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WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

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MEMORANDUM

SUBJECT: Use of Special Accounts for Oversight Costs

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

TO: Superfund National Policy Managers, Regions 1 - 10
Regional Counsels, Regions 1 - 10
Assistant Regional Administrators, Regions 1 - 10

PURPOSE

This memorandum is sent on behalf of the Special Accounts Senior Management Committee. The purpose of this memorandum is to clarify current special account guidance to encourage the use of Superfund special account funds for conducting oversight of actions being performed by potentially responsible parties (PRPs) at Superfund sites.

BACKGROUND

Special accounts are site-specific, interest bearing sub-accounts within the EPA Hazardous Substance Superfund (Superfund Trust Fund). Special accounts are used to fund response actions conducted pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA establishes special accounts pursuant to section 122(b)(3) of CERCLA, which authorizes the government to retain and use settlement monies received from PRPs to carry out response actions contemplated by such an agreement.

The use of a special account to fund response actions is controlled by the settlement language under which the funds were received. Most settlement agreements provide that funds in a special account will be used to conduct or finance response actions at or in connection with the site.

USE OF SPECIAL ACCOUNTS FOR OVERSIGHT

In instances where EPA is conducting oversight and receives payments from PRPs for that oversight pursuant to a settlement agreement, regions should deposit those payments into a special account. Those funds, rather than appropriated resources from the Superfund Trust Fund, should then be used to fund

future EPA oversight costs. The source of funding (special account or appropriated Trust Fund money) for EPA's oversight does not affect the PRP's legal obligation to reimburse EPA. EPA will bill the PRPs for oversight activities it performs in accordance with the terms of the settlement agreement regardless of the source of oversight funding. This practice will utilize available special account resources, while conserving appropriated Superfund Trust Fund resources for sites where there are no viable PRPs for performance of work.

Funding Payroll Associated with Oversight

Over the past several years, regions have done an excellent job of utilizing special account funds for extramural costs associated with oversight and reducing appropriated Superfund Trust Fund expenditures for those activities. While we have seen improvements in regional use of special accounts for oversight, we believe there are additional opportunities for improvements in this area. Where special account funds are available for this purpose, EPA regions should try to maximize the use of special accounts for payroll associated with oversight activities, as well as for extramural costs associated with conducting oversight. Additional information on accessing special accounts for payroll costs can be found in the fact sheet, "Charging Payroll to Superfund Special Accounts," issued on September 16, 2013.[1]

Oversight Billings and Deposits into Special Accounts

In many instances, EPA periodically bills a PRP for past oversight costs pursuant to a settlement agreement, and deposits those funds into a special account to pay for future EPA oversight. In accordance with current Agency financial policies and procedures, oversight billings should be prepared and collected in a timely manner.[2] This ensures that EPA has funding available in the special account to continue oversight. If the special account is depleted and the oversight payment has not been deposited into the account, then EPA will be required to use appropriated funds for oversight rather than PRP funds. Particularly where payroll is being charged to the special account, it is imperative that funds continue to be available in the special account to avoid negative balances.

Prior to placing oversight reimbursement funds into a special account, regions should evaluate the available special account balance, in light of the work remaining at the site, to ensure the additional funds are needed in the special account and will be used in a timely manner. Depending on utilization and estimated future costs, EPA may not need to deposit every oversight payment into the special account, but rather can deposit payments on an as needed basis as the account balance is drawn down. Additional information on managing deposits into special accounts can be found in the fact sheet, "Managing Special Account Deposits," issued on September 16, 2013.[3]

Prepayment of Oversight Costs

EPA can also negotiate with PRPs to prepay oversight costs and place the payments into a special account. As a means to save additional appropriated dollars, regions should, when appropriate, request

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[1] The "Charging Payroll to Superfund Special Accounts" fact sheet (September 16, 2013) can be found at http://intranet.epa.gov/oeca/osre/workgroup/sa-docs/sa-payroll-fs-2013.pdf.

