those sites where there was a greater likelihood of successful action. We recognize that EPA's pursuit of all hazardous waste sites may not be a prudent decision in light of limited resources. However, in our opinion, failure to even undertake minimal cost recovery activities in pursuing cost recovery for these sites increases the potential of responsible parties avoiding their liability and this will consequently impact on the amount of funds available for cleanup of hazardous waste sites.

Future Impact On The Trust Fund

In December 1984, as required by Section 301 (a)(b)(c) of CERCLA, EPA submitted a report to Congress projecting the size and focus of the Superfund program and future funding needs. According to the study, EPA assumed that: (1) there were about 25,000 hazardous waste sites; (2) 2,500 of these 25,000 would be NPL sites; and (3) cost recovery from responsible parties would be at a rate of 47 percent for removals. We estimated the future dollar impact of the Agency's policy on the Trust Fund by identifying the Agency's projections for the future number of removals and the average dollar amount involved for removals under $200,000. The following information and assumptions used in the calculation came from EPA's Section 301 study.

EPA's Section 301 study predicted that 190 removals will be performed each year. One hundred and fifteen of these removals will be at non-NPL sites and will average less than $200,000 per site. Based on historical data

we calculated that potentially over $60 million will be lost to the Trust Fund in the next 20 years if cost recoveries for removal actions under $200,000 continue to be ignored. Presented below is our calculation.

- 190 removals per year - 30 NPL removals = 160 non-NPL removals
- 160 non-NPL removals x 72 percent (removals under $200,000) = 115 removals under $200,000
- 115 removals per year under $200,000 x $49,532 average cost of a removal = $5,696,180 per year
- $5,696,180 per year x 20 years of removal activities = $113,923,600
- $113,923,600 x 53 percent nonrecovery rate = $60,379,508

This calculation did not take into account any increased cost for inflation over the 20 year period. Further, the recovery rate of 47 percent assumed by EPA may be too high. For example, GAO in a March 29, 1985, report stated that the figure of 47 percent for cost recovery for removals was an optimistic assumption based on what EPA hopes to accomplish rather than the actual 21 percent rate experienced for removals to date. We discussed this calculation with OERR's Chief, Office of Program Management and he stated that the calculation was reasonable.

Alternative Methods of Pursuing For Cost Recovery Would Permit Recovery While Saving Resources

Given the number of incidents or sites at which EPA had spent Trust Fund monies, cost recovery cases have the potential to severely drain Agency and DOJ enforcement resources. While the Agency is authorized to seek recovery of all Trust Fund monies, the costs associated with case referral, case preparation and litigation for cases involving removal or small remedial actions in some cases may approach the cost of the cleanup itself. In order to use Agency resources effectively the Agency needs to explore alternative methods for pursuing cost recovery actions.

In a March 1986 article entitled: The Need for Innovative Environmental Enforcement, the Acting Assistant Administrator for OECM indicated that alternative approaches are available for EPA to pursue cost recovery claims. In the article he stated the following:

> "EPA can make more effective and efficient use of its existing resources by exploring other means of bringing and resolving enforcement actions, and making the present system more efficient. . . . Some of these cases could be handled by arbitration. An example of this type of case, in which the need for arbitration is more apparent, are cost recovery cases under Section 107 of the CERCLA . . . . EPA and the regulated community must be willing to depart from the traditional judicial and administrative enforcement procedures in some cases - especially those under CERCLA - in favor of generally - accepted alternative procedures which promise economies of time, money and other resources. Arbitration, both binding and non-binding, and mediation would seem to be highly suitable alternatives."

We discussed with EPA officials the use of arbitration as one alternative to pursuing cost recovery actions in court. Regional Counsel in Region 3 informed us that filing a cost recovery action in court is a more viable option, since arbitration has no precedential value. Furthermore, they would not like to see the resolution of cases put into the hands of an arbitration board. Region 4 officials, while reacting favorably to the concept of an arbitration board, expressed reservations about the ability of an arbitration board to negotiate settlements if there were several responsible parties involved or if the responsible parties deny liability. Some Headquarters legal officials believe that, while arbitration eliminates the need to go to court and reduces litigation costs, the process is still time consuming for the region and settlements are generally reduced. However, we believe that arbitration should be pursued in the absence of any other action being taken.

In addition, we discussed the possibility of giving these cases to private attorneys outside the Agency on a contingency basis for fees. OECM officials told us this may be a viable solution to reducing the impact on EPA attorney resources.

Conclusion

We recognize that all hazardous waste sites may not be actively pursued where cost recovery from responsible parties is required. While resource constraints and pursuit of high dollar sites may be conserving the Trust Fund, we believe that the Agency should take a more active role in pursuing sites under $200,000. EPA should make every effort to negotiate with responsible parties to recover cleanup costs. We believe that a reasonable effort should be made to recover costs on all sites. Agency management needs to evaluate the cost of pursuing cost recovery actions in court against the prospect of actually recovering costs. Agency management also needs to include in its evaluations the fact that costs incurred for cost recovery actions are potentially recoverable. As the number of hazardous waste sites increases, EPA must aggressively pursue cost recovery to ensure replenishment of the Trust Fund.

OSWER Comments And OIG Evaluation

The Assistant Administrator for OSWER will take our recommendations into consideration when updating Agency policies and procedures. The Assistant Administrator further stated that the new Superfund bill expressly allows for alternative dispute resolution procedures. In addition, the AA stated that the new bill would give EPA administrative authority to pursue cost recovery actions under $500,000, and it should not be necessary to hire outside attorneys. We believe if the proposed new law gives Superfund the authority to handle cases under $500,000 through administrative means, the Agency will be in a better position to pursue cost recovery actions. However, since the Agency has limited personnel resources and priority may still be given to high dollar cases, we still believe that outside attorneys on a contingent basis will be of benefit to the Agency.

Recommendations

We recommend that the Assistant Administrator for the Office of Solid Waste and Emergency Response:

1. Require that minimal cost recovery actions (e.g., notification, demand letters) be pursued for sites where funds expended are under $200,000. Also, Headquarters should weigh the costs to be incurred for litigation versus the costs to be recovered before pursuing a cost recovery action.

2. Develop and issue specific policies, procedures and negotiating strategies for settling cases under $200,000 ($500,000) to the regions to ensure a consistent Agency approach.

3. Examine the possibility of using an arbitration board or some similar mechanism as an alternative to filing cost recovery actions in court.

4. Pursue the possibility of giving cost recovery actions under $200,000 to outside attorneys on a contingency basis for fees.

2. BANKRUPT POTENTIAL RESPONSIBLE PARTIES IMPACT ON EPA'S ABILITY TO RECOVER CLEANUP COSTS UNDER CERCLA

EPA may not recover millions of dollars spent for cleanup activities at hazardous waste sites because some potential responsible parties (PRPs) file for bankruptcy. During our review, we identified 22 ongoing sites with cleanup costs in excess of $65.2 million, from the inception of CERCLA through September 30, 1985, where costs may not be recovered because of potential responsible parties filing for bankruptcy. Of the $65 million, EPA had actually filed claims against bankrupt parties for over $57 million. Of this, EPA was awarded $47,859, of which $27,165 was received on 2 of the 22 bankruptcy cases. The Agency needs to make improvements in two areas: filing for cost recovery actions against bankrupt parties and establishing a system to identify bankrupt parties. Improvements in these two areas would enhance EPA's cost recovery efforts. Due to the uncertainty which surrounds the bankruptcy issue, as well as the potential of PRPs to avoid their responsibilities, the Agency must take aggressive action during the early stages of the bankruptcy proceedings. This will place the Agency in a better position since its claims conceivably could be classified as a first priority claim (i.e., administrative expenses) under bankruptcy rules.

The OECM is responsible for pursuing legal enforcement actions against bankrupt parties. EPA regional offices are responsible for developing and referring bankruptcy cases to OECM. To assist the regions in developing CERCLA enforcement actions against bankrupt parties, OECM issued, "Guidance Regarding CERCLA Enforcement Against Bankrupt Parties," on May 24, 1984. This policy encourages consistency in current and future bankruptcy cases brought by EPA. The guidance provides, in part: (1) a discussion of enforcement theories available to the Agency to pursue bankrupt parties under CERCLA; and (2) an overview of the relationship between cost recovery under CERCLA and bankruptcy law. Currently, a new procedure is being circulated for review.

The Bankruptcy Reform Act of 1978, commonly referred to as the Bankruptcy Code, states that a claim may be based on a right to payment as a result of work completed and cost incurred. There are two types of bankruptcies, (Chapter 7 and Chapter 11) that a corporation can seek. Chapter 7 bankruptcy is when a corporation actually "walks out" and quits its business. This usually happens because liabilities outweigh the assets and the corporation does not plan to reorganize. The corporation can accomplish this by placing itself in a Chapter 7 bankruptcy with the approval of the court, or it can be forced into it by its creditors with court approval. Thus, the assets are used to pay off creditors. In a Chapter 11 bankruptcy the corporation plans to continue its business and have debts previous to its bankruptcy request worked out with its creditors during the reorganization phase. The corporation will actually be paying current business costs during the period as an ongoing business while it is in negotiation for payment of previous debts. In both types of bankruptcies the court is involved as well as the creditors.

Under section 507 of the Bankruptcy Code, the claims of secured creditors (i.e., repayment of loans) are satisfied fully before assets are distributed to any unsecured creditors. Section 507 also sets up the priority structure for the satisfaction of unsecured claims. The priority order for such claims are:

1. Administrative expenses . . . and any fees and charges assessed against the estate . . . ;

2. Unsecured claims allowed under section 502(b) of the Bankruptcy Code (certain claims arising in involuntary cases);

3. Allowed unsecured claims for wages, salaries, or commissions, including vacations, severance and sick leave pay;

4. Allowed unsecured claims for contributions to employee benefit plans;

5. Allowed unsecured claims of individuals, to the extent of $900 . . . ; and

6. Allowed (certain) unsecured (tax or penalty fee) claims of Governmental units.

Under the Bankruptcy Code it appears that an EPA claim would be classified as a sixth priority claim. However, in a recent bankruptcy case, T.P. Long Chemical, Inc. (Case No. 581-906), the Ohio Federal District Court classified cleanup costs as administrative expenses or a first priority claim under the bankruptcy rules. Thus, this ruling has placed the Agency in a better position to recover cleanup costs. Region 5 Regional Counsel's response to this opinion states that:

"This ruling is significant in that it is the first time to my knowledge that a Bankruptcy Court has held that expenses of an environmental cleanup under CERCLA are administrative expenses of the bankruptcy's estate. While the court did not allow the Agency to stand ahead of perfected secured interest holder, the classification of Government cleanup costs as administrative expenses places the claim of the Agency well ahead of most creditors."

Current Status Of Agency Bankrupt Actions

We requested from the Acting Associate Enforcement Counsel for Hazardous Waste Enforcement at Headquarters, a status report on CERCLA bankruptcy actions. We wanted to determine (1) the number and dollar value of bankruptcy cases being pursued by the regions, and (2) the amount of funds that had been recovered from bankrupt parties. OECM provided us with a status report of CERCLA bankruptcy actions as of September 30, 1985. We also used a Financial Management System report to determine the recovered amount (refer to Exhibit D). These reports disclosed the following:

1. The Agency identified 22 bankruptcy cases, totaling $65,150,841;

2. The Agency had actually filed claims against the above bankrupt parties for $57,245,705; and

3. The Agency, while awarded $47,859, had actually recovered $27,165 in cleanup costs from 2 of the 22 bankrupt cases, as of September 30, 1985.

As shown above, the Agency had filed 22 bankrupt cases; yet, the Agency had not been very successful in recovering costs. We discussed the results with OECM personnel who told us that the Agency would rather use its resources against a PRP with adequate resources. However, we believe that the Agency must be able to balance its actions against PRPs among viable and less viable parties so that industry will note that EPA will pursue all cost recovery actions to the fullest extent possible.

Management Of Bankruptcy Cases

The Agency was not taking aggressive and timely action in filing for cost recovery when the PRP had filed for bankruptcy. This can result in the Agency not being able to preserve its right as a creditor. In addition, EPA did not have an effective monitoring system to determine if and when a PRP goes bankrupt. This is critical since EPA would only have a limited time in which to present its claim.

Filing For Cost Recovery

The primary objective of cost recovery is to provide reimbursement of expenditures to the Trust Fund. A second objective is to encourage voluntary actions by responsible parties. EPA's cost recovery strategy generally calls for the initiation of cost recovery efforts as soon as total costs are known.

The Agency must establish itself as a creditor. If this is done, the Agency will legally put the responsible party on notice that it expects payment and if the PRP goes bankrupt, EPA would be on file as a creditor. Thus, EPA would receive notice of bankruptcy (order of relief) and other creditor's notices which are important so that it will know the status of the proceedings.

In a January 30, 1985, memorandum entitled " Procedures for Documenting Costs for CERCLA Section 107 Actions" the Director, OWPE stated that, "It is the Agency's intention that some type of action be taken to recover expenses for every site where Federal money was expended. The Agency plans to have all cases dealt with in a timely and efficient manner." To accomplish this Headquarters should refer the bankruptcy claim to the Department of Justice for filing by a specific due date or a special exception must be requested. Prompt referral of bankruptcy cases is necessary to preserve the Agency's claim as a creditor. The Agency has to file a "proof of claim" to be assured of preserving its rights as a creditor. The proof of claim under a bankruptcy may be the only remedy left for the Agency to recover funds from a bankrupt PRP.

