



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Spending Taxpayer Dollars

Management Alert:

Significant Data Quality Deficiencies Impede EPA's Ability to Ensure Companies Can Pay for Cleanups

Report No. 16-P-0126

March 31, 2016



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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
EPA	U.S. Environmental Protection Agency
FMFIA	Federal Managers' Financial Integrity Act
OIG	Office of Inspector General
RCRA	Resource Conservation and Recovery Act

Cover photo: The Asarco Copper Smelter Site in Hayden, Arizona. This site is associated with a bankruptcy settlement agreement reached between Asarco and the federal government in 2008. (EPA photo)

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At a Glance

Why We Did This Review

In the process of evaluating the U.S. Environmental Protection Agency's (EPA's) progress in reducing taxpayer liabilities through the use of financial assurance instruments for cleanup sites, we became aware of significant data gaps and invalid financial assurance instruments that pose a risk to the EPA and taxpayers. We are issuing this management alert now because we believe that the EPA cannot provide reasonable assurance of proper controls over its programs and operations that protect the public from environmental harm and safeguard federal funds.

Companies with facilities regulated under the Resource Conservation and Recovery Act (RCRA) are required to provide financial assurance that they have sufficient financial assets to cover closure and post-closure costs. Hazardous waste sites regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Superfund, are required to obtain financial assurance for the estimated cost of cleanup.

This report addresses the following EPA goal or cross-agency strategy:

- *Protecting human health and the environment by enforcing laws and assuring compliance.*

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Management Alert: Significant Data Quality Deficiencies Impede EPA's Ability to Ensure Companies Can Pay for Cleanups

What We Found

Data quality deficiencies and a lack of internal controls prevent the EPA from properly overseeing and managing its financial assurance program for RCRA and CERCLA. For these programs, EPA data for corporate self-insurance show:

- The estimated total cost is \$9.1 billion.
- An estimated \$577 million is expired.
- More than \$6 billion is insufficient or not documented as being provided to the EPA.

Environmental and extensive financial risks exist from the EPA's failure to have accurate and complete data to monitor and ensure compliance with RCRA and CERCLA financial assurance requirements.

The EPA is aware of the poor quality of its data and the resulting vulnerabilities. The EPA can take steps to mitigate risk to human health and the environment if a responsible company declares bankruptcy or abandons a facility. However, if the EPA cannot determine if it has secured valid and sufficient financial assurance instruments from those private parties, taxpayers are at risk for paying significant amounts of those parties' financial obligations. In addition, public health protections may be delayed or deferred. Despite the EPA's awareness of this risk, it has not taken meaningful steps to address the problem. Furthermore, the EPA has not disclosed this area of vulnerability in its Federal Managers' Financial Integrity Act report in the past 5 years.

Although we are now reporting this time-critical disclosure issue, our ongoing evaluation could result in additional matters being reported to the agency.

Recommendations and Agency Comments

The EPA's data deficiencies, coupled with a lack of controls over billions of dollars in financial assurance instruments, significantly impair and threaten the management of the EPA's RCRA and Superfund programs, which present environmental and significant financial risks to the EPA. The agency disagreed with the estimated cost of invalid financial assurance instruments, and our portrayal of human health and financial risk. However, the EPA could not provide any other data on financial assurance to support its disagreement. We recommend that the EPA develop and take corrective actions to address the vulnerabilities. In addition, we recommend that the EPA include the significant vulnerabilities and exposure related to the RCRA and CERCLA financial assurance data gaps and noncompliance as a material weakness in its Federal Managers' Financial Integrity Act reporting. The agency disagreed that the issue should rise to the material weakness level; thus, our recommendations are unresolved as we work toward resolution.



