



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

EPA-350-R-04-004

June 2004

Annual Superfund Report to Congress for Fiscal 2003



OIG Scorecard Summary of Superfund Results

OIG GOAL 1

Contributing to Improved Human Health and Environmental Quality

(Below are Superfund Results of OIG Work in Terms of Products, Actions by EPA, and Impacts)

- 10 Environmental Recommendations
- 10 Environmental Risks Identified
- 17 Examples of Environmental Policy, Regulatory, Practice, Process Actions, or Changes Made
- 3 Examples of Environmental Improvement
- 2 Environmental Risks Reduced
- 1 Certification/Validation/Verification (of Environmental Information or Activity Reviewed)
- 1 Best Environmental Practice Implemented
- 1 Best Environmental Practice Identified

OIG GOAL 2

Improving EPA's Management, Accountability, and Program Operations

(Below are Superfund Results of OIG Work in Terms of Products, Actions by EPA, and Impacts)

- 42 Recommendations for Management Improvements/Additional Review
- 3 Certifications/Validations/Verifications (of Management Information or Activity)
- 1 Best Management Practice Implemented
- 1 Best Management Practice Identified
- 2 Examples of Management Policy, Practice, Process Actions, or Changes
- \$26,514,172 Questioned Costs*
- \$340,154 Efficiencies/Savings *

** exclusive of contracts and Single Audits from audits by Defense Contract Audit Agency, other Federal Auditors, and Certified Public Accountants*

- **72% OIG Customer Satisfaction Rating on Superfund Assignments**

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Office of Inspector General, visit our web site at:

<http://www.epa.gov/oig>

Cover Photo: The Hanford Superfund Site – the largest environmental cleanup project in the world – was the subject of an EPA OIG report issued in fiscal 2003 (see page 6). The photo on the cover is of the K-West Reactor located in Hanford's 100-K Area. (Photo by EPA OIG)



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Foreword

This report covers fiscal 2003 Superfund activity of the Environmental Protection Agency (EPA) Office of Inspector General (OIG). The Superfund Amendments and Reauthorization Act of 1986 requires the OIG to annually audit the Superfund program and report the results to Congress. This report summarizes some of the more significant highlights for the reporting period.

The OIG issued an unqualified opinion on EPA's fiscal 2003 financial statements, including those of the Hazardous Substance Superfund Trust Fund. During fiscal 2003, we noted that the Superfund Trust Fund transferred to EPA \$82.7 million more than was available to be transferred. Nonetheless, EPA officials indicated the Superfund program will continue to operate as long as Congress continues to appropriate funds for it.

To help Congress better address Superfund funding issues, we provided the Committee on Environment and Public Works with details it requested on the specific remedial action funding needs for each non-Federal National Priorities List site. While we had calculated Regional needs of \$417 million for these sites during fiscal 2002, EPA had only obligated \$320 million, a \$97 million shortfall.

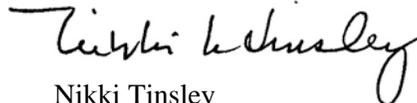
More than half of EPA's funding is used for assistance agreements, many of which involve Superfund work, and improvements continue to be needed in the managing of these agreements. We provided Congress with requested information on continuing noncompliance problems related to assistance agreements. Further, we testified before a Congressional subcommittee on ways EPA can better manage assistance agreements, and we issued several reports addressing specific agreements.

During our review of EPA's response to the World Trade Center collapse caused by terrorist attacks, we determined that while EPA does not have clear statutory authority to establish and enforce health-based regulatory standards for indoor air, it is provided the authority to respond to releases of hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act. Our report was used by members of Congress to forge an agreement with the Council on Environmental Quality whereby EPA will lead a multi-agency effort to more fully evaluate the adequacy of indoor cleanup of Lower Manhattan and the need for any additional action. In addition, EPA generally agreed to explore ways to better coordinate response efforts in the event of future disasters, and to improve sampling methods and health-related benchmarks.

Based on our review of the Department of Energy's Hanford site in Washington State – the largest environmental cleanup project in the world – EPA has agreed to improve oversight at the location. We also

noted concerns about whether EPA's National Hardrock Mining Framework contributed to any environmental improvements or protections at specific hardrock mining sites, many of which are Superfund sites.

Addressing cleanup at Superfund sites throughout the country remains critical. Therefore, we will continue to assist Congress and EPA in their efforts to ensure that the public is adequately protected against potential adverse health and environmental impacts resulting from such sites.

A handwritten signature in black ink, appearing to read "Nikki Tinsley". The signature is fluid and cursive, with a prominent initial "N" and a long, sweeping tail.

Nikki Tinsley
Inspector General

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Hazardous Substance Superfund Trust Fund

The Government Management Reform Act requires Federal agencies to prepare annual audited financial statements. The requirement for audited financial statements was enacted to help bring about improvements in agencies' financial management practices, systems, and controls so that timely, reliable information is available for managing Federal programs.

One of the major entities covered by these financial statements is the Hazardous Substance Superfund Trust Fund. The EPA OIG's requirement to audit EPA financial statements also meets our Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) audit requirement to annually audit the Superfund Trust Fund, which we previously referred to as our Trust Fund audit.

