



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Selected Aspects of Inactive Hazardous Waste Site Remediation Cost Recovery

**Department of Environmental
Conservation**



Report 2014-S-14

January 2015

Executive Summary

Purpose

To determine whether the Department of Environmental Conservation (Department) has effective systems in place to fully and accurately accumulate State costs related to site investigation and remediation, bill for and collect these costs from responsible parties in a timely manner, and identify and pursue parties responsible for the contamination of inactive hazardous waste sites. This audit covers the period April 1, 2011 through October 17, 2014.

Background

The Department of Environmental Conservation is responsible for the Inactive Hazardous Waste Disposal Site Program (Program), also known as the State Superfund Program, in New York. The purpose of the Program is to identify, investigate, and remediate sites containing consequential amounts of hazardous waste. Sites that pose a significant threat to public health and/or the environment require investigation, identification of possible responsible parties, and remediation of the site. Responsible parties are legally responsible for site remediation. The Department takes steps to identify and locate responsible parties, and negotiate consent orders with them, to ensure the proper cleanup of the sites and repayment of associated State costs. The Department also bills responsible parties to recover State costs associated with remediating a site.

Key Findings

- The Department has taken steps to improve its Superfund billing process and the timeliness of billing. However, bill preparation is a very time-consuming process and billing frequency for each site is about once a year at most. In addition, the bills do not include up-to-date costs, which delays recovery of some State costs until the next bill is prepared. We reviewed 21 bills for eight sites and found they did not include the most recent three to seven months of site costs. We looked up the amount of costs incurred but not billed for 14 of the 21 and found that the unbilled costs totaled \$1.9 million.
- We found that the Department generally takes reasonable steps to identify all potential responsible parties and to obtain agreements with, or pursue enforcement efforts against, those parties responsible for contaminating a site.

Key Recommendations

- Explore additional ways to increase the efficiency and timeliness of the billing process.
- Work internally and with Department of Health officials to identify and implement ways to include more up-to-date costs in each bill.

Other Related Audits/Reports of Interest

[Department of Transportation: Collection of Lease and Permit Revenues \(2012-S-6\)](#)

[Office of the Attorney General: Accounts Receivable Collections \(2011-S-25\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

January 22, 2015

Mr. Joseph Martens
Commissioner
Department of Environmental Conservation
625 Broadway
Albany, NY 12233-1011

Dear Mr. Martens:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Selected Aspects of Inactive Hazardous Waste Site Remediation Cost Recovery*. This audit was performed according to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The Department of Environmental Conservation (Department) is responsible for the Inactive Hazardous Waste Disposal Site Program (Program), also known as the State Superfund Program, in New York. The purpose of the Program is to identify, investigate, and remediate sites containing consequential amounts of hazardous waste. When potentially hazardous sites are identified, the Department assesses the presence of hazardous waste and the threat posed by the site to the public health or the environment. Sites with a confirmed presence of hazardous waste are added to the State's official list of sites (Registry) and classified according to the threat to the public or environment. Sites with a significant threat to public health and/or the environment (classification code 2) require action including investigation, identification of possible responsible parties, evaluation and final approval of cleanup options, design of the remediation action, and finally remediation of the site.

A responsible party includes current owners or operators of a site, past owners or operators of the site at the time of disposal of the contaminants, any person who generated contaminants disposed at the site, and any person who arranged for or transported contaminants to a site or disposed of any contaminants at a site. Responsible parties are legally responsible for site remediation. The Department is required to make all reasonable efforts to identify and locate responsible parties to implement remedial programs, pay for program costs, and reimburse the State for Program costs it incurs.

The Department's Office of General Counsel (OGC) takes steps to identify and locate responsible parties and is responsible for negotiating consent orders with responsible parties to ensure the proper cleanup of the sites and repayment of associated State costs. For many sites, remedial work is carried out by responsible parties under Department oversight. When the Department is unable to identify responsible parties, or the responsible parties are unable or unwilling to complete the site remediation, it may remediate the site using funds from the 1986 Environmental Quality Bond Act, known as the State Superfund. The Division of Environmental Remediation (DER) is responsible for billing responsible parties to recover State costs associated with remediating a site including the Department's personal services costs, contract costs, and Department of Health (DOH) personal service and laboratory costs. Recouped costs replenish the State Superfund and can be used to remediate other sites.

As of May 6, 2014, the 741 active sites on the State's Registry had at least one type of remediation project. Of the 741 sites, 291 were fully funded by responsible parties, 189 were fully funded by the State Superfund, 14 were fully funded by the Federal Superfund, and the remaining 247 were funded by combinations of monies from the responsible parties, the State Superfund, and/or other sources (see Exhibit).