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

THE INSPECTOR GENERAL

March 31, 2016

MEMORANDUM

SUBJECT: Management Alert: Significant Data Quality Deficiencies Impede
EPA's Ability to Ensure Companies Can Pay for Cleanups
Report No. 16-P-0126

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Mathy Stanislaus, Assistant Administrator
Office of Land and Emergency Management

Cynthia Giles, Assistant Administrator
Office of Enforcement and Compliance Assurance

During our evaluation of the U.S. Environmental Protection Agency's (EPA's) progress in reducing taxpayer liabilities from financial assurance instruments at Resource Conservation and Recovery Act and Comprehensive Environmental Response, Compensation and Liability Act sites, we became aware of significant data gaps and invalid financial assurance instruments that pose an environmental and financial risk to the EPA and taxpayers. This management alert report provides recommendations to immediately address this time-critical issue; our evaluation on financial assurance instruments continues and could result in additional matters being reported to the agency.

This report represents the opinion of the Office of Inspector General (OIG) and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

The agency disagreed with our recommendations. Thus, the recommendations are unresolved with resolution efforts in progress. Please provide a written response to this report within 30 calendar days. You should include planned corrective actions and a completion date for the recommendations.

Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

This report will be available at www.epa.gov/oig.

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Purpose

The purpose of this management alert report is to provide early information obtained during our evaluation of the U.S. Environmental Protection Agency's (EPA's) progress in reducing taxpayer liabilities from financial assurance instruments at Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) sites. This report identifies a material weakness¹ and, based on annual disclosure requirements and timing, conveys time-critical recommendations. Upon completion of our work, the Office of Inspector General (OIG) plans to issue a final report that addresses our assignment objectives and may have additional recommendations.

Background

Financial assurance provides for the current and future obligations of private parties in RCRA and CERCLA cleanups. Financial assurance is used in EPA cleanup programs as well as in other federal programs, such as mine cleanups and reclamation. RCRA regulations require facilities that treat, store or dispose of hazardous waste to obtain financial assurance for closure and post-closure costs.² CERCLA, commonly referred to as Superfund, requires responsible parties under specific circumstances to obtain financial assurance to cover the estimated cost of cleanup at the point when a site remedy is selected.³

What is Financial Assurance?

Financial assurance is meant to provide documentation or proof that those responsible for cleaning up contaminated sites or facilities have the financial resources to properly do so, preventing costs from being passed on to taxpayers.

If financial assurance is not obtained or is insufficient, the EPA has the authority to step in and could provide taxpayer-funded resources to clean up a site and protect public health if significant risks or an imminent threat exists. However, the goal of both Superfund and RCRA is for the polluter to pay for cleanup activities. When polluters do not pay the full cost and the government must step in, the financial burden shifts from the responsible private party onto taxpayers.

¹ According to U.S. Office of Management and Budget Circular A-123, a material weakness is a significant deficiency that should be included in the annual Federal Managers' Financial Integrity Act assurance statement as a reportable condition that the agency head determines to be significant enough to be reported outside the agency.

² Financial assurance is required under RCRA Subtitle C, RCRA Subtitle D, RCRA Subtitle I, and RCRA corrective action authority. The requirements fall under RCRA Sections 3004(a), (t), and (u); 3005(e); 3008(h); and 9003(c) and (d).

³ The EPA requires financial assurance when action is taken under CERCLA Sections 106 and 122. The EPA is currently developing regulations under CERCLA 108(b), which gives the EPA authority to require that classes of facilities maintain financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage or disposal of hazardous substances.

Also, contamination at sites can remain undetected and thus unaddressed for long periods of time, causing such significant impacts as longer periods of public exposure to contaminants, more difficult cleanups and higher costs. For example, if a site causes chemicals or waste to leak into ground water, it can, over time, result in loss of a water supply, higher cleanup costs, and health problems. Site cleanup delays from a lack of sufficient financial assurance create a risk of longer exposures to unsafe chemicals or longer periods where natural resources are restricted and unavailable for use.



