



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

*Cleaning up and revitalizing land
Operating efficiently and effectively*

Self-Insurance for Companies With Multiple Cleanup Liabilities Presents Financial and Environmental Risks for EPA and the Public

Report No. 18-P-0059

December 22, 2017



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Abbreviations

CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
OLEM	Office of Land and Emergency Management
OMB	Office of Management and Budget
RCRA	Resource Conservation and Recovery Act
RCRAInfo	Resource Conservation and Recovery Act Information System
SEMS	Superfund Enterprise Management System
U.S.C.	United States Code

Cover photo: Kerr-McGee Chemical Corp. site in Columbus, Mississippi. The EPA put the site on the Superfund program's National Priorities List in 2011 because of contaminated ground water, sediment and soil caused by facility operations. (EPA photo)

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At a Glance

Why We Did This Review

Financial assurance is meant to provide documentation or proof that those responsible for the closure, post-closure care or cleanup of contaminated sites or facilities that handle hazardous waste have adequate financial resources to do so. We did this evaluation to determine whether the U.S. Environmental Protection Agency (EPA) includes all environmental liabilities in its reviews of financial assurance and whether it reviews the validity of Resource Conservation and Recovery Act (RCRA) and Superfund financial assurance liabilities for companies with multiple facilities/sites nationwide.

This report focuses on companies with multiple environmental liabilities covered by self-insurance instruments (e.g., financial tests demonstrating or corporate guarantees stating the companies have enough assets to cover their liabilities). In a March 2016 [report](#), we identified data quality and control deficiencies that prevented the EPA's proper management of RCRA and Superfund financial assurance.

This report addresses the following:

- *Cleaning up and revitalizing land.*
- *Operating efficiently and effectively.*

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Self-Insurance for Companies With Multiple Cleanup Liabilities Presents Financial and Environmental Risks for EPA and the Public

What We Found

The EPA does not include and verify all self-insured environmental cleanup liabilities when evaluating requests for and reviewing corporate self-insurance. The EPA faces significant challenges to validating forms of self-insurance, including:

- **Regulatory constraints:** Most RCRA regulations and Superfund guidance we reviewed do not require full disclosure of all environmental liabilities, and the EPA lacks the information needed to independently validate all forms of self-insured liabilities. EPA guidance also does not require regional staff to check whether a company has multiple liabilities in other regions when validating a self-insurance instrument.
- **Data and technical gaps:** The EPA lacks a data system with the capability to track multiple environmental liabilities and the resources and technical ability to validate self-insurance for companies with multiple environmental liabilities. Survey responses from all 10 EPA regions showed that 70 percent of respondents believe insufficient staff training and expertise are moderate or extreme barriers to the efficient management and review of financial assurance instruments.

The EPA's ability to oversee self-insurance instruments is impaired, leaving the agency and taxpayers vulnerable to billions of dollars in financial risk and the public vulnerable to environmental risk. Unlike the EPA, some federal agencies do not accept corporate self-insurance.

The inability to validate a company's self-insurance is a high-risk issue for the EPA. If self-insurance is not valid, a company may default on its obligation to pay for cleanup or closure activities, in some cases necessitating a government response. This threatens the effectiveness of cleanup programs, as the EPA—and, ultimately, the taxpayers—could be left with billions of dollars in cleanup costs. If a cleanup is not performed by the facility as required, it can result in longer human and environmental exposures to unsafe substances. The EPA could mitigate the risks by requiring full disclosure of all self-insured environmental liabilities, or the agency could seek regulatory or statutory changes. During our review, we also found a lack of compliance with physical safeguards for hard-copy financial assurance instruments.

Recommendations and Planned Agency Corrective Actions

We recommend that the EPA study the costs associated with requiring full disclosure of all self-insured environmental liabilities and with eliminating the use of corporate self-insurance instruments. We also recommend that the EPA add controls to improve its oversight of financial assurance. The agency agreed with nine of our 14 recommendations. Work is underway to reach agreement on the five unresolved recommendations.



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

THE INSPECTOR GENERAL

December 22, 2017

MEMORANDUM

SUBJECT: Self-Insurance for Companies With Multiple Cleanup Liabilities
Presents Financial and Environmental Risks for EPA and the Public
Report No. 18-P-0059

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Barry Breen, Acting Assistant Administrator
Office of Land and Emergency Management

Susan Bodine, Assistant Administrator
Office of Enforcement and Compliance Assurance

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this evaluation was OPE-FY15-0052. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures. Accordingly, the findings described in the report are not binding upon the EPA in any enforcement proceeding brought by the EPA or the U.S. Department of Justice.

The responsible offices for issues discussed in this report are the Office of Superfund Remediation and Technology Innovation and Office of Resource Conservation and Recovery, both within the Office of Land and Emergency Management, and the Office of Site Remediation Enforcement and Office of Civil Enforcement, both within the Office of Enforcement and Compliance Assurance.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 60 calendar days. You should include planned corrective actions and completion dates for all unresolved recommendations. Your response will be posted on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1

Introduction

Purpose

We evaluated the U.S. Environmental Protection Agency's (EPA's) progress in reducing taxpayer environmental liabilities through the use of financial assurance instruments at Resource Conservation and Recovery Act (RCRA) facilities and Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)—commonly referred to as Superfund—sites. For our evaluation, we asked the following questions:

What is financial assurance?

Financial assurance is meant to provide documentation or proof that those responsible for cleaning up contaminated sites or facilities have the financial resources to properly do so, preventing costs from being passed on to taxpayers.

- Are all environmental liabilities (for both RCRA and Superfund programs) included in financial assurance evaluations?
- Does the EPA review nationwide RCRA and Superfund financial liabilities for companies with multiple facilities/sites to verify that financial assurance mechanisms are valid?

Background

Financial assurance provides for the current and future obligations of private parties in RCRA and CERCLA cleanups. Financial assurance is used in EPA cleanup programs as well as in programs executed by other federal agencies, such as the U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Bureau of Land Management. In RCRA and Superfund programs, financial assurance can include forms of self-insurance or assurance obtained through third parties.

The RCRA statute and related regulations under Subtitle C require owners and operators of facilities that treat, store or dispose of regulated hazardous waste to obtain financial assurance for closure, post-closure care and corrective action costs.¹ States have been largely authorized to implement the RCRA Subtitle C

¹ Financial assurance is required under RCRA Subtitle C as described in the main text, Subtitle D (for municipal solid waste landfills regulated under 40 CFR § 258), and Subtitle I (for underground storage tanks). The requirements for Subtitle C facilities fall under RCRA Sections 3004(a), (t) and (u); 3005(e); and 3008(h). The requirements for Subtitle I facilities fall under RCRA Sections 9003(c) and (d).

program.² Pursuant to its enforcement authorities under CERCLA, the EPA requires financial assurance from potentially responsible parties that covers the estimated cost of Superfund site cleanup during the remedy selection process.³

If an owner, operator or potentially responsible party defaults or is otherwise unable to fund its cleanup obligations, the EPA has the authority to (a) step in and provide taxpayer-funded resources to clean up a site and/or (b) use its enforcement authority to bring the party into compliance to protect public health and the environment, depending on the circumstances. However, a goal of both Superfund and RCRA is for the polluter to pay for cleanup activities. Some companies are responsible for cleanups at multiple facilities or sites across the nation for both RCRA and Superfund liabilities. In this report, the term “environmental liabilities” refers to the total liabilities for a company with multiple facilities/sites nationwide or across multiple environmental programs (both RCRA and Superfund).

While companies are required to provide documentation/proof to the EPA or states that financial resources are available for meeting regulatory or cleanup requirements for a facility or site, the EPA is responsible for ensuring the validity of the financial assurance (i.e., that the financial assurance provided, among other things, has not expired and includes a sufficient amount to cover regulatory cleanup requirements).

The RCRA statute, its related regulations and the Superfund program allow companies to provide self-insurance. Table 1 provides details and identifies whether the regulations or model consent decree documents⁴ include a requirement to disclose all environmental liabilities to the EPA.

