



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

NOV - 8 1995

EPA-540-F-98-042
PB98-963259

OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

OSWER Directive # 9240.0-29P

MEMORANDUM

SUBJECT: Transmittal of "Office of Solid Waste and Emergency Response Procedures for Contract Laboratory Program Investigations"

FROM: Stephen D. Luftig, Director *Stephen D. Luftig*
Office of Emergency and Remedial Response (5201G)

TO: Addressees

Purpose: This memorandum restates for Superfund program offices existing Office of Solid Waste and Emergency Response (OSWER) procedures and program responsibilities during investigations of Contract Laboratory Program (CLP) laboratories and/or laboratory employees by the Office of Inspector General (OIG) for alleged fraud or other corrupt practices. Potential OSWER actions during any subsequent criminal, civil or administrative actions are also discussed.

Background: The CLP consists of a nationwide community of analytical laboratories, Environmental Protection Agency (EPA) organizations, and associated contractors. It is managed from EPA Headquarters in Washington, DC, by the Analytical Operations Center (AOC) within the Office of Emergency and Remedial Response (OERR). EPA support for implementing the CLP is provided by the ten EPA Regional offices and the Sample Management Office contractor.

The CLP generates data from analyses of approximately 50,000 samples per year which are collected from Superfund sites. It provides Routine Analytical Services to analyze samples for the presence of organic and inorganic compounds. The Superfund program uses these data to determine the need for removal and remedial response actions at those sites and to support Superfund monitoring and enforcement activities. Superfund may also use the data to support other site response actions, including operation, maintenance, and closure activities. Each sample which is processed by CLP laboratories must be documented properly to ensure timely, correct, and complete analysis for all parameters requested, and, most importantly, to support the

potential use of sample data in Superfund response and enforcement actions.

In accordance with the EPA OIG's mission to detect and prevent fraud, waste, and abuse, the OIG has investigated, and will continue to investigate, CLP contractors and individuals to detect potential fraud and other corrupt practices that may compromise the authenticity and reliability of CLP data. Although the number of cases of fraud or other corrupt practices in the CLP has not been great, no fraudulent activity will be permitted to jeopardize the integrity of the Superfund program.

As a result of OIG investigations, and criminal and civil actions initiated by the Department of Justice, EPA has suspended, proposed for debarment, and debarred several CLP laboratories and individuals from receiving new contracts and from future participation in Federal non-procurement programs. The Superfund program has discontinued use of existing CLP contracts with suspended CLP laboratories and individuals pending the completion of administrative and judicial actions.

In the May 20, 1992 Federal Register [57 FR 21576], EPA published a notice proposing to amend the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300) by adding an Appendix E, OSWER Procedures for CLP investigations. In the proposed Federal Register notice, procedures Superfund employees are to follow when CLP laboratories and individuals are under investigation for alleged fraud or other corrupt practices were detailed.

Objective: In June 1995, OERR decided to reissue the procedures as an OSWER directive instead of publishing it as a Federal Register notice. Please note the procedures apply only to CLP laboratory services contracted from private sector analytical laboratories, and are not applicable to laboratory services provided by contract to other EPA programs.

Three related procedures are also attached for your information. On March 4, 1991, OERR and the Office of Waste Programs Enforcement (OWPE) issued a "Policy on the Use of Allegedly Altered Data from Laboratories Under Investigations for Fraud." This guidance discusses program requirements and site considerations related to the use of environmental data generated by laboratories subject to OIG investigations. The intent of the guidance is to protect the integrity of EPA decisions based on such laboratory data.

On July 18, 1991, OERR and the Office of Enforcement issued "OSWER/OE Communication Procedures for Notification of Interested Parties Regarding Administrative, Civil and Criminal Actions Against Contract Laboratories." These procedures implement the notification provisions of the guidance, "OSWER Procedures for

CLP Investigations." The communications procedures detail communications policies for affected Superfund program and legal offices when a contract laboratory is under investigation by the OIG; was suspended or debarred by the EPA; or had civil or criminal action taken against it. The communications procedures also explain when information concerning contract laboratory fraud will be communicated outside the Federal government.

On June 22, 1992, OERR and OWPE issued OSWER Directive 9240.0-20, "Update on Proposed Rule and Procedures for CLP Investigations", which summarized Superfund program practices followed when a CLP laboratory is investigated for fraud or other potential misconduct.

Implementation: This OSWER Directive includes the attached guidance as well as all previously referenced guidance issued to date by the OERR on procedures for CLP Investigations. Please ensure appropriate program office personnel receive copies of OSWER Directive # 9240.0-29 and are cognizant of OSWER procedures and program responsibilities.

