



Office of the Inspector General U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Audit of the Superfund Activities in the Environment and Natural Resources Division for Fiscal Year 2018



Executive Summary

Audit of the Superfund Activities in the Environment and Natural Resources Division for Fiscal Year 2018

Objective

The Office of the Inspector General (OIG) conducted an audit to determine if the cost allocation process used by the Environment and Natural Resources Division (ENRD) and its contractor provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases from fiscal year (FY) 2018. To accomplish this objective, we assessed Superfund case designation, costs distributed to these cases, and the adequacy of the internal controls over the recording of charges to Superfund cases.

Results in Brief

The ENRD provided an equitable distribution of costs to FY 2018 Superfund cases. We found that the cost allocation process used by the ENRD provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases. However, we identified one exception pertaining to the billing of charges associated with a case that the ENRD incorrectly classified as a Superfund case upon its opening in FY 2018. This resulted in \$164,087 in unallowable expenses that were incorrectly billed to the U.S. Environmental Protection Agency (EPA).

Recommendations

Our report provides two recommendations pertaining to ENRD addressing \$164,087 in erroneous charges billed to the EPA. The ENRD agreed with both recommendations.

Audit Results

In 1980, Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) to clean up hazardous waste sites throughout the United States. The ENRD administers cases against those who violate CERCLA's civil and criminal pollution-control laws. The EPA entered into interagency agreements with the ENRD to reimburse its litigation costs related to its Superfund activities.

Our overall assessment of Superfund charges for FY 2018 determined that the ENRD generally provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases. Specifically, while the ENRD generally adhered to its procedures for designating cases as Superfund or non-Superfund, we identified one exception pertaining to the billing of charges associated with a case that should not have been classified as a Superfund case. This resulted in \$164,087 in unallowable expenses that were incorrectly billed to EPA. We were able to reconcile ENRD's accounting records to costs reported in the system designed to process Superfund related financial data from the ENRD's Expenditure and Allotment Reports. We also found that the ENRD appropriately allocated incurred costs to Superfund and non-Superfund cases, based on the correct totals for the fiscal years. Further, we found that selected costs charged to Superfund were adequately supported and allocable to Superfund.

AUDIT OF THE SUPERFUND ACTIVITIES IN THE ENVIRONMENT AND NATURAL RESOURCES DIVISION FOR FISCAL YEAR 2018

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AUDIT OF THE SUPERFUND ACTIVITIES IN THE ENVIRONMENT AND NATURAL RESOURCES DIVISION FOR FISCAL YEAR 2018

INTRODUCTION

Congress passed the *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA or Superfund) to clean up hazardous waste sites throughout the United States.¹ The law addressed concerns about the need to clean up abandoned hazardous waste sites and the future release of hazardous substances into the environment. When CERCLA was enacted, the U.S. Environmental Protection Agency (EPA) was assigned responsibility for preparing a National Priorities List to identify sites that presented the greatest risk to human health and the environment. Waste sites on the National Priorities List were generally considered the most contaminated in the nation, and EPA funds could be used to clean up those sites. The cleanup of these sites was to be financed by the potentially responsible parties – generally the current or previous owners or operators of the site. In cases where the potentially responsible party could not be found or was incapable of paying cleanup costs, CERCLA established the Hazardous Substance Superfund Trust Fund (Trust Fund) to finance cleanup efforts. The Trust Fund also pays for EPA's enforcement, as well as research and development activities.

Under Executive Order 12580, the Attorney General is responsible for all Superfund litigation. Within the Department of Justice (DOJ), the Environment and Natural Resources Division (ENRD) administers cases against those who violate CERCLA's civil and criminal pollution-control laws. Superfund litigation and support are assigned to the following ENRD sections: Appellate, Environmental Crimes, Environmental Defense, Environmental Enforcement, Land Acquisition, Natural Resources, and Law and Policy.

Since FY 1987, the EPA has entered into interagency agreements with the ENRD to reimburse the ENRD for its litigation costs related to its CERCLA activities. As shown in Table 1, cumulative budgeted reimbursements for Superfund litigation totaled over \$849 million between FYs 1987 and 2018, which represented over a quarter of the ENRD's total budget during this period.

¹ 42 U.S.C. §103 (2018). Because certain provisions of CERCLA were set to expire in fiscal year (FY) 1985, Congress passed the *Superfund Amendments and Reauthorization Act* (SARA) in 1986. SARA stressed the importance of using permanent remedies and innovative treatment technologies in the cleanup of hazardous waste sites, provided the EPA with new enforcement authorities and settlement tools, and increased the authorized amount of potentially available appropriations for the Trust Fund.