[2] Please see the following resource management directives for receivables and billings: "Policy Standard" (RMDS 2540-09), http://intranet.epa.gov/ocfo/policies/direct/2540-09.pdf; "Billing and Collecting (RMDS 2540-9-P1), http://intranet.epa.gov/ocfo/policies/direct/2540-09pro_1.pdf; "Performance Measures and Reporting" (RMDS 2540-9-P4), http://intranet.epa.gov/ocfo/policies/direct/2540-09pro_4.pdf ; "Superfund Accounts Receivable and Billing" (RMDS 2550D-14), http://intranet.epa.gov/ocfo/policies/direct/2550d-14.pdf ; and, "Superfund Accounts Receivable and Billing, Technical Interpretation" (RMDS 2550D-14-T1), http://intranet.epa.gov/ocfo/policies/direct/2550d-14-T1.pdf.

[3] The "Managing Special Account Deposits" fact sheet (September 16, 2013) can be found at http://intranet.epa.gov/oeca/osre/workgroup/sa-docs/sa-deposits-fs-2013.pdf.

that PRPs prepay the first installment of oversight costs under any settlement agreement where the PRPs have agreed to perform a response action (e.g., remedial investigations/feasibility studies (RI/FS), remedial design/remedial action (RD/RA), or removal actions) and pay future oversight costs. For more information on prepayment of oversight costs, please see the "Additional Guidance on Prepayment of Oversight Costs and Special Accounts" memorandum issued December 22, 2006.[4]

Review Older Settlement Agreements Silent on the Use of Special Accounts
Regions should review those sites with older settlement agreements that do not contain special account language, and, where cost reimbursements are going to the Superfund Trust Fund, evaluate, based on current and future work at the site, if it makes sense to create a special account to fund current and future EPA response activities at the site. At active sites with regular oversight billings, the region may decide to create a special account to fund EPA's future oversight.

Retaining Funds for Oversight Costs 15 Years Past Site Construction Completion
EPA has a general policy that a special account should not be used to retain funds for a site that is 15 years past site construction completion, as typically response costs beyond this point are minimal and EPA will generally fund these activities from appropriated dollars.[5] A special account may be used to retain funds at a site beyond 15 years after site construction completion is achieved based on site-specific circumstances and/or specific settlement language. A site-specific circumstance where it may be appropriate to retain funds for a site 15 years past site construction completion is where EPA is conducting continuing, regular oversight of PRP response actions at the site, including operation and maintenance (O&M) activities. If the PRP is providing payments to EPA for oversight costs, EPA may want to continue to use special accounts to fund those oversight activities depending on the amount of costs incurred by EPA annually for that site.

Deposit of Funds in a Special Account after Reclassification
Generally, EPA should not deposit funds into a special account if a reclassification has occurred. Reclassification usually occurs when there are excess funds in an account, meaning no additional funds would need to be deposited for future response work.

However, there may be instances where deposits into a special account may be appropriate even after a reclassification has occurred. One such situation is where EPA is performing oversight and receives regular oversight payments from PRPs. EPA may reclassify excess funds in the special account, and continue to deposit oversight payments into the special account on an as needed basis in order to continue to fund EPA's oversight activities for the site.

CONCLUSION

The use of special accounts to fund oversight activities provides multiple benefits to EPA, including preserving appropriated resources for use at sites where there are no PRPs to perform work. EPA should make every effort to maximize the use of special accounts for these activities.

If you have any questions regarding this memorandum, please feel free to contact me at (703) 603-8960 or woolford.james@epa.gov.

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[4] The "Additional Guidance on Prepayment of Oversight Costs and Special Accounts" memorandum issued December 22, 2006 can be found at http://www2.epa.gov/sites/production/files/2013-10/documents/spec-acct-oversight.pdf.
[5] See page 2 of the "Effective Utilization of Superfund Special Accounts" memorandum issued April 2, 2012 and available at http://www.epa.gov/superfund/pubs/pdfs/SF%20Special%20Accounts_Effective%20Utilization%20Memo.pdf.

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