The following summary of our fiscal 2003 financial statement audit relates to all findings resulting from our audit of EPA's financial statements, including those of the Hazardous Substance Superfund Trust Fund. During this review, we noted that the Superfund Trust Fund, managed by the U.S. Treasury Bureau of Public Debt, transferred funds to EPA in excess of the assets available to be transferred by \$82.7 million in fiscal 2003. In our opinion, because recoveries have declined and the investment principal upon which interest is earned has steadily decreased, the current deficit of \$82.7 million and future Superfund Trust Fund financing would have to be covered by appropriations from the Treasury's general fund in order for the Superfund Trust Fund to continue operations.

EPA Earns Unqualified Opinion on Financial Statements

EPA earned an unqualified opinion on its fiscal 2003 financial statements. In evaluating EPA's internal controls, we identified eight reportable conditions in the following areas. Although we

do not believe they represent material weaknesses that would prevent the fair presentation of reliable financial statement amounts, they are internal weaknesses that still should be corrected.

- EPA did not always adequately document standard vouchers for transfer requests from Treasury to EPA Trust Fund accounts (Superfund and Leaking Underground Storage Tank Trust Funds) prior to transactions being entered into the Integrated Financial Management System.
- EPA project officers regularly approved invoices without the detailed documentation to support costs.
- EPA did not reconcile the unearned revenue from State Superfund Contracts to the general ledger, and therefore could not ensure the accuracy of the approximately \$29 million recorded for that account.
- EPA did not promptly record approximately \$2 million in marketable securities received in fiscal 2003 from companies in settlement of debts.
- The Integrated Financial Management System suspense file was not in compliance with the requirement that the Application Program Interface provide internal controls, such as control totals and record counts, to ensure integrity.
- Due to system shortcomings, we continued to be unable to assess the adequacy of the automated internal control structure as it relates to automated input, processing, and output controls for the Integrated Financial Management System.
- For accounts receivable, we noted numerous instances where receivables were not

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recorded timely due to late submission of supporting documentation from Department of Justice, Regional Counsel, or program offices. Further, one regional financial management office did not properly calculate its allowance for doubtful accounts.

- EPA's Financial Systems Branch bypassed the Integrated Financial Management System manual online data entry controls when making a systemic correction of erroneous transactions; instead of using the journal voucher process, it reversed transactions by processing negative debts and positive credits. As a result, the audit trail for these transactions was hidden and basic evidence requirements for the transactions were circumvented.

Our tests of compliance with laws and regulations did not identify any instances of noncompliance with laws and regulations that would materially misstate the financial statements. However, we identified three noncompliances under the Federal Financial Management Improvement Act. Although EPA made significant improvements regarding cost

accounting, EPA was not in compliance with the Statement of Federal Financial Accounting Standards No. 4 that requires EPA to provide full costs per output to management in a timely fashion. Further, we noted noncompliances related to reconciliation of intragovernmental transactions and completion of the fiscal 1999 remediation plan. None of these noncompliances met the Office of Management and Budget's definition of substantial noncompliance.

In its response to our draft report, the Office of the Chief Financial Officer generally concurred with our recommendations and noted the completion or planning of a number of corrective actions. Regarding our concerns related to the Superfund Trust Fund shortfall and the decline in cost recoveries, the Office of the Chief Financial Officer indicated the Superfund program will continue to operate as long as Congress continues to appropriate funds for it, and noted that EPA's fiscal 2003 appropriation came from Trust Fund assets and the general fund.

We issued our final report (2004-1-00021) on November 21, 2003.

Assistance Agreements

More than half of EPA's fiscal year 2003 budget was awarded to organizations outside the Agency through assistance agreements, including a significant amount of funds related to Superfund sites. Therefore, the efficient management of assistance agreements is essential for EPA to ensure it efficiently manages its Superfund efforts.

On July 23, 2003, in response to a Congressional request, we provided Congress with a report providing statistics and other details on continuing noncompliance problems related to assistance agreements and how EPA deals with them.

Further, in testimony on assistance agreements, the Inspector General told a Congressional subcommittee that while EPA has acted to improve the management of such agreements, it needs to ensure that adequate resources are devoted to the area and personnel are held accountable. "We are committed to working with Congress and EPA to ensure that money awarded every year through assistance agreements is producing the intended environmental and public health benefits," Inspector General Nikki Tinsley testified on June 11, 2003, before the U.S. House of Representatives' Subcommittee on Water Resources and the Environment, Committee on Transportation and Infrastructure.

CERCLA requires audits "of a sample of agreements with States," and we perform financial and compliance audits of assistance agreements with States and political subdivisions. During fiscal 2003, the OIG issued three reports on specific assistance agreements related to Superfund, including two reports on agreements awarded to States. Details on each follow.

Costs Claimed by Tribal Association on Solid Waste and Emergency Response Under EPA Assistance Agreement No. CR827181-01

We questioned all \$2,357,376 presented to the Tribal Association on Solid Waste and Emergency Response because the Association's financial management system was not adequate to account for claimed costs in accordance with Federal regulations. The Association also did not comply with Federal requirements when procuring contractual services.

The funding was authorized in part under CERCLA to have the newly formed Association, headquartered in Washington, DC, provide a government-to-government mechanism through which tribes could be proactively involved in the policy discussions that affect implementation of environmental programs on their land.

The Association's financial management system was inadequate in that the Association could not or did not: (1) provide a summary of claimed costs by cost element or reconcile claimed costs to its general grant ledger, (2) support its salaries and wages, (3) competitively procure contractual services or perform any of the required cost or pricing analyses, (4) provide a legal written agreement to support its subgrant, and (5) appropriately draw down cash. As a result of these deficiencies, we questioned all \$2,357,376 in costs claimed under the Agreement.