An April 7, 1986, article in the Legal Times entitled "DOJ Gets More Aggressive in Chapter 11 Cases" contained a comment made by Associate Deputy Attorney General Jay B. Stephens. He stated:

> ". . . that the Justice Department finally has awakened to the realization that "there are great potential dollars our there: for the government to collect. Previously, he said, "competing interests" and priorities have kept the department and its prosecuters from focusing on bankruptcy matters."

With this in mind, EPA should be aggressive in seeking reimbursement for cleaning up sites, especially in the early stages when the PRP is filing for bankruptcy. We believe that if the case is pursued early, a more favorable outcome may result since the Agency would have established the priority of its claim in relation to other creditors.

EPA recognizes the need to pursue judicial actions against bankrupt parties. However, even if EPA finds a responsible party to be financially sound at the time identified, there is no guarantee that the PRP will not file for bankruptcy at a later date. Consequently, an OECM attorney believes that while a cost recovery action can be initiated before completion of a remedial investigation/feasibility study, this would not preclude a responsible party from declaring bankruptcy to avoid liability.

The Need For Aggressive Action Against Bankrupt Parties

EPA needs to file claims against PRPs as soon as possible in order for the Agency to reserve its right to recover claims on costs associated with site cleanup of bankrupt parties. If EPA does not file a claim and the bankrupt party does not place EPA on its creditors list, the Agency may lose its creditor status. This would occur because the court would not know that EPA is a creditor. Thus, no distribution of any available

funds could be made to EPA. Also, if EPA does not file or files in later stages of bankruptcy, there is the possibility of: (1) abandonment of the site; (2) other administration costs "eating up" the assets; (3) and the sale of assets at "fire sale" prices, or other methods to dilute the assets prior to and during the bankruptcy. This could be done without EPA having a say in the matter. In addition, an aggressive stand against bankrupt parties may bring out more PRPs that will absorb the cost of cleanups or catch fraudulent schemes. For example, in a recent bankruptcy declaration, (Thomas Solvent Co. (TSC)), the U.S. has filed a CERCLA section 107 complaint to recover cost associated with site cleanup. Part of the new case will be against Richard Thomas, individually, and four corporations which were "spun-off" from TSC prior to TSC's bankruptcy.

A major obstacle faced by EPA was when does it become a creditor. We discussed this issue of EPA's rights to claim as a creditor with an attorney from OECM. We asked when is EPA "officially" a creditor so that it will be necessary for the bankrupt party to list the Agency as a creditor. The OECM attorney stated that some PRPs interpret it to be at the time of a demand letter, while others do not. Further, when EPA sends out a demand letter, the letter should state that EPA is an official creditor. The attorney also stated that EPA is supposed to be notified when a PRP goes bankrupt. However, if a responsible party does not "interpret" EPA to be a creditor, EPA may not be notified. If EPA is not notified of a PRP's bankruptcy filing, it will not be able to file a claim in sufficient time to preserve its right of claim. Further, a PRP could go bankrupt and EPA could have no knowledge of this. We were also told that to develop a system that EPA would know if PRP goes bankrupt would be difficult since a party could be bankrupt in many different states and districts.

Under a Chapter 7 bankruptcy, as explained in the June 30, 1985, memorandum entitled, "Procedures for Documenting Costs for CERCLA § 107 Actions," a claim must be filed within 90 days from the first meeting of the creditors unless an extension is moved for or granted. Under Chapter 11 a claim must be filed by the date set by the court. However, to file a claim timely, EPA must know the date that a proof of claim has to be filed. It is important that EPA becomes aware of any PRP bankruptcies and acts in a timely manner. As previously stated, EPA needs to be aware of a bankruptcy at the earliest stage so that it can attend creditors meeting and thus be able to support its position effectively. If the Agency does not become aware of bankruptcies early or does not act in a timely manner, the potential for recovering costs lessens.

EPA Does Not Have An Adequate System To Determine When A PRP Goes Bankrupt

We found that there was no list of all PRPs. Thus, when EPA is notified of a PRP filing for bankruptcy, it had no listing to refer to. It is important that the Agency place more emphasis on these bankrupt parties since it may be the last chance in which the Agency can preserve its rights. This is the only way the Agency can establish its priority on the distribution of the debtor's estate.

EPA did not have a system in place to determine if a PRP files for bankruptcy. The court will only notify EPA when a PRP files for bankruptcy if EPA is listed as a creditor by the bankrupt party. In those cases where the court notified EPA that the PRP was filing for bankruptcy, EPA did not have adequate policies and procedures to take the necessary action to establish the priority of its claim in relation to other creditors. As a result, when a notice came in, EPA did not know to who it should go. OGC is developing new procedures to ensure that the Agency can respond in a timely manner. It is necessary that the Agency's attorneys: (1) receive notification of all PRP bankruptcy claims, and (2) be notified when a PRP sends bankruptcy notices to creditors. The Agency needs to be on record as a creditor in sufficient time so that it can attend the meeting of creditors (usually not less than 20 or more than 40 days after the order of relief). Also, the Agency's attorney handling a bankruptcy case must be able to receive any notices sent to a creditor on a timely basis so that he/she can respond within the time stated on the notice.

CONCLUSION

The intent of the enforcement program is to compel responsible party clean-up of hazardous waste sites or to have them pay for cleanups performed by the Government. In our opinion, responsible parties declaring bankruptcy impacts on funds available for cleanup of other sites. We believe that EPA should be more aggressive in filing early claims against responsible parties. By increasing its effort, EPA may stand in a better position to recover funds earlier, and potentially prevent the PRP from declaring fraudulent bankruptcy. In addition, failure to aggressively recover cost expended from the Trust Fund will not only reduce the number of hazardous waste sites that EPA could clean up, but also demonstrate to PRPs that they can avoid reponsibilities by filing for bankruptcy.

OSWER Comments And OIG Evaluation

In response to the draft audit report, the Assistant Administrator indicated that OSWER will review and revise the Bankruptcy guidance regarding timeliness of actions and procedures for establishing EPA claims. In addition, OSWER will consider revising the demand letters to include appropriate official creditor language. OSWER did not comment on our recommendation concerning priority of claims.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

1. Use more explicit language in the demand letter identifying EPA as an "official creditor", thus no interpretation of the demand letter will be required by the PRP;

2. Establish procedures on how to take the necessary action(s) to establish EPA's priority claim in relation to other creditors;

3. Coordinate with the Office of General Counsel on developing new procedures and a system that will permit EPA to take timely action, once it is notified of a PRP's bankruptcy filing; and

4. Coordinate with OECM to try and balance Agency actions against both viable and nonviable PRPs especially in light of the courts' recent leaning towards giving Governmental units first priority on hazardous waste cases after secured creditors.

3. EPA NEEDS TO COMPLETE NEGOTIATIONS WITH RESPONSIBLE PARTIES IN A MORE TIMELY MANNER

Negotiations with responsible parties were not always fully successful and often extend well beyond established Agency timeframes for conducting negotiations. Even though the Agency has a policy prescribing a 60-day cut-off period for negotiations, we found that EPA did not have a coordinated or systematic structure for tracking negotiations to ensure timely completion. We estimated that 276 (67 percent) of 411 negotiations were either (1) ongoing from fiscal 1984 or (2) initiated in fiscal 1985 and had exceeded 60 days, with negotiations, lasting an average of 279 days. Fifteen of the site negotiations over 60 days, amounting to $3,598,700 in clean-up costs, were concluded without a settlement or cost recovery reached with responsible parties. In addition, even though they did not exceed 60 days in length, we found 31 negotiations in the amount of $6,733,000 which were considered unsuccessful since they did not result in a settlement. Also, we found 43 additional negotiations that had outcomes that were fund financed actions for which we were unable to obtain dollar amounts from either SCAP or CMS. EPA officials informed us that cutting off negotiations is a judgment call based on the progress made and usually negotiations were not concluded by the 60-day cut off period. Even though various systems were supposed to track enforcement progress, we were unable to determine the current status or results of all negotiations. Untimely negotiations delay sites from progressing toward cost recovery through litigation and ultimately may weaken the Agency's position to reach a settlement with responsible parties to clean up sites.

Superfund enforcement actions can occur at different points in the cleanup process and can involve both regional and Headquarters personnel. In general, these actions include: (1) identification of the responsible parties; (2) notification of the responsible parties by letters showing their potential liability for cleaning up the site; and (3) negotiations between EPA and the responsible parties to determine whether a mutually agreeable settlement is possible. EPA may also negotiate with responsible parties to determine whether they will perform various phases of site cleanup, such as the remedial investigation/feasibility study (RI/FS), cleanup of surface problems at the site, or cleanup of groundwater contaminated at the site. EPA may negotiate for one phase at a time or for several phases at once.

If negotiations are successful, the terms of the agreement between EPA and the responsible parties are incorporated into an administrative consent order or consent decree. The financial settlement alternative is similar to costs recovered for the Trust Fund, because the responsible parties contribute money while EPA arranges for the cleanup. If negotiations prove unsuccessful, EPA can (1) clean up the site itself with Trust Fund money or (2) issue a unilateral administrative order or obtain a court order forcing the responsible parties to clean up the site. When EPA cleans up the site, it attempts to recover the cleanup costs from the responsible parties at a later date. In issuing a unilateral administrative order or obtaining a court order, the reponsible party must comply with the terms of the order or pay fines or treble damages.

Since the beginning of the Superfund program, the goal of negotiations was to secure privately managed or financed cleanup of hazardous substance releases. The timeframes for completing negotiations have generally remained the same throughout the history of CERCLA. For example, on February 23, 1982, a memorandum entitled, "Hazardous Waste Compliance and Enforcement Program Guidance" was issued by the Office of Solid Waste and Emergency Response. The memorandum mentioned that if substantive negotiations, which are believed to lead to a satisfactory resolution within a short period of time (normally 60 days or less), have not been entered into within 30 days of the date of response required by the notice letters, Regional program offices should proceed with administrative action or litigation. In addition, on August 26, 1983, EPA issued a policy document entitled, "Guidance on Pursuing Cost Recovery Actions Under CERCLA," which indicates that a reasonable period of time for most negotiations is 60 to 90 days. This policy also maintains that the negotiation timeframes be disclosed to the responsible parties as a deadline to reach an agreement.

The most recent EPA policy which discusses the timing of negotiations is contained in the "Interim CERCLA Settlement Policy," dated December 5, 1984. This guidance mentions that a Negotiations Decision Document (NDD), which follows completion of the RI/FS, makes the preliminary identification of the appropriate remedy for the site. Prelitigation negotiations between the government and the responsible parties should normally not extend for more than 60 days after approval of the NDD. If significant progress is not made within a reasonable amount of time, the Agency will not hesitate to abandon negotiations and proceed immediately with administrative action to litigation. While the type of negotiation undertaken by the Agency may vary, the general timeframe for conducting negotiations with responsible parties was 60 days.

The basic working document used by EPA to plan and manage CERCLA enforcement activities is the Superfund Comprehensive Accomplishment Plan (SCAP). The SCAP provides information on each region's plans for enforcement activities on a quarterly basis and records whether those activities were accomplished within the expected quarter. One item which SCAP tracks is negotiations with responsible parties. We reviewed SCAP to determine the results of negotiations that were ongoing in fiscal 1985. Also, we wanted to determine the length of negotiations. By reviewing the SCAP we found that 411 negotiations were ongoing with responsible parties. However,

the SCAP was updated every fiscal quarter to only include any additional negotiations which were started. There was no detailed information provided on the status of the ongoing negotiations or how long they were in progress. Furthermore, we were unable to identify exact start dates for the 411 negotiations. Headquarters officials from the Office of Waste Programs Enforcement (OWPE) informed us that the SCAP is a Superfund management tool to monitor regional progress of various site activities. The SCAP does not provide detailed information on these activities. For monitoring purposes, OWPE officials believe that tracking progress by fiscal quarters is adequate, and that reporting details, such as specific dates for each site was not warranted. However, OWPE referred us to the Case Management System (CMS) which contains specific dates on various enforcement actions.

We obtained a copy of a CMS report to determine whether the negotiations were completed, what the results were, and the length of time that EPA spent negotiating with responsible parties. We found that the CMS, in general, provides critical milestone dates for such enforcement actions as administrative/unilateral orders, case referrals to the Department of Justice, cases filed, and settlements with responsible parties. The CMS does not monitor or track negotiations per se but only the end result, (e.g., if the case was referred to Headquarters). In addition, EPA did not have a system that pointed out that a negotiation was taking longer than 60 days and may need to be cut off.

Using the SCAP and CMS reports, we extracted pertinent information to estimate the length of the 276 negotiations we reviewed. Also, we found another 16 actions for which we could not determine the length of negotiations (refer to Exhibit E).

Our review of SCAP and CMS results for the 292 negotiations disclosed the following:

- 104 sites did not appear to have been completed by September 30, 1985. Based on the Agency's records, these negotiations are still ongoing.

- 100 sites appear to have concluded with settlements with responsible parties. We believe these negotiations were successful.

- 43 sites appear to have been transferred to the Trust Fund (fund financed action) for potential EPA cleanup. Since these negotiations did not result in a private party clean up, we consider these negotiations to be unsuccessful.

- 11 sites appear to have concluded with EPA issuing unilateral administrative orders. We believe these negotiations were unsuccessful.

- 6 sites were either (1) transferred to another EPA program for action, (2) transferred to a state for action, (3) involved bankrupt parties, or (4) had no action listed.