Table 1: RCRA and CERCLA financial assurance statutes, regulations, and model and guidance documents

Name and statute	Regulations or model and guidance documents	Program(s)	Required to disclose <u>all</u> environmental liabilities to EPA?
RCRA Subtitle C, hazardous waste: Sections 3004(a), (t) and (u); 3005(e); and 3008(h)	<ul style="list-style-type: none"> • 40 CFR Part 264, Subpart H (permitted) • 40 CFR Part 265, Subpart H (interim status) • 40 CFR § 264.101 (corrective action for solid waste management units) • 40 CFR Part 261, Subpart H 	Closure/post-closure, third-party liability; corrective action; excluded hazardous secondary materials	Partially ^a
RCRA Subtitle C, hazardous waste: Sections 3004(a), (t) and (u)	<ul style="list-style-type: none"> • 40 CFR Part 267, Subpart H • 40 CFR § 267.101 (corrective action for solid waste management units) 	Hazardous waste facilities operating under a standardized permit	Yes ^b

² Under RCRA Section 3006, the EPA may authorize a state hazardous waste program to operate in lieu of the federal regulations in the state.

³ The EPA requires financial assurance through CERCLA orders and settlements under CERCLA Sections 106 and 122, when a responsible party is taking a CERCLA action.

⁴ EPA and Department of Justice staff use model consent decree documents when negotiating remedial design/remedial action judicial consent decrees with potentially responsible parties under Sections 106, 107 and 122 of CERCLA. The models are designed to be used in conjunction with the remedial design/remedial action statement of work.

Name and statute	Regulations or model and guidance documents	Program(s)	Required to disclose all environmental liabilities to EPA?
RCRA Subtitle D	40 CFR Part 258, Subpart G	Municipal solid waste landfills	No ^c
RCRA Subtitle I: Sections 9003(c) and (d)	40 CFR Part 280, Subpart H	Underground storage tanks	No
CERCLA (Superfund): Sections 106, 108(b) and 122	Consent Decrees; Administrative Orders on Consent; Unilateral Administrative Orders; guidance documents	Removal and remedial actions	Partially ^d

Source: Office of Inspector General (OIG)-created table based on list of EPA regulations that cover financial assurance.

- a Requirements include disclosure to the Regional Administrator in the EPA region where the facilities are located. The term “facilities” refers to RCRA closure and post-closure facilities as well as to underground injection control facilities that demonstrate financial responsibility through a financial test. Disclosure requirements only include some liabilities as noted, not all environmental liabilities, which could include other programs such as petroleum underground storage tank facilities or municipal solid waste management facilities.
- b According to the EPA, a small number of facilities apply for standardized permits.
- c Requirements include the storing, in a facility’s (not the EPA’s) operating record, the disclosure of all cost estimates covered by financial test for municipal solid waste management facilities, underground injection control facilities, petroleum underground storage tank facilities, polychlorinated biphenyl (PCB) storage facilities, hazardous waste treatment, and storage and disposal facilities.
- d The EPA’s September 2016 [Model Consent Decree](#) states that in reviewing financial assurance submissions, the EPA should make sure that companies fully and accurately reflect all of their financial assurance obligations under multiple environmental programs. Additionally, the CERCLA model documents, when implemented as written, require that these obligations are disclosed.

The EPA, under CERCLA 108(b), has the authority to require that specific classes of facilities maintain financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage or disposal of hazardous substances. The EPA proposed financial responsibility requirements under CERCLA 108(b) for the hardrock mining industry,⁵ which included two options regarding financial tests: (1) the no financial test option and (2) the financial test option. The no-financial test option would have required all owners and operators to acquire third-party financial instruments (e.g., letter of credit) or fund a trust fund to demonstrate financial responsibility. The financial test option would have allowed a company to self-insure its liabilities by demonstrating that it has adequate financial resources. On December 1, 2017, the EPA decided not to issue final regulations.⁶

The EPA is responsible for establishing internal controls regarding oversight and management of financial assurance instruments. In July 2016, the Office of Management and Budget (OMB) updated OMB Circular A-123,⁷ expanding federal managers’ internal control responsibilities to include effectively managing the risks an agency faces as it works to achieve its strategic objectives. The OMB’s emphasis is on looking beyond just one program or location to anticipate and manage risk more broadly.

⁵ For further details, see 82 Federal Register 3388 (Volume 82, Issue 7 (January 11, 2017)).

⁶ See prepublication copy notice, docket number: EPA-HQ-SFUND-2015-0781.

⁷ In 2016, OMB renamed Circular A-123 *Management’s Responsibility for Enterprise Risk Management and Internal Control*.

Sufficient Financial Assurance Mitigates Financial and Environmental Risks

The value of having financial assurance sufficient to cover the cost of closure, post-closure care or cleanup of contaminated sites or facilities that handle hazardous wastes includes avoiding the use of taxpayer dollars and reducing the potential for prolonged exposure to harmful contaminants. When financial assurance is not sufficient and a party responsible for contamination defaults, the EPA may need to step in and use federal funds (taxpayer dollars) to finance the cleanup.

In addition, without sufficient financial assurance, contamination at sites can remain unaddressed for long periods, leading to larger problems such as more complicated cleanups and higher costs. For example, chemicals and waste from untreated sites may, over time, leak into ground water, which can result in the loss of a water supply, higher cleanup costs and potential environmental and human health impacts.

Self-Insurance Instruments

Owners and operators of RCRA facilities and responsible parties of Superfund sites have several options—called instruments or mechanisms—for obtaining financial assurance. We focused on two self-insurance instruments: the corporate guarantee and financial test for the RCRA Subtitle C and Superfund programs. A description of each type of self-insurance financial assurance instrument is in Table 2.

Table 2: Financial assurance self-insurance instruments

Instrument	Description
Financial test	There are two alternatives for meeting the financial test. The first evaluates the assets and liabilities of a company. The second evaluates the assets and bond rating of a company. If the owner and operator chooses to use a financial test to meet financial assurance requirements, the owner and operator must pass one of the two financial tests specified. If the owner and operator chooses to use a financial test to meet financial assurance requirements, this decision must be documented in a letter to the Regional Administrator, which must be signed by the company's Chief Financial Officer and attached to an independent Certified Public Accountant report examining the owner and operator's annual report.
Corporate guarantee	This represents a guarantee of costs by an affiliated corporation, such as a parent company, another corporation under the same parent company, or a firm with a substantial business relationship with the site or facility operations. The guarantor must meet the financial test requirements outlined above.

Source: OIG-created table based on the EPA's *RCRA, Superfund, and Emergency Planning and Community Right-to-Know Act Call Center Training Module, Introduction to: RCRA Financial Assurance (40 CFR Parts 264/265, Subpart H)*, updated October 2001.

The financial test and corporate guarantee are unique in that they do not require a corporation to set aside funds. Therefore, self-insurance instruments are not readily

convertible to cash by regulators. Also, self-insurance instruments offer a low-cost financial assurance alternative because a corporation does not have to pay a third-party company to create a trust fund or issue a letter of credit. Instead, the EPA and authorized states rely on an annual review of the corporation's assets and liabilities, as well as a letter from the corporation's Chief Financial Officer supporting the use of the financial test and corporate guarantee to demonstrate financial responsibility for liabilities. If issues are identified prior to the annual review, corporations may be required to obtain alternative financial assurance.

Financial Assurance Review Process

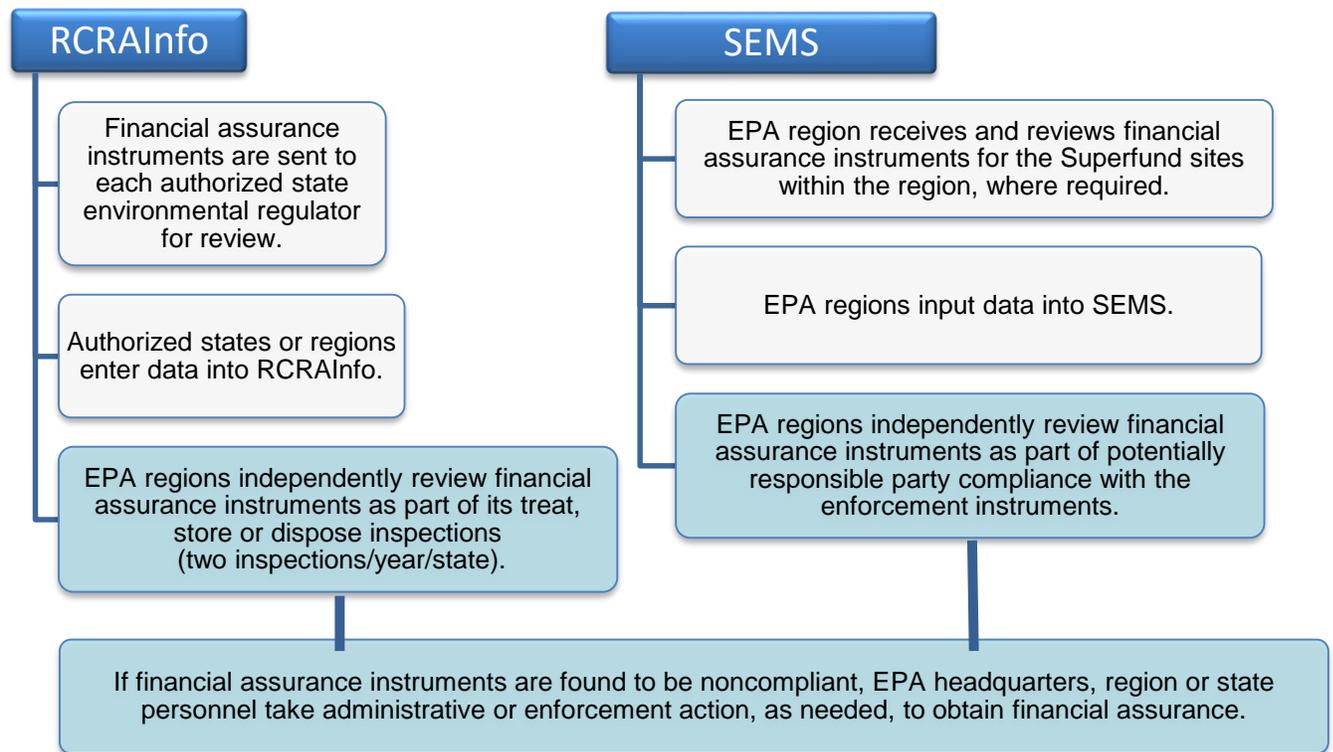
The EPA's financial assurance review process for self-insurance instruments involves the use of two data systems:

- Resource Conservation and Recovery Act Information System (RCRAInfo).
- Superfund Enterprise Management System (SEMS).

The financial assurance review process for self-insurance instruments includes receipt of financial assurance documentation; input of financial assurance information into RCRAInfo or SEMS; review of the financial assurance documentation for validity; and enforcement action, if needed, for noncompliance.

Figure 1 provides an overview of the financial assurance review process. Reviewing for the validity of a financial assurance instrument—in particular, a self-insurance instrument—could include determining whether the instrument is expired or whether there is a sufficient amount of financial assurance to cover the cost of cleanup. If financial assurance is found to be invalid or is not provided, this would be an instance of noncompliance. In an instance of noncompliance, the EPA could require the regulated entity either to obtain financial assurance if it was not provided or to obtain valid financial assurance for those instruments expired or insufficient to cover the cost of cleanup. To ensure that a corporation's self-insurance instruments—such as the financial test and corporate guarantee—are reviewed each year and up to date, the RCRA and Superfund programs developed guidance.

Figure 1: Overview of the financial assurance review process for RCRAInfo and SEMS



Source: OIG-created graphic from information gathered through EPA interviews and documents. Blue-shaded boxes indicate review steps that may not occur for all instruments.

Responsible Offices

The following EPA offices and suboffices are involved with the issues in this report:

- **Office of Land and Emergency Management (OLEM):**
 - Office of Superfund Remediation and Technology Innovation.
 - Office of Resource Conservation and Recovery.
- **Office of Enforcement and Compliance Assurance (OECA):**
 - Office of Site Remediation Enforcement.
 - Office of Civil Enforcement.

Scope and Methodology

We conducted our work from June 2015 to August 2017.⁸ We conducted this performance audit in accordance with generally accepted government auditing

⁸ On March 31, 2016, we issued OIG Report No. [16-P-0126](#), *Management Alert: Significant Data Quality Deficiencies Impede EPA's Ability to Ensure Companies Can Pay for Cleanups*, to convey time-critical recommendations.

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 objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To address our objectives, we reviewed relevant materials pertaining to the process and procedures used to track and monitor financial assurance instruments for RCRA facilities and Superfund sites. Due to the large number of underground storage tank sites and the absence of a national EPA database covering financial assurance for these sites, we did not conduct an in-depth review for underground storage tank sites (RCRA Subtitle I). We also did not include a detailed review of RCRA Subtitle D financial assurance because it applies to municipal solid waste landfills and because states have the primary oversight lead for RCRA Subtitle D. We focused on the self-insurance instruments of corporate guarantee and financial test for the RCRA Subtitle C and Superfund programs.

We interviewed key staff within the EPA's OLEM, OECA and Region 5. We also interviewed representatives from the U.S. Forest Service, an industry representative and state environmental staff. We surveyed RCRA and Superfund program contacts and experts in financial assurance from the 10 EPA regions; there were a total of 42 respondents to our survey. We reviewed nationwide Superfund and RCRA data. We focused our review on self-insurance instruments (financial test and corporate guarantee) because of the potentially higher risk to the taxpayer.

Prior OIG Management Alert Report

On March 31, 2016, we issued EPA OIG Report No. [16-P-0126](#), *Management Alert: Significant Data Quality Deficiencies Impede EPA's Ability to Ensure Companies Can Pay for Cleanups*, which conveys time-critical recommendations preceding the issuance of this report. The report identified and made recommendations regarding data quality deficiencies and a lack of internal controls that prevented the EPA from properly overseeing and managing its financial assurance program for RCRA and Superfund. The EPA completed all corrective actions and improved data quality, particularly in the Superfund program. However, as of January 2017 for RCRA and February 2017 for Superfund, other data deficiencies persist, including expired, missing or insufficient financial assurance instruments that total almost \$3 billion. These issues are discussed further in this report.

Chapter 2

EPA Faces Challenges Overseeing Corporate Self-Insurance

The EPA does not include and verify all self-insured environmental cleanup liabilities when evaluating requests for and reviewing corporate self-insurance. The EPA faces significant challenges to validating forms of self-insurance, including:

- **Regulatory constraints:** Most RCRA regulations and CERCLA guidance we reviewed do not require full disclosure of all environmental liabilities, and the EPA lacks the information needed to independently validate all forms of self-insured environmental liabilities. In addition, EPA guidance does not include procedures that require regional staff to check whether a company has multiple liabilities in other regions when validating a self-insurance instrument.
- **Data and technical gaps:** The EPA lacks a data system with the capability to track multiple environmental liabilities and the resources and technical ability needed to validate self-insurance for companies with multiple environmental liabilities. Survey responses from all 10 EPA regions showed 70 percent of respondents believe insufficient staff training and expertise are moderate or extreme barriers to the efficient management and review of financial assurance instruments.

The inability to validate a company's self-insurance is a high-risk issue for the EPA. If self-insurance is not valid, a company may default on its obligation to pay for cleanup or closure activities, in some cases necessitating a government response. This threatens the effectiveness of the cleanup programs, as the EPA—and, ultimately, the taxpayers—could be left with billions of dollars in cleanup costs. If a cleanup is not performed by the facility as required, it can result in longer human and environmental exposures to unsafe substances. The EPA could mitigate the risks by requiring full disclosure of all self-insured environmental liabilities, or the agency could seek regulatory or statutory changes. During our review, we also found a lack of controls over the physical safeguarding of hard-copy financial assurance instruments.

Lack of Disclosure Requirements and Limited Information on Self-Insurance Instruments Present a Financial Risk

The EPA does not include and verify all self-insured environmental liabilities (estimated cleanup costs for all sites/facilities using financial test or corporate guarantee instruments) in most reviews of the validity of self-insurance instruments. For example, the EPA does not know the number of self-insurance instruments that cover multiple environmental liabilities nationwide. The EPA estimated in February 2017 that there were 17 potentially responsible parties that each provided a corporate guarantee or financial test instruments for more than one Superfund site. At that time, there

were 53 Superfund sites for which one of these 17 potentially responsible parties provided financial assurance, and that does not include sites in other environmental programs. The RCRA program could not provide an estimate for the number of RCRA facilities covered by a corporate guarantee or financial test that also covers other CERCLA sites or RCRA facilities owned or operated by the same guaranteed party. The EPA's data system does not allow for the compilation

of this type of information. Due to regulatory and data constraints, the EPA does not have information on all environmental liabilities that would help it to determine whether a self-insurance instrument is valid and sufficient to pass the financial test or allow a corporate guarantee for the estimated cost of cleanup.

Not all RCRA regulations and CERCLA guidance require companies to fully disclose all other self-insurance environmental liabilities at all sites or facilities when applying for or renewing self-insurance at a single site or facility. Instead, the agency relies on corporations to provide adequate self-insurance (financial test or corporate guarantee) and disclose when self-insured financial assurance covers more than one facility where required (detailed in Table 1).

According to the EPA, it does not independently verify

all financial assurance self-insurance instruments on a routine basis, but it could do so on a case-specific basis.