We recommended that EPA recover the \$2,357,276 that was not supported as required, suspend work under the current agreement and make no new awards until the Association can demonstrate that its accounting practices are consistent with Federal requirements, and require the Association to modify its financial

management system and practices to meet Federal requirements.

We issued our final report (2003-4-00119) on September 19, 2003.

Costs Claimed on Stringfellow Superfund Site by the California Department of Toxic Substances Control

For claims submitted by the State of California in connection with the Stringfellow Superfund site, we questioned about \$24 million of the \$64 million claimed by the State, primarily related to advance match and credit claims.

We audited an Interim Financial Status Report for Cooperative Agreement No. V009380-01, an advance match claim, and a Superfund Amendments and Reauthorization Act credit claim. These all involved cleanup of a former hazardous waste disposal facility in Riverside County, California.

For the \$30,171,233 credit claim, we questioned \$16,468,059 of that amount, primarily related to bond interest and accrued interest on borrowings being claimed even though that is not allowable. We also questioned \$6,505,535 of a \$9,480,767 advance match claim, again primarily involving bond interest and accrued interest being inappropriately claimed. For the \$24,659,869 claimed under Cooperative Agreement No. V009380-01, we questioned \$1,161,643, related to an ineligible contract and inappropriate travel and equipment costs.

We recommended that EPA Region 9 disallow the questioned costs, authorize payments and allow eligible advance match costs and credits

when appropriate, and review improvements made.

We issued our final report (2003-1-00013) on September 30, 2003.

Costs Claimed by Georgia Department of Natural Resources Under EPA Assistance Agreement No. VC984299-98

We questioned \$16,559 of the total Federal share of \$3,930,101 claimed by the Georgia Department of Natural Resources under Assistance Agreement No. VC984299-98 as ineligible.

The Agreement was provided to Georgia to provide it with financial support related to its Superfund Core Program, designed to improve its Superfund efforts, as well as the Voluntary Cleanup Program.

We identified two areas of regulatory noncompliance during our examination that resulted in our questioning \$16,559 of the Federal share. Specifically, the State did not: (1) submit timely and complete performance reports as required, and (2) conduct physical inventories of CERCLA-funded property as required.

We recommended that EPA Region 4 recover the \$16,559 in questioned costs, continue to monitor the State's submission of quarterly progress reports, and require appropriate physical inventories and written procedures.

We issued our final report (2003-4-00101) on June 26, 2003.

Remedial Action Decision Making

We performed indepth reviews of the reliability of site-specific analytical data as a basis for sound site remediation decisions. In addition, the OIG has worked closely with the Agency to characterize Superfund sites. Through these and other actions, the OIG is working to ensure that Agency decisions on site remediation are based on data of known quality.

Based on a Congressional request, we identified remedial action funding needs for non-Federal sites on the National Priorities List (NPL). Also in 2003, we issued reports on activities at the Hanford Superfund site and on pump and treat remedies, both of which impact remedial action decision making. Details follow.

OIG Provides Congress Details on Remedial Action Funding Needs

In response to his request, we provided Senator James Jeffords, Chair of the Committee on Environment and Public Works, with details on the Fiscal Year 2002 remedial action funding needs of each non-Federal NPL site. This October 25, 2002, letter was also sent to Senator Barbara Boxer, Chair of the Superfund, Toxics, Risk and Waste Management Subcommittee.

Although we calculated a total Regional need of \$417 million for remedial action construction activities at non-Federal Superfund NPL sites for Fiscal Year 2002, EPA only obligated a total of \$320 million for these sites, a shortfall of \$97 million. The amount obligated by EPA totaled \$281 million in obligated funds, including \$95 million deobligated from prior year funding, plus an additional \$39 million obligated by Regions from State Superfund contracts and special accounts. These numbers do not include pre-remedial action costs associated with remedial investigation/feasibility studies, remedy selection, remedial design, and other study/investigation activities.

We also determined that while there had been a Regional need of \$60 million for sites undergoing long-term response actions for Fiscal Year 2002, EPA only obligated a total of \$43 million to these sites, a shortfall of \$17 million. These sites are generally those where construction is complete and long-term response actions involve continuing treatment activities. EPA had obligated \$27 million from appropriated funds, including \$3 million deobligated from prior year funding, and an additional \$16 million was obligated by Regions from State Superfund contracts and special accounts.

According to officials in EPA's Office of Emergency and Remedial Response, which provides the funds, managing uncontrolled hazardous waste sites is inherently uncertain in nature, and site funding needs change frequently based on dynamic site conditions, such as construction delays and site design revisions.

The Agency indicated it placed a priority on funding ongoing construction and then on the highest priority new construction starts, and we found this generally occurred. However, we noted three instances where EPA funded lower priority new starts because these sites had minimal resource needs and would create minimal future resource burdens.

We noted that EPA has continued to emphasize its "enforcement first" approach for the Superfund cleanup process, in which Superfund site teams negotiate timely settlements with responsible parties and have responsible parties conduct remedial actions whenever possible. If a settlement cannot be negotiated, the Region is to issue Unilateral Administrative Orders to all appropriate parties to compel expeditious cleanup before the Region proceeds with a Superfund-financed remedial action. Other EPA activities for conserving Superfund resources include reviewing post cleanup activities;

tightening the criteria for NPL listing; and requiring Regions to return to Headquarters a greater portion of deobligated funds so that the funds can be used in other Regions.

