



Office of Inspector General

Report of Audit

Report on Audit of Delaware Superfund Cooperative Agreements V-003620 and V-003350

E5FFL5-03-0177-5100489

September 19, 1995

**Inspector General Division
Conducting the Audit:**

**Mid-Atlantic Audit Division
Philadelphia, Pennsylvania**

Region Covered:

Region 3

Program Offices Involved:

**Hazardous Waste Management Division
Grants and Audit Management Branch**



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September 19, 1995

MEMORANDUM

SUBJECT: Final Audit Report on Delaware Superfund Cooperative
Agreements V-003350 and V-003620
Audit Report No. ESFFL5-03-0177-5100489

FROM: *P. Ronald Gandolfo*
P. Ronald Gandolfo
Divisional Inspector General for Audit
Mid-Atlantic Audit Division

TO: Michael McCabe
Regional Administrator
Region 3

We have attached a copy of the final audit report on Delaware Superfund Cooperative Agreements. The overall objectives of our audit were to determine whether:

- Cooperative agreement number V-003620 was adequately monitored,
- Delaware Department of Natural Resources and Environmental Control (DNREC) complied with the requirements of cooperative agreement V-003620, and
- Costs claimed under V-003350 were allowable, allocable, and reasonable.

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

Audit of DE Superfund Cooperative Agreements

Our draft report was issued on July 20, 1995. We received your response and a written response from the grantee. Both responses were included, in full, as appendixes to our report. In addition, we have addressed the comments throughout the report as appropriate.

Action Required

In accordance with EPA Order 2750, you, as the action official are required to provide this office a written response to the audit report within 90 days of the final audit report date. For corrective actions planned but not completed by your response date, reference to specific milestone dates will assist this office in deciding whether to close this report. We have no objections to the further release of this report to the public.

Should there be any questions, contact me or Martin Pinto of my staff at (215) 597-0497.

Attachment

EXECUTIVE SUMMARY

PURPOSE

The objectives of our audit were to determine whether:

1) cooperative agreement number V-003620, totaling \$2,268,310, was adequately monitored; 2) DNREC complied with the requirements of cooperative agreement V-003620; and 3) total costs claimed of \$220,897 under cooperative agreement V-003350 were reasonable, allowable, and allocable.

BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510, enacted on December 11, 1980, established the "Superfund" program. The purpose of the Superfund program is to protect public health and the environment from the release, or threat of release, of hazardous substances. The Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499, enacted October 17, 1986, revised and expanded CERCLA. SARA required the OIG to examine a sample of cooperative agreements awarded to states carrying out response actions. The results of these examinations, including this audit report, are reported annually to Congress.

CERCLA sections 104(c)(3) and 104(d) authorize EPA to enter into cooperative agreements with States or political subdivisions to take, or to participate in, any necessary actions provided under CERCLA. A cooperative agreement serves to delineate EPA and State responsibilities for actions to be taken at the site, obtains required assurances, and commits Federal funds. EPA uses cooperative agreements to encourage State participation in the full range of Superfund activities including preliminary assessments, site inspections, remedial investigations, feasibility studies, remedial designs, remedial actions, maintenance of completed remedies, and management assistance of State involvement in Federally managed projects.

RESULTS-IN-BRIEF

We found cooperative agreement number V-003620, totaling \$2,268,310, was not adequately monitored by EPA or DNREC and DNREC did not comply with 7 of the 13 special condition requirements. In addition, we found total costs claimed of \$220,897 under cooperative agreement V-003350 were unsupported by adequate source documentation.

PRINCIPLE FINDINGS

DNREC DID NOT COMPLY WITH THE SPECIAL CONDITIONS

DNREC did not comply with 7 of 13 (54%) special conditions under cooperative agreement V-003620. This occurred because:

- 1) EPA did not properly monitor the special conditions including progress reports to ensure compliance as required by EPA's Assistance Administration Manual; and
- 2) DNREC did not ensure that special conditions and performance goals were achieved as required by 40 CFR 31.40.

As a result of the noncompliance, the objectives of the special conditions were not achieved and EPA was unaware of the status of activities to be performed. In addition, EPA awarded \$174,777 in excess of DNREC's needs that could have been used for other Superfund projects.

INADEQUATE SOURCE DOCUMENTATION

We questioned all costs totaling \$220,897, claimed under pre-remedial cooperative agreement V-003350 because DNREC did not maintain adequate source documentation. In accordance with 40 CFR 35.6705 and 40 CFR 30.500, DNREC must maintain all official records for each assistance award for 10 years following the submission of the final Financial Status Report (FSR). DNREC submitted its final FSR on July 5, 1988 and was required to maintain source documentation until July 5, 1998. The records maintained must adequately document the following: amounts

received and expended, property purchased, time charged, and compliance with applicable standards. We found DNREC did not maintain these records. Factors contributing to this condition were:

- 1) EPA did not notify DNREC of this requirement until the cooperative agreement was closed, and
- 2) the closeout of the cooperative agreement was inordinately delayed over four years by EPA.

Without adequate source documentation, we were unable to express an opinion on the allowability of costs claimed. Also, EPA and DNREC may be unable to recover Superfund expenditures under future cost recovery actions for work performed under this cooperative agreement.

RECOMMENDATIONS

We recommend the Regional Administrator:

1. Monitor DNREC's compliance with the special conditions of the Superfund cooperative agreements, and require the activities and tasks included in the workplan to be completed.
2. Require EPA project officers to adequately monitor cooperative agreements.
3. Obtain adequate support from DNREC for costs claimed under the pre-remedial cooperative agreement V-003350 or recover the Federal share of questioned costs.
4. Ensure all recipients of CERCLA-funded grants, cooperative agreements, and contracts comply with the 10 year record retention requirement as stipulated in 40 CFR 35.6705.
5. Close out grants and cooperative agreements in a timely manner as required by Assistance Administration Manual, Chapter 40 - Closeout of Assistance Agreements.