- 4 sites appear to have concluded with referrals to the Department of Justice. We consider these site negotiations unsuccessful since they did not result in a settlement with responsible parties.

- 2 sites appear to have concluded with cost recovery actions. We consider these negotiations successful.

- 22 sites had outcomes that could not be determined from the system.

We concentrated on identifying negotiations which lasted over the 60-day cut-off period as stated in Agency guidance. Our review of the 411 site negotiations disclosed that 276 (67 percent) exceeded the 60-day Agency policy, with the average negotiation taking 279 days. Of these 276 negotiations, it appeared 15, totaling $3,598,700, concluded with no settlement being reached with the responsible parties (i.e., fund financed, issuance of unilateral administrative order or subsequent referral/filing to the Department of Justice). We were not able to determine the dollar amounts for the 43 fund financed actions.

The Superfund program is generally implemented in the regions. Headquarters officials informed us that detailed site negotiation documentation should be available in the regional offices. However, in Region 3 our review was hampered because many of these pertinent documents (notice and demand letters, responsible party correspondence, minutes of negotiations, etc.) could not be located. For example, in 5 of 25 site files (20 percent) reviewed, we could not determine the duration of the negotiations which took place between the Region and the responsible parties. This was due to the fact that the Regional site files were generally not organized. Furthermore, our review of Superfund enforcement information maintained by Region 3 disclosed that there was no system that provided comprehensive information on all enforcement actions.

Region 3 could provide information on dates such as when (1) notice letters were sent to responsible parties; (2) administrative orders and consent decrees were issued; and (3) judicial enforcement actions were referred to EPA Headquarters and the Department of Justice. However, at the time of our review, the Region did not have any report or system that showed the dates when (1) responsible party searches began and ended; (2) response to notice letters and subsequent correspondence were received; (3) negotiations with responsible parties began and ended; (4) settlements with responsible parties were reached; and (5) responsible parties performed cleanup actions at a site in compliance with administrative orders and consent decrees. Our review of the Superfund enforcement action information maintained by Region 3 disclosed that most of this information was maintained in individual site files.

In Region 4, we could not review and evaluate the status of negotiations of the Region's 151 Superfund sites because the information could not be obtained without a detailed review of the individual project files. The status of negotiations was not monitored and controlled on an ongoing basis at all sites. While the Region had been moderately successful in negotiating settlements for certain phases of site cleanup, the Agency

guidelines for conducting negotiations within 60 days had not been consistently met. In addition from information available, it was sometimes difficult to determine precisely when negotiations were initiated and concluded. Of the 29 sites reviewed, 9 different negotiations lasted from 6 months to 30 months. In response to our Region 4 report, the Region had taken steps to limit negotiations following the completion of a workplan to 60 days or less. Also, the Region had earlier implemented procedures for tracking the milestones of remedial and enforcement processes of each site which should help.

While many of the above regional and Headquarters systems and reports track and monitor various enforcement actions, they did not record critical milestone dates for enforcement activities occurring at all sites. Consequently, EPA did not have a mechanism to track all critical enforcement milestone dates (i.e., length of negotiations) in any systematic manner from initiation through completion.

The General Accounting Office (GAO) in a May 1986 report "Responsible Party Clean Up Efforts Required Improved Oversight" stated that, "Experience with EPA's settlement process has shown that it may take 2 years or more to complete a remedial investigation and feasibility study. Subsequent negotiations and settlements to establish remedy selection, design, and implementation may add yet another year, even before cleanup begins."

In addition, an EPA contractor in a March 14, 1986, study showed the following on negotiations:

-- Pre-RI/FS negotiations should not last for more than 60-90 days actually lasted for an average period of 195 days.

-- Study findings for both elapsed time and workdays required indicate that more effort is being expended on (Pre-RI/FS) negotiations than had been assumed by Headquarters.

-- Remedial design/remedial action (RD/RA) negotiations which should last about 60-90 days based on current policy, actually lasted about 250 days.

-- Although data is limited, the study results indicate that the elapsed time required for (RD/RA) negotiations is significantly longer than either prior budget assumptions or the OWPE policy on the conduct of settlement discussions anticipated.

We discussed with both legal and Superfund officials at Headquarters and the Regions the reasons why negotiations with responsible parties are so time consuming. For example, negotiations were lengthy at the Delaware City PVC Plant (15 months) in Region 3 because the 106 administrative orders for the feasibility study and remedial cleanup was the first of its kind, and there were disagreements over the consent order's wording. Also, Headquarters policy changes had to be reflected in the consent order and this delayed its issuance.

At Headquarters, in a discussion with a senior attorney from OECM, we were told that the 60-day cut off period for negotiations is not realistic and that negotiations are usually lengthy when they involve several responsible parties. In addition, if an agreement cannot be reached with all RPs involved, then the negotiations tend to drag on. Furthermore, in Region 3, we found only a few instances where the Region had informed the responsible parties that the negotiation period would be only 60 days. In our opinion, if the responsible parties were told there was a time limit on negotiations, site cleanup and fund reimbursement may be expedited.

However, EPA officials argue that negotiations have resulted in favorable settlements to compel responsible party cleanup of hazardous waste sites. Senior OWPE management believe that the success of the negotiation process should be measured against the settlement reached with responsible parties. Furthermore, Superfund and legal enforcement representatives stated that they may negotiate at length because, in their opinion, the likelihood of reaching a settlement with responsible parties is greater than pursuing the case through litigation.

CONCLUSION

While we recognize EPA's recent success to compel responsible party clean-ups through negotiations, we believe the negotiation process needs to be made more timely. While we agree with EPA that the current 60-day cut-off to complete negotiations may be unrealistic in some instances, we believe that some cut-off period must be established in conducting negotiations with responsible parties. As we stated earlier, 276 of the 411 negotiations exceeded the 60-day Agency policy. These 276 negotiations averaged 279 days. EPA must re-evaluate its December 5, 1984, guidance and establish a more realistic timeframe to complete negotiations with responsible parties. Furthermore, EPA should improve its monitoring of all negotiations by requiring regional offices to maintain information on meeting this goal in any enforcement management system. To ensure that these timeframes are met, EPA should inform all responsible parties prior to beginning negotiations of the cut-off period. If negotiations approach the cut-off period without a reasonable settlement, then they should be broken off by EPA, and cost recovery pursued through civil action. Negotiations with responsible parties are an essential part of the enforcement process. Failure to conduct timely negotiations would, in our opinion, increase the likelihood of responsible parties delaying or potentially avoiding their liability (i.e., declaring bankruptcy) which may ultimately weaken EPA's efforts to recover cleanup costs on future hazardous sites.

OSWER Comments And OIG Evaluation

The Assistant Administrator for OSWER indicated that OSWER will re-evaluate their present policy, procedures and negotiation timeframes under the new Superfund bill and will take our recommendations into consideration. We agree with this action. However, to evaluate how OSWER has acted on our recommendations, we need to be advised on the new revised policy and procedures.

Recommendations

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

1. Re-evaluate the Agency's present policy and procedures to ensure that timeframes set for negotiations are reasonable. Also, timeframes should not be exceeded unless it can be documented in the files that significant progress is being made.

2. Require that specific steps in the negotiation and settlement process are planned, scheduled, and initiated in a systematic and orderly manner in order to minimize delays in the settlement process.

3. Require Agency negotiators to notify responsible parties that the negotiations must be concluded within the Agency's established timeframe.

4. Require the regional offices to maintain information on the length of negotiations and whether this conforms to the goal established by EPA.

4. EPA NEEDS TO IDENTIFY AND TRACK STATUTE OF LIMITATIONS (SOL) DATES

EPA could potentially fail to recover millions of dollars in cleanup costs by not filing cost recovery actions within the "statute of limitations" (SOL) period. Although Agency policy states that court actions should be brought timely, there was no formal system to identify and track SOL dates. During our audit, we identified 65 non-NPL completed removals sites, totaling $2,917,200, which may be lost if cost recovery actions are not filed on or before December 31, 1986. While some of these sites may ultimately be referred to the Department of Justice, EPA may eventually violate the SOL unless agreement can be reached on what is the SOL period. Consequently, responsible parties could completely avoid any financial liability for the cleanup of hazardous waste sites if appropriate cost recovery actions are not filed in court within the SOL period. Despite confusion as to when the SOL period should start, this issue will become more significant in the next few years as an increasing number of sites progress toward cleanup. Although EPA is aware of the situation, formal procedures and a system need to be developed to ensure that: (1) all cost recovery actions are filed timely regardless of the SOL; and (2) SOL dates are identified for all cleanup sites on a current and ongoing basis.

EPA Needs To Improve Its Timing of Cost Recovery Actions

Historically, there has been considerable confusion over whether a SOL will apply to CERCLA cases and, if so, when it would start. Since CERCLA did not mention an SOL time period in which an enforcement action must be filed, EPA over the past years issued conflicting guidance in order to minimize the risk in recovering expended funds. Both the August 1983 Agency policy (when dollars are first expended) and the February 1984 internal OWPE policy (upon completion of a response action) adopted a 3-year SOL period. OWPE believed it would be extremely cumbersome and make for "piecemeal litigation" to file cases when funds are first expended because

expenditures for a site frequently extend over a period of several years. The House of Representatives CERCLA reauthorization bill proposes a 3-year SOL period from when a response action is completed. In our flash audit report, we recognized that the CERCLA reauthorization legislation may resolve this issue for future sites but may not "grandfather" cases prior to its passage.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) did not mention a time period in which a cost recovery action must be filed to avoid violation of the SOL. EPA officials at Headquarters and in the regions told us that CERCLA cases could fall either under Federal law (six years), or tort law (three years).

To help clarify the issue, EPA issued a document entitled "Guidance on Pursuing Cost Recovery Action Under CERCLA" on August 26, 1983. This guidance stated:

> "There is some doubt at this time as to precisely which limitation period will be applied to a cost recovery action . . . since it is possible that a court may see CERCLA actions arising out of the tortious conduct of others, cost recovery actions should be brought within three years. . . . In order to avoid argument on this point and to eliminate a potential bar to recovery, the Agency should attempt to commence all cost recovery action within three years of the date dollars are first expended."

The OWPE issued supplemental guidance in the form of a memorandum on February 15, 1984, stating that EPA should observe a three year SOL period that begins on the completion date of a response action. However, this guidance was never officially issued to the regional offices for implementation.

On September 5, 1984, we issued a flash report expressing our concern that a number of potential cost recovery actions under CERCLA might be in jeopardy due to the uncertainty surrounding a CERCLA SOL. On March 26, 1985, the Agency issued a response to our flash report. In addressing our concern over the uncertainty surrounding the SOL for cost recovery actions, the Agency response stated, in part, that:

> "We need to differentiate between a legal definition of the SOL under CERCLA and the establishment of timeliness for referrals of CERCLA cost recovery actions. The Agency must strike an appropriate balance between the need to minimize any risks to the government's ability to recover expended funds and the operational realities of the CERCLA program and the cost recovery process."

Legal Definition

The position of the Government (EPA and Department of Justice) is that there is no SOL under CERCLA, but if there was, it would be six years from completion of a response action. There are cases now in the courts which may provide some case law on whether no SOL applies, a six-year SOL applies, or whether three years is the appropriate limitation period.

On March 26, 1985, EPA issued a discussion paper on a New Hampshire court ruling concerning the SOL on CERCLA cases. The case involved a responsible party attempting to block a New Hampshire claim for cost recovery under CERCLA by implying that the SOL had expired. The judicial decision was that the State claim should not be dismissed since the three-year SOL (under Section 112 of CERCLA) does not apply to judicial actions for cost recovery. EPA, in its discussion paper, concluded that:

> "It is important to note that this is the first definitive ruling concerning the SOLs for cost recovery actions under CERCLA. Although the opinion concerns a claim brought by a state under Section 107 of CERCLA, we would expect a similar ruling on claims by the United States. The decision is strong support for the proposition that Congress intended to allow Federal and state governments to undertake judicial actions for reimbursement of removal, remedial, and response costs expended under CERCLA at any time."

While we recognize the significance of the decision, we believe there still is uncertainty surrounding the SOL. For example, EPA mentions in its response to our flash report that there is a risk that the courts may take a contrary review, such as selecting the start date rather than the completion date as the SOL time period or holding to a three-year SOL. An OECM attorney re-emphasized that the above case is the first decision concerning the SOL, and that several other cases may have to be decided to clarify this issue. In addition, EPA in its response indicated that the Congress and the courts will be making the definitive determination on the SOL.

The CERCLA reauthorization bills specifically address the SOL for cost recovery. The Senate version, dated September 26, 1985, provides that a claim must be presented or action commenced within six years after the date of completion of the response action (Statute of Limitations, SE142(a), Section 113). However, the House of Representatives version provides that an initial action for recovery of costs must be commenced within three years after completion of the removal action or within six years after initiation of physical on-site construction of a remedial action (Section 113, Litigation, Jurisdiction, and Venue, (g) Statute of Limitations, (2) Action for Recovery of Costs). If the House's version takes precedence, the SOL for removal actions will be three years from completion of the action.

Until such time that this issue is satisfactorily resolved by either the Congress or the Federal courts, we believe EPA should utilize a conservative date for SOL: three years from the completion of the removal action.