The Potential Financial Risk to EPA From Invalid Financial Assurance

EPA data as of January 2017 demonstrate the potential financial risk the agency faces in instances of invalid financial assurance. For example, according to EPA data, there were \$1.6 billion in estimated costs for sites or facilities recorded in RCRAInfo as having expired financial assurance and \$207 million for sites or facilities recorded in RCRAInfo as having no financial assurance. According to the EPA, the appearance of expired, insufficient or a lack of financial assurance instruments in RCRAInfo is not necessarily indicative of actual lack of financial assurance, and data entry errors and data gaps may still exist.

Example of the Potential Cost to EPA and Taxpayers From Invalid Financial Assurance

At the time of our survey in October 2015, one region was aware of 12 facilities that were noncompliant because the potentially responsible parties did not provide valid financial assurance. The shortfall was approximately \$78.2 million. Seven of those 12 facilities were still noncompliant as of December 2017. These seven noncompliant facilities are significant because taxpayer funds could be used to cover the shortfall between the required funds and the financial assurance provided. While this example is not limited to self-insurance instruments, it demonstrates the potential cost to the EPA and taxpayers of invalid financial assurance.

In addition, neither the RCRA nor Superfund program has a data system that can identify information for all companies with multiple self-insured environmental liabilities. While the EPA could take steps to track this information, the EPA does not always do so because a lengthy manual review would be needed. This creates the risk that a company could inappropriately pass the financial test or offer a corporate guarantee while having environmental liabilities in multiple locations or across multiple environmental programs. In such instances, if a company is unable to cover the cost of its cleanup responsibilities, the EPA and taxpayers could bear billions of dollars in cleanup costs.

Some Federal Agencies Do Not Use Self-Insurance and Avoid Risks

Other federal agencies—such as the U.S. Department of Agriculture’s Forest Service and the U.S. Department of the Interior’s Bureau of Land Management—do not accept self-insurance as an option based on their statutory requirements. These agencies therefore avoid the risks associated with these instruments. In 2015, the Forest Service issued a declaration⁹ on financial assurance and created a long-term trust requiring operators of large mines on forest service land to establish a trust with the Forest Service as the benefactor. The Forest Service spends approximately \$18.5 million annually to address past mining impacts and, according to managers, is seeking to reduce public liability and reduce the use of public funds to subsidize responsible parties. In addition, the U.S. Department of the Interior’s Office of Surface Mining and Reclamation has taken steps to limit its use of self-insurance instruments. Specifically, the office accepts self-bonding (a self-insurance instrument) as legal and has plans to amend its self-bonding regulations to protect taxpayers from liability associated with the reclamation of surface coal mining operations.

EPA’s Superfund Program Has Attempted to Increase Its Awareness of All Self-Insured Environmental Liabilities

The EPA attempted to increase its awareness of all self-insured environmental liabilities through its 2015 *Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders* and its September 2016 Superfund model remedial design/remedial action consent decree.¹⁰ The 2016 model consent decree is intended as guidance for EPA employees for use with Superfund response action settlements. The 2015 guidance states that any submission pursuant to the financial test or corporate guarantee should capture all environmental obligations assured through the use of a financial test or corporate guarantee. The 2016 model consent decree states that

⁹ The declaration refers to a July 2015 letter sent by the Forest Service to Regional Foresters; Station Directors; Area Directors; the International Institute of Tropical Forestry Director; Deputy Chiefs; and Washington, D.C., Office Directors on ensuring the use of long-term trusts for future large mining operations.

¹⁰ CERCLA settlement agreements that provide for performance of response actions, including financial assurance requirements designed to ensure that funds are available to complete such work, are authorized pursuant to CERCLA Sections 106 and 122 and memorialized through consent decrees.

reviewers of financial assurance submissions should ensure that companies fully and accurately reflect all their financial assurance obligations to determine whether the company meets the financial test criteria. The model consent decree also states that regions have discretion to require that financial assurance be provided through another type of instrument other than one for self-insurance. However, according to Superfund program management and staff, data systems cannot track environmental liabilities across multiple environmental programs. Further, regions with a shortage of resources have difficulty confirming whether a corporation has accurately listed all of its environmental liabilities assured through the use of self-insurance instruments.

Improvements Made but Data Reliability Issues Persist

Both the Superfund and RCRA programs have indicated that they have made changes to improve data quality, but some problems persist. The EPA believes its remaining deficiencies are mostly the result of data quality issues resulting from system limitations in SEMS and RCRAInfo. In response to our 2016 management alert report, the EPA completed a feasibility analysis of the financial assurance data systems in September 2017 and will consider the development of a new financial assurance application to better support Superfund.

Despite these actions, the Superfund program is still unable to provide the OIG with reliable data for insufficient instruments.¹¹ One cause of the data problems is that SEMS does not have a data field that allows the EPA to record and thus track the differences between the amount of financial assurance negotiated and the initial amount required. Due to negotiations with potentially responsible parties, the estimated cleanup costs could be less than the initial requirement. Progress cleaning up a Superfund site can also lower the environmental liabilities and, thus, the amount of financial assurance required. Without a means to include these reductions in the financial assurance required in SEMS, the gaps between the amount of financial assurance required versus provided may appear greater. Consequently, the EPA and those who conduct oversight of Superfund financial assurance do not have an accurate assessment of the financial assurance required and, therefore, cannot effectively and efficiently monitor and, as needed, act or address the total financial risk to the EPA and taxpayers.

The RCRA program provided data that show a reduction in the amount of expired, missing or insufficient financial assurance. However, the program still faces data system limitations and challenges in identifying financial assurance instruments that cover multiple facilities and determining whether the financial assurance provided matches the amount required. The program launched a long-term strategy for RCRA Subtitle C financial assurance program management and data quality. The strategy seeks to (1) maintain and continue improvement of RCRAInfo financial assurance data quality, (2) take actions to document and remedy incidents

¹¹ The Superfund program defines insufficient financial assurance as instances where the potentially responsible parties agreed to financial assurance in an enforcement instrument but such financial assurance was not provided.

of noncompliance, (3) monitor overall and facility-level financial assurance program compliance, and (4) improve the usability and function of RCRAInfo's financial assurance module. However, the total for expired, missing and insufficient financial assurance instruments total almost \$3 billion.

Guidance and Resource Challenges Impact EPA's Ability to Review Self-Insurance Data for Multiple Liabilities

Current EPA guidance documents for self-insurance do not include procedures for checking with other regions for facilities/sites with multiple liabilities. In addition, formal written guidance does not include instructions on the steps to take when an invalid financial assurance instrument (expired, insufficient or not provided) is identified.

Further, reviewing the validity of self-insurance instruments requires resources with training and expertise. Expertise needed to review financial assurance submissions includes knowing how to monitor and detect financial risk in a company's financial statement, the ability to recalculate a company's financials on an annual basis, and the ability to ensure cleanup cost estimates are correctly summed across all facilities. Survey responses from all 10 EPA regions indicated that 19 out of 27 respondents (70 percent) identified insufficient staff training and expertise to be

moderate or extreme barriers to the efficient management and review of financial assurance instruments. In addition, 14 out of 27 survey respondents (52 percent) indicated an insufficient number of staff as a moderate or extreme barrier. Survey details are in Appendix A. The EPA's Superfund program staff and managers also informed us that a shortage of staff expertise exists in six of the EPA's 10 regions.

Without proper guidance and adequate resources, there is risk that staff tasked with reviewing financial assurance instruments will not detect whether an instrument is valid, including its expiration date or sufficiency of financial assurance, or will not be aware of what steps to take when a problem is detected.

A Corporation Can Fail the Financial Test When Additional Information Is Considered

From a regional interview, we learned that because the EPA does not have a system or procedure requiring regional staff to check with other regions before validating financial test submissions, a corporation could potentially pass the financial test by reporting its liabilities in only one region. However, if regional staff take additional steps to check a corporation's nationwide liabilities and discover that same corporation has other liabilities in other regions, the corporation could fail the financial test. Checking with other regions for facilities/sites that belong to corporations with multiple self-insured liabilities is only done on a case-specific basis. According to the EPA, the burden is on the responsible parties to submit information on all relevant sites. Since regional staff are not required to check liabilities across multiple locations to verify that the responsible parties have submitted all applicable information, it would be unusual for a region to take these additional steps. Therefore, this demonstrates a vulnerability to the EPA.

