



U.S. ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF INSPECTOR GENERAL

*Catalyst for Improving the Environment*

## Site Visit Report

# American Recovery and Reinvestment Act Site Visit of the Tower Chemical Superfund Site, Clermont, Lake County, Florida

Report No. 11-R-0431

August 3, 2011



**Report Contributors:**

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**Cover photo:** Excavation of soils and sediment at the Tower Chemical Superfund site in Clermont, Lake County, Florida. (EPA photo)

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Washington, DC 20460



# At a Glance

*Catalyst for Improving the Environment*

## Why We Did This Review

The U.S. Environmental Protection Agency, Office of Inspector General, conducts site visits of American Recovery and Reinvestment Act of 2009 (Recovery Act) funded projects. The purpose of the visits is to confirm compliance with selected Recovery Act requirements. We selected the Tower Chemical Superfund project in Clermont, Lake County, Florida, for review.

## Background

EPA awarded a fixed price contract under the Recovery Act to Polu Kai Services, LLC, to clean up contaminated soils at the Tower Chemical Superfund Site. This remedial action consisted of excavating, transporting, and disposing of soils contaminated with pesticides and other composites, and restoring the excavated areas. The value of the contract was \$4,197,177.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

The full report is at:  
[www.epa.gov/oig/reports/2011/20110803-11-R-0431.pdf](http://www.epa.gov/oig/reports/2011/20110803-11-R-0431.pdf)

## ***American Recovery and Reinvestment Act Site Visit of the Tower Chemical Superfund Site, Clermont, Lake County, Florida***

### **What We Found**

We conducted an unannounced visit at the Tower Chemical Superfund site in Clermont, Lake County, Florida, on July 12–13, 2010. We toured the project site, interviewed contractor and subcontractor personnel, and reviewed documentation related to Recovery Act requirements. We also visited the contractor's office in Virginia and EPA Region 4 to interview personnel and review files.

Based upon our site visit, we did not identify any issues that would require action from Polu Kai Services, LLC, or the U.S. Environmental Protection Agency.



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

THE INSPECTOR GENERAL

August 3, 2011

**MEMORANDUM**

**SUBJECT:** American Recovery and Reinvestment Act Site Visit of the  
Tower Chemical Superfund Site, Clermont, Lake County, Florida  
Report No. 11-R-0431

**FROM:** Arthur A. Elkins, Jr.  
Inspector General

A handwritten signature in black ink, appearing to read "Arthur A. Elkins, Jr.", is placed to the right of the "FROM:" line.

**TO:** Gwendolyn Keyes Fleming  
Regional Administrator, Region 4  
U.S. Environmental Protection Agency

This is our report on the subject site visit conducted by the Office of Inspector General of the U.S. Environmental Protection Agency (EPA). The report summarizes the results of our site visit of the Tower Chemical Superfund Site in Clermont, Lake County, Florida.

We performed this site visit as part of our responsibility under the American Recovery and Reinvestment Act of 2009 (Recovery Act). The purpose of our site visit was to determine the contractor's compliance with selected requirements of the Recovery Act pertaining to EPA Contract No. EP-R4-10-01. EPA used Recovery Act funds of \$4,197,177 for the contract.

The estimated direct labor and travel costs for this report are \$124,388.

**Action Required**

Because this report contains no recommendations, you are not required to respond to this report.

The report will be made available at <http://epa.gov/oig>. If you or your staff have any questions regarding this report, please contact Melissa Heist, Assistant Inspector General for Audit, at (202) 566-0899 or [heist.melissa@epa.gov](mailto:heist.melissa@epa.gov); or Robert Adachi, Director of Forensic Audits, at (415) 947-4537 or [adachi.robert@epa.gov](mailto:adachi.robert@epa.gov).

## **Purpose**

The purpose of our unannounced site visit was to determine whether the contractor for the Tower Chemical Superfund Site project complied with selected requirements of the American Recovery and Reinvestment Act of 2009 (Recovery Act), P.L. 111-5, pertaining to U.S. Environmental Protection Agency (EPA) Contract No. EP-R4-10-01. We also evaluated the reasons for limiting contract competition to small business 8(a) contractors and awarding a fixed price contract.

## **Background**

On October 28, 2009, EPA awarded a fixed price contract under the Recovery Act to Polu Kai Services, LLC, to provide remedial services at the Tower Chemical Superfund Site, Operable Unit 3, located in Clermont, Lake County, Florida. These remedial services consisted of excavating, transporting, and disposing soils contaminated with pesticides and other composites, and restoring the excavated areas. The contract addressed steps in the Record of Decision, dated September 14, 2006. EPA began cleaning up the Tower Chemical Superfund Site in 1983.

EPA issued a nationwide Invitation for Bids to Small Business Administration 8(a) contractors. EPA received 23 bids between \$2.8 and \$8 million. The government's independent estimate was about \$8 million.

EPA has modified the contract 19 times to correct accounting issues, replace key personnel, provide technical direction, order optional quantities, and add new work and additional excavation capacity. The contract has increased from the original amount of \$2,639,060 to \$4,197,177. The principal reason for the higher cost was an increase in the amount of contaminated soil being removed. EPA prepared two Justifications for Other Than Full and Open Competition and performed price analysis to increase the contract's scope and price.