Between April 1, 2011 and March 25, 2014, DER issued 596 bills totaling \$21.2 million for 318 unique inactive hazardous waste sites and consent orders (sites). The Department collected \$19.5 million of the total billed as of March 19, 2014. In addition, the Department collected another \$27 million from a combination of invoices issued prior to April 1, 2011, such as installment payments, costs due upon the signing of consent orders, and settlements.

Audit Findings and Recommendations

We found the Department has taken recent steps to improve its Superfund billing process and the timeliness of billing. However, bill preparation is still a very time-consuming process and the billing frequency for each site is about once a year at most. In addition, the bills do not include up-to-date costs, which delays recovery of the State's costs until the next bill is prepared. The Department also takes reasonable steps to identify all potential responsible parties, and to obtain agreements with, or pursue enforcement efforts against, parties responsible for contaminating a site.

Timeliness of Superfund Billings

There is no required frequency to bill responsible parties. However, DER officials found that billing for a one-year period is the most efficient billing interval. For the three-year period ended March 25, 2014, the Cost Recovery Section (Cost Recovery) issued 596 bills totaling \$21.2 million for 318 inactive hazardous waste sites. Of the 318 sites, 221 received multiple bills (470 bills) totaling \$18.5 million with an average interval of 1.4 years. We excluded 11 sites that were billed twice on the same day from our analysis. Of the remaining 86 sites, 22 were only billed once even though more than a year passed since the last bill. Three of the 22 sites were not rebilled even though 18 to 24 months had elapsed, and for four of them over two years had elapsed. For the remaining sites, either they were no longer in Cost Recovery or less than a year had elapsed since the prior bill.

In July 2012, Cost Recovery developed a new tracking module for Department costs related to the sites. The new module reduces the time it takes staff to look for and compile the costs for a site. This has allowed Cost Recovery to further improve the timeliness of its billing. Since implementation in July 2012, 78 (74 percent) of 105 sites that could have been billed twice were, in an average of one year. Of the remaining 27 sites, the bills for 22 were only one to three months over the one-year target. The remaining five sites were yet to be rebilled, but had scheduled billing dates between three and 11 months beyond the one-year target.

According to DER officials, there are numerous reasons why a bill may be delayed beyond the goal of one year, including:

- When a project has been completed, DER may wait until the final costs are available to prepare the last bill, instead of creating an interim bill and a final bill;
- When a responsible party has failed to pay a bill and DER and OGC have already taken action, DER may delay preparing the next bill;
- Staff may be redirected to complete other priority tasks, such as preparing cost summaries for other programs;
- Project Managers may not be available to review and approve invoices;
- Issues arise during invoice preparation that may take up to a month to resolve; and
- DER's workload is slowly growing, which strains the limited billing resources (3.25 full-time equivalent staff).

The annual billing goal and typical billing frequency are largely driven by how time consuming the bill preparation process is and the number of projects to be billed by Cost Recovery. According to DER officials, invoice preparation can take between two and 30 hours depending on the complexity and issues related to the site and billing. Superfund project costs are not captured in a single information system, so staff need to query up to six separate systems to extract project costs. In addition to the queries, billing staff need to determine the billing period and which project costs are billable, obtain project manager approval of invoices, print invoices and other paperwork to match with subsequent receipts, and obtain DOH cost data.

We also found that bills do not include the most up-to-date costs, which delays recovery of some incurred costs until the next bill is prepared. The delays are caused by lags in the availability of cost data from DOH and from some Department systems. DOH's cost data is not available until the end of each quarter. Although Department data is generally not as old, to ensure bills are not confusing to the responsible parties, Cost Recovery includes DOH and Department costs through the same date. As of September 3, 2014, DOH's cost data was available through March 26, 2014 and the Department's personal service cost data was available through May 21, 2014. This lag period can result in the delays of significant amounts. We reviewed 21 bills for eight sites and found they did not include the most recent three to seven months of site costs. We looked up the amount of costs incurred but not billed for 14 of the 21 and found that the unbilled costs totaled \$1.9 million.

Department officials have stated that, as part of ongoing efforts to improve efficiencies, it will continue to evaluate various strategies and business practices, as resources allow, for scheduling Cost Recovery billings and increasing the efficiency of its billing process.

Identifying and Pursuing Responsible Parties

We found that the Department generally takes reasonable steps to identify all potential responsible parties and to obtain agreements with, or pursue enforcement efforts against, parties or persons responsible for contaminating a site to fund the remediation program.

