

LEGISLATIVE AUDIT DIVISION

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MEMORANDUM

TO: Legislative Audit Committee Members
FROM: Angie Grove, Deputy Legislative Auditor
CC: Richard Opper, Director, Department of Environmental Quality
Tom Livers, Deputy Director
Sandi Olsen, Administrator, Remediation Division
DATE: December 2009
RE: Performance Audit Follow-up (10SP-04): Program and Policy Issues Impacting State Superfund Operations (orig. 08P-05)
ATTACHMENT: Original Performance Audit Summary

INTRODUCTION

In June 2008, we presented our performance audit on Program and Policy Issues Impacting State Superfund Operations. The audit made nine recommendations to the Department of Environmental Quality (department). In July 2009, we began gathering preliminary information from the department on their progress in implementing the recommendations. This memo summarizes the results of our follow-up work in addition to presenting background information on state superfund activities.

Overview

Audit recommendations addressed the need for improving controls over general program operations, policy issues impacting program success, and procedural changes to improve remediation planning. Eight report recommendations have either been implemented or implementation is ongoing. Due to the timing of the audit, one report recommendation has not been implemented, but is under consideration by the department.

BACKGROUND

The term "superfund" refers to a state (or federal) government's program to clean up uncontrolled and abandoned hazardous waste sites. It is also commonly the name of the fund established to allow the government to clean up such sites and compel responsible parties to perform cleanups. In Montana, this account is known as the Environmental Quality Protection Fund (EQPF). Superfund sites generally represent sites of historical waste contamination where disposal activities have caused the contamination of air, water, and/or soils with hazardous substances. The department is responsible for the state's superfund program and activities.

FOLLOW-UP AUDIT FINDINGS

The performance audit report contained nine recommendations to the department. As part of follow-up work, we interviewed agency officials and examined program materials. The following summarizes information relating to follow-up audit work and the implementation status of recommendations.

Recommendation #1

We recommend the Department of Environmental Quality:

- A. Establish priorities and develop a plan of action to address House Joint Resolution 34 study recommendations.**
- B. Set long-term priorities and provide ongoing guidance for the Comprehensive Environmental Cleanup and Responsibility Act program.**

Implementation Status – Being Implemented

House Joint Resolution 34 (HJR 34)

The department established priorities as recommended in the HJR 34 report and completed a number of activities in response to the report's recommendations. Based on program material submitted by the department, they have developed benchmarks, identified program resources, improved communications, utilized institutional controls, and adhered to the established site cleanup process.

Long-Term Priorities and Ongoing Guidance

The department has developed a four-year work plan which includes milestones for each active remediation site. The department reports that contamination sites are prioritized according to administrative rule, with those priorities periodically updated. They also hold monthly briefings on high priority projects between program staff and department management, including the director and deputy director. These briefings are an effort to provide more direction to program staff on overall program priorities. While the department still relies on the existing prioritization process outlined in administrative rule, the department has more formally established priorities and utilizes monthly briefings to provide more guidance from department management to program staff. It will be important for management to continue to provide ongoing guidance to program staff to promote the ongoing success of the program.

Recommendation #2

We recommend the Department of Environmental Quality:

- A. Conduct supervisory review of invoice packets to ensure staff adheres to department cost recovery policy requiring authorization by a project manager prior to paying invoices.**
- B. Train additional department staff to assist with monthly invoicing of liable parties to ensure timely billing.**

Implementation Status – Implemented

Supervisory Review

As part of the monthly billing process, the department has developed an invoice review checklist to incorporate a step requiring authorization by a project officer. This checklist and process is part of the department's cost recovery policy. According to department staff, this is the control used by the program to ensure a supervisor reviews invoice packets prior to payment.