Region 10 Needs to Improve Oversight of Hanford Superfund Site

Our review of the adequacy of EPA Region 10's oversight of Department of Energy Superfund cleanup actions at the Hanford 100-K Area Superfund Site has resulted in EPA's agreement to improve oversight at the site.

The Hanford site, located in southeastern Washington State, encompasses about 568 square miles and has been identified as the largest environmental cleanup project in the world. The potential environmental and human health risks associated with contamination at the Hanford site are extreme. Approximately 3.7 million pounds of used nuclear fuel are stored in unlined concrete basins at the Hanford 100-K Area site. The Columbia River, which is over 1,000 miles long, runs directly through the Hanford site for about 50 miles. The spent nuclear fuel storage basins are less than a half-mile from the river and in earlier years one of the basins had leaked.

We found that despite some important cleanup progress, EPA Region 10 did not:

- Take sufficient action to ensure that timely milestones for interim cleanup actions at the area existed.
- Ensure that cleanup milestones that did exist were achievable.
- Effectively address insufficient cleanup progress.
- Take sufficient action to address poor performance of the remedy used to clean up groundwater contaminated with hexavalent chromium.

Also, EPA Region 10 could not demonstrate that it had obtained sufficient information to conclude that contaminated groundwater in the reactor section of the 100-K Area did not

require an interim cleanup action. Further, in consultation with an independent expert, we found that the existing groundwater monitoring and sampling system in the Hanford 100-K area was inadequate to determine whether hazardous pollutants could be affecting the environment.

We recommended that Region 10 monitor Department of Energy efforts to successfully complete remediation requirements and take appropriate actions as needed if requirements are not met; evaluate performance of the upgraded pump-and-treat system; require a formal assessment on the need for an interim remedial action in the area's reactor section; and have the Department of Energy improve its groundwater monitoring system. We noted that enforcement actions should be pursued as appropriate. The Agency generally accepted our findings and recommendations.

We issued our final report (2003-P-00002) on November 4, 2002.

Nationwide Pump-and-Treat Remedies Need Improvement

EPA's Nationwide Pump-and-Treat Optimization project identified 241 recommendations to improve the effectiveness and reduce costs at Superfund-financed groundwater pump-and-treat systems. If implemented, these recommendations could result in a 36-percent reduction in annual Superfund costs for evaluated sites. Although about half of the 241 recommendations have been fully implemented or are in progress, it is not clear that EPA has established a milestone for completing this project, implementing all the recommendations, and accounting for the associated environmental and cost savings benefits. EPA needs to sustain its progress and develop focused plans to track the effectiveness of this nationwide project.

Groundwater contamination is present at the majority of Superfund and Resource Conservation and Recovery Act corrective action sites. Pump-and-treat remedies are the

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most common groundwater cleanup remedies used at Superfund NPL sites and are also most commonly used to remediate Methyl Tertiary-Butyl Ether (MtBE), a pollutant associated with leaks or spills from underground storage tanks. There are over 700 pump-and-treat systems operating at NPL sites nationwide, 88 of which are financed by the Superfund program.

Collectively, Phases I and II of this nationwide project identified the 241 recommendations for improvements to 17 of the 20 Superfund-financed pump-and-treat systems evaluated, while also collecting cost and performance information for all 88 Superfund-financed systems. The project also identified important ways that existing systems can be managed more effectively. Information obtained from EPA Regions and States generally indicated the optimization project was valuable, useful, and identified savings opportunities.

Phase III of the project is ongoing and generally involves project tracking and capturing progress toward implementing recommendations. There is no current scheduled end date, milestone, or focused plan of action associated with completion of Phase III, although EPA's initial plans indicate Phase III was scheduled for completion by the end of fiscal 2002. EPA needs to set priorities for which sites or recommendations are most critical to track, establish a time line for tracking actions, and establish credible metrics to measure environmental and cost benefit outcomes. In the long term, it will be difficult to determine the environmental and cost benefits of optimization projects if accurate and meaningful information on the results they produce has not been collected or analyzed.

We issued our final report (2003-P-00006) on March 27, 2003.

Response Claims

CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, authorizes EPA to pay any claim for response costs by “any other person” as a result of carrying out the National Contingency Plan. Potentially Responsible Parties, who often make these claims, are required to enter into a Preauthorized Decision Document (PDD) with EPA to cover work for which some costs will be reimbursed. The PDD specifies the work to be performed, the portion of the cost that EPA will reimburse, and the procedures through which the Potentially Responsible Parties can make claims for reimbursement.

We conducted various claim reviews, which are not audits; rather, they are reviews that follow the instructions in the Agency’s claims guidance for the claims adjuster. Summaries on the results of several of our response claim reviews follow.

Review of Missouri Electric Works Claim Results in Questioned Costs of \$145,491

We reviewed the first claim submitted by Armstrong Teasdale LLP for the Missouri Electric Works Site Trust Fund, in Cape Girardeau, Missouri, and questioned costs of \$145,491.

Under the PDD, the claimant is entitled to submit claims for 20 percent of allowable costs incurred for the remedial action, not to exceed a total of \$3,500,000. The claim contained total costs incurred of \$7,912,352, and requested reimbursement of \$1,582,470.