REGION RESPONSE AND OIG EVALUATION

1. The Region did not respond to the first finding regarding DNREC's non-compliance with 7 of 13 special conditions under cooperative agreement V-003620.
2. The Region responded that regulations effective during the grant period for cooperative agreement V-003350, only required the grantee to keep source documentation through July 5, 1991. The Region responded they would accept costs based on the reconciliation of the Final Status Report submitted on July 5, 1988.

Our position remained unchanged because the ten year record retention requirement became effective before the previous three-year requirement elapsed and before EPA closed the cooperative agreement. DNREC was required to maintain records until July 5, 1998.

DNREC RESPONSE AND OIG EVALUATION

1. Regarding the recycled paper special condition under cooperative agreement V-003620, DNREC responded that some recycled paper was purchased. Our report remained unchanged because interviews with DNREC's New Castle office revealed that recycled paper was not used to prepare the quarterly progress reports submitted to EPA. The special condition requires the use of recycled paper for all reports.
2. DNREC objected to our recommendation to the Regional Administrator to obtain supporting documentation from DNREC or to require DNREC to pay back the Federal Share of cooperative agreement V-003350. DNREC agreed that if EPA had performed the close out of the cooperative agreement in a timely manner, they would have been notified of the change in the record retention requirement prior to the end of the three year requirement and could have maintained adequate source documentation. DNREC responded that it was following the regulations it knew existed at the time the records were destroyed. Our position remained unchanged for the reasons stated above under Region Response and OIG Evaluation.

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CHAPTER 1
INTRODUCTION

PURPOSE

From November 1983 to September 1993, the Environmental Protection Agency (EPA) awarded funds totaling \$12 million under 37 cooperative agreements to the Delaware Department of Natural Resources and Environmental Control (DNREC). The objectives of our audit were to determine whether: 1) cooperative agreement number V-003620, totaling \$2,268,310, was adequately monitored; 2) DNREC complied with the requirements of cooperative agreement V-003620; and 3) total costs claimed of \$220,897 under cooperative agreement V-003350 were reasonable, allowable, and allocable.

BACKGROUND

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510, enacted on December 11, 1980, established the "Superfund" program. The purpose of the Superfund program is to protect public health and the environment from the release, or threat of release, of hazardous substances from abandoned hazardous waste sites and other sources where other Federal laws do not require a response. CERCLA established a Hazardous Substance Response Trust Fund to provide funding for responses ranging from control of emergencies to permanent remedies at uncontrolled sites. CERCLA authorized a \$1.6 billion program financed by a five-year environmental tax on industry and some general revenues.

The Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law 99-499, enacted October 17, 1986, revised and expanded CERCLA. SARA reinstated the environmental tax and expanded the taxing mechanism available for a five-year period. It authorized \$8.5 billion for the Superfund program from 1987 to 1991. It renamed the Trust Fund, the Hazardous Substance Superfund. The Budget Reconciliation Act of 1990 reauthorized the program for three additional years and extended the taxing mechanism for four additional years.

Audit of DE Superfund Cooperative Agreements

SARA required the OIG to examine a sample of cooperative agreements awarded to states carrying out response actions. The results of these examinations, including this audit report, are reported annually to Congress.

CERCLA section 104(c)(3) does not allow EPA to fund remedial cleanups unless the State enters into a contract or cooperative agreement with EPA to provide certain assurances, including cost sharing. CERCLA sections 104(c)(3) and 104(d) authorize EPA to enter into cooperative agreements with States or political subdivisions to take, or to participate in, any necessary actions provided under CERCLA. A cooperative agreement serves to delineate EPA and State responsibilities for actions to be taken at the site, obtains required assurances, and commits Federal funds. EPA uses cooperative agreements to encourage State participation in the full range of Superfund activities--site assessments, remedial and removal cleanups, and enforcement activities.

Remedial cooperative agreements provide funding to clean up or treat hazardous waste at a single site or multiple sites within a State. These cooperative agreements may be lengthy in duration because remedial responses, from the planning stage to accomplishment of the completed remedy, frequently take five years or longer.

Core cooperative agreements provide a means to fund functions of the Delaware program which were not directly associated with a specific site. Core cooperative agreements were for activities such as, program management, supervision, fiscal management, contract administration, quality assurance, risk assessment, training, legal assistance, and other miscellaneous items. Core cooperative agreement number V-003620 was amended seven times and provided DNREC \$2,268,310 during the project period from September 1, 1991 to August 31, 1994.

Pre-remedial cooperative agreements provide funding to DNREC to conduct preliminary assessments, site inspections, site inspection follow ups, hazardous ranking scores, and management assistance. These activities allow DNREC to evaluate sites for potential inclusion on the Superfund National Priorities List. The pre-remedial cooperative agreement number V-003350 was for

Audit of DE Superfund Cooperative Agreements

\$220,897 and had a project period from October 1, 1985 to March 31, 1988.

To assist the reader in obtaining a proper understanding of the report, key terms used in this report for cooperative agreement number V-003350 are defined below:

Costs Claimed: Costs identified by DNREC as eligible for Federal participation on an outlay report submitted to EPA. Costs claimed totaled \$220,897.

Costs Questioned Unsupported: Costs not supported by adequate documentation. Unsupported costs totaled \$220,897.

EPA Payments to Date: This amount included funds disbursed by EPA to DNREC. Total EPA payments were \$220,897.

Balance Due EPA: This amount should not be construed as being the final determination of questioned costs. The amount may vary depending upon EPA resolution. The balance due EPA is \$220,897.

SCOPE AND METHODOLOGY

We conducted a performance audit of the core cooperative agreement number V-003620 and a financial audit of the pre-remedial cooperative agreement number V-003350. We performed the audit in accordance with the *Government Auditing Standards* (1991 Revision) issued by the Comptroller General of the United States. Our examination included such tests of the accounting records and other auditing procedures as we considered necessary.