Between April 1, 2011 and May 6, 2014, there were 56 sites that had remedial actions completed and funded by the State Superfund. Some of these sites could have had remedial projects (e.g., site characterization or remedial investigation) completed in the past and funded by other programs, such as the Brownfield Cleanup or Voluntary Cleanup Programs. In addition, some sites could have had projects funded by responsible parties in the past. Twenty-seven of the 56 sites appeared to have had their first remedial project started within the last 10 years.

For these 27 sites, OGC identified a total of 106 potential responsible parties. Of the 106, OGC determined that 26 should/could not be pursued because they were deceased, bankrupt, not liable, or under another remediation program or had already reached a settlement. OGC had not yet reached a determination on another two. The remaining 78 potential responsible parties had declined to sign, did not respond, or could not be located, as shown in the table below.

Table 1

Reasons Consent Orders Were Not Signed		
Reason	Number of Responsible Parties	Percent
Declined/Refused	40	51
Undeliverable/Unable to Locate	29	37
Did Not Respond	9	12
Totals	78	100

We sampled 6 of the 27 sites to review OGC efforts to pursue the 37 associated potential responsible parties identified. For all six sites, we found OGC had: ongoing communication with property owners for site access; enforcement documentation such as referrals to the Office of the Attorney General (OAG), if warranted; and evidence of other actions that OGC took to pursue responsible parties. Such actions include pursuing legal recourse for the recovery of State costs, and attempts to contact potential responsible parties after each phase of the remediation process. We conclude that OGC efforts were reasonable and sufficient under the circumstances.

OGC officials stated they run into numerous difficulties in identifying and pursuing responsible parties. For example:

- Smaller entities tend to go bankrupt;
- Businesses may no longer exist;
- Site owners may be elderly and without the financial means to fund a remedial program; and
- Larger sites, such as landfills, have many potential responsible parties and it can be difficult to identify who is actually responsible.

OGC acknowledges that pursuing responsible parties and holding them responsible for a remedial program can have positive results in some cases. However, they caution that these efforts can also have unintended negative consequences in others. One such consequence is that attempts to obtain administrative or OAG orders often cause major delays in the remediation process. When DEC determines a site to be a significant threat, it prefers to proceed as quickly as possible to investigate and remediate the site to protect human health and safety and the environment. OGC cited three examples of delays that arose from enforcement efforts, one of which ended in bankruptcy. The other two sites have not yet been investigated or remediated despite 20 years of litigation.

Recommendations

1. Explore additional ways to increase the efficiency and timeliness of the billing process.
2. Work internally and with Department of Health officials to identify and implement ways to include more up-to-date costs in each bill.

Audit Scope and Methodology

Our audit determined whether the Department of Environmental Conservation (Department) has effective systems in place to fully and accurately accumulate State costs related to site investigation and remediation, bill for and collect these costs from responsible parties in a timely manner, and identify and pursue parties responsible for the contamination of inactive hazardous waste sites. Our audit scope included the period April 1, 2011 through October 17, 2014.

To accomplish our audit objective, we interviewed Department officials and contacted DOH officials. We also analyzed billing data for the period April 1, 2011 to March 25, 2014; analyzed accounts receivable data for the period April 1, 2011 to March 19, 2014; analyzed data on hazardous waste sites being addressed as of May 6, 2014; and reviewed legal consent orders that were active, completed, or referred as of or after April 1, 2011. Our audit excluded billings for the Brownfield Cleanup and Voluntary Cleanup Programs. Our review focused on the Department's processes, but excluded DOH's billing process. We reviewed applicable sections of Federal and State laws and regulations, and examined the Department's internal controls and relevant policies and procedures. In addition, we selected a judgmental sample of 12 invoices and 11 payments based on high-dollar value and other factors to verify compliance with the legal consent orders. We also reviewed hard-copy files for 11 sites that appeared to have past costs that should be reimbursed by responsible parties but had no indication that payment was made.

