



Testimony

Before the Subcommittee on VA, HUD, and Independent
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ENVIRONMENTAL PROTECTION

Opportunities to Recover Funds Obligated for Completed Superfund Projects

Statement for the Record by
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Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to provide a statement for the record for use in the Subcommittee's hearing on the Environmental Protection Agency's (EPA) fiscal year 1998 appropriation. As you requested, we have reviewed certain aspects of EPA's contracts and assistance agreements¹ that are used to accomplish the work of the Superfund program. Specifically, we are providing information on (1) the total amount of unspent obligated funds remaining on completed contract work orders and assistance agreements and the EPA offices and regions primarily responsible for administering these funds and (2) the timeliness of EPA's recovery of such funds.

In summary, we found the following:

- As of December 1996, about \$249 million in unspent obligated funds was potentially available to be recovered on over 6,000 completed work orders and assistance agreements. EPA's Office of Solid Waste and Emergency Response and its regional offices located in Atlanta, New York, and Philadelphia administer most of the funds.
- In the early 1990s, EPA recognized the need to take more timely action to recover unspent funds. However, according to the agency's Inspector General, EPA's offices responsible for managing contracts and assistance agreements were not provided sufficient resources to do so, while carrying out their other responsibilities. Consequently, in 1994, EPA created the Superfund Deobligation Task Force to respond to a growing backlog of completed work orders and assistance agreements, and the associated unspent funds. Since fiscal year 1994, the task force has recovered over \$400 million. However, the task force is not keeping up with a growing backlog of completed work orders and assistance agreements because it is composed of part-time members who perform these activities only when their primary job responsibilities enable them to do so.

Background

EPA relies heavily on contracts and assistance agreements for the Superfund program, which was created to clean up the nation's most hazardous waste sites. EPA relies on contractors to accomplish the work of the program, including (1) cleaning up hazardous waste sites, (2) supervising cleanups performed by others, and (3) providing technical

¹Assistance agreements include grants, cooperative agreements, and interagency agreements. Grants provide financial assistance to organizations to carry out a program without substantial federal involvement. Cooperative agreements provide financial assistance and require substantial federal involvement to carry out a program. Interagency agreements transfer funds between federal agencies.

and scientific support to the program. Contracts are generally used to obtain the services of private businesses when EPA manages the work. Assistance agreements are generally used to support the activities of states, nonprofit organizations, and universities in the Superfund program. From fiscal years 1990 through 1996, Superfund contracts accounted for \$5 billion, or 57 percent, of the \$8.8 billion that EPA obligated for all contracts awarded during that period. From fiscal years 1990 through 1995, the most recent period for which information is available, EPA entered into 620 Superfund assistance agreements valued at about \$387 million.

EPA issues individual work orders to describe the specific tasks and requirements to be completed on contracts. When a new work order is awarded or a new assistance agreement is entered into, EPA obligates an amount equal to the estimated cost of the work. As work progresses, EPA releases funds to contractors or the recipients of assistance agreements and liquidates its obligations. In many instances, the amount of funds obligated exceeds the amount eventually needed to pay the contractor or other entities for the completed tasks and other requirements. In such cases, the unspent funds may be deobligated and recovered when all work has been completed or when the specified period of performance has expired. Before recovering unspent funds, EPA reviews the completed contract or assistance agreement to ensure that all appropriate payments have been made. EPA leaves between 10 to 15 percent of the total expenditures made under the contract or assistance agreement as a reserve to cover any additional costs, as determined by a final audit. Recovered funds are to be used for other Superfund activities, since congressional appropriations for the Superfund program remain available for use until expended.

EPA contracting officers or grant specialists are responsible for reviewing the costs of the work and performing other closeout activities. The maximum amount of time allowed for closing out contracts according to the Federal Acquisition Regulation is 36 months from the date the contracting officer receives evidence of the project's completion. Similarly, EPA's Final Closeout Policy for Assistance Agreements specifies that assistance agreements be closed within 180 days after completion.

Unspent Funds Could Be Recovered From Inactive Superfund Contracts and Assistance Agreements

Using EPA’s data systems,² we identified contract work orders and assistance agreements having unspent obligations for work that has been completed or for which the specified performance period has expired. Our analysis of the data shows that about \$249 million in unspent funds are potentially available for recovery, mostly on contracts and agreements administered by the Office of Solid Waste and Emergency Response and three EPA regional offices. As shown in table 1, hundreds of work orders or agreements were completed prior to 1991.