For long-term remedial projects the Agency also needs to take action to ensure that the necessary documentation will be available to support the Agency's cost recovery actions. The Chief, Superfund/RCRA Procurement Branch, Procurement and Contracts Division (PCMD) has already initiated some action by requesting a class deviation from the Federal Acquisition Regulations (FAR). On March 21, 1986, the Chief requested a FAR deviation be processed that will require contractors to retain records for a period

of 10 years in lieu of 3 years after final payment. This deviation would apply to all Superfund contracts. However, a recent audit by the U.S. Army Audit Agency, "Superfund Management U.S. Army Corps of Engineers, Washington, D.C.," dated 24 April 1986, revealed that the Army's current documentation requirements were not adequate, in that accounting documents are to be kept 6 years, 3 months from payment. As such, the required documentation from the Corps of Engineers may be destroyed before litigation is begun. The Agency in its August 1, 1986, response indicated that it is currently negotiating with the Corps of Engineers to ensure that Corps contracts contain the same records retention requirements as EPA contracts. This would help minimize the likelihood of the Corps contractors destroying necessary documentation before EPA files a case for cost recovery.

Timely Filing

In their response to our flash report concerning the SOL, the Assistant Administrator for OSWER and Assistant Administrator for OECM stated that:

> ". . . for reasons of good management, it is appropriate to establish an earlier date for filing cost recovery actions regardless of the statute of limitations. Evidence is fresher, knowledgeable personnel are more likely to be available and the Fund can more likely be replenished if actions are brought as soon as possible."

Subsequently, on October 7, 1985, the Assistant Administrator for OSWER and the Assistant Administrator for OECM issued a joint memorandum to the regions on the "Timing of CERCLA Cost Recovery Actions." The purpose of the memorandum was to provide guidance on when cost recovery actions should be initiated under § 107 of CERCLA. The memo also noted that the above policy guidance was not intended to limit any actions, but was intended to assist EPA regional offices in the management of cost recovery actions. Specifically:

(1) Cost recovery action should be initiated within one year of completion of a removal action at a non-National Priorities List Site.

(2) Cost Recovery action should be initiated as soon as practicable after signing the Record of Decision, usually within 18 months of that time for remedial actions. However, cost recovery actions should not begin until the Remedial Design Phase is completed.

The above policy was further included in the Agency's Operating Guidance FY 1987 (page 12).

In order for EPA to have an effective and efficient cost recovery program, it must establish "early" timeframes and plans for initiating and filing cost recovery actions. Without such plans and timeframes, EPA will experience great difficulty in handling the hundreds of CERCLA cost recovery cases over the next several years. In addition, with an established plan EPA will be able to properly allocate resources to ensure timely settlements. Thus, EPA would be able to accomplish the ultimate goal, early replenishment of the Trust Fund, which would allow the Agency to clean up additional hazardous waste sites at an earlier time.

EPA Needs To Track SOL Dates

Despite confusion over the SOL time period, EPA needs to develop a management information system to identify and track SOL dates for initiating cost recovery actions against responsible parties. On September 5, 1984, we issued a flash audit report to bring this significant issue to the immediate attention of management. We reported that there was no formal system or procedures in place to provide management an overview of cost recovery actions in regard to the SOL. In addition, we found while Superfund personnel were generally aware of the status of their own individual cases, there was no comprehensive record of the status of all cases. We recommended that: (1) EPA develop a comprehensive listing of all cleanup actions to date; and (2) implement a system and procedures to identify and track cost recovery actions in regard to SOL dates.

In November 1984, OWPE developed a process to review completed removal actions and completed units of remedial actions to assure that cost recovery cases were filed before the SOL expired. This process used three years from the completion of the removal/remedial action as the ending date for SOL purposes. OWPE informed the regions that this report was to be reviewed for accuracy and possible action on a quarterly basis.

In our review of Region 3, we found that on November 27, 1984, Headquarters sent the first of these quarterly reports to the region. It showed the SOL period for actions that were completed for three years or were approaching three years from completion in fiscal 1985. This report identified four removal actions and Region 3 confirmed that cost recovery had been initiated on three of these sites. The fourth site had no financially viable responsible parties. Our review disclosed that there were an additional three removal actions that the OWPE report did not identify. Although these three cases were filed with the Department of Justice, the fact that neither Headquarters or Region 3 identified these sites indicates that the OWPE SOL review process alone was not sufficient to assure that cost recovery actions were filed before the SOL expires.

In Region 4 our review disclosed that the Region could encounter significant problems with cost recovery actions that are ongoing at two major sites. On one site, the Regional Superfund Comprehensive Accomplishment Plan (SCAP) indicates negotiations were scheduled for the third quarter of fiscal 1985. However, under the most conservative assumption, the SOL would have expired in September 1984. The Regional SCAP also shows that for the second site a responsible party search was scheduled for the third quarter of fiscal 1985. However, the SOL would have potentially expired in the second quarter of fiscal 1985.

Throughout the audit, we briefed senior OWPE and OECM management on the status of our review. When asked about their response to our September 5, 1984, flash audit report on the SOL, they provided us a memorandum from the Director, OWPE to the acting Assistant Administrator for OSWER on the status of that response. The memorandum states, in part, that:

"We are presently compiling information, including completion dates on all removal actions. We are in the process of developing a computer tracking system for cost recovery to identify and track cost recovery actions. The current docket system in OECM allows us to track cost recovery referrals to Headquarters, referrals to the Department of Justice, and filings of complaints and certain additional information. Our new system will also be able to track the activities associated with CERCLA 107 cases, which include dates of expenditures, SOL, issuance of demand letters, and actual expenditures associated with site response actions."

On March 26, 1985, EPA issued a response to our flash report. EPA agreed with our recommendations to establish a system to identify and track response actions and key dates for cost recovery and is currently developing such a system. In the interim period, the Agency established a manual system to track significant dates on site specific basis. However, the OWPE did not address our recommendation of developing a comprehensive listing of potential SOL dates even after informing the Assistant Administrator for OSWER (in a February 1985 memorandum) that this was being compiled. OWPE did indicate that information on potential SOL dates were available. However, the dates were not monitored since the Agency had agreed on a 6-year SOL period and no sites were in danger of violating the SOL period.

Subsequent to the Agency's response to our flash report, we wanted to identify at Headquarters all completed non-NPL removals which may violate the SOL if not filed on or before December 31, 1986. We requested a listing from OERR identifying all removal actions completed on or before December 31, 1983. This listing provided us information on sites that would reach the 3-year SOL period on or before December 31, 1986. We elected to use the more conservative timeframe of three years after completion for a removal action. We found that there were 106 removal actions, amounting to $14,609,558. Subsequently, we attempted to determine whether these sites had been filed for cost recovery actions. Due to the lack of a centralized management information system to monitor site status, we were forced to rely on several Superfund and legal enforcement management documents to determine whether cost recovery action was initiated. Our review of the legal docket system and the case management system disclosed that 65 removal actions, totaling $2,917,200, may be lost if cost recovery actions are not filed by December 31, 1986.

Discussions with Headquarters officials revealed they did not view the SOL as a serious problem. As discussed in EPA's response to the OIG flash audit report, Headquarters officials discussed their position that the 6-year statute of limitations applied as well as recent progress in developing a tracking system as steps taken to minimize a potential SOL violation. Consequently, EPA believes that this area is a low risk. While we recognize and commend the Agency's progress, we believe that inadequate identification and tracking of SOL dates is still a serious problem.

As discussed above, we identified 65 non-NPL completed removal sites, totaling $2,917,200, which may violate the SOL if not filed on or before December 31, 1986. We believe the SOL is a potential risk to cost recovery since a final decision was not made on the issue by either Congress or the Federal courts. Until this issue is resolved, EPA is still at risk in recovering costs expended from CERCLA. The Agency can minimize the risk by aggressively pursuing cost recoveries in accordance with revised guidance.

OSWER Comments and OIG Evaluation

In the September 10, 1986 memorandum, the Assistant Administrator for OSWER indicated that work was initiated on a tracking system that will identify all removal actions and pinpoint significant enforcement-related dates, including the statute of limitations dates. In addition, OSWER and OECM have requested that the Regions review the universe of removal actions for purposes of potential cost recovery actions.

The response states that the new Superfund bill directly addresses the issue of the statute of limitations. However, as we stated in our report, depending on which version of the Superfund bill may be passed, the SOL period can vary.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

1. Proceed under the more conservative tort law timeframe (three years after completion of a removal) until such time the issue is resolved by Congress or the courts.

2. Include and track in the comprehensive listing of all removal actions the SOL date.

3. For those sites where the SOL is about to expire, take immediate action to initiate negotiations or referrals to DOJ.

4. Ensure that cost recovery actions are being initiated within one year of completion of a removal action at non-NPL sites.

5. EPA NEEDS TO IMPLEMENT A COMPREHENSIVE MANAGEMENT INFORMATION SYSTEM (MIS) TO TRACK ENFORCEMENT ACTIVITIES

EPA would have a better managed CERCLA enforcement operation with a comprehensive management information system which would consolidate the information now contained in various Agency information systems. At the time of our review, the Agency used several information systems to collect and maintain site-specific enforcement information. Each of these systems served a useful but particular management information need. However, currently no one system provides all Agency managers with all the timely and consistent data needed to effectively manage and/or evaluate its Superfund enforcement program. Even though EPA enforcement program managers have indicated that a system providing comprehensive information for tracking enforcement actions is beneficial, EPA has not developed such a system.

OSWER has recognized that its current information system needs improvement. In December 1984, an EPA contractor completed an internal study for OSWER which recommended that a comprehensive information system be developed. The Agency is now developing such a system. If properly developed and implemented, the new system could: (1) reduce or in some instances eliminate the conditions noted in this report on the problems with the Agency's cost recovery effort; and (2) improve the overall Agency management of CERCLA enforcement activities.

We found that CERCLA enforcement information was contained in various management and financial information systems: Superfund Comprehensive Accomplishments Plan (SCAP); the Case Management System (CMS); Enforcement Docket System; CERCLA Information System (CERCLIS); and Financial Management System. While we noted that each of these systems served a particular useful management need, none of the systems was designed to serve as a integrated system which would contain specific milestones and financial information to adequately monitor CERCLA enforcement activities. Agency officials were required to use outputs from multi systems and manually search through individual regional project site files to determine the enforcement status of any given hazardous waste site.

In our audits of Regions 3 and 4, we experienced difficulty in determining: (1) site status and (2) cost recovery activities from the various automated information systems. As a result, we had to manually generate pertinent site and program information such as: (1) information on bankruptcy cases; (2) the length of time taken for the negotiation process; (3) progress in pursuing enforcement actions against potential responsible parties; and (4) the statute of limitations dates. OWPE, which is the responsible office for managing the CERCLA enforcement program, was unable to provide us with detailed statistical information in such areas as length of negotiation, and the number of sites where the statute of limitations was expiring or had expired. As a result, we were required to extract the information from several reports. In addition, our request for information on the number and amount of bankruptcy claims had to be referred to the regions. Regional personnel manually generated this data from the project files since the systems did not contain this information.

In a February 6, 1985 memo, the Director, OWPE agreed that the information, we requested, would be of benefit and could assist in a better management of the CERCLA enforcement program. Additionally, both Regions 3 and 4 agreed that a comprehensive automated management information system was needed. Region 4, in fact, had developed an automated regional site tracking system to improve control over the status of its enforcement actions. However, at the time of our review, we were unable to review the status of negotiations and the cost recovery actions at all of the Regions' Superfund sites due to the voluminous correspondence and data in the individual project files. This information could not be obtained without doing a detailed review of the individual project files.

Our audit findings indicate a need to collect additional information in a automated format. Our review of Region 3 showed that the Region did not have any reports or system that reported the dates when: (1) responsible

party searches began and ended; (2) responses to notice letters and subsequent correspondence were received; (3) negotiations with responsible parties began and ended; (4) settlement with responsible parties were reached; and (5) responsible parties performed cleanup at a site in compliance with administrative orders and consent decrees.

In addition, our review of the regions were hampered because many of the pertinent documents (notice and demand letters, responsible party correspondence, minutes of negotiations) could not be located because the site files were generally not well organized. Even though Region 3 agreed with the findings and implemented a central filing system for enforcement data, the need and benefits of an automated MIS are still apparent and valid.

As previously mentioned, enforcement actions may be taken by both regional and Headquarters offices and by both EPA and DOJ. As a result, we believe there is a need to be able to quickly determine the current status of a site and the responsible Agency office. Currently, the Agency has no system which would provide this type of information, and there is a potential for sites to be lost or for site activities not to be taken.

CONCLUSION

Despite these shortcomings, we recognize the Agency's efforts to improve its reporting capabilities for enforcement actions. However, we believe improvements are still needed in order for Agency officials to effectively manage the CERCLA enforcement program. In our opinion, as the number of enforcement actions increase in the future, it will become increasingly necessary to maintain comprehensive Superfund enforcement tracking information.

We believe a comprehensive management information system offers many benefits. First, the information will allow managers to determine how long different steps in the enforcement process are taking so that reasonable time frames for completing these steps can be set. Second, it will provide an easy way to determine whether the time frames set for the enforcement process are being met. Third, the information will help managers in workload planning by providing data on upcoming steps. Fourth, the information will help management to more easily respond to information requests from Congress and other sources.

OSWER Comments And OIG Evaluation

The Assistant Administrator for OSWER in the September 10, 1986 memorandum made no specific comments with regard to our recommendations for this finding. As stated in our report, we believe Agency officials need to make improvements to effectively manage the CERCLA enforcement program.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Solid Waste and Emergency Response:

1. Designate the development of the CERCLA enforcement system as a high priority item; and

2. Require that pertinent site-specific enforcement information on bankrupt cases, statute of limitations, negotiation milestone dates, etc. be included as data elements in the new MIS.