We performed both our survey and audit at DNREC offices in Dover and New Castle, Delaware, as well as the EPA Region 3 Hazardous Waste Management Division (HWMD) and Grants Management Division (GMD) offices in Philadelphia, Pennsylvania.

Of the 37 cooperative agreements which EPA awarded to DNREC, we judgementally selected three to review during the survey: a core award, a pre-remedial award, and a remedial award. This report addresses the core and pre-remedial awards. We considered the following factors in selecting the cooperative agreements:

Audit of DE Superfund Cooperative Agreements

- Type of cooperative agreement,
- Length of project period, and
- Date and amount of award.

Our survey began with an entrance conference on June 8, 1994 and ended on November 3, 1994. The overall objectives of our survey were to determine the nature and extent of subsequent audit effort in areas which may warrant a detailed audit and to provide a basis for planning a detailed audit.

As a result of the survey, we found that DNREC's quarterly progress reports did not provide the status of the commitments in the cooperative agreements. In addition, Region 3 did not require due dates for completing many of these commitments. We also found that DNREC did not maintain complete financial records for the pre-remedial cooperative agreement as required by EPA regulations. Our limited evaluation of the special conditions during the survey phase revealed that DNREC did not comply with many of the special conditions in the cooperative agreement. For these reasons, we focused on the monitoring issues specifically related to special conditions and progress reports under the core program cooperative agreement number V-003620. In addition, we limited the scope of our audit to further evaluations of the unsupported costs under pre-remedial cooperative agreement number V-003350. Our audit fieldwork was conducted between November 3, 1994 and January 31, 1995.

Our audit included tests of financial records and other procedures we considered necessary under the circumstances. We interviewed project officers from the HWMD and grant specialists from GMD. In addition, we interviewed DNREC employees. We examined various records and documents, including: progress reports, correspondence, invoices, payment vouchers, and timesheets.

In assessing compliance with Federal requirements, we referred primarily to the following criteria:

Audit of DE Superfund Cooperative Agreements

- Title 40 CFR Parts 30, 31, and 35;
- EPA Assistance Administration Manual;
- EPA Automated Clearing House (ACH) Payment System Manual;
- EPA Letter of Credit - Treasury Financial Communications System (LOC-TFCS) Manual; and
- EPA Manual: Managing Your Grant and Cooperative Agreement: Project Officer Responsibilities.

The scope of our internal control work was limited to understanding and evaluating: 1) the policies and procedures used by EPA to monitor its cooperative agreements; and, 2) DNREC's internal control structure as related to our audit objectives and DNREC's administration of the cooperative agreements. Our objective was not to express an opinion on the internal controls, and our work would not necessarily disclose all matters in the internal control structure that might be considered material weaknesses or reportable conditions. Because of inherent limitations in any internal control structure, losses, noncompliance, or misstatements could occur and not be detected. We assessed the control risk in order to plan our audit and to determine the nature, timing, and extent of our testing. Our risk assessment of the internal controls disclosed that the control risk for the audit as a whole was low, except for the procurement system which we assessed as medium.

Moreover, we reviewed Region 3 HWMD's Report on Internal Controls for fiscal years 1992 and 1993. The report was prepared to comply with the Federal Managers' Financial Integrity Act (Integrity Act). We also analyzed the Annual Assurance Letter for fiscal year 1994. One significant weakness identified during the Agency's Integrity Act review process was the Region's monitoring of the Superfund cooperative agreements awarded to the State of Virginia. We found a similar weakness in the monitoring of the Superfund cooperative agreements awarded to DNREC. This is fully discussed under Chapter 2 of this report. None of the other weaknesses cited in this audit report were previously disclosed by Region 3.

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On January 25, 1994, the management consulting firm of Booz Allen & Hamilton (BAH) issued a report on DNREC's capabilities in meeting Superfund financial management and documentation requirements for cost recovery. The scope of this review was limited to the examination of DNREC's site-specific financial documentation and recordkeeping practices. The report identified several areas related to financial management that needed improvement. Our report discusses some of these issues as they relate to our audit objectives.

We reviewed the BAH report and DNREC's corrective action plan for resolving the identified issues. We believe that the corrective action plan prepared by DNREC appeared adequate to address the issues. We discussed the report and the corrective action plan with DNREC officials. We were informed that they were proceeding with the implementation of the corrective action plan. We did not follow up on all the issues identified in the BAH report in order to prevent duplicative audit effort. Our survey revealed that two of the issues in the report were specifically related to our objectives. We included these issues within the scope of our audit. These issues included:

1. Recoding and reconciling timesheets was delayed. DNREC's accounting system initially charged employees' labor costs against a designated account. DNREC periodically corrected the charges based on allocations recorded on the timesheets. The delay in recoding and reconciling timesheets resulted in inaccurate financial reporting to program managers in DNREC.
2. Backup documentation for the Automated Clearing House (ACH) payment requests did not provide a complete audit trail of the amount requested.

We issued a draft report on July 20, 1995. We received written responses from Region 3 and the DNREC. Both responses were included, in full, as appendixes to our report. We conducted a telephonic exit conference with DNREC on August 31, 1995. Region 3 elected not to have an exit conference. We have addressed Region 3's and DNREC's comments throughout the report as appropriate.

PRIOR AUDIT COVERAGE

EPA's Office of the Inspector General (OIG) issued several financial and performance reports on Superfund cooperative agreements awarded to States in Region 3 including, Virginia, West Virginia, Pennsylvania, and Maryland. Generally, these reports identified monitoring issues and questioned costs similar to this audit.

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CHAPTER 2
DNREC DID NOT COMPLY WITH THE SPECIAL CONDITIONS

DNREC did not comply with 7 of 13 (54%) special conditions under cooperative agreement V-003620. This occurred because:

- 1) EPA did not properly monitor the special conditions including progress reports to ensure compliance as required by EPA's Assistance Administration Manual; and
- 2) DNREC did not ensure that special conditions and performance goals were achieved as required by 40 CFR 31.40.