Provisions of the procedures highlight the careful balance between the due process and other legal rights of CLP laboratories and individuals and the competing demands of EPA to protect public health and the environment under the Superfund program. These procedures are designed to mitigate potential damage to the Government, protect the Government from harm, and maintain due process and other legal rights of CLP laboratories or individuals under investigation. The procedures protect the authenticity and reliability of CLP-generated data and the validity of EPA decisions based on such data.

For additional information or comment, please contact Hans J. Crump-Wiesner, Director, Analytical Operation Center (Mailcode 5204G), OERR, EPA, 401 M Street, S.W., Washington, DC 20460. He can also be reached at (703) 603-8821.

Attachments (4)

Addressees: Director, Office of Site Remediation and Restoration
Regions I
Director, Emergency and Remedial Response Division
Region II
Director, Hazardous Waste Management Division
Regions III, IX
Director, Waste Management Division
Region IV
Director, Superfund Division
Regions V, VI, VII
Assistant Regional Administrator, Office of
Ecosystems Protection and Remediation
Region VIII

Director, Environmental Cleanup Office
Region X

Director, Office of Environmental Measurement &
Evaluation

Region I

Director, Environmental Services Division
Regions II-IV, VI-VIII, X

Director, Environmental Sciences Division, Region V
Chief, Environmental Services Branch, Region IX

cc: Jerry Clifford, Director, Office of Site Remediation
Enforcement (2271)
Betty Bailey, Director, Office of Acquisition Management
(3801)
Mike Northridge, Regional Support Division, Office of Site
Remediation Enforcement (2272)
Regional Counsel, Regions I-X
Regional CLP Technical Project Officers, Regions I-X

OSWER Procedures for Contract Laboratory Program Investigations

A. Purpose

This guidance describes the actions the Office of Solid Waste and Emergency Response (OSWER), will take to protect the authenticity and reliability of analytical data generated for OSWER's Superfund programs by laboratories participating in the Contract Laboratory Program (CLP). This guidance is intended to aid the internal management of EPA. The procedures are not intended to, nor do they, create any right or benefit enforceable at law by any party against EPA or its officers or employees.

B. Reporting and Cooperation

1. All allegations or suspicions of fraud, waste, or abuse involving a CLP laboratory and/or individual will be reported immediately to the EPA OIG by any EPA employee or contractor associated with the Superfund program.

2. All EPA employees shall cooperate fully with the OIG during the course of a preliminary inquiry and any subsequent investigation. The cooperation includes, but is not limited to, providing all relevant information associated with the CLP laboratory and/or individual, fulfilling all information requests by the OIG, providing technical assistance to the OIG, and making on-site visits that may be required during the course of the preliminary inquiry and any subsequent investigation.

3. EPA employees will also cooperate with other Federal authorities, including the Department of Justice (DOJ), in matters related to preliminary inquiries, investigations, and criminal and civil referrals and prosecutions.

C. OSWER Actions During OIG Investigations

1. After reviewing a Notice of Scheduled Investigation (NSI) received from the OIG for a current CLP contractor and/or individual, AOB will request EPA's Office of Acquisition Management Division (OAM) to consider:

a. issuing a Contracting Officer Stop Shipment (COSS) notice informing the laboratory under investigation that EPA will not order any sample analyses (including performance evaluation (PE) samples) under the laboratory's CLP Routine Analytical Services (RAS) contract(s) pending completion of the OIG investigation; and

b. advising the Sample Management Office (SMO) to cease scheduling RAS samples (including PE samples) to the laboratory.

2. In cases where evidence of fraud or other corrupt practices is found, OSWER will take action to protect the Government's interest by referring the matter to the EPA Office of Grants and Debarment (OGD) and Office of General Counsel (OGC), Inspector General Division, to pursue suspension and/or debarment of the laboratory and/or individual.

3. OSWER may request that OAM discontinue the use of any existing contracts with the laboratory and/or individual under OSWER programs, concurrent with any suspension, debarment, or other action that deems the laboratory and/or individual to be ineligible. OSWER may also request that the Contracting Officer (CO) consider terminating existing CLP contracts.

4. OSWER will consult with OGC's Inspector General Division about possible civil or administrative action to recover monetary damages in connection with the alleged fraud or other corrupt practices.

5. EPA will consider all relevant investigative information authorized for release by the OIG, and DOJ if applicable, in EPA's review and approval of Superfund program quality assurance project plans under the NCP.