COMPLETED NON-NATIONAL PRIORITY LIST
REMOVAL SITES WITH CLEANUP COSTS UNDER $200,000

Region	Total Number of Completed Removal Sites Under $200,000 as of 09/30/85	Total Obligations of Removal Sites Under $200,000 as of 09/30/85
1	16	$ 997,475
2	15	644,237
3	32	1,792,501
4	65	2,768,504
5	40	1,902,972
6	18	608,703
7	11	589,519
8	7	169,320
9	35	1,473,392
10	9	528,233
Totals	248	$11,474,856

SCHEDULE OF COMPLETED REMOVAL ACTIONS ON CLEANUP COSTS UNDER $200,000 THROUGH SEPTEMBER 30, 1985

REGION	NAME OF SITE	COMPLETION DATE	TOTAL OBLIGATIONS
1	Bourdeaudhui	6/14/1985	$145,120
1	Bursey Asbestos	5/28/1985	22,000
1	Castle Hill	5/9/1984	190
1	Cyanide Incident	1/23/1983	1,528
1	Dean Street	8/3/1983	180,000
1	Gonic Sites	3/13/1985	150,000
1	Great Diamond Island	4/18/1983	829
1	Hougels Neck	3/19/1985	5,000
1	Keswick Road	11/10/1983	194
1	Lake Sunapee	6/9/1984	31,732
1	Matarazzo	5/28/1985	10,000
1	Pointer Asbestos	7/1/1985	25,000
			$571,593
1	Total Sites - 12		
2	Abandoned Drum	2/19/1982	$ 1,146
2	Abandoned Drums Erie Canal	7/16/1982	675
2	Blue Poly Drum	2/24/1984	777
2	Blue Spruce International	11/15/1983	3,291
2	Fort Totten	4/21/1983	0 1/
2	Horseshoe Road Dump	7/12/1985	60,000
2	Kearny Drum Dump #1 & #5	5/3/1985	92,131
2	Kearny Drum Dump #2	4/13/1985	42,000
2	Long Island Beach	8/13/1982	1,095
2	Signo Trading	7/3/1984	134,325 2/
2	Wallkill Well	3/16/1984	18,315
			$353,755
2	Total Sites - 11		

REGION	NAME OF SITE	COMPLETION DATE	TOTAL OBLIGATIONS
3	Baltimore Iron & Metals	2/1/1984	$ 73,656
3	Biedler Road	6/8/1983	4,707
3	Boyertown Scrap Metal	5/19/1983	35,181
3	Caustic Midnight Dump	3/24/1983	1,409
3	Columbia Park Drum	1/25/1985	151,238
3	Coons Run	9/6/1983	109,279
3	East Cumberland Street	9/28/1984	797
3	Evans Trail	8/8/1984	169,372
3	Eweing Road Drum Site	10/24/1984	25,000
3	Fennel Road	7/11/1985	11,163
3	Interstate 70 Acid Spill	5/31/1984	16,657
3	Locomotive Junkyard	3/15/1984	1,228
3	Mt. Pocono	1/24/1984	45,729
3	Old Garage	2/8/1985	6,699
3	Patrick Diehl	1/8/1985	50,678
3	Piney Creek Drum	7/6/1985	15,452
3	Pottstown Abandoned Trailer	5/2/1985	180,583 2/
3	Richardson Property	2/5/1985	43,038
3	Security Boulevard	3/4/1985	115,830
3	Semco PCB Site	10/31/1984	142,490
3	Springer Septic Services	2/13/1984	55,412
3	Stoneman Property	6/19/1985	5,113
3	Tinicum Marsh	9/23/1983	154,968
3	Vulcanized Rubber & Plastics	7/6/1983	42,696
3	Wheeling Hill	12/28/1983	4,570
3	Yokum Chlordane Contamination	3/20/1984	18,387
			$1,481,332
3	Total Sites - 26		
4	Abandoned Drum	7/28/1984	$ 1,812
4	Abandoned Drum	8/11/1983	1,821
4	Abandoned Drum/Hillsborough	9/17/1982	6,996
4	Abandoned Drum/Hillsborough	9/17/1982	3,976
4	Abandoned Drum/Marathon	1/1/1985	4,187
4	Ahoskie Midnight Dump	3/29/1985	3,000
4	Buckhorn Pesticide Fire	3/28/1985	15,000
4	Buford Highway	11/20/1984	5,000
4	Bush Brothers Plating	8/31/1985	120,000
4	C. D. Buff	3/21/1985	20,000
4	Caldwell County	7/15/1983	39,976
4	Callahan Drum	10/28/1983	7,963
4	Canton Plating & Bumper Works	12/19/1984	200,000
4	Cape Fear Wood Preserving	3/19/1985	150,000

REGION	NAME OF SITE	COMPLETION DATE	TOTAL OBLIGATIONS
4	Catoosa County Labpack	4/30/1985	$ 4,000
4	Caustic Chemical	7/20/1983	9,930
4	Coal Branch Hollow	6/24/1985	32,000
4	Creosote Tanks Release	9/28/1984	50,000
4	Davenport Creosote Spill	8/19/1983	54,533
4	Everhart Lumber Site	5/23/1984	10,500
4	Ft Oglethorpe Drum	2/28/1985	6,000
4	GA Highway 138	4/12/1984	5,544
4	Gail Foster Property	7/13/1984	3,000
4	Hadaway Road	4/29/1985	3,000
4	Head PCB Spill	2/7/1985	20,000
4	Horry Co. Fireworks	2/18/1985	90,000
4	Ivy Road (Bessie Runner)	10/30/1984	15,000
4	J & L Drum Site	10/26/1982	40,782
4	Jimmy's Truck Stop	5/1/1985	12,000
4	Johnson Property Site	4/16/1984	50,000
4	Lake Kathy Road Spill	1/18/1985	13,000
4	Lake Worth Inlet	6/4/1985	2,158
4	Lummis Island	4/10/1984	25,000
4	McAllister Drum Site	1/13/1984	87,025
4	Midnight Dump	8/24/1984	50,000
4	Midnight Dumping (KY)	7/28/1984	9,529
4	Midnight Dumping/Guilford	7/17/1981	1,954
4	One-Hour Koretizing	7/30/1984	14,000
4	Payco Pallet and Drum	4/10/1984	25,464
4	PCB Midnight Dump	2/15/1983	36,019
4	Pembroke Pines	12/19/1982	19,765
4	Petro Chemical	10/28/1983	175,858
4	Rock Bridge Park	1/25/1984	25,000
4	Rome Coal Tar	5/19/1985	100,000
4	Roosevelt Highway Spill	12/15/1983	34,937
4	S. Electroforming	8/30/1984	28,000
4	Scotts Creek Battery	1/25/1985	87,000
4	Simpson Road Drum	4/15/1985	27,000
4	Snapper Lane	10/14/1983	3,225
4	St. John River	10/3/1984	11,284
4	Unknown Chemical Discharge	12/3/1982	4,289
4	Villa Rica-High Point Rd	5/17/1984	16,612
4	Western Carolina Smelting	12/5/1984	81,000
4	Williams Pesticide Site	4/9/1983	10,616
			$1,874,755
4	Total Sites - 54		

REGION	NAME OF SITE	COMPLETION DATE	TOTAL OBLIGATIONS
5	Abandoned Chemicals	4/18/1983	$ 46,402
5	Abandoned Drum	7/3/1983	1,569
5	Abandoned Drum	7/16/1982	1,142
5	Abandoned Drums-Ecorse	6/27/1984	6,095
5	Bloomington Capacitor Site	2/1/1985	53,559
5	C-Way	11/26/1984	21,749
5	Chemical Drum	7/1/1982	3,487
5	Chicago Drum	7/22/1984	22,317
5	Cyanide Incident	8/17/1984	494
5	Drums on Beach	7/2/1982	2,628
5	Elkhart Site	3/25/1985	93,122
5	Floyd Hutter	6/10/1984	1,424
5	Fort & Scotten Streets	4/16/1984	8,713
5	GP & K, Inc.	6/10/1985	9,428
5	I-69	3/6/1985	16,049
5	Midnight Dump, W. 58th Street	4/28/1983	456
5	Midnight Dumping	10/1/1981	23,970
5	Millpoint (Spring Lake)	7/6/1984	2,501
5	Niles Township	3/20/1985	16,236
5	Oak Creek	1/31/1985	5,000
5	R. J. Trucking	7/9/1985	18,695
5	Seaway Warehouse	7/17/1984	28,443
5	Sorrento Site	3/31/1984	3,239
5	St. Louis River	8/27/1984	1,103
			$387,821
5	Total Sites - 24		
6	Acrylonitril Spill	4/3/1984	$ 2,250
6	Amoco Dock 31	3/8/1982	3,643
6	Chemical Drums-Padres Island	10/17/1984	5,119
6	Haddock Airport	2/5/1985	15,000
6	Houston Ship Channel	1/4/1984	5,000
6	Jack Dennis Pesticide Burnsite	3/18/1983	32,381
6	Near Wills Point	5/14/1983	9,652
6	Padre & Mustang Islands I	3/27/1985	160,422
6	Panther Creek	3/11/1982	3,037
6	South of Waco	5/5/1983	3,792
6	Stonewall Drug Dump	6/13/1985	7,000
6	Styrene Spill	2/22/1984	7,065
6	W. J. Oil	2/3/1984	54,777
			$309,138
6	Total Sites - 13		

REGION	NAME OF SITE	COMPLETION DATE	TOTAL OBLIGATIONS
7	Blue River Flood	6/30/1984	36,006
7	Flood Damage	2/22/1983	31,323
7	Franklin/Gimblin St.	5/2/1984	26,537
7	Holly Street Drum Site	6/29/1984	29,000
7	Rockwood School District	7/23/1984	49,007
			$171,873
7	Total Sites - 5		
8	Gene Murren	3/30/1984	$ 16,268
8	Green River Cyanide	1/23/1985	3,000
8	Montgomery Ward Store	5/15/1984	106,000
8	Vaagan-Dahle Farm	7/20/1984	24,419
			$149,687
8	Total Sites - 4		
9	A. S. Power Plant	7/24/1984	$ 27,321
9	Abandoned Drum	5/27/1982	1,580
9	Abandoned Drum	8/22/1984	2,000
9	Angeles National Forest	7/23/1982	4,370
9	Big Spring Ranch	4/21/1983	3,780
9	Bloomfield Avenue	7/13/1984	3,243
9	Cherokee Trucking	2/15/1985	105,503
9	Crystal Cove Beach	8/22/1983	3,561
9	Cyanide Spill	5/16/1985	8,500
9	Drainage Ditch	1/4/1984	1,994
9	Echo Bay Station	4/26/1983	9,015
9	L. Fricker Co.	7/19/1985	175,999
9	Laguna Beach II	4/29/1984	1,266
9	Long Beach Drum	8/20/1984	1,069
9	M/V Victoria II Keehi Lagoon	9/15/1985	50,000
9	Mystery Dump	12/14/1981	6,989
9	N Tulip St. - Escondido	3/15/1985	44,541
9	Parkside Drive	3/21/1984	6,231
9	PCB Transformers (includes 31 subsites)	9/21/1984	4,707
9	Riverside Pesticide	6/10/1985	27,490
9	Roic-Sun Valley	6/20/1985	100,000 2/

REGION	NAME OF SITE	COMPLETION DATE	TOTAL OBLIGATIONS
9	Sacramento River	2/16/1983	$ 2,363
9	Satala Power Plant	7/18/1984	20,214
9	South Half Moon Bay	8/14/1985	20,000
9	Tafuna Power Plant	7/19/1984	40,276
9	Tuba City Acid Tank	9/10/1982	34,140
9	Unknown Chemical Drums	5/11/1983	1,394
9	Washo Drum	8/28/1985	2,500
			$710,046
9	Total Sites - 28		
10	Abandoned Drum	3/9/1984	$ 1,058
10	Municipal Landfill	5/20/1982	6,181
10	Ohlson Mountain PCB	8/23/1985	101,399
10	PCB Contamination	6/17/1983	8,571
10	Spokane Drum Fire	6/21/1985	3,000
			$120,209
	Total Sites - 5		$6,130,209
	Total Completions - 182		

1/ Financial Management Division's records shows an obligation through September 1985 of $675.

2/ OWPE states that these sites are targeted for action in the SCAP.