As a result of the noncompliance, the objectives of the special conditions were not achieved and EPA was unaware of the status of activities to be performed. In addition, EPA awarded \$174,777 in excess of DNREC's needs that could have been used for other Superfund projects.

According to EPA's Assistance Administration Manual, the project officer is critical to the successful completion of work performed under an EPA assistance agreement. The amount of involvement a project officer has in the grantee's performance is determined by the type of assistance award. Under a cooperative agreement, there should be significant involvement by the project officer during all stages of a project, including site visits, telephone calls, and meetings. The project officer is the primary point of contact and must:

- monitor the technical aspects of the work performed,
- ensure the recipient complies with the terms of the assistance agreement,
- review the financial status reports to ensure that the funds are used properly, and
- insist on the timely submission of high quality progress reports.

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In accordance with 40 CFR 31.40, grantees are responsible for managing the day-to-day operations of activities performed under the cooperative agreement. Grantees must also ensure compliance with applicable Federal requirements and that performance goals are achieved.

Our review of the project officer's file disclosed minimal evidence that EPA monitored the cooperative agreement. Specifically, we found no documentation to indicate routine monitoring, such as phone logs, or evidence that the project officer ensured the special conditions were complied with. Also, the project officer did not ensure that the content of the progress reports was sufficient. Although EPA's project officer performed site visits to DNREC on a regular basis, there was no indication of discussions related to non-compliance with special conditions.

A. NON-COMPLIANCE WITH SPECIAL CONDITIONS

SPECIAL CONDITIONS	COMPLIANCE
Progress Reports	No
ACH Payment System	No
Fair Share Percentage	No
MBE/WBE Submittal of SF-334	No
Content of Publicized Documents	No
Recycled Paper	No
Award Subject to 40 CFR Part 35, Subpart O	No
Debarred/Suspended Contractors	Yes
Small Business Rural Areas Affirmative Steps	Yes
Prompt Payment Act	Yes
Budget Period Cost	Yes
Drug-Free Workplace	Yes
Indirect Cost Rates	Yes

Progress Reports

Timely and adequate progress reports ensure that EPA project officers are aware of the status of activities being performed by the State under the cooperative agreement. Progress reports are an essential management tool that should be utilized by EPA project officers.

We examined progress reports submitted to EPA by DNREC for the period covering October, 1991 to September, 1994. The special conditions of the cooperative agreement and 40 CFR 35.6650 cited several specific items to be included in the progress reports, as listed below. However, we found that DNREC's progress reports did not contain any of the following required items.

- 1) An explanation of work accomplished during the reporting period, delays or other problems, if any, and a description of the corrective measures that are planned.
- 2) A comparison of the percentage of the project completed to the project schedule, and an explanation of significant discrepancies.
- 3) A comparison of the estimated funds spent to date against planned expenditures and an explanation of significant discrepancies.
- 4) An estimate of the time and funds needed to complete the work required in the cooperative agreement. Also, a comparison of that estimate to the time and funds remaining, and a justification for any increase.

In addition to these missing items, the progress reports did not identify the status of all the activities and related tasks included in the workplan as required by 40 CFR 35.6650(a). The core cooperative agreement provided funding to support the overall activities for the Superfund program, such as, fiscal and contract management, training, quality assurance, clerical, and general support. Tasks which comprise fiscal and contract management include: reviewing and improving the State procurement process, coordinating the negotiation and execution of new

contracts for Superfund sites, and administering close-out activities.

Specifically, the workplan listed thirteen activities and their related tasks, but the progress reports summarized information into four areas that were not directly related to these activities. The progress reports were inadequate because DNREC did not identify if the activities and tasks were completed, amended, delayed, or deleted. Without this information, the project officer could not use the progress reports to determine the status of activities and tasks. Therefore, he could not monitor the cooperative agreement and ensure that the objectives of the activities and tasks were achieved.

During our audit fieldwork, we reviewed a sample of progress reports prepared by another state in Region 3. West Virginia's progress reports identified each activity included in the core program cooperative agreement workplan and summarized the status of work performed under each activity.

DNREC personnel agreed that the status of each of the 13 activities was not provided in the progress reports. This occurred because DNREC summarized information into general categories such as Management and Supervision instead of focusing on the activities and tasks identified in the workplan. DNREC personnel told us that EPA was pleased with the format and used their progress reports as a model for other states to follow. However, the special condition clearly identified exactly what DNREC was required to address in each progress report. We believe the reports are inadequate because they did not meet these requirements.

Although the content of the progress reports was inadequate, DNREC complied with the timeliness requirement. The special conditions and 40 CFR 35.6650 required these reports to be prepared quarterly and submitted within thirty days of the end of the reporting period. We found DNREC submitted their progress reports in a timely manner.

ACH Payments

We found DNREC did not comply with the special condition related to the Automated Clearing House (ACH) payment system. Specifically, we found that the following four requirements were not met.

1) Payment Requests will be based on disbursement needs.

The EPA-ACH Payment System Manual requires requests for funds to be based on immediate disbursement requirements and that funds received be disbursed as soon as possible to minimize the Federal cash on hand. We reviewed DNREC's Cash Balance Reports for February, 1993 for cooperative agreement V-003620. We found that DNREC maintained large amounts of Federal cash on hand, exceeding \$130,000. This issue was previously identified to DNREC and Region 3 in the BAH report issued on January 25, 1994. According to DNREC personnel, ACH payment requests were prepared prior to negative cash balances occurring. In response to the BAH report, DNREC decided to change their policy and to only draw funds when accounts are negative. Although we did not ensure that DNREC consistently applied this new policy, we noted that cash balances in February, March and June of 1994 were usually negative.

2) Timely reporting of cash disbursements and balances as required by the EPA-ACH Payment System Manual.