We questioned \$145,491 of the total costs. This involved \$77,590 in ineligible costs, \$57,841 in unsupported costs, and \$10,060 in unreasonable costs. The Federal share of these questioned costs was \$29,098, and the Agency agreed to not pay that questioned Federal share.

Review of Tybouts Corner Landfill Claim Results in Questioned Costs and Interest of \$386,283

We reviewed the third claim submitted by the Tybouts Corner Landfill Site Trust, in New Castle, Delaware, and questioned costs and interest of \$386,283.

Under the PDD, the claimant is entitled to submit claims for 21 percent of allowable costs incurred for the remedial action, not to exceed a total of \$5,886,000. The claim contained costs incurred of \$3,588,680, including \$130,459 of interest expense. The claimant requested reimbursement of \$856,685 (21% x \$3,458,221 + \$130,459 of interest).

We questioned \$255,824 of costs and \$130,459 of interest as ineligible, or a total of \$386,283. The Federal share of these questioned costs was \$184,182 (21% x \$255,824 + \$130,459 of interest), and the Agency agreed to not pay that questioned Federal share.

Other Claims Reviewed During Period

During three additional response claim reviews that we completed during fiscal 2003, nothing came to our attention that caused us to believe that the claimed costs were unreasonable or unnecessary. These three reviews were as follows.

York Oil: We reviewed the second claim submitted by Alcoa, Inc., for the York Oil OU-1 Superfund Site, in the Town of Moira, Franklin County, New York. The PDD authorizes the claimant to submit claims for 16.11 percent of allowable costs incurred for the remedial action, not to exceed \$2,738,700. Alcoa requested reimbursement of \$228,875 (16.11 percent of \$1,420,699) for costs it incurred between November 30, 1999, and June 30, 2001.

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Parker Landfill Superfund Site: We reviewed the claim submitted by Ethan Allen, Inc., for the Parker Landfill Superfund Site in Caledonia County, Vermont. The PDD authorizes the claimant to submit claims for 47 percent of allowable costs incurred for the remedial action, not to exceed \$3,015,432. Ethan Allen submitted documentation detailing incurred costs of \$681,212 and requested reimbursement of \$320,170.

Hunterstown Road Superfund Site: We reviewed the second claim submitted by Viacom, Inc., for the Hunterstown Road Superfund Site in Adams County, Pennsylvania. The PDD authorizes the claimant to submit claims for 39 percent of allowable costs incurred for the remedial action, not to exceed \$2,670,320. Viacom submitted documentation detailing incurred costs of \$2,726,492 and requested reimbursement of \$1,063,332.

Performance Reviews

In addition to reviews required by CERCLA and the Superfund Amendments and Reauthorization Act, we conduct other reviews that address Superfund issues. Following are summaries on several completed during fiscal 2003.

Hardrock Mining Framework Not Achieving Sufficient Results

We found no evidence that EPA's National Hardrock Mining Framework has contributed to any environmental improvements or protections at specific hardrock mining sites, many of which are Superfund sites.

Hardrock mining involves the extraction of certain metals and minerals from hard formations of the earth, and include copper, gold, iron ore, lead, and silver. EPA estimates there may be as many as 200,000 abandoned hardrock mines alone in the United States. EPA issued the Framework in 1997, after 3 years of development, to deal with environmental issues posed by proposed, active, and abandoned hardrock mining sites.

Certain laws and regulations present obstacles to what EPA can realistically accomplish. For example, EPA has only an advisory role in developing environmental impact statements for hardrock mines on public lands. Further, the primary programs that allow EPA to prevent pollution from hardrock mining are delegated to the States or provide regulatory exclusions for types of waste generated from hardrock mining.

EPA did not develop or communicate a strategy for implementing the Framework, management did not support it, and there was inadequate coordination within EPA and between EPA and other agencies. EPA did not have current and accurate data on the extent of the challenges posed by hardrock mining activities.

We recommended that EPA develop effective implementation strategies for the Framework to account for gaps, lack of coordination, and regulatory challenges. EPA management responded that they believed the Framework has utility, but agreed that improvements can be made and indicated they will initiate actions.

We issued our final report (2003-P-00010) on August 7, 2003.

CERCLA Gives EPA Authority to Respond to Indoor Air Problems Such as Those Resulting From World Trade Center Collapse

During our review of EPA's response to the World Trade Center collapse caused by the terrorist attacks on September 11, 2001, we concluded that while EPA does not have clear statutory authority to establish and enforce health-based regulatory standards for indoor air, it is provided the authority to respond to releases of hazardous substances under CERCLA.

Specifically, under Section 104(a) of CERCLA, EPA is authorized, consistent with the National Contingency Plan (NCP), to remove or remediate any hazardous substance that is released into the environment, or any pollutant or contaminant that may present an imminent and substantial danger to the public health or welfare. Asbestos is a hazardous substance under CERCLA, and there were such releases as a result of the World Trade Center collapse.

Neither CERCLA nor the implementing regulations under the NCP obligate EPA to undertake response actions. As provided in the NCP, "activities by the Federal and State governments in implementing this subpart are discretionary governmental functions" that do not create "a right to Federal response" nor "any duty of the Federal government to take any response action at any particular time"

(40 CFR § 300.404(h)(3)). Moreover, CERCLA contemplates State participation in response actions (42 U.S.C. 9621(h)), and the NCP allows for States to assume the lead agency role.