EXHIBIT C

COMPLETED NON-NATIONAL PRIORITY LIST REMOVAL SITES WITH CLEANUP COSTS BETWEEN $200,000 AND UNDER $500,000 IN VALUE THAT MAY NOT BE RECOVERED

Region	Total Number of Completed Removal Sites Between $200,000 - $500,000 as of 09/30/85	Total Obligations of Removal Sites Between $200,000 - $500,000 as of 09/30/85
1	1	$ 400,112
2	1	293,332
3	5	1,648,633
4	4	1,108,000
5	3	970,907
6	2	460,878
7	1	442,140
8	2	437,000
9	0	0
10	0	0
Totals	19	$5,761,002

SCHEDULE OF SUPERFUND SITES THAT THERE IS A BANKRUPTCY CASE AGAINST POTENTIAL RESPONSIBLE PARTIES
(Note 1)

Region	Case/Site Name	Total EPA Claim Against Bankruptcy Responsible Party	Date of Bankruptcy	Date of Claim	Total CERCLA Funds Spent Through Sept. 30, 1985	Total Funds Awarded	Notes
1	Johns Manville, NH	$1,100,000	8/26/82	11/30/84	$1,100,000	$ -0-	
2	Syncon Resins, Inc.	1,867,596	10/19/81	03/21/83	2,809,732	-0-	
2	Combe Fill Landfills, NJ		11/13/81	01/22/86		-0-	
	North	228,530			228,530	-0-	
	South	88,879			88,879	-0-	
3	Bruin Lagoon, PA	1,222,446	02/08/77	12/09/83	3,578,356	-0-	
3	Drake Chemical, PA	1,200,000	00/00/81	12/20/83	1,630,341	-0-	
3	L.A. Clarke & Sons	65,492	03/11/83	11/02/84	Not Known	-0-	
4	American Creosote, FL	7,000,000	05/21/82	07/22/82	1,261,724	-0-	
5	A&F Materials, IL	100,000	Not Known	06/00/83	586,694	-0-	
5	Electric Utilities Corp, IL	176,575	09/19/83	10/19/84	1,000,000	-0-	
5	Isanti Solvent, MN	777,727	07/00/83	09/13/83	995,000	-0-	
5	Liquid Disposal, MI	321,505	04/00/82	01/13/83	2,777,247	-0-	
5	Long, T.P. OH	37,859	05/29/81	07/29/83	37,859	37,859	Note 2
5	Peerless Plating, MI	139,339	08/22/83	01/01/85	147,650	-0-	

5	Thomas Solvent, MI	4,335,006	04/06/84	08/21/84	3,477,195	-0-
5	Crystal Chemical, TX	814,879	09/24/81	07/15/82	1,548,152	-0-
6	Hardage Disposal Site	979,550	01/28/85	06/03/85	Not Known	-0-
6	Metcoa, TX	332,669	Not Known	01/24/84	336,798	-0-
6	Triangle Chemical, TX	148,653	06/00/81	09/23/82	332,669	-0-
7	Aidex Corp, IA	12,000	02/05/79	06/22/81	2,214,015	10,000 Note 3
7	Charter, MO	34,000,000	04/20/84	11/18/84	34,000,000	-0-
9	Metate Asbestos	2,297,000	02/25/83	08/10/83	7,000,000	-0-
		$57,245,705			$65,150,841	$47,859 Note 4

Total Sites 22

Notes

Note 1 The above information is a result of OECM's generated data. The column "Total CERCLA Funds Spent Through September 30, 1985" does not represent the actual expenditures as of September 30, 1985. They may represent estimates, funds expended through the date of claim, and approximate amounts through this period. The current FMS does not show all site specific costs. Thus, it is difficult to obtain the exact expenditures per site. To obtain such amounts it would require Agency personnel to go to many different sources.

Note 2 EPA received $14,198 as payment for this case.

Note 3 EPA received $12,967 as payment for this case.

Note 4 EPA received $27,165 as payment for this amount.

NEGOTIATIONS AS OF SEPTEMBER 30, 1985
(Note 1)

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
1	Beacon Heights Landfill	3rd Qtr 85		315 days		
	Laurel Park, Inc.	3rd Qtr 84	3rd Qtr 85	360 days	Settlement	
	Charles George	3rd Qtr 85		315 days		
	Groveland Wells 1 & 2	2nd Qtr 85		405 days		
	Hocomonco Pond	3rd Qtr 85		315 days		
	Norwood PCB/Grant Gear	3rd Qtr 85		315 days		
	Plymouth Harbor	1st Qtr 85		495 days		
	Resolve Inc	3rd Qtr 85		315 days		
	Salem Acres	2nd Qtr 85		405 days		
	Silresim Chemical	3rd Qtr 84	4th Qtr 85	450 days	Settlement	
	McKin Co.	2nd Qtr 85	4th Qtr 85	225 days	Settlement	
	O'Connor Site	2nd Qtr 85		405 days		
	Winthrop Town Landfill	3rd Qtr 85	4th Qtr 85	90 days	Settlement	(2)
	Coakley Landfill	2nd Qtr 85	3rd Qtr 85	90 days	Fund Fin. Action	
	Exxon	3rd Qtr 85	1st Qtr 86	180 days	Unilateral Order	
	Fimble Door	3rd Qtr 85		315 days		
	Gonic (Two Drum Sites)	4th Qtr 84	1st Qtr 85	90 days	Fund Fin. Action	
	Keefe Environmental Services (KES)	Not Known	2nd Qtr 85	Not Known	Cost Recovery	
	Rodgers Mobile Home	3rd Qtr 85		315 days		
	Savage	4th Qtr 85		225 days		
	Central Landfill	2nd Qtr 85		405 days		
	Landfill & Resource Recovery	3rd Qtr 84	1st Qtr 85	180 days	Fund Fin. Action	
	Peterson/Puritan Inc	Not Known	1st Qtr 85	Not Known	Fund Fin. Action	
	Picillo Farm	3rd Qtr 85		315 days		
	Stamina Mills	3rd Qtr 85		315 days		
	Western Sand and Gravel	2nd Qtr 84	4th Qtr 85	540 days	Settlement	(2)

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
2	Abestos Dump	3rd Qtr 84	3rd Qtr 85	360 days	Settlement	
	Chemical Leaman Tank Lines, Inc.	2nd Qtr 85	4th Qtr 85	180 days	Settlement	(2)
	D'Imperio Property	2nd Qtr 85	3rd Qtr 85	90 days	Not Known	
	Fried Industries	3rd Qtr 85		315 days		
	GEMS	3rd Qtr 85		315 days		
	GEMS	4th Qtr 85		225 days		
	Johnson & Towers	2nd Qtr 85		405 days		
	Johnson & Towers	2nd Qtr 85		405 days		
	KIN-BUC Landfill	1st Qtr 85	3rd Qtr 85	180 days	Cost Recovery	
	King of Prussia	1st Qtr 84	3rd Qtr 85	540 days	Settlement	
	Lipari Landfill	3rd Qtr 84		675 days		
	Lipari Landfill	2nd Qtr 85		405 days		
	Lone Pine Landfill	1st Qtr 84		Not Known	Fund Fin. Action	
	Lone Pine Landfill	1st Qtr 85		495 days		
	M & T Delisa	3rd Qtr 85		315 days		
	MKY Corporation	4th Qtr 85	1st Qtr 86	90 days	Settlement	
	Price Landfill	2nd Qtr 85	3rd Qtr 85	90 days	Settlement	
	Quanta Resources	3rd Qtr 85		315 days		
	Quanta Resources	2nd Qtr 85	3rd Qtr 85	90 days	Settlement	
	Ringwood Mines	2nd Qtr 85		405 days		
	Scientific Chemical Processing (Carl)	3rd Qtr 85	1st Qtr 86	180 days	Settlement	
	Scientific Chemical Processing (Carl)	3rd Qtr 85		315 days		
	Scientific Chemical Processing (Newark)	3rd Qtr 85		315 days		
	Syncon Resins	3rd Qtr 85		315 days		(4)
	Tabernacle Drum Dump	2nd Qtr 84	2nd Qtr 85	360 days	Unilateral Action	
	Clothier Disposal	2nd Qtr 85		405 days		
	Fulton Terminals	2nd Qtr 85		405 days		
	G. M. Central Foundry	2nd Qtr 84	3rd Qtr 85	450 days	Settlement	
	Hudson River PCB's	1st Qtr 84	3rd Qtr 85	540 days	Fund Fin. Action	

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
2	Olean Wellfield(McGraw-Edison)	3rd Qtr 85		315 days		
	Pollution Abatement Services (PAS)	3rd Qtr 85		315 days		
	SAG Harbor/Nabisco	1st Qtr 85	3rd Qtr 85	180 days	Fund Fin. Action	
	Volney Landfill	2nd Qtr 85		405 days		(2)
	Wide Beach	3rd Qtr 85		315 days		
	Fibers Public Supply Wells	4th Qtr 85	1st Qtr 86	90 days	Settlement	
	Frontera Creek	3rd Qtr 85	Not known	315 days	Fund Fin. Action	
	Juncos Landfill	2nd Qtr 84	1st Qtr 85	270 days	Settlement	
	Puerto Rico Chemical	4th Qtr 84		585 days		
	Upjohn Facility	1st Qtr 84		855 days		
3	Dover AFB	1st Qtr 85			Transferred to RCRA	(2)
	Harvey & Knott Drum	3rd Qtr 85		315 days		
	Tybouts Corner Landfill	4th Qtr 84	1st Qtr 85	90 days	Settlement	
	Tybouts Corner Landfill	2nd Qtr 85		405 days		
	Limestone Road	3rd Qtr 84	Not Known	675 days	Fund Fin. Action	(2)
	Mid-Atlantic Wood Preservers	3rd Qtr 85		315 days		
	Sand Gravel & Stone	4th Qtr 84	2nd Qtr 86	540 days	Settlement	
	United Rigging	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Ambler Asbestos Site	1st Qtr 85	3rd Qtr 85	180 days	Fund Fin. Action	(3)
	Amchem Dioxin	2nd Qtr 84	4th Qtr 85	540 days	Settlement	(2)
	Domino Salvage Yard	2nd Qtr 85	4th Qtr 85	180 days	Fund Fin. Action	
	Drake Chemical	1st Qtr 85	2nd Qtr 85	90 days	Not Known	
	Fischer & Porter	1st Qtr 84	1st Qtr 85	360 days	Settlement	
	Havertown PCP Site	4th Qtr 84	1st Qtr 85	90 days	Unilateral Order	
	Henderson Road	3rd Qtr 85	1st Qtr 86	180 days	Settlement	
	Lackawanna Refuse	4th Qtr 85		225 days		
	Lavelle Borehole	3rd Qtr 85	1st Qtr 86	180 days	Fund Fin. Action	
	Letterkenny Army Depot	1st Qtr 85	2nd Qtr 85	90 days	Fund Fin. Action	(2)
	McaDoo Associates	3rd Qtr 84	1st Qtr 85	180 days	Not Known	
	Mill Creek	3rd Qtr 84		675 days		

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
3	Moyers Landfill	3rd Qtr 85		315 days		
	Palmerton Zinc	4th Qtr 84	4th Qtr 85	360 days	Settlement	
	Swissvale Auto Parts	3rd Qtr 84	2nd Qtr 85	270 days	Settlement	
	Taylor Borough Dump	3rd Qtr 85		315 days		
	Tyson's Dump	1st Qtr 85	2nd Qtr 85	90 days	Not Known	
	Tyson's Dump	4th Qtr 85		225 days		
	United Metal Traders	Not Known	1st Qtr 85	Not Known	Settlememt	
	Westinghouse #2	4th Qtr 84		585 days		
	Avtex Fibers Site	2nd Qtr 85		405 days		
	Culpepper Wood Preservers	3rd Qtr 85		315 days		
	Defense General Supply FF	1st Qtr 85		495 days		
	East Kane Tar Pits	4th Qtr 85		225 days		
	Fort A. P. Hill	1st Qtr 85	2nd Qtr 85	90 days	Settlement	
	Hampton Cylinders (Moor-Fita)	1st Qtr 85	1st Qtr 86	360 days	Settlement	
	IBM Manassas Site	3rd Qtr 85	4th Qtr 85	90 days	Civil Action Ref.	
	Big John's Cullet Pile	4th Qtr 84	1st Qtr 85	90 days	Unilateral Order	
	Big John's Salvage-Holt Rd	2nd Qtr 85		405 days		
	Georges Creek	1st Qtr 85	4th Qtr 85	270 days	Not Known	
	Heizer Creek	1st Qtr 85	4th Qtr 85	270 days	Settlement	
	Manila Creek Dioxin	1st Qtr 85	4th Qtr 85	270 days	Settlement	
	Mobay Chemical	3rd Qtr 85		315 days		
	Monsanto (Plant Road)	1st Qtr 84	3rd Qtr 85	540 days	Settlement	
	Monsanto Landfill	1st Qtr 85	4th Qtr 85	270 days	Settlement	
	Monsanto Plant	4th Qtr 84		585 days		
	Nitro Dump	1st Qtr 85	4th Qtr 85	270 days	Settlement	
	Ordnance Works Disposal	4th Qtr 84	1st Qtr 85	90 days	Fund Fin. Action	
	Poca Mine	1st Qtr 85	4th Qtr 85	270 days	Settlement	(1)
	Smith Douglas	4th Qtr 85		225 days		
	South Charleston	1st Qtr 85	4th Qtr 85	270 days	Not Known	