Safekeeping of Hard-Copy Financial Assurance Documentation Needs Improvement

Not all regions follow processes to physically safeguard and protect all hard-copy financial assurance instruments (not just self-insurance instruments), which could be worth millions of dollars each. Superfund hard-copy financial assurance instruments are to be stored at each region, whereas RCRA hard-copy financial assurance instruments are to be stored by the states, except for states where the EPA implements the RCRA program. However, according to survey responses and a regional interview, not all regions safeguard hard-copy financial assurance instruments:

- One region has no process to ensure an instrument goes to the proper person for storage.
- In one region, financial assurance instruments for the Superfund program are not stored in the same area as the program office.
- In one region, a multimillion-dollar financial assurance instrument was found amidst a stack of papers locked in a drawer.

Per the updated OMB Circular A-123, each federal employee is responsible for the safeguarding of federal assets and the efficient delivery of services to the public. These hard-copy financial assurance records are needed by the EPA to collect funds in the event the company cannot pay for cleanup. The lack of prudent safekeeping of financial assurance instruments in EPA regions puts the agency at risk of not being able to locate or access these valuable documents when needed.

Conclusions

Some federal agencies, based on their statutory requirements and regulations, do not accept self-insurance as an option, avoiding the risks associated with these instruments. The risks from self-insurance include:

- Financial risk to the EPA, states and taxpayers of almost \$3 billion.
- Incomplete and unreliable financial assurance data that do not reflect the true amount of financial assurance available.
- Inefficient use of EPA, regional and state resources to conduct monitoring and oversight due to inaccurate information and data systems.

The EPA has several significant impediments in overseeing self-insurance. The agency can mitigate these associated risks with the following actions:

- Significantly strengthen its internal controls.
- Require disclosure of all environmental liabilities covered by self-insurance instruments.

- Obtain the data on multiple environmental liabilities required to make an appropriate decision on financial assurance validity.
- Redesign its data systems.
- Ensure its staff expertise and resources are adequate to review and track compliance.

This effort would entail considerable human and information system resources, both by the EPA and states. The OIG has conducted reviews of financial assurance over the years and is familiar with the challenges to conduct effective oversight in this area.

The inability to validate a company's self-insurance is a high-risk issue for the EPA. If self-insurance is not valid, a company may default on its obligation to pay for cleanup or closure activities, in some cases necessitating a government response using federal funds to finance the cleanup. Without sufficient financial assurance, contamination at sites can also remain unaddressed for long periods, leading to larger problems such as more complicated cleanups, higher costs and longer human and environmental exposures to unsafe substances.

An efficient way for the EPA to mitigate and reduce the risks of self-insurance is to make regulatory changes and, as needed, seek statutory changes that eliminate the option for self-insurance or require the disclosure of all environmental liabilities for the RCRA and Superfund programs. Additional options may exist. For example, although the EPA recently decided not to issue final financial assurance regulations for hardrock mining facilities, the EPA had, in its proposed rule, included an option for not accepting one form of self-insurance (financial tests) under CERCLA 108(b).

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management and the Assistant Administrator for Enforcement and Compliance Assurance:

1. Conduct a study to determine the costs associated with modifying the existing regulations to include (a) a requirement for full disclosure of all self-insured environmental liabilities; and (b) eliminating the use of corporate self-insurance instruments, including the financial test and corporate guarantee, for Resource Conservation and Recovery Act and Superfund financial assurance.
2. Once the study in Recommendation 1 is complete, implement the selected measure (1a or 1b).
3. Update standard operating procedures and data systems to accommodate the changes implemented for Recommendation 2.

4. Train staff on the changes implemented for Recommendation 2.
5. Develop or update existing standard operating procedures to outline the Office of Land and Emergency Management and Office of Enforcement and Compliance Assurance roles and responsibilities for overseeing the validity of Resource Conservation and Recovery Act and Superfund financial assurance instruments, where needed.
6. Develop and include procedures for checking with other regions for facilities/sites with multiple self-insured liabilities in the standard operating procedures created for Recommendation 5.
7. In the standard operating procedures created for Recommendation 5, develop and include instructions on (1) the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not provided) is identified and (2) how to collect information on the causes of invalid financial assurance.
8. Train staff on the procedures and instructions developed for Recommendations 5 through 7.
9. Develop and distribute to EPA regions and states annual reports that include the total dollar amount of Resource Conservation and Recovery Act and Superfund financial assurance required and provided.
10. Develop and distribute to EPA regions and states annual reports that include progress on the reduction of financial assurance that is expired, insufficient and/or not provided.
11. To more accurately determine the value of insufficient instruments, add a data field(s) to the data system used for Superfund financial assurance, to track when a lower amount of Superfund financial assurance is accepted by the EPA region or headquarters through negotiations with a responsible party or other arrangements.
12. Train staff on how to use the new data field created for Recommendation 11.
13. In coordination with EPA Regional Division Directors, evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy Superfund and/or Resource Conservation and Recovery Act financial assurance instruments.
14. As needed, update procedures evaluated in Recommendation 13 to include details on how hard-copy financial assurance instruments submitted to the EPA should be received, maintained and monitored.

Agency Comments and OIG Response

OLEM's and OECA's original response to the OIG draft report is in Appendix B. We met with OLEM and OECA staff and had subsequent communications in October and November 2017 to discuss their comments. Based on our communications, we revised Recommendations 5, 7 and 13, and OLEM and OECA agreed to a revised corrective actions plan for several recommendations (Appendix C). Recommendations 5 through 8 and 10 through 14 are resolved with agreed-to actions pending.

Recommendations 1 through 4 and 9 are unresolved with resolution actions underway. OLEM and OECA agree that actions undertaken in response to these recommendations will improve management and oversight of financial assurance. However, OLEM and OECA continue to disagree with the report's text regarding the level of risk posed by self-insurance. In addition, OLEM and OECA believe that the data in EPA systems showing large amounts of invalid financial assurance are not accurate. However, due to system limitations, they cannot provide accurate data.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	14	Conduct a study to determine the costs associated with modifying the existing regulations to include (a) a requirement for full disclosure of all self-insured environmental liabilities; and (b) eliminating the use of corporate self-insurance instruments, including the financial test and corporate guarantee, for Resource Conservation and Recovery Act and Superfund financial assurance.	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance		
2	14	Once the study in Recommendation 1 is complete, implement the selected measure (1a or 1b).	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance		
3	14	Update standard operating procedures and data systems to accommodate the changes implemented for Recommendation 2.	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance		
4	15	Train staff on the changes implemented for Recommendation 2.	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance		
5	15	Develop or update existing standard operating procedures to outline the Office of Land and Emergency Management and Office of Enforcement and Compliance Assurance roles and responsibilities for overseeing the validity of Resource Conservation and Recovery Act and Superfund financial assurance instruments, where needed.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	3/31/19	
6	15	Develop and include procedures for checking with other regions for facilities/sites with multiple self-insured liabilities in the standard operating procedures created for Recommendation 5.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	3/31/19	
7	15	In the standard operating procedures created for Recommendation 5, develop and include instructions on (1) the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not provided) is identified and (2) how to collect information on the causes of invalid financial assurance.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	3/31/19	
8	15	Train staff on the procedures and instructions developed for Recommendations 5 through 7.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	9/30/19	