Staff Training

In response to the audit's recommendation, the department trained a second staff person within the remediation division to conduct cost recovery duties. There are plans to train a third staff person within the remediation division in the future. In addition, a staff person within the department's Financial Services Office (FSO) has also been trained in cost recovery activities. According to department staff, these trainings were desktop-based and consisted of walking other staff through the procedures and processes. Department staff also reported that it is improving its overall billing processes through an information technology system. This system is designed to streamline the production of invoices in programs with fee assessments and cost recovery obligations. Department staff expect invoicing procedures to change and adapt to this new system.

Recommendation #3

We recommend the Department of Environmental Quality assign responsibility to compile and maintain current data necessary to analyze account status for all Comprehensive Environmental Cleanup and Responsibility Act projects.

Implementation Status – Implemented

The department has assigned a staff person from the FSO to maintain account status information for the program's projects. As part of those responsibilities, this staff person reviews and signs off on all billing from the remediation division for accuracy. This staff person maintains a spreadsheet of all state superfund accounts and reviews those accounts on a quarterly basis. For example, if the amount of an account exceeds certain thresholds within the department's cost recovery policy, this staff person will notify management to consider legal actions. In addition, this staff person meets with the financial staff at the remediation division on a monthly basis to discuss account issues.

Recommendation #4

We recommend the Department of Environmental Quality:

- A. Finalize and ensure implementation of policy for evaluating accounts receivable and addressing uncollectible accounts.**
- B. Evaluate Environmental Quality Protection Fund accounts receivable to determine viability of accounts and take appropriate action including transferring accounts to other agencies/entities and writing off uncollectable accounts as bad debt.**
- C. Establish thresholds to define when department management should be involved in accounts receivable assessment and decision-making.**

Implementation Status – Implemented

Evaluating Accounts Receivable

As a result of audit work, the department adopted a formal cost recovery policy on April 17, 2008. This policy requires an annual evaluation for all accounts. In addition, financial staff from the remediation division and FSO meet on a monthly basis to review and evaluate all accounts. Any account concerns are discussed at these meetings, with assignments and action items for staff. These monthly meetings are the means by which the department ensures that the policy for evaluating accounts is followed.

Viability of Accounts

According to department staff, all EQPF open items have been reviewed and resolved. On an annual basis, the department reviews outstanding receivables, in accordance with the cost recovery policy. As noted, financial staff from the remediation division and FSO meet on a monthly basis to review and

evaluate all accounts. The department's cost recovery policy contains specific instructions for transferring accounts to other agencies/entities and writing off uncollectable accounts as bad debt.

Account Thresholds

The department adopted a formal cost recovery policy on April 17, 2008. This policy outlines a \$100,000 threshold for when department management should be involved in accounts receivable assessment and decision-making.

Recommendation #5

We recommend the Department of Environmental Quality:

- A. Finalize policy for bringing legal action against potential liable parties for nonpayment of the department's remedial action costs to include defined thresholds for pursuing action.**
- B. Identify changes needed in statutes to enhance the department's ability to recover remedial action costs and seek statutory changes to resolve issues.**

Implementation Status – Implemented

Legal Action

The department adopted a formal cost recovery policy on April 17, 2008. As part of this policy, thresholds have been defined for bringing legal action against potential liable parties for nonpayment. Invoices unpaid for more than one year and in the amount of \$100,000 or more for both principal and interest will be referred to legal staff for evaluation and collection.

Statutory Changes

According to department staff, they identified statutory changes needed to enhance the department's ability to recover remedial action costs. In the 2009 Legislative Session, they requested SB147 which would have reduced the timeframe for payment of invoices to 30 days and established deed restrictions for state superfund sites. However, the Legislature did not pass SB147. Similarly, the department requested HB153 to improve the voluntary cleanup process, including providing the department with the ability to cease work when an applicant is not paying the department's costs. HB153 became law.

Recommendation #6

We recommend the Department of Environmental Quality ensure the Financial Services Office is the primary entity responsible for enacting accounts receivable policy and ensuring procedures are followed.