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
4	Perdido Groundwater Contamination	1st Qtr 85	1st Qtr 86	360 days	Settlement	
	Saraland Apartments	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	City Industries	4th Qtr 85		225 days		
	Hipps Road Landfill	2nd Qtr 85		405 days		
	Hollingsworth Solderless Terminal Co.	4th Qtr 85		225 days		
	Miami Drum Services	2nd Qtr 85		405 days		
	NW 58th Street	2nd Qtr 85		405 days		
	Pickettville Road Landfill	4th Qtr 85		225 days		
	Zellwood Ground Water Contamination	3rd Qtr 84	2nd Qtr 85	270 days	Fund Fin. Action	
	Marzone/Chevron Co	1st Qtr 85	3rd Qtr 85	180 days	Settlement	
	Powersville	1st Qtr 85	1st Qtr 86	360 days	Fund Fin. Action	
	Airco	1st Qtr 85	1st Qtr 86	360 days	Settlement	
	Harrison City	4th Qtr 85		225 days		
	Flowood	3rd Qtr 85	2nd Qtr 86	270 days	Settlement	
	Gautier Oil(Seaboard)	2nd Qtr 85	3rd Qtr 85	90 days	Settlement	
	Chemtronics Inc	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Dockery Property	4th Qtr 85		225 days		
	Martin-Marietta/Sodyeco	3rd Qtr 84		675 days		
	Potter Pits	4th Qtr 85		225 days		
	Independent Nail	4th Qtr 85		225 days		
	Medley Farms	4th Qtr 85		225 days		
	Palmetto Wood Preserving	4th Qtr 85		225 days		
	Palmetto Wood Preserving	2nd Qtr 85	3rd Qtr 85	90 days	Not Known	
	Galloway Pits	4th Qtr 85		225 days	Unilateral Order	
5	Acme Solvent Reclaiming	3rd Qtr 85		315 days		
	Alburn Incinerator/HAAS	3rd Qtr 85	2nd Qtr 86	270 days	Civil Action Ref.	
	Crab Orchard/Sangamo Dump	4th Qtr 84	2nd Qtr 86	540 days	Settlement	
	Cross Brothers	2nd Qtr 85	3rd Qtr 85	90 days	Fund Fin. Action	
	Environmental Dynamics	2nd Qtr 84	2nd Qtr 85	360 days	Settlement	(2)
	KERR-MCGEE	3rd Qtr 84		675 days		

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
5	KERR-MCGEE	1st Qtr 84		855 days		
	KERR-MCGEE (Kress Creek/West Branch)	Not Known	4th Qtr 85	Not Known	Fund Fin. Action	
	KERR-MCGEE(Reed-Keppler)	Not Known	4th Qtr 85	Not Known	Fund Fin. Action	
	KERR-MCGEE(Residential Areas)	Not Known	4th Qtr 85	Not Known	Fund Fin. Action	
	KERR-MCGEE(Sewage Treatment Plant Site)	Not Known	4th Qtr 85	Not Known	Fund Fin. Action	
	NL Industries/Taracorp Lead Smelter	1st Qtr 85	3rd Qtr 85	180 days	Settlement	
	Pagel's Pit	4th Qtr 85	1st Qtr 86	90 days	Not Known	
	Riverdale Chemical Co	4th Qtr 84	2nd Qtr 85	180 days	Settlement	
	Sheffield (U. S. Ecology)	2nd Qtr 85	4th Qtr 85	180 days	Settlement	(2)
	Velsicol Chemical Corp	1st Qtr 85	4th Qtr 85	270 days	Fund Fin. Action	
	Wauconda Sand & Gravel	4th Qtr 84		585 days		
	American Chemical Service	3rd Qtr 85	1st Qtr 86	180 days	Not Known	
	Bennett Stone Quarry	Not Known	3rd Qtr 85	Not Known	Settlement	
	Dimar Corp	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Enviro-Chem	3rd Qtr 84	1st Qtr 86	540 days	Not Known	
	Fisher-Calo	3rd Qtr 85	1st Qtr 86	180 days	Not Known	
	Fort Wayne Reduction Dump	3rd Qtr 85	4th Qtr 85	90 days	Fund Fin. Action	
	Lemon Lane Landfill	Not Known	3rd Qtr 85	Not Known	Settlement	
	Main Street Well Field	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Main Street Well Field	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Midco I	1st Qtr 84	3rd Qtr 85	540 days	Settlement	
	Midco I	2nd Qtr 85	3rd Qtr 85	90 days	Settlement	
	Midco II	1st Qtr 85	3rd Qtr 85	180 days	Settlement	
	Midco II	2nd Qtr 85	3rd Qtr 85	90 days	Settlement	
	Neal's Dump	Not Known	3rd Qtr 85	Not Known	Settlement	
	Neal's Landfill	Not Known	3rd Qtr 85	Not Known	Settlement	
	Seymour Recycling	1st Qtr 84		855 days		
	Wayne Waste Oil	4th Qtr 85	1st Qtr 86	90 days	Not Known	
	Wedzeb Enterprises	2nd Qtr 84	1st Qtr 86	630 days	Unilateral	
	Westinghouse Sites	1st Qtr 84	3rd Qtr 85	540 days	Settlement	
	American Steel Works	4th Qtr 85	Not Known	Not Known	Settlement	
	Berlin & Farro	1st Qtr 84		855 days		
	Berlin & Farro	3rd Qtr 85	2nd Qtr 86	225 days	Settlement	
	Burrows Sanitation	3rd Qtr 85	4th Qtr 85	90 days	Fund Fin. Action	

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
5	Dow Chemical Co (Midland)	3rd Qtr 84	2nd Qtr 85	270 days	Settlement	
	Ionia City Landfill	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	K. L. Avenue Landfill	3rd Qtr 85	1st Qtr 86	180 days	Not Known	
	K. L. Avenue Landfill	4th Qtr 85	2nd Qtr 86	180 days	Fund Fin. Action	(2)(3)
	Kareckas Farm	1st Qtr 85	2nd Qtr 85	90 days	Settlement	
	Kentwood Landfill	3rd Qtr 85	1st Qtr 86	180 days	Not Known	
	Mason County Landfill	4th Qtr 85	1st Qtr 86	90 days	Not Known	
	MES Co/Joe Wilds	2nd Qtr 85	3rd Qtr 85	90 days	Settlement	
	Metamora Landfill	3rd Qtr 85	4th Qtr 85	90 days	Fund Fin. Action	(2)
	OTT/Story/Cordova Chemical	1st Qtr 84	2nd Qtr 86	810 days	Fund Fin. Action	
	Packaging Corp of America	2nd Qtr 84	2nd Qtr 85	360 days	Settlement	
	Tar Lake	3rd Qtr 84	1st Qtr 86	540 days	Not Known	
	U. S. Aviex	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Whitehall Municipal Wells	3rd Qtr 84	3rd Qtr 85	360 days	Settlement	
	Burlington Northern	1st Qtr 84	2nd Qtr 85	450 days	Settlement	
	FMC-Northern Ordinance	2nd Qtr 85	1st Qtr 86	270 days	Not Known	
	Isanti	2nd Qtr 85	1st Qtr 86	270 days		(4)
	Joslyn Manufacturing & Supply	1st Qtr 84	Not Known	Not Known	Transferred to State	(2)
	New Brighton/Arden Hills	2nd Qtr 84		720 days		
	NL/Taracorp	4th Qtr 84	2nd Qtr 85	180 days	Settlement	
	Reilly Tar & Chemical Corp	1st Qtr 84	3rd Qtr 85	540 days	Settlement	
	South Andover(Andover Sites)	2nd Qtr 85	4th Qtr 85	180 days	Fund Fin. Action	
	South Andover(Andover Sites)	4th Qtr 85		225 days		
	St. Louis River	2nd Qtr 85	2nd Qtr 86	360 days	Fund Fin. Action	
	University of Minnesota	3rd Qtr 85		315 days		(2)
	Whittaker Corp	2nd Qtr 85		405 days		
	American Steel Drum	1st Qtr 85	2nd Qtr 85	90 days	Unilateral Order	
	Arcanum Iron & Metal	4th Qtr 85	1st Qtr 86	90 days	Not Known	

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
6	Cecil Lindsey	4th Qtr 85	1st Qtr 86	90 days	Not Known	
	Mid-South	4th Qtr 85		225 days		
	Bayou Bonfouca	3rd Qtr 85	4th Qtr 85	90 days	Fund Fin. Action	
	Bayou Sorrell	2nd Qtr 85		405 days		
	Citgo	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Cleve Reber	3rd Qtr 85	1st Qtr 86	180 days	Not Known	
	Cleve Reber	3rd Qtr 85	4th Qtr 85	90 days	Not Known	
	Homestake Mining	3rd Qtr 85		315 days		
	Lee Acres(DOI)	3rd Qtr 85	4th Qtr 85	90 days	No Action	
	South Valley	1st Qtr 84	1st Qtr 85	360 days	Settlement	
	South Valley	3rd Qtr 84	2nd Qtr 85	270 days	Fund Fin. Action	
	Hardage/Criner	2nd Qtr 85		405 days		
	Okemah Drum Site	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Bailey Waste Disposal	2nd Qtr 85	3rd Qtr 85	90 days	Fund Fin. Action	
	Bio-Ecology Systems	1st Qtr 84	2nd Qtr 85	450 days	Fund Fin. Action	
	Brio Refinery	1st Qtr 85	3rd Qtr 85	180 days	Settlement	
	Brio Refinery	1st Qtr 85	2nd Qtr 85	90 days	Settlement	
	Crystal Chemical	4th Qtr 84		585 days		
	Crystal City	3rd Qtr 85	4th Qtr 85	90 days	Fund Fin. Action	
	Dixie Oil Processors	4th Qtr 85		225 days		
	French Limited	1st Qtr 85	3rd Qtr 85	180 days	Settlement	
	Harris-Farley Street	3rd Qtr 84	4th Qtr 85	450 days	Settlement	
	Hastings Radio Chemical	4th Qtr 85		225 days		
	Hill Sand Co	1st Qtr 85		495 days		
	Industrial Transformers	3rd Qtr 85	4th Qtr 85	90 days	Fund Fin. Action	
	Koppers	1st Qtr 85	2nd Qtr 85	90 days	Settlement	
	Motco	4th Qtr 84	2nd Qtr 85	180 days	Fund Fin. Action	
	Motco	4th Qtr 84	2nd Qtr 85	180 days	Civil Action Ref.	
	Odessa Chromium I	1st Qtr 85	3rd Qtr 85	180 days	Fund Fin. Action	
	Odessa Chromium II	1st Qtr 85	3rd Qtr 85	180 days	Fund Fin. Action	
	Petrochemical System	1st Qtr 85	2nd Qtr 85	90 days	Fund Fin. Action	
	Sheridan Disposal	3rd Qtr 85		315 days		
	South Cavalcade	1st Qtr 85	2nd Qtr 85	90 days	Settlement	

REG	NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
7	Aidex	2nd Qtr 84	Not Known	Not Known		(4)
	Chemplex	1st Qtr 85	2nd Qtr 85	90 days	Not Known	
	Mason City Coal	4th Qtr 85		225 days		
	Cherokee County	4th Qtr 85		225 days		
	Cortland Container	3rd Qtr 84	1st Qtr 85	180 days	Unilateral Order	
	John's Sludge Pond	1st Qtr 84		855 days		
	Elliot Shooting Park	4th Qtr 85	1st Qtr 86	90 days	Settlement	
	Findett	2nd Qtr 85		405 days		
	Fulbright Landfill	3rd Qtr 85		315 days		
	Riverfront Landfill	2nd Qtr 85		405 days		(2)
	Riverfront Landfill	3rd Qtr 85		315 days		(3)
	St. Joseph Landfill	4th Qtr 85		225 days		
	Union Carbide Agricultural Prod.	4th Qtr 85		225 days		
	Environmental Services Inc	4th Qtr 84		585 days		
	Hastings G. W. Contamination	4th Qtr 85		225 days		
8	Anaconda Smelter	3rd Qtr 84	1st Qtr 85	180 days	Settlement	
	Anaconda(Mill Creek)	4th Qtr 85	1st Qtr 86	90 days	Settlement	
	Burlington Northern RR	1st Qtr 85	1st Qtr 86	360 days	Settlement	
	California Gulch	4th Qtr 85		225 days		
	Denver Radium	2nd Qtr 85	4th Qtr 85	180 days	Fund Fin. Action	
	Denver Toluene	4th Qtr 85	1st Qtr 86	90 days	Unilateral Order	
	Hill AFB	3rd Qtr 85	2nd Qtr 86	270 days	Settlememt	
	Koppers Co	1st Qtr 85		495 days		
	Martin Marietta/Denver Aerospace	3rd Qtr 85	2nd Qtr 86	270 days	Settlement	
	Micronutrients International	4th Qtr 85	2nd Qtr 86	180 days	Settlement	
	Ogden Defense Depot	3rd Qtr 85		315 days		
	PDC Spas	1st Qtr 85	2nd Qtr 85	90 days	Unilateral Order	
	Sharon Steel/Midvale Smelter	2nd Qtr 85	3rd Qtr 85	90 days	Fund Fin. Action	
	Smuggler Mt.	2nd Qtr 85	4th Qtr 85	180 days	Settlement	
	Tooele Army Depot	3rd Qtr 85		315 days		
	Wasash Chem	4th Qtr 85		225 days		

REG	NAME OF SITE NAME OF SITE	QUARTER INITIATED	QUARTER COMPLETED	ESTIMATED LENGTH OF NEGOTIATION THRU FY 86 2nd QTR.	OUTCOME	NOTES
9	Indian Bend Wash Area	3rd Qtr 84	2nd Qtr 85	270 days	Settlement	
	Litchfield Airport Area	3rd Qtr 84	2nd Qtr 85	270 days	Unilateral Ord	
	Aerojet General	4th Qtr 84	2nd Qtr 86	540 days	Settlement	
	Del Norte City Pesticide Storage Area	4th Qtr 85		225 days		
	Fairchild Camera & Instrument Mt. View	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Intel Mt. View	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Montrose Chemical	2nd Qtr 84	2nd Qtr 85	360 days	Fund Fin. Action	
	NEC Electronics	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Norwalk Dump	3rd Qtr 85	4th Qtr 85	90 days	Civil Action Ref.	
	Raytheon	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
	Siltec Corp	3rd Qtr 85	4th Qtr 85	90 days	Settlement	
10	Bunker Hill	2nd Qtr 85		405 days		
	Bonneville Power Adm	1st Qtr 85	2nd Qtr 85	90 days	Settlement	
	Gould Inc	2nd Qtr 85	4th Qtr 85	180 days	Settlement	
	Martin Marietta Aluminum	2nd Qtr 85	4th Qtr 85	180 days	Settlement	
	Commencement Bay, S. Tacoma (12A)	3rd Qtr 84	1st Qtr 85	180 days	Settlement	
	Commencement Bay/Tacoma Tar Pits	3rd Qtr 84	1st Qtr 85	180 days	Settlement	
	Northside Landfill	Not Known	1st Qtr 85	Not Known	Fund Fin. Action	
	Queen City Farms Inc	4th Qtr 85	1st Qtr 86	90 days	Settlement	
	Strandley	1st Qtr 85	3rd Qtr 85	180 days	Settlement	
	Western Processing Co	3rd Qtr 85		315 days		
	Williams & Son	2nd Qtr 85	4th Qtr 85	180 days	Settlement	

NOTES

(1) The information above was generated from OWPE's SCAP report on negotiations dated 10/25/85 and 5/16/86. These negotiations were ongoing prior to FY 85, initiated in FY 85, completed in FY 86 (2nd quarter), or FY 85 negotiations ongoing thru FY 86 (2nd quarter). The estimated length of negotiation was obtained by giving a value of 90 days for each full quarter and giving a value of 45 days for each initiated and completed quarter.