CERCLA only applies to the release of hazardous substances “into the environment.” CERCLA defines “environment” as “the navigable waters ... and ... any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States.” Courts have held the emissions of dust within enclosed buildings are not releases “into the environment” and therefore are not CERCLA releases. However, in the World Trade Center case, the contamination of indoor spaces was caused by an external event – the collapse of the World Trade Center towers. The collapse itself caused a release of hazardous substances into the “environment” when a huge dust plume was released into the ambient air. Matter from the dust plume then entered buildings in the surrounding area. In such a case, when the release “into the environment” ends up contaminating enclosed structures, CERCLA provides EPA the authority to take any actions necessary to eliminate or mitigate the threat to public health from the release.

We made recommendations for EPA to coordinate with others in developing protocols for determining how indoor environmental concerns should be handled in large-scale disasters, and publish oversight criteria for handling cleanup following terrorist attacks and other disasters. EPA generally agreed to explore ways to better coordinate efforts in the event of future disasters, and to improve sampling methods and health-related benchmarks.

We issued our final report (2003-P-00012) on August 21, 2003.

Greater Use of Performance-Based Service Contracts Could Increase Savings

EPA has made limited use of Performance-Based Service Contracting (PBSC), an acquisition methodology in which the Government pays for results rather than effort or process. Office of Management and Budget (OMB) and EPA studies have shown that PBSC saves money and improves contractor performance. For example, with OMB’s assistance, EPA studied PBSC within the Superfund program. Most projects saved money, with one project lowering costs by 30-35 percent while improving the quality of work.

EPA has generally limited use of PBSC to obtaining commercially available services, such as janitorial and landscaping work. Further, EPA awarded non-PBSC contracts for services previously awarded as performance-based. Also, many contracts EPA identified as performance-based were not designed to take advantage of PBSC’s benefits, since the contracts were too prescriptive or did not provide meaningful incentives or disincentives.

Based on discussions with Agency officials, this occurred because EPA did not adequately plan or hold officials accountable for increasing PBSC use, and there was a general reluctance to shift the responsibility for outcomes to contractors. As a result, EPA missed opportunities to achieve greater cost savings and improve contractor performance. Of the \$599 million in PBSC-eligible obligations for the 9-month period ended June 30, 2002, we determined that EPA could have saved as much as \$72.5 million through greater use of PBSC.

Also, OMB’s Federal Procurement Data System showed nearly 50 percent fewer PBSC obligations than EPA reported in its own Integrated Contracts Management System. This primarily occurred because the Federal Procurement Data System did not show performance-based task orders issued under

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non-performance-based contracts as PBSC, and because the Integrated Contracts Management System lacked the capability to provide all data needed in the Federal Procurement Data System. As a result, EPA's contracting actions were inaccurately portrayed in the national database used for reporting to Congress, the President, and the public.

We recommended that EPA take various actions to increase performance-based contracting, and that the database accuracy be reviewed and Integrated Contracts Management System and Federal Procurement Data System data periodically compared. EPA generally agreed with our findings and recommendations to expand PBSC, noted that correct data was sent,

and that EPA's current contracts systems do not meet its business needs. According to the Assistant Administrator for Administration and Resources Management, the systems provide inadequate reporting, cumbersome tracking status, and redundant data entries, which result in extraordinary inefficiencies and errors. The Office of Administration and Resources Management hopes to install a web-based system that will eliminate duplicate data entry, track actual costs and progress in real time, and provide a Commercial Off The Shelf application consistent with the President's e-government initiatives.

We issued our final report (2003-P-00008) on March 31, 2003.

Public Liaison

In April 2002, the OIG assumed responsibility for EPA Superfund National Ombudsman reviews. This national function was previously housed in EPA's Office of Solid Waste and Emergency Response. However, despite this change, the Agency's Regional Superfund Ombudsmen continued to work directly for the Regions, and during 2003 we performed a review to evaluate the Regional Superfund Ombudsmen program.

EPA Needs Better System for Regional Superfund Ombudsmen

We found that EPA does not have a management system in place to ensure its Regional Superfund Ombudsmen are accountable for fulfilling their responsibilities. The Regional Superfund Ombudsman function is generally a collateral duty within the Superfund program. As a result, there is a perceived lack of independence and impartiality. Further, a lack of guidance has caused uncertainty over the function.

The American Bar Association identifies a core characteristic of an Ombudsman as having the ability to conduct inquiries and investigations in an impartial manner. Another core characteristic is being independent. However, two General Accounting Office (GAO) reports (dated July 2001 and October 2002) noted concerns about the independence and impartiality of both EPA's National Ombudsman and Regional Superfund Ombudsmen.

To correct the independence and impartiality issues raised by GAO, EPA moved the National Ombudsman function from EPA's Office of

Solid Waste and Emergency Response to the EPA OIG, as noted. However, EPA has not yet addressed GAO's concerns regarding the Regional Superfund Ombudsmen. The continued alignment of the Regional Superfund Ombudsmen with the Superfund program indicates a lack of independence and impartiality.

Specifically, 7 of the 10 Regional Ombudsmen are located in the Superfund program and receive their annual evaluations from managers within that program. In 5 of the 7 regions aligned with the Superfund program, the Regional Ombudsman duties are collateral duties, with the estimated time spent on Regional Ombudsman duties ranging from 5 to 20 percent. None of the Regional Superfund Ombudsmen with collateral duties maintains time records specific to their Ombudsman duties, and Ombudsman duties are often performed in conjunction with other Superfund program responsibilities.