Confirmation soil sampling at the Murray Laundry Superfund site in Salt Lake County, Utah. The EPA removed contaminants at this site to address threats to public health and the environment. (EPA photo)

RCRA and Superfund operators and responsible parties have several options for financial assurance agreements, called instruments or mechanisms. A description of each type of financial assurance instrument is in Table 1.

Table 1. Financial assurance instruments

Instrument	Description
Financial test	There are two alternatives for meeting the financial test. The first evaluates the assets and liabilities of a company. The second evaluates the assets and bond rating of a company. If the owner and operator choose to use a financial test to meet financial assurance requirements, the owner and operator must pass one of the two financial tests specified.
Corporate guarantee	The guarantee of costs by an affiliated corporation, such as a parent company, another firm under the same parent company, or a firm with a substantial business relationship with the site or facility operations.
Trust fund	A way to set aside money specifically earmarked for cleanup or closure expenditures. Money is paid into the trust fund during a specified period. The money accumulated in the fund should be adequate to cover the necessary cleanup or closure costs.
Letter of credit	Credit issued by a financial institution that guarantees payment of obligations up to a specified amount.
Surety bond	Guarantees issued by a surety company that specified obligations will be met. The bonds are either in the form of payment (payment bonds) or commitment to comply with cleanup, closure and liability requirements (performance bonds).
Insurance	An insurance policy for the value of site/facility cleanup costs. The policy must guarantee that funds up to the face value amount of the policy will be available for payment upon the direction of the permitting authority (i.e., the state or EPA).

Source: OIG-created table based on the EPA's RCRA, Superfund, and Emergency Planning and Community Right to Know Act Call Center Training Module, October 2001.

The financial test and corporate guarantee are unique in that those instruments do not require a facility owner/operator to set aside funds; instead, the EPA relies on

an annual review of the corporation's assets and liabilities, as well as a letter from the corporation's Chief Financial Officer attesting to the ability of the corporation to fund a cleanup. In addition, and unlike other types of financial assurance, the financial test and corporate guarantee do not automatically renew.

Scope and Methodology

We began our evaluation in June 2015. OIG performance audit work described in this management alert was conducted in accordance with generally accepted government auditing standards, except that we have not received and analyzed all RCRA and Superfund financial assurance compliance data requested. Once received, the amount of expired and insufficient financial assurance could change. Generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We analyzed and requested EPA analysis of financial assurance data in the EPA's RCRAInfo database and the Comprehensive Environmental Response, Compensation, and Liability Information System.⁴ We requested the number and dollar amount of expired, insufficient and nonexistent financial assurance instruments for RCRA and Superfund sites and facilities. We reviewed the EPA's 2011 to 2015 Federal Managers' Financial Integrity Act (FMFIA) submissions. OIG work is ongoing, and we plan to issue a report that fully addresses our assignment objectives.

Significant Data Quality and Control Deficiencies Put EPA, Taxpayers and Public Health at Risk

The EPA data systems used for financial assurance were developed primarily for tracking cleanup *progress* rather than monitoring financial assurance compliance. The systems are ineffective in tracking and monitoring compliance with financial assurance nationwide. There are currently no fields in EPA databases to automate accurate searches for expired dates, insufficient financial assurance instruments, or instruments not provided. Financial assurance data fields in both Superfund and RCRA databases are not fully populated and do not regularly undergo quality assurance and quality control checks. We consider these issues to be internal control weaknesses.

The EPA Office of Resource Conservation and Recovery permit staff told us that there is only one person in that office who has the program and technical

⁴ The EPA is currently transitioning from the Comprehensive Environmental Response, Compensation and Liability Information System to the new Superfund Enterprise Management System. However, the new system is not yet operational. The most recent data available are from November 2013.

knowledge to perform an in-depth analysis of RCRAInfo financial assurance data. The permit staff could not identify anyone else in EPA with the expertise to perform this work. According to Office of Land and Emergency Management and Office of Enforcement and Compliance Assurance managers, their offices currently review the financial assurance data ad hoc and as needed for specific sites or corporations when questions arise. According to memos and presentations, the EPA is aware that the databases are incomplete and inaccurate, but it has not taken meaningful steps to correct this.