EPA's Letter of Credit Manual and ACH Payment System Manual require Federal Cash Transactions Reports to be submitted. Until June 30, 1991, these reports were required to be submitted quarterly. After June 30, 1991, the reports were required semi-annually. These reports should be utilized to determine whether funds were disbursed timely and whether DNREC was accumulating large balances on hand.

We reviewed a total of 28 Federal Cash Transactions Reports for the period beginning January 1, 1986 and ending June 30, 1994. Of these 28 reports, 23 (82%) were late. Of these late reports, 12 were over 30 days late. Consequently, EPA was not always aware of the current status of funds.

- 3) *For drawdowns under the EPA-ACH payment process, the recipient will show on the payment request, the cooperative agreement number, the appropriate EPA account number, and the drawdown amount applicable to the activity account.*

We examined 30 payment requests covering the period from October, 1991 through November, 1994 to determine if they contained the appropriate cooperative agreement numbers, EPA account numbers, and activity assignment codes. We also examined the balance on hand for each request. Accurate reporting is essential in order for the project officer to adequately monitor and reconcile funds awarded and disbursed.

We found no errors in the recording of the cooperative agreement number. However, deficiencies were noted in several other areas. For example, three or 10 percent of the account numbers were recorded incorrectly. In addition, our audit disclosed that DNREC always entered \$0 for balance on hand. DNREC personnel stated that EPA did not require the balance on hand to be entered on the form. Without accurate reporting of the cash balance on hand, EPA cannot determine if the State is disbursing the funds timely, in compliance with the ACH payment process.

- 4) *Financial Status Reports are to be submitted to EPA, within 90 days after the end of the overall cooperative agreement.*

According to 40 CFR 35.6670, Financial Status Reports are due annually, 90 days after the end of the Federal fiscal year. During the period of our review, DNREC was required to submit three FSRs, one for each Federal fiscal year of the project. These reports were due December 1, 1992, 1993, and 1994. We found DNREC did not submit the three required FSRs timely. For example, the FSR due December 1, 1992, was not submitted until February 15, 1994, over a year late. Further, this FSR required revisions. The revised FSR was received on March 3, 1994, over 15 months late. This FSR included financial information for fiscal years 1992 and 1993. The FSR that was due December 1, 1994 has not yet been submitted at the time of our review and was over six months late.

The information contained on FSRs is necessary for effective management and oversight of the cooperative agreement. EPA must

review the FSRs and compare the funding levels, both Federal and State, with progress on the project. Without the timely and accurate reporting of the FSRs, the EPA project officer cannot ensure that requested funds were commensurate to the progress made during the period.

Fair Share Percentage

EPA's policy is to ensure that recipients of EPA funds award a fair share of subagreement funding to Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE). The State of Delaware negotiated a "Fair Share" objective of not less than eight percent with EPA. Therefore, the State of Delaware agreed to award at least eight percent of its subagreement funding under EPA projects to small, minority, and women-owned businesses.

We reviewed the State's compliance for Federal fiscal years 1991 through 1994. We found the State did not meet the eight percent objective during 1991 and 1993. DNREC personnel informed us that the goals were not consistently met because the State's previous procurement system was inadequate. Specifically, the State's procurement system did not require affirmative steps to assure that small, minority, and women-owned businesses were used. As a result, EPA did not meet its objective of assuring that small, minority, and women-owned entities were provided the opportunity to participate in subagreement awards under EPA financial assistance agreements. However, DNREC personnel informed us they began implementing a new procurement system in fiscal year 1994. In addition, DNREC has developed a procurement and property manual which identifies the affirmative steps that the State must take to assure that small, minority, and women-owned entities are provided the opportunity to receive subagreements. However, it does not require DNREC to achieve the eight percent goal negotiated with EPA.

MBE/WBE Reporting

In addition to the eight percent negotiated fair share objective, the State of Delaware was required to submit 12 reports of the MBE/WBE utilization under Federal assistance agreements. However, these reports did not contain accurate information.

Specifically, all 12 reports required an explanation of the reasons for non-attainment, but only 2 reports provided the explanation. The State's utilization reports are essential in order for EPA to compile information regarding the nationwide utilization of minority businesses under EPA assistance agreements, as mandated by the U.S. Department of Commerce.

Content of Publicized Documents

CERCLA mandates adequate public notification of Federal participation in Superfund projects and programs. When issuing documents describing projects or programs funded under the core cooperative agreement, DNREC must indicate the percentage and dollar amount of Federal funding. These documents include statements issued to the public, press releases, requests for proposals (RFP), and invitations for bids (IFB).

DNREC personnel informed us they had not implemented this special condition because EPA Region 3 prepared most of the documents to be released to the public. Also, DNREC personnel stated that RFPs and IFBs do not contain this information because the State requires these documents to be prepared by a central State office outside of DNREC. It is important to include this information because contractors submitting proposals in response to the RFPs and IFBs will be unaware that they will be expected to comply with Federal requirements.

Recycled Paper

DNREC was required by a special condition to use recycled paper for all reports, including progress reports sent to EPA. We found that recycled paper was not used at the New Castle, Delaware office where the progress reports were prepared. DNREC personnel stated recycled paper was not used because the photocopy machine would malfunction. EPA Order 1000.25 directed EPA to use and to promote the use of recycled paper. The objective of this requirement was to reduce and recycle twenty-five percent of municipal solid waste and to create and develop stable markets for products containing recovered materials. DNREC's non-compliance with this special condition hindered EPA's objective.

Title 40 CFR Part 35 Subpart O

Title 40 CFR Part 35 Subpart O contains recipient requirements for administering CERCLA-funded cooperative agreements. Subpart O includes the regulations for progress reports. DNREC's progress reports did not contain any of the required items cited in 40 CFR 35.6650, as discussed previously under Progress Reports. The progress reports were inadequate because DNREC focused on positions rather than activities when summarizing information for the progress reports. Consequently, EPA could not thoroughly monitor the cooperative agreement and could not ensure that objectives of the special conditions were being achieved.