(2) The information was not shown on the FY 86 SCAP report as being transferred; thus we were unable to determine the status of negotiations. We requested the information from the Office of Waste Program Enforcement, Compliance Branch (OWPE - CB) and they provided us with information on a quarter completed basis, status(ongoing/transferred) and initiated date if needed. We did not put in this chart negotiations which were in the FY 85 SCAP report, but were told that they were completed in FY84 in the review by the above mentioned office. We also did not include information on two sites which we were told were Federal facilities and should not be included in SCAP.

(3) The dates were changed since they were apparent mistakes and OWPE corrected them.

(4) The outcome was found as a bankrupt case (See Exhibit D).

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

9-10
OA-1399

SEP 10 1986

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Draft Consolidated Report on EPA's Cost Recovery Actions Against Potential Responsible Parties

FROM: J. Winston Porter
Assistant Administrator

TO: Ernest E. Bradley III
Assistant Inspector General for Audit

Thank you for the opportunity to respond to the subject audit report. We are concerned that the findings as they are presented in the report do not reflect the total scope of the enforcement program. The enforcement program has three basic strategies. First, we negotiate with the responsible party or parties to undertake the cleanup or to pay EPA upfront for the costs of the cleanup (cashout). If the negotiations fail, EPA then has two remaining choices: Either to take the responsible party to court to compel a cleanup action or to use the Fund and subsequently to recover the costs of cleanup from the responsible party. We feel that it would provide balance to the report to include the number of settlements we have achieved that require responsible parties to clean up the site. As on September 30, 1985, we had settlements worth approximately $477 million in cleanup, 175 cases filed worth $306 million in cleanup, and $137 million filed for cost recovery. See Appendix 2 Note 1

Another concern we have about the report is the cost recovery ratio of 1.1 percent of Trust Fund expenditures. We feel that this is a very poor characterization of our cost recovery program for a number of reasons. First, the analysis compares total funds obligated with total cash received through cost recovery as of September 30, 1985. Using the total funds obligated is not indicative of the site work that is completed, the time it takes to prepare a case once work is complete, and the existance of a viable responsible party at those sites where work has been done. Additionally, the scope of your audit was limited to removals, yet your analysis takes into consideration all Superfund costs. Finally, all Superfund costs are not cost recoverable. For instance, it is Agency policy not to recover research and development costs. See Appendix 2 Note 2

A better characterization would be to compare the amount of funds expended at a completed site that has a viable responsible party, to the amount of cost recovery achieved through cases filed and cases in negotiation. It should be mentioned that in FY 1986, we expect to double the amount of cost recovery that we achieved in the first five year of the fund.

Our next concern is your statement on page 10 that, "potentially over $60 million will be lost to the fund in the next 20 years if cost recoveries for removal actions under $200,000 continue to be ignored." Although $60 million may not be recovered over the next 20 years, it will not be due to ignoring cases under $200K. It will be due to not having a viable responsible party. See Appendix 2 Note 3

The next concern is your statement about "the Congressional goal of establishing a self-sustaining Fund to clean up the hazardous waste sites". The Congressional goal is to clean up the nation's worst hazardous waste sites. Since we estimate that more than half of the sites are abandoned and have no viable responsible party against which to cost recover, your interpretation of the Congressional goal would not appear to be reasonable. A more accurate statement would be to say that it is important that EPA maintain an aggressive cost recovery program because EPA will be able to clean up additional sites with the recovered funds. It is also important to note that Congress must appropriate these dollars to EPA, before they can be used. See Appendix 2 Note 4

Our final concern is related to the 199 sites under $200,000, that are not being pursued by EPA. In reviewing the sites listed in exhibit A, we have determined that almost 50 percent of the sites are under $10,000. In weighing our staffing resources against the amount of recoverable dollars, cases under $10,000 represent a low priority. See Appendix 2 Note 5

Before addressing each of your specific recommendations, we want to point out that the new Superfund bill will bring some changes. Over the next several months, we will be reviewing our existing policies and procedures and will be revising them to incorporate the new provisions. During this process, we will also take your recommendations into consideration in updating our policies and procedures.

OIG Recommendation - Small Case Policies

1. Require that minimal cost recovery actions (e.g., notification, demand letters) be pursued for sites where funds expended are under $200,000. Also, Headquarters should weigh the costs to be incurred for litigation versus the costs to be recovered, before pursuing a cost recovery action.

2. Develop and issue specific policies, procedures, and negotiating strategies for settling cases under $200,000 ($500,000) to the Regions to ensure a consistent Agency approach.

3. Examine the possibility of using an arbitration board or some similar mechanism as an alternative to filing cost recovery actions in court.

4. Pursue the possibility of giving cost recovery actions under $200,000 to outside attorneys on a contingency basis for fees.

OSWER Response

Under the new Superfund, cases under $500,000 now can be handled through administrative means. We will be reviewing existing policies and requirements of the new law, and we take into consideration your recommendations. The new Superfund bill expressly allows for alternative dispute resolution procedures. Since the new law gives us administrative authority to pursue cost recovery actions under $500,000, it should not be necessary to use outside attorneys.

OIG Recommendation - Bankruptcy Cases

1. Use more explicit language in the demand letter identifying EPA as an "official creditor," thus no interpretation of the demand letter will be required by the PRP.

2. Establish procedures on how to take the necessary action(s) to establish EPA's priority claim in relation to other creditors.

3. Coordinate with the Office of General Counsel on developing new procedures and a system that will permit EPA to take timely action, once it is notified of a PRP's bankruptcy filing.

4. Coordinate with OECM to try to balance Agency actions against both financially viable and nonviable PRPs, especially in light of the courts' recent leaning towards giving governmental units first priority on hazardous waste cases after secured creditors.

OSWER Response

We will consider revising our demand letters to include the appropriate "official creditor" language.

The Bankruptcy Guidance issued by OECM will be reviewed and revised as appropriate in light of the suggestions made regarding timeliness of actions and procedures for establishing EPA's claims.

OIG Recommendation - Negotiation Policy

1. Re-evaluate the Agency's present policy and procedures to ensure that timeframes set for negotiations are reasonable. Also, timeframes should not be exceeded unless it can be documented in the files that significant progress is being made.

2. Require that specific steps in the negotiation and settlement process are planned, scheduled, and initiated in a systematic and orderly manner in order to minimize delays in the settlement process.

3. Require Agency negotiators to notify responsible parties that the negotiations must be concluded within the Agency's established timeframe.

4. Require the Regional offices to maintain information on the length of negotiations and whether this conforms to the goal established by EPA.

OSWER Comments

We will re-evaluate our present policy and procedures and timeframes for negotiations under the new law, and take your recommendations into consideration.

OIG Recommendation - Statute of Limitation (SOL)

1. Proceed under the more conservative tort law timeframe (three years after completion of a removal) until such time as the issue is resolved by Congress or the Courts.

2. Include and track the SOL date in the comprehensive listing of all removal actions.

3. For those sites where the SOL is about to expire, take immediate action to initiate negotiations or referrals to DOJ.

OSWER Response

The new Superfund bill directly addresses the issue of the statute of limitations.

OSWER has initiated work on a tracking system that will identify all removal actions and pinpoint significant enforcement-related dates, including statute of limitations dates.

OSWER and OECM have already asked the Regions to review the universe of removal actions for purposes of potential cost recovery actions.

Current guidance ("Timing of CERCLA Cost Recovery Actions") requires that CERCLA actions be initiated in a manner that ensures compliance with any applicable statute of limitations and also ensures that the evidence does not become stale.

We appreciate the opportunity to comment on the draft consolidated audit report. If you have any questions regarding our comments, please call Brad Campbell on 382-4478.

cc: Jack McGraw
Gene Lucero
Brad Campbell

ADDITIONAL OIG COMMENTS TO OSWER'S RESPONSE DATED SEPTEMBER 10, 1986

The following notes present the OIG's response to OSWER's comments which were not addressed in the body of the report:

Notes

1 OSWER presented some dollar figures on settlements achieved with responsible parties (RPs). After receiving this response, we requested further clarification of these figures from OSWER. OSWER indicated that: (1) the $477 million was money received from RPs to actually clean up the sites and was not part of the $1.3 million Trust Fund obligations; (2) $225 million of the $306 million was also included in the $477 million figure mentioned above; and (3) the remaining $81 million of $306 million represents the value of cleanups EPA is pursuing through the court system. None of the above figures were part of the $1.3 billion Trust Fund obligations. In addition, the $137 million is money that EPA is trying to recover by requesting the Department of Justice to file for cost recovery. The $137 million is a part of the $1.3 billion Trust Fund obligations.

2 We believe that the 1.1 percent cost recovery ratio is not a poor characterization since it shows the actual percentage of total funds the Trust Fund received through cost recovery. We are pointing out that $14 million, or 1.1 percent, of the $1.3 billion obligated from the Trust Fund for cost recovery efforts as of September 30, 1985 have been returned to the Trust Fund by collections from responsible parties. Obligations are mainly a combination of two important accounting transactions: (1) disbursed amounts and (2) estimates of future expenditures that may occur. Thus, obligations represent the expenditures and best estimate of expenditures the fund has or intends to incur. While it would be unrealistic to expect EPA to recover all Trust Fund expenditures, the Agency needs to be more aggressive in pursuing its cost recovery actions.

We agree that cost recovery actions are resource intensive and may not always be practical. However, we are concerned that the current practice of selective enforcement may deplete the Trust Fund and exempt numerous responsible parties from financial liability for cleanup costs. All funds recovered, regardless of the amount are considered important since they replenish the Trust Fund and may be utilized for future cleanups.

In addition, the scope of our audit was not limited to just removals. Three of the findings consisted of remedial as well as removal actions.

Notes

3 We believe that the Agency needs to strengthen its methods in pursuing cases under $200,000. In his response, the Assistant Administrator for Solid Waste and Emergency Response commented, "Although $60 million may not be recovered over the next 20 years, it will not be due to ignoring cases under $200,000. It will be due to not having a viable responsible party." The Agency stated that it uses a priority system in pursuing cases and that cases under $200,000 have a lower priority than larger dollar cases. We realize that some of the costs may not be recovered due to a lack of viable responsible parties. However, when there is a viable responsible party, the low priority given to these cases may still result in the funds not being recovered. In addition, we have serious reservations about establishing a threshold for initiating cost recovery actions. Should a threshold be established, it could encourage responsible parties to establish multiple hazardous waste sites in order to avoid financial liability for cleanup costs.

4 While we agree with OSWER's statement that some sites may be abandoned and have no viable responsible party, we believe overall EPA must pursue an aggressive cost recovery program. We believe EPA should pursue cost recovery actions at all sites to the extent such actions can be pursued on a cost effective basis (e.g., negotiations, filing of lawsuit, etc.) Such a position will show that EPA will use strength in the process of recovering funds.

5 We would like to provide clarification in 3 areas. First, OSWER's comment should refer to Exhibit B and not Exhibit A. Second, based on a special printout provided by OSWER that showed some of the sites were listed under entirely different names, the number of sites under $200,000 was subsequently changed from 199 to 182 sites. Third, while cases under $10,000 in value may not have the highest priority, we believe all sites need to be evaluated for potential cost recovery action. In his response to the Region 4 audit report, the Regional Administrator stated:

> "Since the established floor for cost recovery actions is $500,000, recovery actions costing less than $500,000 are a lower priority at both EPA-HQ and at the Department of Justice (DOJ). Therefore, cost recovery for sites under $200,000 is practically nonexistent. In HQ, the Office of General Counsel (OGC) as well as Region IV's Office of

> Regional Counsel (ORC) are not prepared to pursue or negotiate settlements at these low dollar sites. Until authority to settle these cases administratively is delegated to the regions, very few of these cases will be pursued."

In our opinion, all sites should be examined to determine the need for negotiations and possible filing of a case. Thus, the negotiation team would be able to show strength. In addition, we believe alternative methods such as the use of outside attorneys on a contingency basis for fees should still be explored.