We identified several high-dollar, invalid RCRA and Superfund financial assurance instruments, as well as several significant data quality deficiencies in the EPA’s tracking systems for RCRA and Superfund financial assurance. The estimated gaps in financial assurance for corporate guarantee and financial test instruments under RCRA and Superfund are shown in Table 2.

Table 2. Estimated gaps in RCRA and Superfund financial assurance data⁵ and cost⁶ for corporate guarantee and financial test instruments

	2013 Superfund data (as of November 2013)	2015 RCRA data (as of October 2015)	Total for both RCRA and Superfund
Total financial assurance required			
Number	334 sites	335 facilities ⁷	669
Estimated Cost	\$5.5 billion	\$3.6 billion	\$9.1 billion
Sites or facilities with expired financial assurance			
Number	35	39	74
Estimated Cost	\$306 million	\$271 million	\$577 million
Sites or facilities with no financial assurance⁸			
Number	93	87	180
Estimated Cost	\$3.4 billion	\$384 million	\$3.8 billion
Sites or facilities with insufficient financial assurance			
Number	EPA cannot determine	224	Cannot determine
Estimated Cost		\$2.3 billion	
Total for both RCRA and Superfund sites or facilities with no or insufficient financial assurance⁹			
Number			404
Estimated Cost			\$6.1 billion

Source: OIG analysis of EPA data.¹⁰

⁵ The EPA disagreed with our estimates but could not provide us with more accurate numbers.

⁶ Estimated cost represents the cost of all activities—direct and indirect—needed to address the particular financial assurance type. Such estimates provide the base figure for the amount of financial assurance a facility must provide.

⁷ The number of RCRA facilities for total financial assurance required does not account for potential overlaps in the EPA’s data. The EPA told us facilities could be classified in more than one category. For example, facilities counted with expired or no financial assurance could also potentially be counted in the totals for insufficient financial assurance.

⁸ The RCRA no financial assurance data could include facilities with financial assurance instruments other than the corporate guarantee and financial test.

⁹ The total amounts are likely higher because the total number and estimated cost of financial assurance for Superfund sites with insufficient financial assurance instruments are not included. The EPA cannot determine this number.

¹⁰ For RCRA data and cost, EPA provided color-coded data for expired and insufficient financial assurance. For Superfund data, the data and cost for expired and total financial assurance were provided by the EPA. The OIG calculated the number and estimated cost for all other categories from the EPA data.

EPA managers who provided us with the financial assurance data believe the instruments exist at the state or regional office level but have not been reported to the EPA's RCRA and Superfund tracking systems. While conceivable, this does not change the fact that there is no evidence available that adequate financial assurance exists. For RCRA and Superfund combined, these databases contain an estimated \$577 million in expired instruments and more than \$6 billion in financial assurance that is insufficient or not provided for corporate guarantee and financial test instruments. For those instruments, the EPA cannot readily determine if it has secured valid and sufficient financial assurance. Without evidence of valid financial assurance instruments for billions of dollars in estimated cleanup costs, there is a risk that taxpayer dollars could be used if responsible parties do not have the necessary funds to cover cleanups at contaminated facilities when needed.