While it is not practical for EPA to meet independence and impartiality standards for Regional Ombudsmen, due to the limited time spent on Ombudsman duties, these Regional Ombudsmen believe they can be effective in resolving stakeholder complaints at a local level and assisting in alleviating site disputes. Therefore, we recommended that the Assistant Administrator for the Office of Solid Waste and Emergency Response change the title of the Regional Superfund Ombudsmen to better reflect their role, and develop clear and consistent guidance on their duties.

We issued our final report (2003-S-00004) on March 13, 2003.

Investigative Activity

The OIG Office of Investigations continued to focus its investigative resources on allegations of fraud, waste, and abuse in high risk and high dollar EPA programs and administrative areas, including the Superfund program. High priority was also given to environmental programs and employees when the action under investigation had the potential to seriously undermine the integrity of the Agency and/or the public trust in the Agency's ability to carry out its mission to protect public health and safeguard the environment.

Proactive and reactive investigative efforts by the OIG Office of Investigations covered all stages of the Superfund program:

- The Laboratory Fraud Directorate continued its initiative to detect and investigate laboratory fraud within the environmental community, involving commercial, contractual, and Agency laboratories. Many of these laboratories conduct analysis and produce data that is used to make decisions concerning Superfund sites.
- The Financial Fraud Directorate continued major efforts in uncovering fraudulent activities in the award and performance of contract and assistance agreements. EPA programs, including Superfund, are dependent on contractors and assistance agreement recipients to perform a significant portion of the work related to EPA's mission.
- The Cyber Crimes Directorate continued to monitor previously identified computer security weaknesses, identify new and emerging vulnerabilities, and advise the Agency on any additional computer security enhancements that are needed. We continued to perform criminal investigations of intrusive activities affecting EPA systems and data.

During fiscal 2003, our Superfund investigative efforts resulted in:

- Two indictments
- One sentencing
- Six administrative actions

Monetary fines and restitution totaled more than \$134,000. During the past 3 fiscal years, cumulative monetary fines, restitution, and recoveries resulting from Superfund investigations totaled more than \$80.3 million. We expect to see a continued increase in significant actions as OIG's investigative emphasis on major Agency contracting and laboratory fraud continues.

Following are two instances of Superfund investigative activities with results in fiscal 2003.

Corporate Employees Debarred from Receiving Federal Funds as a Result of Falsifying Laboratory Test Results

During 2003, six former employees of Intertek Testing Services Environmental Laboratory (ITS), Richardson, Texas, were debarred from doing business with the Federal Government. This included a corporate Vice President, who was debarred for a period of 10 years. These former employees were involved in falsifying laboratory reports. The U.S. Attorney for the Northern District of Texas cited the investigation as the largest laboratory fraud investigation in the history of the United States.

The ITS facility conducted as many as 25,000 separate analyses of air, soil, liquids, pesticides, explosives, and nerve-gas agents for both private firms and Government agencies. The allegedly falsified test results were used to monitor some of the nation's most polluted hazardous waste sites for, among other things, the presence of known or suspected human

cancer-causing contaminants. According to Federal prosecutors, the defendants altered data to make testing instruments appear to be properly calibrated and within quality control limits when they were not. After the inception of the investigation, the facility was shut down.

In September 2001, a Federal grand jury in Texas issued a 30-count indictment against 13 former lab workers and managers of ITS. Charges included conspiracy, mail fraud, wire fraud, and presenting false claims against the Government. The indictment accused ITS managers and chemical analysts with falsifying data samples from 1988 to 1997.

ITS pled guilty to one count of conspiracy to commit an offense against and otherwise defraud the United States, in violation of 18 U.S.C. 371. In February 2002, ITS was sentenced as a corporation and ordered to pay a fine of \$9 million and a \$400 special assessment fee, and to serve 42 months of probation. In March 2002, ITS entered into a civil settlement agreement with the Department of Justice Civil Litigation Branch, Washington, DC, in which ITS agreed to pay the United States \$8,741,000 to resolve certain civil claims the United States had on behalf of the Army Corps of Engineers, the Department of Defense, and EPA. The criminal and civil action against ITS resulted in a total dollar recovery of \$17,741,400. In addition, five ITS employees pled guilty to criminal acts, while eight were acquitted of criminal culpability by a jury.

The results of this investigation made a national impact on the laboratory community and resulted in the issuance of an open letter to the laboratory community by the EPA Inspector General. This investigation had a direct impact on EPA's mission to improve and protect environmental quality and human health.

This investigation was conducted jointly by the EPA OIG, the EPA Criminal Investigation Division, the Defense Criminal Investigative Service, the United States Army Criminal Investigation Command, and the Air Force Office of Special Investigations.

Fund Director Sentenced on Charges Related to Embezzlement

The director of the National Iron Workers Apprenticeship Training and Journeyman Upgrading Fund, Washington, DC, was sentenced on July 1, 2003, on charges related to embezzling Federal grant funds.

Raymond J. Robertson, a trustee of the Fund as well as the director, was sentenced in U.S. District Court, District of Columbia, to 6 months home detention and 3 years probation. He was also ordered to pay \$103,169 in restitution, a \$30,000 fine, and a \$800 special assessment. The sentence was the result of Robertson's guilty plea on March 28, 2002, to charges of conspiracy, theft, and embezzlement from the organization.