B. EXCESS OBLIGATED FEDERAL FUNDS

EPA awarded excess funding to DNREC under cooperative agreement V-003620. Of the \$2,268,310 awarded under this cooperative agreement, \$270,537 was obligated for capacity assurance. Under capacity assurance, DNREC must assure the availability of treatment or disposal facilities which have an adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes that are generated within the State. We found that DNREC had not used \$174,777 or 65 percent of the \$270,537 obligated for capacity assurance. As of the date of our report, DNREC personnel were unable to justify their requests for additional capacity assurance funding. In our opinion, these funds could have been used more efficiently, either for additional Superfund awards to DNREC or other states. The chart below provides the specific amounts and the months these funds were left unused.

Audit of DE Superfund Cooperative Agreements

UNUSED OBLIGATED FUNDS FOR CAPACITY ASSURANCE COOPERATIVE AGREEMENT V-003620 AS OF JANUARY, 1995			
DATE OF AWARD AND AMENDMENTS	AMOUNT OF AWARD	AMOUNT UNUSED	MONTHS FUNDS UNUSED
August 30, 1991	\$90,760	\$ 0	0
September 23, 1992	12,033	7,033	27
February 18, 1993	62,606	62,606	22
September 9, 1993	84,183	84,183	25
September 30, 1993	20,000	20,000	25
July 11, 1994	955	955	5
TOTALS	\$270,537	\$174,777	

We compared the dollar amounts approved in the award and subsequent amendments to information included in EPA's accounting system as of January 3, 1995. Our review revealed that EPA continued to award additional funds for capacity assurance although large balances were unused for as long as 27 months.

RECOMMENDATIONS

We recommend that the Region 3 Administrator:

1. Monitor DNREC's compliance with the special conditions of the Superfund cooperative agreements, and require the activities and tasks included in the workplan to be completed.
2. Ensure DNREC implements the corrective actions planned as a result of the Booz, Allen, and Hamilton report issued on January 25, 1994.
3. Require project officers to adequately monitor cooperative agreements. Specifically, project officers should:

- a) Insist on high quality progress reports that include, as minimum, all of the information required in 40 CFR 35.6650 and a status of each activity in the workplan;
- b) Review and analyze the progress reports to determine whether DNREC is meeting the tasks contained in the workplan; and
- c) Monitor funds awarded and disbursed to ensure that funds are awarded as needed and that amendments are not in excess of DNREC's needs.

REGION RESPONSE AND OIG EVALUATION

The Region did not respond to this finding.

DNREC RESPONSE AND OIG EVALUATION

1. DNREC requested we cite the regulation which requires progress reports identify the status of all the activities and related tasks included in the workplan.

We concur. We have added the specific regulation. Our draft report only identifies 40 CFR 35.6650 under Progress Reports. Paragraph (a) of this regulation requires grantees to submit quarterly progress reports on the activities delineated in the Statement of Work.

2. DNREC stated that even though there was no recycled paper in stock at the time of your (OIG) survey, typically a fraction of every order of copy paper is recycled paper.

Our report remains unchanged. Interviews of DNREC's New Castle office revealed that recycled paper was not used to prepare the quarterly progress reports submitted to EPA. The special condition requires the use of recycled paper for all reports.

3. DNREC's written response stated that the correct amount of unliquidated obligations was \$152,242, not the \$174,777

identified in our report. In addition, DNREC provided a breakout supporting an amount of \$134,384.

Our position remains unchanged. Our amount is based on EPA's financial information system and is supported by documentation. Even though DNREC personnel provided information from their accounting system supporting a lower amount, DNREC did not justify their requests for this additional capacity assurance funding. We maintain that these funds could have been used more efficiently for additional Superfund awards to either DNREC or to other states.

CHAPTER 3
INADEQUATE SOURCE DOCUMENTATION

We questioned all costs totaling \$220,897, claimed under pre-remedial cooperative agreement V-003350 because DNREC did not maintain adequate source documentation. In accordance with 40 CFR 35.6705 and 40 CFR 30.500, DNREC must maintain all official records for each assistance award for 10 years following the submission of the final Financial Status Report (FSR). DNREC submitted its final FSR on July 5, 1988 and was required to maintain source documentation until July 5, 1998. The records maintained must adequately document the following: amounts received and expended, property purchased, time charges, and compliance with applicable standards. We found DNREC did not maintain these records. Factors contributing to this condition were:

- 1) EPA did not notify DNREC of this requirement until the cooperative agreement was closed, and
- 2) the closeout of the cooperative agreement was inordinately delayed over four years by EPA.

Without adequate source documentation, we were unable to express an opinion on the allowability of costs claimed. Also, EPA and DNREC may be unable to recover Superfund expenditures under future cost recovery actions for work performed under this cooperative agreement.

The following schedule shows that all costs claimed totaling \$220,897 have been questioned as unsupported.

Audit of DE Superfund Cooperative Agreements

Analysis Of Allowability Of Costs Claimed
For The Period October 1, 1985 to March 31, 1988
Under EPA Cooperative Agreement V-003350 Awarded To
DE Department of Natural Resources and Environmental Control

AUDITOR'S OPINION

<u>Cost</u> <u>Category</u>	<u>Costs</u> <u>Claimed</u>	<u>Costs Questioned</u> <u>Unsupported</u>
Salaries	\$124,237	\$124,237
Travel	4,000	4,000
Contractual	38,965	38,965
Supplies	4,328	4,328
Capital	26,715	26,715
Indirect	22,652	22,652
Total	<u>\$220,897</u>	<u>\$220,897</u>

Federal Share Claimed and Reviewed	100%	\$220,897
Less: Federal Share Questioned:		
Unsupported		<u>220,897</u>
Allowable Federal Share		\$ 0
Payments To Date		<u>220,897</u>
Balance Due EPA		<u>\$220,897</u>

During the survey, DNREC could not provide original documentation for the costs claimed under the cooperative agreement. DNREC did provide monthly printouts of expenditures. However, these printouts were not supported by original documentation and could not be reconciled to payment requests or FSRs.

