

Special Account Frequently Asked Questions (FAQs)
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Introduction

What are special accounts?

Special accounts are site-specific, interest-bearing sub-accounts in the Superfund Trust Fund used to fund site-specific response work. CERCLA Section 122(b)(3) authorizes EPA to retain and use funds received through a settlement agreement with a potentially responsible party (PRP) for purposes of carrying out the agreement. Typically, EPA uses the money deposited in special accounts for cleanup and enforcement activities at Superfund sites.

Account Establishment

What are EPA's requirements for placing funds in a special account?

EPA has established two threshold requirements that must be met prior to the placement of funds into a special account:

- Future Work Requirement: Funds should only be placed into a special account to finance the future work remaining or potential future work which is contemplated. Future work is where additional CERCLA response actions (e.g., investigation, enforcement, cleanup) remain to be performed and additional costs remain to be incurred (e.g., oversight, five year review) at the site. The future work requirement ensures that funds will be used and will not remain idle in an account.
- Funds Must be Received Under an Agreement: Special accounts are funded through CERCLA agreements which designate some or all of the collected funds for response activities at a site. Usually, funds are received from a PRP through administrative consent orders, administrative agreements, or consent decrees arising out of "cashout" settlements, such as *de minimis*, ability to pay, or bankruptcy settlements.

How does EPA determine how much should be placed in a special account?

The amount of funds placed into a special account is an estimate made by the Region based upon the cost of future work remaining at the site, including the amount of funds to be retained as a future settlement incentive, the risk of future cost overruns, and site uncertainties at the time. This estimate is required to make sure that only funds necessary to cover future work related to the site are deposited into the special account, and all other funds are deposited into the Superfund Trust Fund.

Financial Accounting of Special Accounts

Where do special account funds reside?

Special accounts are maintained as sub-accounts in the Superfund Trust Fund. This differs from the “general” portion of the Superfund Trust Fund which houses funds received from cost recoveries, fines, penalties, administrative fees, interest on investments, and payments from the Department of Treasury’s General Fund. Funds in the general portion of the Superfund Trust Fund are not available to EPA until appropriated by Congress.

How is interest calculated and where does it reside?

Interest on special accounts is calculated by applying the interest rate to the average daily balance within each special account. Interest rates are approximately the same as the Superfund Trust Fund interest rates. The interest earned is updated monthly and added to each account’s available balance. Through the end of FY 2012, EPA has earned approximately \$400.5 million in interest.

For financial management purposes, the interest earned on special accounts resides in the general portion of the Superfund Trust Fund. The funds are considered permanently appropriated to EPA and are accounted for as a liability against the Superfund Trust Fund until used or no longer needed (i.e., account closure).

Use of Funds

How does EPA use special account funds?

Special account funds can be used only for work related to the site for which the payment was made. The settlement agreement specifies how the money can be used. EPA can use special account funds for a wide range of site-specific response actions, including investigations to determine the nature and extent of contamination, studies and analysis that inform the appropriate remedy decisions, construction of the remedy, enforcement activities, and post construction monitoring.

EPA has established a hierarchy for using special account funds to advance EPA’s goals of “enforcement first” and site cleanup. Special accounts not only provide site-specific cleanup funds, but also provide resources to incentivize other PRPs at the site to perform work, preserving scarce government resources. In accordance with the hierarchy, EPA may use the funds from special accounts:

- as an incentive for other parties to conduct work pursuant to an enforceable agreement at the site by partially reimbursing them for that work;
- to pay for EPA’s future cleanup related costs at the site;
- for other needs at the site specified in the settlement agreement;
- to pay for EPA’s past cleanup related costs at the site (i.e., reclassification); or
- to transfer excess funds to the Superfund Trust Fund.

Can EPA use special account funds at non-NPL sites?

Yes, special account funds may be used at non-NPL sites (e.g. sites which employ the Superfund Alternative Approach, sites with removal actions) as long as the activities being conducted at the site meet the definition of a CERCLA response action.

Can funds from one site's special account ever be used at a separate and distinct site?

Generally no, but this can be accomplished if such use is explicitly stated in the governing settlement agreement. This issue usually arises where a PRP has liabilities at two or more distinct sites.

Can special account funds be used to finance operation and maintenance (O&M) of a remedy or institutional controls?

Special account funds can be used to conduct any CERCLA response action, including O&M and implementation of institutional controls, unless otherwise specified by the settlement agreement.

Does EPA use special account funds before appropriated resources?

Generally, yes. Using special account funds before appropriated funds helps preserve appropriated resources for use at other sites that do not have settlement resources available to conduct response work.

What cleanup accomplishments are linked to the funding already spent from special accounts?

The cleanup accomplishments from special account resources are the same as the Superfund program cleanup accomplishments. Special account resources facilitate response actions, including activities such as remedial investigations, feasibility studies, removal actions, remedial actions, and post construction activities. However, it is rare that special accounts have enough funds for all response actions required at a site. As a result, both special account and congressionally appropriated resources are used to perform the response work required at most sites.

Reclassifications and Transfers

What are special account reclassifications?

Special account reclassifications make previously appropriated resources available for use by EPA. Reclassifications are an accounting adjustment that replaces the source of funding used to fund a response action -- in this case from appropriated funds to special account funds. As a result, the appropriated funds are made available for use at other Superfund sites.

How does EPA decide when to reclassify appropriated funds with available special account funds?