6. Notwithstanding EPA review and approval of any Superfund program quality assurance project plans under the NCP, if other Federal agencies, States, prime contractors, or Potentially Responsible Parties (PRPs) submit data from samples shipped to a laboratory during the time period that is the focus of the investigation, the EPA Superfund program reserves the right to exclude or limit the use of these data in its decision-making, in the absence of satisfactory evidence that the data are not compromised.

D. OSWER Actions Following Suspensions and Debarments

1. In consultation with OGD and OAM, Superfund program employees may take actions pursuant to the applicable regulations with respect to a laboratory and/or individual that has been suspended, proposed for debarment, debarred, or otherwise deemed to be ineligible.

2. Under the terms and conditions of settlement agreements, consent decrees, or administrative orders with PRPs, Superfund program employees may direct PRPs not to use laboratories and/or individuals that are suspended, debarred, or otherwise deemed to be ineligible. In addition, Superfund program employees shall request that COs for the Superfund program use the information available to them, consistent with applicable law, to make responsibility determinations, consent determinations on proposed subcontracts, and contract termination decisions.

3. OSWER will request that the EPA Regions not accept or approve work plans submitted by PRPs that propose to ship samples to a laboratory that is suspended, debarred, or otherwise deemed to be ineligible.

4. Except as otherwise provided in this subsection, OSWER and Regional employees in the Superfund program will not recommend or direct any action by other Federal agencies, States, prime contractors (including the SMO contractor), or Potentially Responsible Parties (PRPs) with regard to their existing or future contracts with a laboratory and/or individual under investigation.

5. It is EPA's position that other Federal agencies, States, and prime contractors are to take actions that are consistent with EPA's actions regarding laboratories and/or individuals that have been suspended, debarred, or otherwise deemed to be ineligible. These parties are to make contractor responsibility determinations and contract administration and termination decisions based on the information available to them, in accordance with applicable regulations.

E. Notification

1. When the OIG issues an NSI regarding a CLP laboratory and/or individual, it routinely sends a copy to OGC's Inspector General Division, the ACB, and the Regional Administrator of the Region in which the laboratory is located. OGC's Inspector General Division will be responsible for forwarding a copy of all NSIs on CLP laboratories and/or individuals to the DOJ Civil Division and to the Director, Regional Support Division, Office of Site Remediation Enforcement, Office of Enforcement and Compliance Assurance (OECA). OSWER will notify appropriate EPA offices when a CLP laboratory and/or individual is issued a COSS notice, suspension, debarment, contract discontinuance or termination, or is otherwise deemed to be ineligible. In addition, it is OSWER's policy to provide the EPA Regions, OECA, and the DOJ Environmental Enforcement Section (EES) with a list of potentially affected sites that have had samples analyzed by the laboratory. If investigative information is authorized for release by the OIG, and DOJ if applicable, OSWER will provide that information to the EPA Regions, OECA, EES, and to COs for use in making contractor responsibility determinations for new awards, subcontract consent determinations, and contract termination decisions.

2. Headquarters and Regional employees of the Superfund program will notify other Federal agencies, States, prime contractors, and PRPs when a CLP laboratory and/or individual is issued a suspension, debarment, contract discontinuance or termination, or is otherwise deemed to be ineligible. In general, Superfund employees will not notify these parties of any

COSS notice or NSI; however, AOB will notify the SMO contractor of any COSS notice. When OIG, and DOJ if applicable, authorize the release of investigative information, Superfund employees will notify other Federal agencies, States, prime contractors, and PRPs of that information for contractor responsibility determinations, subject to the recipient's agreement not to further disclose such information.

3. Other Federal agencies, States, prime contractors, or PRPs may consult the laboratory and/or individual to determine whether EPA or any other organization has taken any action with regard to that laboratory and/or individual that may affect the determination of the responsibility of the laboratory and/or individual or the adequacy of the data generated by the laboratory and/or individual.

4. EPA will respond to requests for information consistent with the requirements and exemptions of the Freedom of Information Act (FOIA), 5 U.S.C. 552.

5. Inquiries from outside EPA to employees of the Superfund program regarding the existence of an investigation of a CLP laboratory and/or individual will be referred to the OIG. Inquiries regarding contract discontinuance or termination will be referred to OAM. Inquiries regarding suspensions, debarments, or other actions under which a CLP laboratory and/or individual is otherwise deemed to be ineligible will be referred to OGD.

6. The Superfund program should ensure that all parties that were previously notified are informed when an investigation is closed, or when a CLP laboratory has been indicted, convicted, the subject of a civil fraud judgment, suspended, debarred, or is otherwise deemed to be ineligible.