Table 1: Balances of Unspent Obligations by Contract and Assistance Agreements’ Completion Year

Fiscal year	Number of orders/ assistance agreements	Unspent obligations
1981-84	7	\$100,945
1985-87	30	1,542,836
1988-90	886	16,871,139
1991-93	2,477	68,923,588
1994-96	2,682	161,484,102
Total	6,082	\$248,922,610

We found that each of EPA’s 10 regional offices and various headquarters offices currently have unspent balances obligated for work that has been completed. (See app. I.) Completed work orders and agreements administered by the Office of Solid Waste and Emergency Response total over \$54 million in unspent funds. In addition, such funds total over \$43 million in region 2 (New York), over \$18 million in region 3 (Philadelphia), and over \$30 million in region 4 (Atlanta). These four agency units account for approximately \$145 million, or about 58 percent, of the \$249 million potentially available for recovery.

EPA officials told us that the Office of Solid Waste and Emergency Response has a large amount of unspent funds because the Superfund Deobligation Task Force, thus far, has given higher priority to recovering funds in EPA’s regions. However, the director of the task force told us that more emphasis will be placed on headquarters’ units during fiscal year 1997. He also told us that EPA regions located in the eastern part of the United States, such as regions 2, 3, and 4, typically award a greater number of Superfund contracts and assistance agreements than other regions and therefore have more unspent funds on work orders and agreements.

²The EPA data systems that we used include (1) the Contracts Information System, (2) the Financial Information System, (3) the Grants Information and Control System, and (4) the Management and Accounting System. We did not verify the accuracy or reliability of the data systems.

Timely Actions Have Not Been Taken to Recover Funds

EPA has experienced a continuing problem in recovering unspent funds on completed Superfund work orders and assistance agreements. To address this problem, EPA created a Superfund Deobligation Task Force, which has succeeded in recovering nearly \$400 million in unspent funds since fiscal year 1994. Nevertheless, the backlog of completed work orders and assistance agreements with unspent funds continues to grow, as additional work orders and assistance agreements are completed. Consequently, on October 1, 1996, the agency implemented a policy that allows EPA offices to use the funds they recover for their own Superfund activities, rather than returning them to the agency for redistribution. However, thus far, this incentive has not resulted in increased recoveries of funds.

Recovering Unspent Funds Is a Long-Term Problem

In December 1990 hearings before the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, we said that EPA's failure to recover unspent funds increased the government's need to borrow; increased the agency's vulnerability to fraud, waste, and abuse; and resulted in missed opportunities to obtain interest payments due the government from overpayments to contractors.³ A few years later, EPA's Inspector General reported that, as of March 1993, contracts awarded under the Superfund program still had balances of over \$100 million in unspent obligated funds that were no longer needed for their original purposes.

According to the Inspector General's report, EPA had experienced delay in recovering unspent funds because it had given a low priority and few resources to closing contracts, which involves ensuring that all goods and services have been received, evaluating performance, and resolving all outstanding issues or problems. The report stated that EPA's Contract Management Division had requested, but not received, additional resources to carry out these responsibilities in a more timely manner.

In addition, according to the Inspector General's report on assistance agreements,⁴ EPA officials stated that competing priorities for staff resources also has resulted in untimely closings of Superfund assistance agreements. Officials of EPA's Grants Administration Division, which administers the agreements, stated that, while closeout functions are

³EPA's Contract Management: Audit Backlogs and Audit Follow-Up Problems Undermine EPA's Contract Management (GAO/T-RCED-91-5, Dec. 11, 1990).

⁴Final Report of Audit on EPA's Controls Over Assistance Agreements, EPA's Office of Inspector General (Sept. 28, 1995).

important, the division places more emphasis on entering into new assistance agreements than on closing old ones.

EPA's Task Force Has Recovered Substantial Funds

To handle a backlog of completed work orders and assistance agreements, in 1994 EPA established a Superfund Deobligation Task Force. The task force is composed of about 30 part-time members, representing several headquarters offices and each of EPA's 10 regional offices. Members review individual contract work orders to identify completed projects, determine the amount of unspent funds available for deobligation, and prepare requests to deobligate and recover the unused funds. The task force gives priority to work orders and assistance agreements with the largest potential recovery of funds.

After the task force identifies unspent funds, EPA takes action to deobligate and recover them, except for an amount held in reserve pending a final audit of the actual costs of the work. If the reserve funds are not sufficient to cover the final costs, as determined by the audit, EPA uses current-year appropriated funds to pay the difference.

Since fiscal year 1994, the task force has recovered over \$400 million. However, we found that substantial funds remain on work orders and assistance agreements that were completed years earlier. For example, our analysis shows that 3,400 work orders and assistance agreements were completed more than 3 years earlier, the maximum amount of time that the Federal Acquisition Regulation and EPA's regulations allow for closing out contracts and assistance agreements. Funds totaling approximately \$87 million, or about 35 percent, of the \$249 million that we identified were associated with these orders and assistance agreements. If the work orders or assistance agreements are not closed within the time specified, EPA is required to do so as soon as possible.