Title 40 CFR 30.501 required DNREC to maintain their records until July 5, 1991, three years after submitting the final FSR on July 5, 1988. However, this regulation was superseded by 40 CFR 35.6705, which states that records must be maintained for ten years following the submission of the final FSR. The ten year record retention requirement became effective before the previous three-year requirement elapsed and before EPA closed the cooperative agreement. Therefore, we believe, DNREC was required to maintain records for ten years. Specifically, we determined

Audit of DE Superfund Cooperative Agreements

that DNREC should have maintained their records until July 5, 1998.

The closeout of a financial assistance project is the final process used by EPA to determine that the recipient has completed all required substantive work and complied with all applicable administrative requirements under the agreement. The Project Officer must assure the Grants Management Division (GMD) within 90 days of project completion that all work has been satisfactorily completed and all technical conditions have been met. The Project Officer must also notify the GMD of the proper handling of any personal property purchased under the agreement and any unliquidated funds.

EPA notified DNREC of the close-out of the cooperative agreement and ten year record retention requirement on February 9, 1993. The close-out was completed over four and one-half years after the final FSR was submitted by DNREC on July 5, 1988. We believe that this is an inordinate delay in the closeout process. The procedures for timely closeout of all completed projects are contained in the Assistance Administration Manual, Chapter 40 - Closeout of Assistance Agreements. According to the manual, the actual closeout process should begin 3 or 4 months before the scheduled end of the project.

Our audit revealed that Grants Management Division delayed the closeout process over three of the four years, and Hazardous Waste Management Division had delayed the process a total of ten months. We believe, if EPA had informed DNREC and performed the closeout of the cooperative agreement in a timely manner, DNREC would have been notified of the change in the record retention requirement prior to the end of the previous three year requirement and DNREC could have maintained adequate source documentation.

RECOMMENDATIONS

We recommend the Regional Administrator of Region 3:

1. Obtain adequate support from DNREC for costs claimed under the pre-remedial cooperative agreement V-003350 or recover the Federal share of questioned costs.
2. Ensure all recipients of CERCLA-funded grants, cooperative agreements, and contracts comply with the 10 year record retention requirement as stipulated in 40 CFR 35.6705.
3. Close out grants and cooperative agreements in a timely manner as required by Assistance Administration Manual, Chapter 40 - Closeout of Assistance Agreements.

REGION RESPONSE AND OIG EVALUATION

Region 3 responded that regulations effective during the grant period (September 28, 1985 to July 5, 1988) only required the grantee to keep source documentation through July 5, 1991. The Region believes the grantee should not be held accountable for records disposed by the grantee prior to the audit conducted in 1995. The Region responded they would accept costs based on the reconciliation of the Final Status Report submitted on July 5, 1988.

Our position remains unchanged. The ten year record retention requirement became effective before the previous three-year requirement elapsed and before EPA closed the cooperative agreement. DNREC was required to maintain records until July 5, 1998.

DNREC RESPONSE AND OIG EVALUATION

DNREC objected to our recommendation to the Regional Administrator to obtain supporting documentation from DNREC or to require DNREC to pay back the Federal Share of the cooperative agreement funds. DNREC agreed that if EPA had performed the close out of the cooperative agreement in a timely manner, they

Audit of DE Superfund Cooperative Agreements

would have been notified of the change in the record retention requirement prior to the end of the three year requirement. In that case, DNREC could have maintained adequate source documentation. Not having heard on the closure of the cooperative agreement, DNREC proceeded to get rid of the cooperative agreement records in an effort to reduce the volume of files to be retained. In February, 1993, EPA formally closed the cooperative agreement and informed DNREC of the requirement to retain the records for ten years instead of three years. Unfortunately, the records had been destroyed by then. DNREC was following the regulations it knew existed at the time the records were destroyed.

Our position remains unchanged as discussed above under the Region Response and OIG Evaluation.

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ACRONYMS

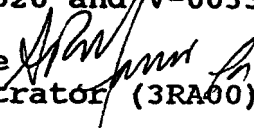
ACH	Automated Clearing House
CERCLA	The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA)
CFR	U.S. Code of Federal Regulations
DNREC	Department of Natural Resources and Environmental Control (State of Delaware)
EPA	U.S. Environmental Protection Agency
FSR	Financial Status Report
GMD	EPA, Region 3's Grants Management Division
HWMD	EPA Region 3's Hazardous Waste Management Division
IFB	Invitation for Bid
LOC-TFCS	Letter of Credit - U.S. Department of Treasury, Financial Communications System
MBE	Minority Business Enterprise
OIG	EPA-Office of the Inspector General
RFP	Request for Proposal
SARA	The Superfund Amendments and Reauthorization Act of 1986
SF-334	Standard Form 334
WBE	Women's Business Enterprise

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

SUBJECT: Response to Draft Audit Report of
Delaware Superfund Co-Operative
Agreements V-003620 and V-003350

DATE: SEP 11 1995

FROM: W. Michael McCabe 
Regional Administrator (3RA00)

TO: P. Ronald Gandolfo
Divisional Inspector General for Audit (3AI00)

Thank you for the opportunity to comment on the draft audit report. The Grants and Audit Management Branch (GAMB) has reviewed the report and believes the issue on records retention should be clarified.

In the report the auditors identified \$220,897 as unsupported costs claimed under Superfund Pre-remedial Co-operative agreement V-003350 for Delaware, because the grantee failed to maintain adequate source documentation. However, based on regulations effective during the grant period (September 28, 1985 to July 5, 1988), the grantee was only required to keep source documentation through July 5, 1991. Since the costs identified by the IG as "unsupported" were based on an audit conducted in 1995, the Region believes the grantee should not be held accountable for records disposed by the grantee prior to the audit. Thus, the Region would accept costs based on the reconciliation of the Final Status Report submitted on July 5, 1988.