Table 1
Comparison of the ENRD's Appropriations and Budgeted
Superfund Reimbursements
(FYs 1987 through 2018)

FY	ENRD APPROPRIATIONS	BUDGETED SUPERFUND REIMBURSEMENTS	TOTAL ENRD BUDGET
1987 - 2009	\$ 1,441,251,000	\$ 647,509,160	\$ 2,088,760,160
2010	109,785,000	25,600,000	135,385,000
2011	108,010,000	25,550,000	133,560,000
2012	108,009,000	24,550,000	132,559,000
2013	101,835,764	23,050,000	124,885,764
2014	107,643,000	23,050,000	130,693,000
2015	110,024,350	21,430,000	131,454,350
2016	110,512,000	20,145,000	130,657,000
2017	110,512,000	20,145,000	130,657,000
2018	110,512,000	18,828,000	129,340,000
Totals	\$2,418,094,114	\$849,857,160	\$3,267,951,274

Source: ENRD Budget History Report for FYs 1987 through 2018

The EPA and the ENRD Statement of Work required the ENRD to maintain a system that documented its Superfund litigation costs. Accordingly, the ENRD implemented a management information system developed by a private contractor. This system is designed to process financial data from the ENRD's Expenditure and Allotment (E&A) Reports into: (1) Superfund direct costs, including direct labor costs and other direct costs; (2) non-Superfund direct costs; and (3) allocable indirect costs.²

The EPA authorized reimbursements to the ENRD in the amount of \$18.8 million during FY 2018 in accordance with the most recent EPA Interagency Agreement DW-015-92496201-1.³

The funding for Superfund is comprised of appropriations from EPA's general fund, interest, fines, penalties, and recoveries.⁴ Consequently, the significance of the ENRD's Superfund litigation can be seen in the commitments and recoveries that the EPA has obtained. Between FYs 1987 and 2018, the EPA received nearly

² The E&A Report is a summary of the total costs incurred by the ENRD during the fiscal year. The report includes all costs (both liquidated and unliquidated) by subobject class and a final indirect cost rate calculation for the fiscal year. Other direct costs charged to individual cases include special masters, expert witnesses, interest penalties, travel, filing fees, transcription (court and deposition), litigation support, research services, graphics, and non-capital equipment. Indirect costs are the total amounts paid in the E&A Reports less direct charges and are allocated based on the direct Superfund salary costs on each case.

³ EPA interagency agreement funds are considered no-year money. ENRD advised that it applied unused funds from previous interagency agreements to supplement the FY 2018 agreement's authorization.

⁴ Excise taxes imposed on petroleum and chemical industries, as well as an environmental income tax on corporations, maintained the Trust Fund through 1995, when the taxing authority for Superfund expired. Since that time, Congress has not enacted legislation to reauthorize these taxes.

\$15 billion in commitments to clean up hazardous waste sites and recovered over \$9.6 billion from potentially responsible parties, as shown in Table 2.⁵

Table 2
Estimated Commitments and Recoveries
(FYs 1987 through 2018)

FY	COMMITMENT (\$ MILLION)	RECOVERY (\$ MILLION)
1987 - 2009	\$7,361	\$5,516
2010	753	726
2011	902	376
2012	118	132
2013	1,051	637
2014	49	163
2015	2,548	1,769
2016	335	63
2017	1,659	176
2018	171	89
Totals	\$14,947	\$9,647

Source: ENRD Commitment and Recovery Reports, FYs 1987 to 2018

Audit Objective

The objective of the audit was to determine if the cost allocation process used by the ENRD and its contractor provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases during FY 2018. To accomplish our objective, we assessed whether: (1) the ENRD identified Superfund cases based on appropriate criteria, (2) costs distributed to cases were limited to costs reported in the E&A Reports, and (3) adequate internal controls existed over the recording of direct labor time to cases and the recording of other direct charges to accounting records and Superfund cases. We designed the audit to compare costs reported in the contractor's accounting schedules and summaries for FY 2018 (see Appendix 3) to the information recorded in DOJ's accounting records, and to review the cost distribution system used by the ENRD to allocate incurred costs to Superfund and non-Superfund cases. To accomplish this, we performed the following tests:

- We reviewed the ENRD's methodology for categorizing Superfund cases by comparing a select number of Superfund cases to the ENRD's Superfund case designation criteria.
- We compared Superfund total costs recorded as paid in the E&A Reports to the amounts reported as Total Amounts Paid in the contractor's year-end accounting schedules and summaries, and we traced the costs to Superfund cases.

⁵ Commitments are estimated funds from potentially responsible parties for the cleanup of hazardous waste sites. Recoveries are actual funds received by the EPA that include Superfund cost recovery, oversight costs, and interest.

- We reviewed the contractor's methodology for distributing direct labor and indirect costs to Superfund cases, and we compared other direct costs to source documents to validate their allocability to Superfund cases.