Implementation Status – Implemented

According to department staff, the FSO is the primary entity for enacting accounts receivable policy and ensuring procedures are followed. For example, while the financial staff at the remediation division participated in the development of a cost recovery policy for the department, the FSO provided input and ultimately approved the policy. In terms of ensuring procedures are followed, as noted above, financial staff from the remediation division and FSO meet on a monthly basis to review and evaluate accounts. These meetings are the means by which FSO ensures procedures are followed. These meetings are guided by agendas and there are generally assignments or action items which need to be addressed by the next meeting.

Recommendation #7

We recommend the Department of Environmental Quality seek legislation to redirect the Orphan Share State Special Revenue Account into the Environmental Quality Protection Fund to align with the Comprehensive Environmental Cleanup and Responsibility Act.

Implementation Status – Not implemented

According to department staff, this recommendation came too late in the Executive Planning Process for the 2009 Legislature. They indicate they are open to considering this recommendation; however, they believe that any such legislation should honor existing agreements which have already been negotiated between responsible parties.

However, within the context of HB2 in 2009, the Legislature approved a one-time-only appropriation of \$9.6 million in orphan share funds to the Department of Natural Resources and Conservation (DNRC) for the state's share of cleanup costs at the Kalispell Pole & Timber, Reliance Refinery, and Yale Oil (KRY) state superfund site. While unusual in the sense that the legislature would appropriate state superfund site funds to DNRC rather than DEQ, the director of legal services for the Montana Legislature analyzed the appropriation and found that it is legal. In addition to providing resources from the orphan share fund directly to a state agency other than the department, the appropriation appears to effectively leave no remaining fund balance in the orphan share fund.

According to department staff, this appropriation is consistent with state law allowing state agencies to access the fund for sites for which they are a responsible party. While the legislature made this appropriation to DNRC, department staff indicate they do not expect DNRC to use much of the appropriation immediately. As such, expected bills from responsible parties with existing agreements will be able to be honored. In addition, department staff indicated that they do not have a real sense of the outstanding costs for sites with existing agreements and are unable to quantify those liabilities.

Recommendation #8

We recommend the Department of Environmental Quality adopt additional Voluntary Cleanup and Redevelopment Act application strategies, such as a phased review process, consultant workshops, applicant checklists, and a staff review guidance tool to improve the voluntary application submission and approval process.

Implementation Status – Implemented

In the 2009 Legislative Session, HB153 amended the Voluntary Cleanup and Redevelopment Act (VCRA) to include a two-step process that will make it easier for applicants and the department to manage the process. VCRA is a voluntary component of the state superfund program. In addition, the department currently is working to update VCRA guidance with checklists for both staff and applicants. The department has provided outreach on the updated application process through conferences around the state. In addition, the department maintains an e-mail listserve to inform consultants of pending changes, ongoing developments, and pertinent information.

Recommendation #9

We recommend the Department of Environmental Quality seek legislation to:

- A. Require applicants to prepay a portion of the department's remedial costs to be submitted along with the voluntary cleanup plan.**
- B. Allow the department to cease work on and rescind approval of a voluntary cleanup plan due to nonpayment of remedial action costs incurred by the state.**

Implementation Status – Implemented

According to the department, they evaluated both options as effective ways to manage cost recovery at VCRA sites. The department determined new fees were not appropriate at the time. The department concluded that the ability to stop work and rescind approvals would be a more effective method to ensure timely payment, negating the need to require prepayment. In the 2009 Session, the Legislature passed HB153 which set criteria for stop work and revocation of approvals. The department indicated that prepayment would generate additional workload and create issues requiring the development of additional policies. The department expects that the potential for stop work will provide adequate incentive for timely payment of outstanding invoices. In addition, the department expressed concerns over how to handle a prepayment fee, due to other program fees. According to the department, the reason applicants come forward to do a voluntary cleanup is because they want to redevelop property for a useful purpose. As such, the most effective means to ensure that process continues to move forward is the ability to cease work. An additional prepayment fee would not accomplish that purpose. The ability to cease work will provide an incentive for applicants to continue to pay.

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