We hope that this response resolves the issues identified in the audit. If you should have any questions on this matter, please contact Robert Reed at 7-7805.

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STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
& ENVIRONMENTAL CONTROL

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DOVER, DELAWARE 19903

OFFICE OF THE
SECRETARY

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August 30, 1995

Mr. P. Ronald Gandolfo
Divisional Inspector General for Audit
Mid Atlantic Division
U.S. EPA - Region III
841 Chestnut Building
Philadelphia, PA 19107

Subject: RESPONSE TO RECOMMENDATIONS IN THE DRAFT
REPORT ON AUDIT OF DELAWARE SUPERFUND
COOPERATIVE AGREEMENTS V-003620 AND V-003350

Dear Mr. Gandolfo:

This is in response to your "Draft" audit report dated July 20, 1995, mentioned above. I offer the following comments on the factual accuracy of the data presented:

SCOPE AND METHODOLOGY

Page 4, Para 3

"Of the 37 cooperative agreements which EPA awarded to DNREC we judgmentally selected three to review during the survey: (emphasis added) a core award, a pre-remedial award, and a remedial award. This report addresses the core and pre-remedial awards."

Please specify the disposition of the remedial award. Also it is not clear whether the draft report pertains to the survey as stated in the quote or an audit as stated in the "subject" of your letter.



Mr. P. Ronald Gandolfo
August 30, 1995
Page 2

PROGRESS REPORTS

Page 9, Para 3

“In addition to these missing items, the progress reports did not identify the status of all the activities and related tasks included in the workplan.”

Please cite the regulations or the special conditions that require that the grantee must identify the status of activities and related tasks included in the workplan.

RECYCLED PAPER

Page 14, Para 1

“We found that recycled paper was not used at the New Castle, Delaware office where the progress reports were prepared.”

Even though there was no recycled paper in stock at the time of your survey, typically a fraction of every order of copy paper is recycled paper.

EXCESS OBLIGATED FEDERAL FUNDS

Page 14 Para 3

“We found that DNREC had not used \$174,777 or 65 percent of the \$270,537 obligated for capacity assurance.”

The correct figure is \$155,242 and not \$174,777.

INADEQUATE SOURCE DOCUMENTATION

Page 20 Para 3


“If EPA had informed DNREC and performed the close-out of the cooperative agreement in a timely manner, DNREC would have been notified of the change in the record retention requirement prior to the end of the previous three year requirement, and DNREC could have maintained adequate source documentation.” We concur with this statement. DNREC submitted FSR to EPA in 1988.

Mr. P. Ronald Gandolfo
August 30, 1995
Page 3

DNREC was required to keep the records only until July, 1991. Not having heard on the closure of the co-operative agreement, DNREC proceeded to get rid of these records in an effort to reduce the volume of files to be retained. However, when in February, 1993, EPA formally closed the cooperative agreement, it informed DNREC of the new requirement to retain the records for ten years instead of three years. Unfortunately, the records had been destroyed by then. DNREC was simply following the regulations it knew existed at the time of destruction of the records.

Therefore it is not appropriate for the auditors to recommend that the Regional Administrator obtain the support documents from DNREC which do not exist, or to require DNREC to pay back Federal share of the cooperative agreement funds. DNREC objects to this recommendation.

I appreciate and thank you for allowing the Department the opportunity to comment on the report.

Sincerely,

Christophe A. G. Tulou
Secretary

CAGT:NVR:sfh
nvr95078.doc

cc: Nicholas A. Di Pasquale
N. V. Raman, Superfund
Nancy Marker, RCRA
Sandra Downs

Statement of Account Balances
FY'92 Grant 09/01/91 - 08/31/94
Superfund 09030203 - 3692
SAI 91061701 Superfund CORE Cooperative Program

CATEGORY	REPT. CAT.	Total Funds Awarded	Disbursements for the Month of JUNE	Total Disbursements to Date	Encumbrances for the Month of JUNE	Total Encumbrances to Date	Year-to-Date Balance JUNE
FEDERAL FUNDS							
Salaries and OEC's	SC21	\$1,063,135.00	(\$349.86)	\$1,092,214.99	\$0.00	\$0.00	(\$29,079.99)
Travel	SC24	\$32,452.00	\$0.00	\$34,894.64	\$0.00	\$0.00	(\$2,442.64)
Contractual Services	SC25	\$638,198.00	\$0.00	\$399,608.80	\$0.00	\$0.00	\$238,589.20
Supplies	SC26	\$84,164.00	\$0.00	\$81,821.51	\$0.00	\$0.00	\$2,342.49
Capital Outlay	SC27	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Indirect Costs	SC29	\$179,824.00	\$0.00	\$151,362.02	\$0.00	\$0.00	\$28,461.98
Total Federal Funds - Superfund		\$1,997,773.00	(\$349.86)	\$1,759,901.96	\$0.00	\$0.00	\$237,871.04
FEDERAL FUNDS							
Salaries and OEC's	SCA1	\$184,584.00	\$0.00	\$106,599.59	\$0.00	\$0.00	\$77,984.41
Travel	SCA4	\$8,242.00	\$0.00	\$1,022.77	\$0.00	\$0.00	\$7,219.23
Contractual Services	SCA5	\$34,145.00	\$0.00	\$2,113.67	\$0.00	\$0.00	\$32,031.33
Supplies	SCA6	\$18,304.00	\$0.00	\$12,415.06	\$0.00	\$0.00	\$5,888.94
Capital Outlay	SCA7	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Indirect Costs	SCA8	\$25,262.00	\$0.00	\$14,001.56	\$0.00	\$0.00	\$11,260.44
Total Federal Funds Capacity Assurance		\$270,537.00	\$0.00	\$136,152.65	\$0.00	\$0.00	\$134,384.35
TOTAL FEDERAL FUNDS		\$2,268,310.00	(\$349.86)	\$1,896,054.61	\$0.00	\$0.00	\$372,255.39

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