We performed these steps to ensure that costs distributed to Superfund and non-Superfund cases were based on total costs for FY 2018, that the distribution methodology used and accepted in prior years remained viable, and that selected costs were supported by evidence that documented their allocability to Superfund and non-Superfund cases. We used the test results to determine whether the ENRD provided an equitable distribution of total labor, other direct costs, and indirect costs to Superfund cases during FY 2018.

Appendix 1 contains a more detailed description of our audit objective, scope, and methodology.

AUDIT RESULTS

Our assessment of FY 2018 Superfund charges determined that the ENRD generally provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases. While the ENRD generally adhered to its procedures for designating cases as Superfund or non-Superfund, we identified one exception pertaining to the billing of charges associated with a case that should not have been classified as a Superfund case. This resulted in \$164,087 in unallowable expenses that were incorrectly billed to EPA. Further, we were also able to reconcile ENRD's accounting records to costs reported in the system designed to process Superfund-related financial data from the ENRD's E&A Reports. We found that the ENRD appropriately allocated incurred costs to Superfund and non-Superfund cases, based on the correct totals for the fiscal years. Further, we found that selected costs charged to Superfund were adequately supported and allocable to Superfund.

Reconciliation of Contractor Accounting Schedules and Summaries to E&A Reports

To ensure that the distribution of costs to Superfund and non-Superfund cases was limited to total costs incurred for each fiscal year, we reconciled the amounts reported in the ENRD's E&A Reports to those in the contractor's Schedule 6, Reconciliation of Total ENRD Expenses. According to the E&A Reports, total ENRD expenses were over \$133 million in FY 2018, as shown in Table 3.

Table 3
Total ENRD Expenses

DESCRIPTION	FY 2018
Salaries	\$78,442,623
Benefits	24,166,386
Travel	2,881,101
Freight	58,646
Rent	16,718,016
Printing	9,510
Services	10,408,540
Supplies	362,329
Equipment	40,869
Total	\$133,088,020

Source: ENRD E&A Reports for FY 2018

We then reconciled the ENRD E&A Report amounts to the distributions in the contractor's Schedule 5, Superfund Costs by Object Classification, and Schedule 2, Superfund Obligation and Payment Activity by Fiscal Year of Obligation. We found that Schedules 1 through 6 reconciled to the E&A Reports.

Superfund Case Reconciliation

The ENRD assigned unique identifying numbers to all Superfund and non-Superfund cases and maintained an annual database of Superfund cases. To ensure that the contractor used the appropriate Superfund database, we reconciled

the contractor's Superfund database to the ENRD's original Superfund database. The reconciliation identified 697 Superfund cases in FY 2018 for which the ENRD incurred hourly direct labor costs.

We also reviewed the Superfund case designation criteria and associated case files to identify the method used by the ENRD to categorize Superfund cases and to determine if Superfund cases were designated in accordance with established criteria. We confirmed that the ENRD memorandum entitled *Environment and Natural Resources Division Determination of Superfund Cases* provided the methodology for designating Superfund cases.

We judgmentally selected 17 cases from across different ENRD divisions as listed in the FY 2018 Superfund database to test whether the ENRD staff adhered to case designation procedures outlined in the ENRD Superfund case determination memorandum.⁶ We compared the case number in the Superfund database to the ENRD case file documents including case intake worksheets, case opening forms, case transmittals, and other correspondence. These documents referenced laws, regulations, or other information used to categorize the cases as either Superfund or non-Superfund for tracking purposes. Of the 17 sampled cases, we found 1 exception pertaining to the charges of case number 90-13-9-15339 from the ENRD's Appellate section. ENRD had tracked labor costs associated with this case as Superfund work beginning in FY 2018. An ENRD official from the Appellate section stated that an ENRD staff member mistakenly opened the case as a Superfund case and redesignated unbilled work hours to a non-Superfund case number (0-13-9-15339/1). However, ENRD did not redesignate charges stemming from FY 2018 work hours as it had already billed those charges to the EPA. The FY 2018 time amounts to 824.25 hours and reflects \$164,087 in expenses that the ENRD incorrectly identified as Superfund hours and billed to the EPA.⁷ Considering that these erroneous billings are not allowable under the terms of ENRD's interagency agreement with the EPA, we recommend that the ENRD remedy \$164,087 in questioned costs. To mitigate the risk of future improper case designation, we also recommend that the ENRD instruct those who designate cases in each section on how to identify Superfund case criteria.

Superfund Cost Distribution

Because we found that the ENRD's case identification method adequately identified Superfund cases, we proceeded to review the system used by the contractor to distribute direct labor, indirect costs, and other direct costs charged to Superfund cases. Our starting point for reviewing the distribution system was to identify and reconcile the ENRD cases as Superfund or non-Superfund. This enabled us to extract only Superfund data from the ENRD data to compare to the accounting schedules and summaries. The Superfund costs in Schedule 2 of the accounting schedules and summaries for FY 2018 are shown in Table 4.