Robertson was charged with conspiring to conceal from the other trustees of the fund and contributing union members the nature and amount of thefts by Robertson and his daughter, Kerry J. Tresselt, from approximately April 1998 until January 1999. Robertson was further charged with embezzlement for using the Fund credit card for personal purchases.

The Fund periodically received Federal program grants, including money from Superfund, to establish or undertake certain skills and safety training. To date, the Fund has received \$1.2 million from EPA.

This investigation was conducted jointly by the EPA OIG; the Department of Energy OIG; and the Department of Labor, Pension, Welfare, and Benefits Association.

Listing of Fiscal 2003 Superfund Reports

<u>Report No.</u>	<u>Description</u>	<u>Date</u>
2003-1-00006	CH2M Hill Inc.-FY 2000 Floorcheck	04-OCT-02
2003-4-00003	CH2M Hill Companies, Ltd.-CAS 403	09-OCT-02
2003-1-00016	Roy F. Weston Inc.-FY 1995 ARCS 68-W9-0057	10-OCT-02
2003-4-00008	Tetra Tech EMI-Budget System	10-OCT-02
2003-2-00001	Asset Group Inc.-Preaward	15-OCT-02
2003-M-00003	Guardian Environmental Services-CY 2001 I/C Adequacy Review	25-OCT-02
2003-P-00002	Oversight of Superfund Cleanup Actions for DOE Hanford Site	04-NOV-02
2003-1-00032	Malcolm Pirnie, Inc. - FY 96 Incurred Cost	18-NOV-02
2003-1-00033	Malcolm Pirnie, Inc. - FY 97 Incurred Cost	18-NOV-02
2003-2-00002	Dyncorp Systems & Solutions LLC-Preaward PR-CI-02-10152	26-NOV-02
2003-S-00003	Hunterstown Road CERCLA Claim No. 2	24-JAN-03
2003-M-00006	Tybouts Corner Superfund Response Claim No. 3	31-JAN-03
2003-4-00035	Roy F. Weston, Inc.-FY 1996 ARCS 68-W9-0046-Cancelled	07-FEB-03
2003-4-00036	Tetra Tech NUS, Inc.-Preaward PR-CI-02-10152	13-FEB-03
2003-1-00063	TechLaw Inc-FY99 Incurred Cost	13-FEB-03
2003-1-00062	TechLaw Inc.-FY98 Incurred Cost	13-FEB-03
2003-1-00064	Roy F. Weston-FY97 ARCS Closeout 68-W8-0089	13-FEB-03
2003-1-00067	OHM Remediation Services-DACA45-96-D-0014 #4	19-FEB-03
2003-1-00061	OHM Remediation Services-DACA45-96-D-0014 #5	19-FEB-03
2003-1-00079	Armstrong Data Services-FY98 Incurred Cost	05-MAR-03
2003-1-00080	Foster Wheeler Environmental Corp.-FY2000 RAC 68-W9-8214	06-MAR-03
2003-S-00004	EPA's Regional Ombudsmen Program	12-MAR-03
2003-M-00009	Assist to Department of Justice - Enviropur West Site	19-MAR-03
2003-P-00006	Improving Nationwide Effectiveness of Pump-and-Treat Remedies	27-MAR-03
2003-M-00011	York Oil Superfund Site Claim No. 2	25-APR-03
2003-4-00053	Bristol Envtl. & Eng. Services Corp.-Accounting System	25-APR-03
2003-1-00103	Booz Allen & Hamilton- CACS 68-W0-0039	29-APR-03
2003-S-00005	Parker Landfill Response Claim III	29-APR-03
2003-2-00011	Ecology & Environment - Region 6 START Billing Rates	30-APR-03
2003-4-00079	Tetra Tech NUS-Billing System	16-MAY-03
2003-4-00082	Tetra Tech, NUS-FY 2000 Floorcheck	16-MAY-03
2003-4-00077	Tetra Tech, Inc.-CAS 408	16-MAY-03
2003-4-00086	PRC Environmental Management Inc.-CAS 408	22-MAY-03
2003-4-00083	PRC Environmental Management Inc.-FY2000 Maar 6 Floorcheck	22-MAY-03
2003-4-00094	Tetra Tech EMI-Purchasing Existence	23-MAY-03
2003-4-00093	Roy F. Weston-DACA45-98-D-0004 #5	23-MAY-03
2003-4-00101	Audit of GDNR Cooperative agreement number VC984299980	26-JUN-03
2003-4-00111	IT Group (Shaw Environmental)-DACA45-98-D-0003 #4	16-JUL-03
2003-4-00112	Tetra Tech, Inc.-Accounting System FY 2003	16-JUL-03
2003-1-00131	Metcalf & Eddy Inc.-FYs 96,97 & 98 RAC 68-W6-0042	23-JUL-03
2003-S-00007	Missouri Electric Works CERCLA Claim	30-JUL-03
2003-P-00010	Mega EPA's National Hardrock Mining Framework	07-AUG-03
2003-P-00012	EPA's Response to the World Trade Center Collapse	19-AUG-03
2003-1-00140	Black & Veatch Spec Proj Corp-FY99 RAC VII 68-W5-0004	22-SEP-03
2003-2-00014	CH2M Hill Inc.-FYs 1996-2000 RAC Close-out 68-W6-0025	22-SEP-03
2003-1-00143	Stringfellow Cooperative Agreement 1983-1995	30-SEP-03