To determine if the Department made reasonable efforts to identify a responsible party, we identified 27 of 56 hazardous waste sites that had remedial actions completed by the State during our scope and had initial Superfund remediation projects started within the last 10 years. Furthermore, we selected a judgmental sample of 6 of the 27 sampled sites to obtain additional information to determine if the Department made reasonable efforts to pursue responsible parties that had initially declined to remediate the sites.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed according to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

A draft copy of this report was provided to Department of Environmental Conservation officials for their review and comment. Officials agreed with our recommendations and reported on activities underway to further improve efficiency, both internally and in cooperation with other agencies. Their comments were considered in preparing this final report and are attached at the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Environmental Conservation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

Active Hazardous Waste Sites by Funding Source(s) as of May 6, 2014		
Funding Sources	Number of Sites	Percent of Sites
Responsible Party	291	39.27%
State Superfund	189	25.51%
Responsible Party and State Superfund	135	18.22%
State Superfund and Other ¹ (Not Responsible Party)	39	5.26%
Responsible Party and Other ¹ (Not State Superfund)	37	4.99%
Responsible Party/State Superfund/Other ¹	24	3.24%
Federal Superfund	14	1.89%
Other ¹ (Not State Superfund or Responsible Party)	12	1.62%
Total	741	100%
¹ Other funding sources include Federal Superfund, Local Government, Title 3 Program, Volunteer Cleanup Program, and Oil Spill Fund.		

Agency Comments

ANDREW M. CUOMO
GOVERNOR



STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

JOE MARTENS
COMMISSIONER

DEC 19 2014

Mr. John Buyce
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236-0001

Dear Mr. Buyce:

The New York State Department of Environmental Conservation (DEC) has reviewed the Office of the State Comptroller's (OSC) draft audit report 2014-S-14 on Selected Aspects of Inactive Hazardous Waste Site Remediation Cost Recovery. The enclosed contains DEC's response to the draft report.

Thank you for the opportunity to respond to OSC's draft audit report. If you need to discuss any of this response, please contact Ann Lapinski at (518) 402-9147.

Sincerely,

A handwritten signature in blue ink that reads "Joseph J. Martens". The signature is fluid and cursive, with the first name "Joseph" and last name "Martens" clearly legible.

Joseph J. Martens

Enclosure

c: A. Lapinski

Department of Environmental Conservation
Selected Aspects of Inactive Hazardous Waste Site Remediation Cost Recovery
2014-S-14
Response to Draft Report

The Department of Environmental Conservation (DEC or Department) has reviewed the draft report dated November 21, 2014 containing the findings and recommendations of the Office of the State Comptroller (OSC) in connection with OSC's audit of DEC's Inactive Hazardous Waste Site Remediation Program (State Superfund Program). DEC's response is broken into three sections. The first section provides DEC's general comments regarding this report. The second section indicates that DEC did not identify any factual inaccuracies and/or areas needing further explanation in the report. The third section is DEC's specific comments on report recommendations.

1) General Comments

OSC's audit covers the administration of programs related to State Superfund sites. The November 21, 2014 draft report indicates whether DEC has effective systems in place to fully and accurately accumulate State costs related to site cost and remediation, bill for and collect these costs from responsible parties in a timely manner, and identify and pursue parties responsible for the contamination of inactive hazardous waste sites. The Department has reviewed the report and believes that the report is an accurate and factual representation of the Department's processes for billing and collecting State Superfund costs, and identifying and pursuing Responsible Parties for inactive hazardous waste site remediation.

Although DEC's review could assess if the report is a fair and accurate representation of State Superfund processes, DEC did not independently verify OSC's computations and statistics. Therefore, DEC cannot attest to the accuracy of this information. However, the Department believes this information to be reasonable as presented.

2) Comments on Specific Report Content

DEC did not identify any factual inaccuracies and/or areas needing further explanation in the report.

3) Comments on Recommendations

The following are DEC's responses to recommendations provided in the draft report:

Recommendation 1 – Continue to explore ways to increase the efficiency and timeliness of the billing process.

Department Response – DEC agrees with this recommendation. As part of an ongoing effort to improve efficiencies/timeliness, DEC will continue to evaluate various strategies for scheduling cost recovery billings and increasing the efficiency of the billing process. There is no statutory

requirement to submit bills within a particular interval of time. The development and implementation of the Cost Recovery Tracking (CRT) Module in the UIS was a multi-year undertaking which was completed and implemented in 2012. Since its implementation, average billing intervals have decreased from an average of 1.4 years per site to an average of 1.03 years per site. The project included an evaluation of business practices and procedures and required collaboration between DER, MBS, ITS and DOH. It also included a review to identify workflow that could be readily automated. DER will continue to evaluate business practices and procedures and implement efficiencies to the extent available resources allow.

Recommendation 2 – Work internally and with Department of Health officials to identify and implement ways to include more up-to-date costs in each bill.

***Department Response** – DEC agrees and will continue to work internally and with DOH to the extent possible to help streamline the process of collecting billing information. However, DOH (not DEC) will be responsible for identifying and implementing potential agreed upon improvements to DOH systems and processes.*