



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

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

AUG 01 2016

MEMORANDUM

SUBJECT: Action Items for Improving and Maintaining Financial Assurance Data for CERCLA

FROM: Cynthia L. Mackey, Director
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James E. Woolford, Director
Office of Superfund Remediation and Technology Innovation

TO: CERCLA Regional Division Directors
CERCLA Regional Branch Chiefs

On March 31, 2016, the Office of Inspector General (OIG) issued a Management Alert titled "*Significant Data Quality Deficiencies Impede EPA's Ability to Ensure Companies Can Pay for Cleanups*" (Report No. 16-P-0126). The report identified data gaps in the national systems used to track financial assurance obligations under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly referred to as Superfund) programs. We are sending this memorandum to make EPA Regions aware of this report and ask your assistance in implementing the actions that the Office of Site Remediation Enforcement (OSRE) and the Office of Superfund Remediation and Technology Innovation (OSRTI) are taking to improve financial assurance for the Superfund program. These actions, for example, necessitate that the Regions work with their Information Management Coordinators (IMCs) to update the financial assurance data in the Superfund Enterprise Management System (SEMS).

Background

In response to the OIG's report, the Office of Enforcement Compliance and Assurance (OECA) and the Office of Land and Emergency Management (OLEM) acknowledged that data gaps exist in the financial assurance data systems for CERCLA and RCRA, and committed to work with the EPA Regions to improve the data quality. We agree the financial assurance data should be better maintained.

In the response to the OIG, our offices outlined a number of activities designed to improve financial assurance data. These activities to improve financial assurance data include:

- Formally communicating the need to address this issue via a memorandum from OSRTI and OSRE to the EPA Regional Superfund Directors;
- Raising this issue directly with the Regions and states on various conference calls, such as the financial assurance calls;
- Producing periodic reports of data gaps in financial assurance to provide to EPA Regions;
- Engaging the CERCLA Financial Assurance Expert Group to identify other methods for improving data quality;
- Evaluating the need and demand for training on data entry and guidance related to the financial assurance module; and
- Following the Agency's System Lifecycle Management Policy to evaluate a financial assurance system that will improve financial assurance tracking.¹

Update Current SEMS Financial Assurance Data

In the short term, OSRE and OSRTI agree that we should improve the data quality of the information in SEMS to ensure the accuracy and completeness of the CERCLA financial assurance data. Specifically, we ask that you coordinate with your IMCs to update the SEMS data elements for financial assurance for open work settlements, which include:

- whether financial assurance is required;
- the amount or value of the financial assurance;
- the type of financial assurance instrument (e.g. corporate guarantee, financial test, letter of credit, payment bond, performance bond, trust fund); and
- the provider of the financial assurance instrument (e.g. name of bank, bond agent, insurer).

Over the coming months, OSRE and OSRTI will be carrying out efforts to improve SEMS financial assurance data quality by engaging Regional users of SEMS to update the data elements outlined above that appear in Enforcement Report #67. As a part of this effort, we will seek to develop SEMS and CERCLA financial assurance training and guidance, and evaluate opportunities for improvements to tracking financial assurance data for CERCLA.

In the fall, as part of the workplanning process, OSRE and OSRTI will be tracking and sharing progress with the EPA Regions and the OIG. Further, in order to address the OIG's concerns, we also plan to evaluate mandatory financial assurance data entry.

Our goal in this effort is to ensure that financial assurance is in place for Superfund sites.

¹ The Agency's System Lifecycle Management Policy and System Lifecycle Management Guidance will guide this process, which will include development of system requirements and system feasibility study.

Develop Improved Financial Assurance Data Tracking System

In addition to improving current SEMS data quality, OSRE and OSRTI are initiating a review that will follow the Agency's System Lifecycle Management Policy to support an improved financial assurance tracking system. Some of the needs that we will be considering include establishing appropriate controls for the data systems, providing access to financial assurance instruments, establishing communication among the systems that house information needed for financial assurance, and providing tools to better monitor national compliance. As part of the analysis, we expect to evaluate EPA Region 5's Financial Assurance Compliance Tool (FACTool) to determine if it could fill the needs for improved financial assurance tracking.

We appreciate that the vast majority of the work to enter and update information on financial assurance data is performed by Regional staff. In order to develop a system that is efficient for the Regions to use, we believe that Regions must be involved and we plan to provide regular briefings on the status of this work for Regional staff. Moreover, we will seek out Regional advice on content entry screens, the development of reports, and participation in workgroups supporting these improvements to financial assurance data.²

If you have any questions about this effort, you may contact OSRE's Jacquie Huynh-Linenberg (huynh-linenberg.jacquie@epa.gov, 202-564-0547) or OSRTI's Larry Zaragoza (Zaragoza.Larry@epa.gov, 703-603-8867) of our staffs.

cc: Cynthia Giles
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CERCLA Regional Branch Chiefs
Superfund Regional IMCs
FACTool User Community
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² These workgroups are currently being developed and the focus of such workgroups will be communicated in detail at a later date.