At the point when a company files for bankruptcy, it can be too late for the EPA to take steps to recover the necessary cleanup funds. For example, Asarco, the potentially responsible party for several sites, settled with the EPA and other



The Bunker Hill Superfund site.
(U.S. Fish and Wildlife Service photo)

federal and state agencies for a total of \$1.79 billion in 2009. At one Asarco site—the Bunker Hill Superfund Site in the Coeur d'Alene Basin, Idaho—the EPA received \$485 million from the Asarco bankruptcy. However, the EPA region in charge of cleanup is seeking additional funding from EPA headquarters to supplement bankruptcy settlement funds. By using funding from EPA headquarters to cover cleanup costs, the total amount of funding available for other sites needing cleanup will be reduced. At another Asarco site—the River Mine Tailings/St. Joe Minerals Superfund Site in Desloge, Missouri—the EPA received

approximately \$29 million from the Asarco bankruptcy. The estimated clean-up cost at the site for the EPA's selected remedy, according to the 2011 Record of Decision, is about \$108 million—significantly more than the settlement funds recovered. Without necessary funds from the responsible party at this and other sites, the EPA and, ultimately, the taxpayers will pay the cost of cleanup. This situation overall can result in delayed cleanups, longer human and environmental exposures to unsafe substances, and longer restrictions on public use of needed natural resources.

Although not subject to RCRA financial assurance or Superfund authorities, recent bankruptcies of two large coal mining companies—Arch Coal Inc. and Alpha Natural Resources Inc.—have demonstrated that companies may be unable to pay debts to federal agencies and state and local governments, including obligations to clean up mining sites as required. Other smaller companies in the coal mining industry have also filed for bankruptcy, and others have lost significant value and are vulnerable to filing bankruptcy in the future. Although the EPA performs some ad hoc reviews of the financial health of companies, it does not have a systematic means of quickly identifying those in trouble.

EPA Omits Reporting a Material Weakness Related to Financial Assurance

In addition to not taking meaningful steps to address the data quality and control deficiencies for RCRA and Superfund financial assurance instruments, the EPA has not disclosed the significant financial risk and insufficient control system in any of its last five FMFIA submissions. As this year's FMFIA reporting cycle approaches, the EPA may be vulnerable to more than \$6 billion in financial exposure and added risks to human health and the environment from expired, insufficient and/or financial assurance instruments not provided for Superfund sites and RCRA facilities. Systematic issues in the way Superfund and RCRA financial assurance compliance is monitored and evaluated, coupled with the data quality deficiencies and lack of internal controls, prevent the EPA from obtaining an accurate estimate of the extent of its financial exposure in this area. The high dollar amount of potentially invalid financial assurance and the severe financial impacts of a financial assurance failure at even one site—as demonstrated with Asarco—results in an impairment that can prevent the agency from fulfilling its mission and effectively managing the Superfund and RCRA cleanup programs. The OIG believes the EPA should report these issues as a material weakness in its annual FMFIA assurance letter.

To implement FMFIA in accordance with the U.S. Office of Management and Budget's Circular A-123, EPA senior managers are required to ensure effective internal controls are in place, evaluate their adequacy, and report results to the Administrator through annual assurance letters. According to the EPA's order implementing FMFIA, risk includes "...those factors which impact the organization's ability to achieve goals, measure performance, operate effectively and efficiently, protect the organization from loss, provide reliable reports and products, and comply with applicable laws, regulations, policies, and procedures." According to the U.S. Office of Management and Budget's Circular A-123, a material weakness is a significant deficiency that should be included in the annual FMFIA assurance statement as a reportable condition that the agency head determines to be significant enough to be reported outside the agency. Effective internal control provides assurance that significant weaknesses in the design or operation of internal control, which could adversely affect the agency's ability to meet its objectives, would be prevented or detected in a timely manner.

The EPA has defined a material weakness as a condition that could significantly impair or threaten fulfillment of a major agency program, function or activity, and is significant enough to report to the President and Congress. We consider the data and potential financial exposure issues outlined in this report an internal control deficiency and material weakness for the EPA. The EPA, through its current management and data systems, can neither prevent nor detect in a timely manner significant deficiencies in the financial assurance instruments for RCRA and Superfund. However, the EPA has not disclosed these vulnerabilities in annual FMFIA assurance letters, as required.