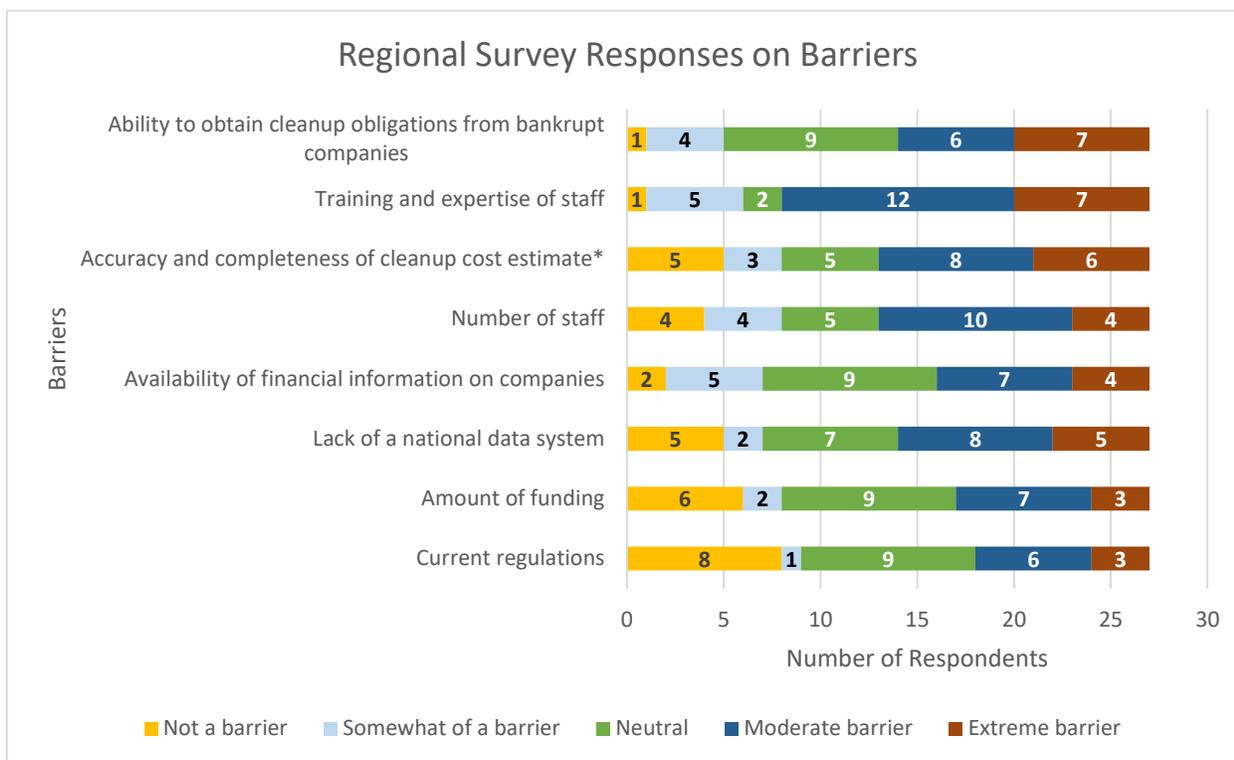
RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
9	15	Develop and distribute to EPA regions and states annual reports that include the total dollar amount of Resource Conservation and Recovery Act and Superfund financial assurance required and provided.	U	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance		
10	15	Develop and distribute to EPA regions and states annual reports that include progress on the reduction of financial assurance that is expired, insufficient and/or not provided.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	12/31/19	
11	15	To more accurately determine the value of insufficient instruments, add a data field(s) to the data system used for Superfund financial assurance, to track when a lower amount of Superfund financial assurance is accepted by the EPA region or headquarters through negotiations with a responsible party or other arrangements.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	12/31/18	
12	15	Train staff on how to use the new data field created for Recommendation 11.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	12/31/18	
13	15	In coordination with EPA Regional Division Directors, evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy Superfund and/or Resource Conservation and Recovery Act financial assurance instruments.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	9/30/18	
14	15	As needed, update procedures evaluated in Recommendation 13 to include details on how hard-copy financial assurance instruments submitted to the EPA should be received, maintained and monitored.	R	Assistant Administrator for Land and Emergency Management, and Assistant Administrator for Enforcement and Compliance Assurance	9/30/18	

¹ C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

Details on Regional Survey Responses

Survey results showed that EPA regional staff and managers believe extreme barriers exist to the effective and efficient management and review of financial assurance instruments. Twenty-seven of the 42 survey respondents answered this question.



Source: OIG-created graphic based on survey data.

*Cost estimates were also mentioned in 2010 by the Environmental Financial Advisory Board.¹² The board concluded that the EPA and its public and private partners need to improve cost estimation expertise that underpins the use of financial assurance instruments, develop more standardized cost estimates, provide more education on best practices, and expand existing coordinating mechanisms in cost-effective ways. The EPA agreed to consider the recommendations made by the board.

¹² The Environmental Financial Advisory Board operates in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and relevant agency policies.

Agency Response to Draft Report

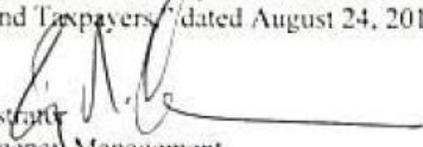


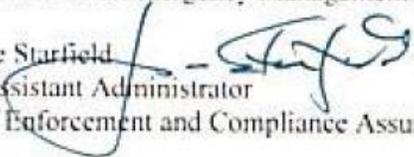
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 22 2017

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Project No. OPE-FY15-0052
"Self-Insurance for Companies with Multiple Environmental Liabilities Creates
Financial Risk for EPA and Taxpayers," dated August 24, 2017

FROM: Barry Breen
Acting Assistant Administrator
Office of Land and Emergency Management


Lawrence Starfield
Acting Assistant Administrator
Office of Enforcement and Compliance Assurance


TO: Arthur Elkins, Jr.
Inspector General
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject draft audit report. The following is a general response to the report, along with responses to each of the report recommendations. For those report recommendations with which our offices agree, we have provided high-level intended corrective actions and estimated completion dates to the extent we can. For those report recommendations with which our offices do not agree, we have explained our views and proposed alternatives to the recommendations. For your consideration, we have included a Technical Comments attachment to supplement this response in the form of redline/strikeout on the draft report.

OVERALL POSITION

We appreciate the Office of Inspector General's (OIG's) attention to the financial assurance programs under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Effective management of these programs is essential for ensuring that environmental obligations are met. The Office of

Land and Emergency Management (OLEM) and Office of Enforcement and Compliance Assurance (OECA) believe that the OIG's report and broader investigations have highlighted the need for improved data quality and use of the data in this area. The OIG's focus has provided a catalyst for improvements in tracking and management of RCRA and CERCLA financial assurance. To this end, OLEM and OECA accept the majority of the OIG's recommendations in the draft report as described below and agree that actions undertaken in response to these recommendations will support ongoing efforts and strengthen overall program management.

However, we continue to disagree with the report's text regarding the level of risk posed by self-insurance. The report does not refer to objective information, in the record, that supports a conclusion that billions of dollars are at risk from the use of the financial test and corporate guarantee. Furthermore, the report derives conclusions based on a dataset which is deficient, and our offices are working to improve this. Thus, statements that billions of taxpayer dollars are at risk are not supported. For these reasons, our offices are concerned with the OIG's Recommendation 1, which would have EPA invest significant resources in pursuing specific and prescribed regulatory changes without sufficient evidence to determine whether such changes are warranted.

Regulatory change is a resource intensive process that should be carefully considered. Our offices strongly believe that other steps are necessary prior to deciding whether to pursue regulatory changes. These include strengthening the dataset; assessing whether and, to what extent, there are actual and observed issues in financial assurance coverage; and then evaluating what actions, both non-regulatory and regulatory, would be commensurate to addressing any identified issue(s). Our offices, thus, propose an alternative to OIG's Recommendation 1 in the chart below. This alternative approach is bolstered by the OIG's own research. As part of conducting the investigation, the OIG surveyed Regional financial assurance practitioners to determine the extent to which potential barriers identified by the OIG exist that hinder effective and efficient management and review of financial assurance instruments. As reported by the OIG, the survey respondents ranked "current regulations" last out of a list of eight barriers affecting effective and efficient management of financial assurance programs. Our alternative approach is a logical, stepwise evaluation to determine what further work would be appropriate.

Importantly, OLEM and OECA have already initiated efforts to improve data quality for both RCRA and CERCLA. Since September 2016, OLEM has improved data quality by reducing error rates by approximately 40 percentage points. Furthermore, in June 2017, OLEM initiated a long-term strategy for improving RCRA financial assurance data which, among several actions, will yield important information to the extent that data gaps equate to real noncompliance of financial assurance. The Superfund program also undertook a review to update its financial assurance data. This update reduced the gap between financial assurance required and financial assurance in place to approximately \$780 million dollars, which represents about 10% of the originally reported gap of \$7.7 billion dollars. We found the data gaps the OIG previously identified were generally a data quality issue, rather than an issue of whether financial assurance was obtained. Therefore, future data updates should continue to reduce this gap. Additionally, OLEM and OECA have undertaken a feasibility analysis to identify and evaluate possible information technology options to provide additional data management support for the Superfund program.

Our offices agree that, in line with several of the OIG’s recommendations, we can continue to build upon our activities to date and enhance existing standard operating procedures and tools to more seamlessly work across RCRA and CERCLA financial assurance programs.

RESPONSE TO REPORT RECOMMENDATIONS

Our offices indicate acceptance or disagreement with the OIG recommendations in the tables below, which we have separated, as needed, to reflect the recommendations to be completed by the RCRA or CERCLA program. We have placed the OIG recommendations to which we are willing to commit with certain qualifications/comments in the “Agreements” table. Other recommendations appear in the “Disagreements” table. For these, we have offered alternatives that are executable and which EPA believes aim to achieve similar objectives to the OIG recommendations.