At least twice a year EPA assesses whether special account funds are available for reclassification. The determination is based on whether EPA can reasonably estimate that the special account contains more resources than are needed to address all known and potential future work at the site. If excess special account funds are identified, EPA will use those resources to pay back previous EPA site expenditures of appropriated resources through the reclassification process. Typically these determinations are made later in the cleanup process when future site costs and risks can be better characterized.

What does it mean when EPA transfers special account funds to the Superfund Trust Fund?

When EPA states it is transferring special account funds to the Superfund Trust Fund, it is making those resources unavailable for EPA to use until Congress appropriates them through the annual budget process. EPA may transfer special account receipts collected from PRPs to the Superfund Trust Fund, which requires moving the receipts from the special account to the general portion of the Superfund Trust Fund. If EPA is transferring interest earned on special account funds, it is reducing the liability owed to EPA from the Superfund Trust Fund, as interest earned on special accounts resides in the general portion of the Superfund Trust Fund but is permanently appropriated to EPA.

Special Account Planning

How does EPA ensure that available funds in special accounts will be used?

At least twice a year, or as site activity warrants, EPA regional offices are required to plan for the use of available special account funds in the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) or its replacement system, the Superfund Enterprise Management System (SEMS). If EPA identifies funds in the special account as no longer necessary for future work at the site, the funds will be planned in CERCLIS for reclassification or transfer to the Superfund Trust Fund.

Can special account planning information in CERCLIS be released to the public?

EPA evaluates each request for planning information and works with the requester to provide as much information as possible for the request. However, Agency plans for the use of special account and appropriated resources are typically not made available to the public so as not to jeopardize any future enforcement or procurement actions at those Superfund sites. Furthermore, these plans for the future may change as site conditions, resources, contractual considerations, and other factors are evaluated.

Management of Special Accounts

What efforts is EPA undertaking to ensure special account funds are used as expeditiously as possible?

EPA will continue to ensure appropriate and efficient use of funds by monitoring planned and actual uses of special account funds through the Superfund program's annual work planning and mid-year review process.

What are EPA's future plans for increasing site cleanup and thus increase expenditures from special accounts?

The Special Accounts Senior Management Committee, which is comprised of EPA senior career officials in Headquarters and Regional offices, has the responsibility for managing special accounts. This committee, which was established in 2009, will continue to oversee the implementation of management improvements for special accounts, including the planned and actual use of special account resources to maximize site cleanups.

The Office of Superfund Remediation and Technology Innovation (OSRTI) and Office of Site Remediation Enforcement (OSRE) also will continue to review plans for the use of special accounts with each regional program during annual work planning and mid-year reviews, using planning, monitoring, and reporting tools in CERCLIS or its replacement system, SEMS, and EPA's financial management system, to ensure the appropriate and efficient use of resources to facilitate cleanup at sites.

EPA issued the memorandum, "Effective Utilization of Superfund Special Accounts" (April 2, 2012) to further improve EPA's use of special accounts and balance program funding needs.

Activities EPA is undertaking pursuant to this guidance include:

- i. Annual reviews by regional Superfund management on the plans for special account use for those accounts with more than \$1 million available or \$0 obligated or disbursed in the past 5 years;
- ii. Retaining special account funds for up to 15 years after site construction completion, after which point EPA will reclassify those special account funds to make funds available for use at other sites; and,
- iii. Using special account resources before appropriated funds.

Why does it appear that special account funds are sitting idle and not being used to clean up sites?

Special accounts are being used to pay for response work at specific sites for which the account was created. Through the end of FY 2012, EPA has expended \$2.2 billion from special accounts. Another \$269.7 million has been obligated but not yet disbursed for site-specific response actions, such as investigations, designs, construction, removal actions, and long-term response actions. In FY 2012 alone EPA expended \$240 million for response work at sites.

The remaining balance of more than \$1.7 billion is intended to finance future cleanup work at particular sites over the longer term. This balance does not represent the level of annual funding available to EPA from special accounts. The time frame for using special account funds at a specific site depends on several factors, including the specific requirements for fund use set forth in the agreement the funds were collected under, the stage of site cleanup, the viability of other responsible parties to conduct site cleanup, and the nature of the site contamination, among other things.

As of the end of FY 2012, the EPA developed multi-year plans to utilize the available balance and will continue to fully plan 100 percent of the funds received to conduct site-specific response activities, or reclassify and/or transfer excess funds to the Superfund Trust Fund for use at other Superfund sites. Current plans indicate that the Agency will utilize more than 47 percent of the currently remaining available special account resources over the next five years for site-specific response work.

What progress has EPA made to address the Office of Inspector General's (OIG's) recommendations regarding the Agency's management of special accounts?

EPA has completed all of the corrective actions required in the OIG's March 18, 2009 report, "Improved Management of Superfund Special Accounts Will Make More Funds Available for Clean-ups," (Report No. 09-P-0119). These actions include: 1) reporting special account financial and planning information as part of EPA's annual Congressional Justification; 2) issued guidance on the appropriate planning and use of special account funds; and, 3) convened the Special Accounts Senior Management Committee to discuss the Agency's progress in managing and using special account resources. The Government Accountability Office's (GAO) January 18, 2012 report, "Status of EPA's Efforts to Improve Its Management and Oversight of Special Accounts," found that EPA has implemented processes and policies to better monitor and manage special accounts since the OIG's report. EPA continues to implement the actions required by the OIG to ensure effective management of special accounts by EPA.