## **Scope and Methodology**

Due to the time-critical nature of Recovery Act requirements at the time of our site visit, we did not perform this assignment in accordance with generally accepted government auditing standards. We did not perform certain steps that would allow us to obtain information to assess the contractor's internal controls and any previously reported audit concerns. As a result, we do not express an opinion on the adequacy of the contractor's internal controls or compliance with all federal, state, or local requirements.

We conducted our unannounced site visit at the Tower Chemical Superfund Site on July 12–13, 2010. We also visited the subcontractor and employment agency for temporary personnel working on the site. During our visit, we:

1. Toured the project
2. Interviewed contractor, subcontractor, and temporary personnel
3. Reviewed records maintained by the contractor, subcontractor, and temporary employment agency on the following matters:
  - a. Buy American requirements under Section 1605 of the Recovery Act
  - b. Wage rate requirements under Section 1606 of the Recovery Act
  - c. Limits on funds and reporting requirements under Sections 1604 and 1512 of the Recovery Act

We visited the contractor's office in Virginia to interview senior managers and obtain records. On August 16–19, 2010, we traveled to Region 4 to interview the contracting officer and review procurement records. We also interviewed the project officer for the remedial action at the Tower Chemical Superfund Site.

## **Results of Site Visit**

Based upon our site visit, we did not identify any issues that would require action by Polu Kai Services, LLC, or EPA. We have summarized our results below.

### ***Buy American Requirements***

We did not identify any issues regarding Section 1605 of the Recovery Act, which requires that all iron, steel, or manufactured goods be produced in the United States, unless certain exceptions apply. The remedial action at the Tower Chemical Superfund site consisted of excavating, transporting, and disposing of soils contaminated with pesticides and other composites, and restoring the excavated areas. We were told that the only material purchased was the sand used to backfill the excavated areas. The contract did not call for the use of any iron, steel, or manufactured goods.

### ***Wage Rate Requirements***

The contractor complied with Section 1606 of the Recovery Act. We interviewed all employees at the Tower Chemical Superfund Site on July 13, 2010, to collect information on compensation, job duties, training, and qualifications. We compared the wages paid on the certified payroll to the Davis-Bacon Act Wage Determination included in the contract. We found that all employees were paid wages and fringe benefits equal to or above the Davis-Bacon rates prescribed in the contract.

### ***Limits on Funds and Reporting***

Based on our review of the contract's statement of work and a visual inspection of the work being performed at the Tower Chemical Superfund Site, we concluded that the contract complied with Section 1604 of the Recovery Act, which states that no Recovery Act funds can be used for any casino, other gambling establishment, aquarium, zoo, golf course, or swimming pool.

We concluded that the contractor complied with its responsibilities under Section 1512 of the Recovery Act, which requires reports on the use of funds and the number of jobs created or retained. We reviewed the 2010 second quarter report prepared and submitted by the contractor to the federal reporting website, as instructed by the contract. Based on our review, the information included in the report met Recovery Act requirements.

### ***Contract Matters***

EPA decided to award a fixed price contract to a small, disadvantaged firm based on sealed bids. This decision was based on recommendations in the Recovery Act and guidance from the Office of Management and Budget and EPA. EPA selected the lowest responsive, responsible bidder. In addition to being a certified 8(a) contractor, the selected contractor was a Service Disabled Veteran Owned Small Business, a Small Business Administration Small Disadvantaged Business, and a Native American (Hawaiian) owned business.

The contract has increased from the original amount of \$2,639,060 to the current value of \$4,197,177. The principal reason for the higher cost was an increase in the amount of contaminated soil being removed. The EPA contracting officer prepared two Justifications for Other Than Full and Open Competition to increase the contract's scope. The contracting officer used price analysis to determine that the negotiated price increases were fair and reasonable.

The EPA project officer stated that although there was extensive soil testing before the project started, it still was not possible to estimate the exact quantity of contaminated soils needing removal on an excavation project of this nature. The project officer was satisfied with the work being done under the contract.

The contractor awarded a large fixed-price subcontract in excess of \$2 million. The subcontract contained the same work as the prime contract. Almost half of the subcontract cost was to pay for the estimated transportation and disposal costs. Both the prime contractor and subcontractor obtained personnel to work on the Tower Chemical Superfund Site from a temporary employment agency. Based on interviews and background checks, these temporary employees were experienced in environmental construction and met hiring criteria.

We could not determine whether the contractor complied with the limitations on subcontracting clause in the contract, which required the contractor to expend at least 50 percent of the cost of contract performance incurred for personnel on “employees of the concern.” At the time of our site visit, work on the contract was not complete and a limits on subcontracting determination could not be done until the contractor completed all work. Secondly, such a determination would be dependent on whether the contractor and subcontractor retained complete cost records for a fixed-price contract, which they were not required to do. An examination of any cost records maintained by the contractor or subcontractor was beyond the scope of this assignment.

## **Recommendations**

We have no recommendations.

## **Agency Response and Office of Inspector General Comment**

On July 21, 2011, we held an exit conference with representatives from EPA Region 4 and Polu Kai Services, LLC to discuss the conclusions in the report. Since there were no recommendations, we did not require or receive comments to the draft report.



## ***Status of Recommendations and Potential Monetary Benefits***

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
No recommendations							

<sup>1</sup> O = recommendation is open with agreed-to corrective actions pending  
C = recommendation is closed with all agreed-to actions completed  
U = recommendation is undecided with resolution efforts

## ***Distribution***

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