Agreements

RCRA Program Agreements

No.	Recommendation	Qualifications/Comments	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
5	Develop standard operating procedures that outline the Office of Land and Emergency Management and Office of Enforcement and Compliance Assurance roles and responsibilities for overseeing the validity of Resource Conservation and Recovery Act and Superfund financial assurance instruments.	EPA requests that the report and recommendation acknowledge existing SOPs.	EPA will, for the RCRA program, inventory and assess existing guidance and/or SOPs, communicate existing guidance and/or SOPs to financial assurance community, and develop or update SOPs and provide to financial assurance community.	1st Quarter FY 2019

6	Develop and include procedures for checking with other regions for facilities/sites with multiple self-insured liabilities in the standard operating procedures created for Recommendation 5.		In the RCRA program, EPA will inventory and assess existing guidance and/or SOPs, communicate existing guidance and/or SOPs to financial assurance community, and develop or update SOPs and provide to financial assurance community.	1st Quarter FY 2019
7	Develop and include instructions on the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not provided) is identified in the standard operating procedures created for Recommendation 5 and collect information on the causes of invalid financial assurance.		In the RCRA program, EPA will inventory and assess existing guidance and/or SOPs, communicate existing guidance and/or SOPs to financial assurance community, and develop or update SOPs and provide to financial assurance community	1st Quarter FY 2019
8	Train staff on the procedures and instructions developed for Recommendations 5 through 7.		In the RCRA program, EPA will hold webinar for EPA regions and states, add SOPs to existing training materials, and evaluate financial assurance training needs and develop training plan	2nd quarter FY 2019

10	Develop and distribute to EPA regions and states annual reports that include progress on the reduction of financial assurance that is expired, insufficient and/or not provided.	The high level corrective actions proposed better matches existing reports in RCRAInfo, as well as OLEM's long-term strategy for improving financial assurance.	For RCRA, track progress to improve financial assurance data in RCRAInfo to reduce the number of facilities that appear from available data to have financial assurance that is expired, insufficient in amount and/or not provided; and distribute to EPA regions and states, as applicable.	1st quarter FY 2019
13	In coordination with EPA Regional Administrators, evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy Superfund and/or Resource Conservation and Recovery Act financial assurance instruments.	EPA recommends coordination with Regional Division Directors. It is more appropriate to carry out this action with the managers who are directly involved in these programs. EPA will only be able to evaluate procedures to safeguard instruments that are provided to EPA. In RCRA, the vast majority of instruments are provided to the state agency.	In the RCRA program, EPA will communicate best practices for financial assurance instrument safeguarding, and develop a memo to Regions memorializing those best practices and directing Regions to assess their compliance with best practices	4th Quarter FY 2018
14	As needed, update procedures evaluated in Recommendation 13 to include details on how hard-copy financial assurance instruments submitted to the EPA should be received, maintained and monitored.		Prior to issuing memo to regions, EPA will evaluate best practices and revise if necessary for inclusion in memo.	4th Quarter FY 2018

CERCLA Program Agreements

No.	Recommendation	Qualifications/Comments	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
5	Develop standard operating procedures that outline the Office of Land and Emergency Management and Office of Enforcement and Compliance Assurance roles and responsibilities for overseeing the validity of Resource Conservation and Recovery Act and Superfund financial assurance instruments.		Develop standard operating procedures which include: (1) roles and responsibilities for overseeing the validity of Superfund financial assurance instruments; (2) procedures for checking with other regions for facilities/sites with multiple self-insured liabilities; (3) instructions on the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not provided); and (4) where to document causes of invalid financial assurance.	2nd Quarter FY 2019
6	Develop and include procedures for checking with other regions for facilities/sites with multiple self-insured liabilities in the standard operating procedures created for Recommendation 5.		Incorporated in recommendation 5	Incorporated in recommendation 5

7	Develop and include instructions on the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not provided) is identified in the standard operating procedures created for Recommendation 5 and collect information on the causes of invalid financial assurance.		Incorporated in recommendation 5	Incorporated in recommendation 5
8	Train staff on the procedures and instructions developed for Recommendations 5 through 7.		Train staff on the procedures and instructions developed for Recommendations 5 through 7.	4th Quarter FY 2019
9	Develop and distribute to EPA regions and states annual reports that include the total dollar amount of Resource Conservation and Recovery Act and Superfund financial assurance required and provided.	For Superfund, this cannot be accomplished in the current data system. While we do not disagree with the corrective action, in order to accomplish it, we would need to improve the FA data management system in order to provide reliable and accurate reports. This effort is currently under review.	Develop and distribute to EPA regions annual reports that include the total dollar amount of Superfund financial assurance required and provided.	TBD

		Implementation will be dependent on availability of resources. Therefore, we cannot identify a completion date at this time.		
10	Develop and distribute to EPA regions and states annual reports that include progress on the reduction of financial assurance that is expired, insufficient and/or not provided.	See qualification/comment to recommendation 9	For Superfund, track progress to improve financial assurance data to reduce the number of enforcement instruments that appear from available data to have financial assurance that is expired, insufficient in amount and/or not provided; and distribute to EPA regions as applicable.	See qualification/comment to recommendation 9
11	To more accurately determine the value of insufficient instruments, add a data field(s) to the data system used for Superfund financial assurance, to track when a lower amount of Superfund financial assurance is accepted by the EPA region or headquarters through negotiations with a responsible party or other arrangements.	See qualification/comment to recommendation 9	To more accurately determine the value of insufficient instruments, modify the data system used for Superfund financial assurance, to track when a lower amount of Superfund financial assurance is accepted by the EPA region or headquarters through negotiations with a responsible party or other arrangements.	See qualification/comment to recommendation 9

12	Train staff on how to use the new data field created for Recommendation 11.	See qualification/comment to recommendation 9	Train staff on how to use the system modifications implemented for Recommendation 11	See qualification/comment to recommendation 9
13	In coordination with EPA Regional Administrators, evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy Superfund and/or Resource Conservation and Recovery Act financial assurance instruments.	EPA recommends coordination with Regional Division Directors. It is more appropriate to carry out this action with the managers who are directly involved in these programs.	In coordination with EPA Regional Administrators, evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy Superfund financial assurance instruments.	1st Quarter FY 2018
14	As needed, update procedures evaluated in Recommendation 13 to include details on how hard-copy financial assurance instruments submitted to the EPA should be received, maintained and monitored.		As needed, for Superfund, update procedures evaluated in Recommendation 13 to include details on how hard-copy financial assurance instruments submitted to the EPA should be received, maintained and monitored.	3rd Quarter FY 2018

Disagreements

Both RCRA and CERCLA Program Disagreements

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
1,2	Conduct a study to determine the costs associated with modifying the existing regulations to	The recommendation as proposed by OIG appears to essentially require structuring a draft rule and	Once EPA completes actions to improve data quality, conduct a qualitative evaluation of the

	<p>include (a) a requirement for full disclosure of all self-insured environmental liabilities; and (b) eliminating the use of corporate self-insurance instruments, including the financial test and corporate guarantee, for Resource Conservation and Recovery Act and Superfund financial assurance.</p> <p>Once the study in Recommendation 1 is complete, implement the selected measure.</p>	<p>then completing a regulatory impact analysis (RIA). As written, the recommendation assumes some type of regulatory change would be the result. This action would be extremely resource intensive and would potentially create inefficiencies and duplicative work in light of the efforts already underway that may obviate the need for this type of analysis.</p> <p>Further, the recommendation would have EPA invest significant resources in pursuing specific and prescribed regulatory changes without sufficient evidence to determine whether such changes are warranted.</p> <p>EPA has reworded this language to outline an alternative which would be more attainable given resource capacity and appropriate following a logical sequence and process prior to determining whether a rulemaking is necessary.</p> <p>Additionally, please note that the CERCLA FT/CG model language currently requires that all environmental liabilities assured through FT/CG are disclosed.</p>	<p>advantages and disadvantages for both private parties and EPA, relative to the status quo, associated with options designed to account for all environmental obligations when reviewing self-insurance for Resource Conservation and Recovery Act and Superfund financial assurance. Options should include, at a minimum, (1) modifying the existing regulations to include a requirement for full disclosure and incorporation of all environmental liabilities covered by a financial test in financial test calculations, (2) modifying the regulations to eliminate the use of corporate self-insurance instruments and (3) non-regulatory approaches. Non-regulatory approaches might include exploring further database updates in the RCRAInfo financial assurance module and SEMS, and improving internal review practices through enhanced standard operating procedures.</p> <p>Once the evaluation is complete, consider implementing the most advantageous measure.</p>
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3,4	Update standard operating procedures and data systems to accommodate the changes implemented for Recommendation 2. Train staff on the changes implemented for Recommendation 2.	Acceptance of these recommendations relates to OIG recommendations 1 and 2.	Update standard operating procedures and data systems as necessary to accommodate any changes implemented. Train staff on any changes implemented.
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RCRA Program Disagreement