Conclusions

The EPA may be vulnerable to considerable financial exposure and risk to human health and the environment because it does not have standardized processes or requirements for tracking and monitoring financial assurance instruments in its Superfund and RCRA databases. These databases contain an estimated \$577 million in expired instruments and more than \$6 billion in financial assurance that is insufficient or not provided. Further, the EPA does not have an effective means to monitor national compliance for financial assurance instruments. These internal control deficiencies are a material weakness that hinders the EPA's ability to make informed decisions, and manage and oversee financial assurance instruments. Recent bankruptcies in the coal mining industry demonstrate how companies may be unable to pay obligations, including cleaning up sites. This underscores the importance of financial assurance to safeguard the use of taxpayer-funded resources. The EPA needs to improve the quality of financial assurance information in its RCRA and Superfund databases to effectively manage risk to agency operations, public health and the environment.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management, and the Assistant Administrator for Enforcement and Compliance Assurance:

1. Comply with the material weakness reporting requirements as prescribed by FMFIA and Office of Management and Budget Circular A-123 by identifying the weaknesses from, and data quality and control deficiencies in, RCRA and Superfund financial assurance in the EPA's FMFIA reports for 2016.
2. Develop and, as required, include in the EPA's FMFIA reports corrective actions that have been taken, are underway, or are planned to address the material weakness.
3. Periodically assess and report to agency management progress against FMFIA corrective action plans for RCRA and Superfund financial assurance weaknesses.

We intend to address additional issues through further recommendations in our forthcoming report.

Agency Comments and OIG Response

Agency officials strongly disagreed that there was a correlation between data gaps and risk to human health and the environment, and that the data gaps in the RCRA and Superfund financial management data systems rise to the level of a material

weakness. The EPA disagreed with the estimated numbers and cost of invalid financial assurance instruments in this OIG report. The EPA believes the level of risk associated with invalid financial assurance instruments is not significant, and that the agency can effectively manage and oversee RCRA and Superfund financial assurance with other tools, such as permit reviews, inspections, and conference calls with regions and states. EPA said that, if necessary, it can take an enforcement action to recover Superfund cleanup costs.

Based on discussions during a January 2016 meeting with EPA managers and our review of written comments, we made changes to the report where appropriate. Based on our analysis and the absence of additional data from the EPA, we continue to believe that the financial risk to taxpayers is significant. Moreover, we conclude that when financial assurance fails to cover the cost of cleanups, it can delay or defer the removal and remediation of harmful contaminants, prolonging exposure and harm to public health. While communication and partnerships with states and regions contribute to the success of the programs, they do not provide the EPA with necessary information on the status and validity of billions of dollars in financial assurance the agency is responsible for overseeing. If sufficient back-up controls to the data systems were in place, the EPA should be able to provide the OIG with agreed-to estimates of invalid financial assurance instruments within a reasonable period of time. By not taking steps to verify financial assurance information, the EPA creates environmental and significant financial risks for itself and the taxpayers.

The OIG believes the data quality deficiencies and high-dollar value of invalid financial assurance instruments, combined with an absence of strong internal controls, significantly impairs and threatens the fulfillment of the RCRA and Superfund program missions, resulting in a material weakness for the EPA that should be reported to Congress.

The EPA disagreed with our recommendations because it does not believe the internal control deficiencies we identified rise to the material level. The recommendations are therefore unresolved with resolution efforts underway.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in \$000s)	
Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	7	Comply with the material weakness reporting requirements as prescribed by FMFIA and Office of Management and Budget Circular A-123 by identifying the weaknesses from, and data quality and control deficiencies in, RCRA and Superfund financial assurance in the EPA's FMFIA reports for 2016.	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance			
2	7	Develop and, as required, include in the EPA's FMFIA reports corrective actions that have been taken, are underway, or are planned to address the material weakness.	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance			
3	7	Periodically assess and report to agency management progress against FMFIA corrective action plans for RCRA and Superfund financial assurance weaknesses.	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance			

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Distribution

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