Furthermore, while the task force has recovered substantial funds, it apparently is not keeping up with a growing backlog of completed work orders and assistance agreements. For example, in a May 1, 1996, statement for the record to the Subcommittee on VA, HUD, and Independent Agencies, House Committee on Appropriations, we said that unspent funds on completed work orders totaled \$164 million as of March 1, 1996.⁵ Our analysis shows that as of January 1, 1997, such unspent funds had grown by \$13 million, an increase of about 8 percent.

⁵Environmental Protection: Selected Issues Related to EPA's Fiscal Year 1997 Appropriation (GAO/T-RCED-96-164, May 1, 1996).

Task force officials told us that during fiscal year 1996, they spent less time on recoveries than they had during the previous 2 fiscal years. The task force recovered \$160 million in fiscal year 1994, \$170 million in fiscal year 1995, but only \$67 million in fiscal year 1996. According to task force officials, fewer staff resources were provided and fewer funds were recovered during fiscal year 1996 because higher priority was given to other work requirements of the EPA units providing the part-time task force members.

These officials also told us that EPA does not have records showing the amount of time that members spend on their task force activities but noted that it is not unusual for competing priorities to severely limit the staff resources that are available. The officials also told us that EPA has never performed an analysis to determine the resources needed to eliminate the agency's backlog and to keep pace with new completed work orders and assistance agreements.

The director of the task force told us that EPA intends to continue with its task force approach. He acknowledged, however, that other options may be considered if sufficient progress is not made in achieving timely recoveries of unspent funds. Among such options are adding resources to the EPA organizations responsible for managing and auditing contracts and grants so that they may be closed in a more timely manner.

New Incentive Policy

EPA believes that a new policy, initiated on October 1, 1996, may result in additional recoveries by providing more incentive to headquarters and regional task force members to identify, deobligate, and recover funds on completed work orders and assistance agreements. Until fiscal year 1997, recovered funds were placed in a central pool and then distributed on the basis of national Superfund priorities. As of October 1, 1996, the funds remain with the offices recovering them to meet the offices' Superfund cleanup needs. EPA officials told us that this new policy might achieve better results by providing greater incentive to EPA offices to deobligate and recover unspent funds. The officials acknowledged, however, that under the new policy, task force members must still find time to perform the recovery activities while meeting other work requirements having higher priority within their organizational units.

Conclusions

The recovery of substantial unspent funds on completed Superfund contract work orders and assistance agreements could help EPA in meeting

its responsibilities for cleaning up Superfund hazardous waste sites. Although the agency has taken actions to recover such funds, it has not succeeded in eliminating a substantial backlog of completed work orders and assistance agreements while keeping pace with annual additions to the backlog. Consequently, EPA is not achieving timely recoveries of these funds, as required by agency policy and the applicable federal contracting regulation.

Recommendation

To recover unspent funds on inactive Superfund contract work orders and assistance agreements, we recommend that the Administrator of EPA develop a strategy for identifying, deobligating, and recovering unspent funds within the period specified for contracts by the Federal Acquisition Regulation, and for assistance agreements by EPA's Final Closeout Policy for Assistance Agreements.

Agency Comments

EPA officials, including the Director of the Budget Division, Office of the Comptroller, generally agreed with the information contained in this statement for the record. They also agreed that a strategy was needed for recovering unspent funds within the period specified by Federal Acquisition Regulations and EPA's regulations. We have incorporated clarifying comments provided by EPA where appropriate.

Funds Available for Deobligation From Superfund Work Orders and Assistance Agreements by EPA Organization as of December 2, 1996

EPA organization	Number of orders/assistance agreements to be deobligated	Estimated recovery
Region 1	229	\$7,668,938
Region 2	589	43,569,654
Region 3	423	18,983,622
Region 4	590	30,651,835
Region 5	452	18,905,755
Region 6	247	11,504,173
Region 7	243	8,764,694
Region 8	190	12,931,893
Region 9	275	14,986,054
Region 10	175	11,218,870
Office of Research and Development	704	5,061,885
Office of Solid Waste and Emergency Response	1,088	54,905,483
Office of Policy, Planning, and Evaluation	113	1,802,992
Office of Administration and Resources Management	497	4,751,486
Office of Enforcement and Compliance Assurance	132	2,086,980
Miscellaneous	135	1,128,296
Total	6,082	\$248,922,610

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