No.	Recommendation	Agency Explanation/Response	Proposed Alternative
9	Develop and distribute to EPA regions and states annual reports that include the total dollar amount of Resource Conservation and Recovery Act and Superfund financial assurance required and provided.	As discussed previously with OIG, there are barriers to providing the FA required and provided. For RCRA, these include potential for double counting of obligations or instruments, temporal mismatch of renewed data and data input lag time, and accurately capturing third-party liability obligations and instruments which may be provided at the company, not facility, level. Further, for the RCRA program, a total sum of financial assurance required and provided is not a figure that aids program management. OLEM has not identified a program need from regions or states for total required and provided FA. OLEM believes also that misinterpretations of such a figure would be likely.	For RCRA, evaluate refinements to the RCRAInfo financial assurance module as part of the V6 update that may reduce the barriers to improve nationwide tracking of financial assurance.

CONTACT INFORMATION

If you have any questions regarding this response, please contact Kecia Thornton (OLEM) at 202-566-1913 and Gwendolyn Spriggs (OECA) at 202-564-2439.

Attachments: Technical Comments

Revised Recommendations and Corrective Actions Plan

The revised corrective actions plan below was submitted by OLEM and OECA and modified through subsequent discussions in October and November 2017. It represents the position of the Action Officials and has been agreed to by the OIG. The OIG revised Recommendations 5, 7 and 13. Recommendations 5, 6, 7, 8, 10, 11, 12, 13 and 14 are agreed to and resolved. Recommendations 1, 2, 3, 4 and 9 are unresolved with resolution efforts underway.

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY	Status
1, 2	Conduct a study to determine the costs associated with modifying the existing regulations to include (a) a requirement for full disclosure of all self-insured environmental liabilities; and (b) eliminating the use of corporate self-insurance instruments, including the financial test and corporate guarantee, for Resource Conservation and Recovery Act and Superfund financial assurance. Once the study in Recommendation 1 is complete, implement the selected measure (1a or 1b).		TBD	U
3, 4	Update standard operating procedures and data systems to accommodate the changes implemented for Recommendation 2.		TBD	U

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY	Status
	Train staff on the changes implemented for Recommendation 2.			
5	Develop or update existing standard operating procedures to outline the Office of Land and Emergency Management and Office of Enforcement and Compliance Assurance roles and responsibilities for overseeing the validity of Resource Conservation and Recovery Act and Superfund financial assurance instruments, where needed.	<p>RCRA EPA will, for the RCRA program, inventory and assess existing guidance and/or SOPs, outline OLEM and OECA roles and responsibilities for overseeing the validity of RCRA financial assurance instruments, communicate existing guidance and/or SOPs to financial assurance community, and develop or update SOPs and provide to financial assurance community.</p>	<p>RCRA 2nd Quarter FY 2019</p>	<p>RCRA R</p>
		<p>CERCLA Develop standard operating procedures which include: (1) roles and responsibilities for overseeing the validity of Superfund financial assurance instruments; (2) procedures for checking with other regions for facilities/sites with multiple self-insured liabilities; (3) instructions on the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not</p>	<p>CERCLA 2nd Quarter FY 2019</p>	<p>CERCLA R</p>

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY	Status
		provided) is identified; and (4) where and when to collect and document causes of invalid financial assurance.		
6	Develop and include procedures for checking with other regions for facilities/sites with multiple self-insured liabilities in the standard operating procedures created for Recommendation 5.	<p>RCRA In the RCRA program, EPA will inventory and assess existing guidance and/or SOPs, outline OLEM and OECA roles and responsibilities for overseeing the validity of RCRA financial assurance instruments, communicate existing guidance and/or SOPs to financial assurance community, and develop or update SOPs and provide to financial assurance community.</p> <p>The RCRA program will develop and include procedures for checking with other regions or states when facilities/sites with multiple self-insured liabilities exist.</p>	<p>RCRA 1st Quarter FY 2019</p>	<p>RCRA R</p>
		<p>CERCLA Incorporated in recommendation 5.</p>	<p>CERCLA Incorporated in recommendation 5</p>	<p>CERCLA R</p>

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY	Status
7	In the standard operating procedures created for Recommendation 5, develop and include instructions on (1) the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not provided) is identified; and (2) how to collect information on the causes of invalid financial assurance.	<p>RCRA In the RCRA program, EPA will inventory and assess existing guidance and/or SOPs, outline OLEM and OECA roles and responsibilities for overseeing the validity of RCRA financial assurance instruments, communicate existing guidance and/or SOPs to financial assurance community, and develop or update SOPs and provide to financial assurance community.</p> <p>The RCRA program will develop and include in the guidance and/or SOPs: (1) instructions on the steps to take when an invalid financial assurance instrument (expired, insufficient in dollar amount, or not provided) is identified and (2) where and when to collect and document causes of invalid financial assurance.</p>	RCRA 2nd Quarter FY 2019	RCRA R
		CERCLA Incorporated in recommendation 5.	CERCLA Incorporated in recommendation 5	CERCLA R
8	Train staff on the procedures and instructions developed for Recommendations 5 through 7.	RCRA In the RCRA program, EPA will hold a webinar for EPA regions and states and additional webinars as needed, add SOPs to existing training materials, and evaluate financial	RCRA 3rd Quarter FY 2019	RCRA R

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY	Status
		in amount and/or not provided; and distribute to EPA regions and states, as applicable.		
		CERCLA For Superfund, annually track progress on the reduction of financial assurance that, based on available data, is expired, insufficient in amount and/or not provided; and distribute to EPA regions as applicable.	CERCLA 1 st Quarter FY 2020	CERCLA R
11	To more accurately determine the value of insufficient instruments, add a data field(s) to the data system used for Superfund financial assurance, to track when a lower amount of Superfund financial assurance is accepted by the EPA region or headquarters through negotiations with a responsible party or other arrangements.	RCRA Recommendation not applicable.	RCRA Recommendation not applicable	RCRA Recommendation not applicable
		CERCLA To more accurately determine the value of insufficient instruments, modify the data system used for Superfund financial assurance, to track when a lower amount of Superfund financial assurance is accepted by the EPA region or headquarters through negotiations with a responsible party or other arrangements.	CERCLA 1 st Quarter FY 2019	CERCLA R
12	Train staff on how to use the new data field created for Recommendation 11.	RCRA Recommendation not applicable.	RCRA Recommendation not applicable	RCRA Recommendation not applicable
		CERCLA	CERCLA	CERCLA R

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY	Status
		Train staff on how to use the system modifications implemented for Recommendation 11.	1 st Quarter FY 2019	
13	In coordination with EPA Regional Division Directors, evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy Superfund and/or Resource Conservation and Recovery Act financial assurance instruments.	RCRA The RCRA program, in coordination with the EPA Division Directors, will evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy RCRA financial assurance instruments, as applicable. The RCRA program will communicate best practices for financial assurance instrument safeguarding, and develop a memo to Regions memorializing those best practices and directing Regions to assess their compliance with best practices. Regions will provide the memo to authorized states.	RCRA 4th Quarter FY 2018	RCRA R

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY	Status
		<p>CERCLA In coordination with EPA Division Directors, evaluate each region's compliance with documented EPA and federal procedures to physically safeguard hard-copy Superfund financial assurance instruments.</p>	<p>CERCLA 1st Quarter FY 2018</p>	<p>CERCLA R</p>
14	As needed, update procedures evaluated in Recommendation 13 to include details on how hard-copy financial assurance instruments submitted to the EPA should be received, maintained and monitored.	<p>RCRA Prior to issuing memo to regions, EPA will evaluate best practices and revise if necessary for inclusion in memo.</p>	<p>RCRA 4th Quarter FY 2018</p>	<p>RCRA R</p>
		<p>CERCLA As needed, for Superfund, update procedures evaluated in Recommendation 13 to include details on how hard-copy financial assurance instruments submitted to the EPA should be received, maintained and monitored.</p>	<p>CERCLA 3rd Quarter FY 2018</p>	<p>CERCLA R</p>

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