⁶ See Appendix 2 for the cases we sampled.

⁷ Of the \$164,087 in unsupported costs, \$109,074 constituted indirect costs.

Table 4
Superfund Distributed Costs

COST CATEGORIES	FY 2018
Labor	\$4,937,219
Other Direct Costs	2,083,088
Indirect Costs	9,788,964
Unliquidated Obligations	6,883,605
Total	\$23,692,876

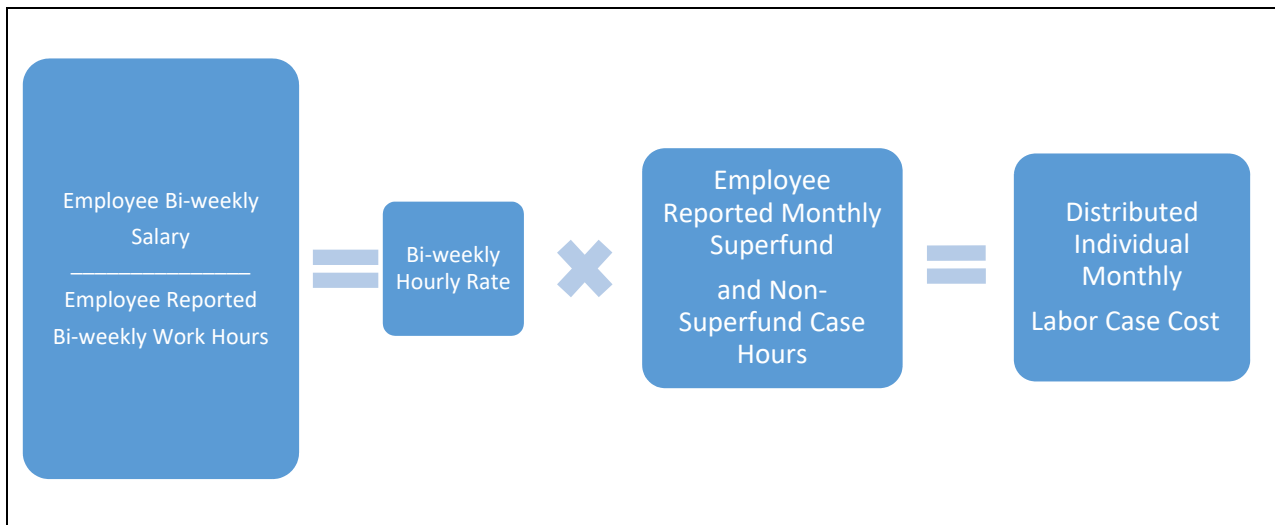
Note: The amounts listed in this table reflect obligations and payments during FY 2018. These amounts are also allocated to prior year interagency agreements, as detailed in the accounting schedules and summaries included at Appendix 3 of this report.

Source: Schedule 2 of the contractor's accounting schedules and summaries.

Direct Labor Costs

The contractor continued using the labor distribution system from prior years, which our prior audits had reviewed and accepted. The ENRD provided the contractor with electronic files that included employee time reporting information and bi-weekly salary information downloaded from the National Finance Center.⁸ Figure 1 shows the formula the contractor used to distribute labor costs monthly.

Figure 1
Monthly Distribution of ENRD Labor Cost



Source: OIG analysis of contractor labor cost calculation

⁸ The National Finance Center processes bi-weekly payroll information for many federal government agencies, including DOJ.

For the purposes of our review, we:

- compared total Superfund and non-Superfund labor costs to costs reported in ENRD E&A Reports for FY 2018;
- reviewed the ENRD labor files listing billable time, selected ENRD salary files provided to the contractor, and the resultant files prepared by the contractor to summarize costs by employee and case; and
- extracted Superfund case costs from the contractor files by using validated Superfund case numbers.

We completed reconciliations between ENRD and contractor data files to: (1) compare extractions from ENRD employee time and case data against the contractor's accounting schedules and summaries and (2) identify Superfund case data.

Using ENRD data, we determined that ENRD employees spent a total of 77,401 hours working on 697 Superfund cases in FY 2018. We verified that the contractor made a similar determination in its billing schedules. To determine if the contractor's billing summary for direct labor totaling \$4,937,219 was accurate based on data provided by the ENRD, we traced and verified the total direct labor costs for Superfund cases using the contractor's calculated labor rates, ENRD's time reports, and ENRD's list of identified Superfund cases for FY 2018.

Overall, we were able to verify the accumulation of reported hours and the extraction of labor costs for Superfund cases. Therefore, we believe that this process is adequately designed to provide an equitable distribution of direct labor costs to Superfund cases.

Indirect Costs

In addition to direct costs incurred for specific cases, the ENRD incurred indirect costs that were allocated to its cases. These costs included salaries, benefits, travel, freight, rent, communication, utilities, supplies, and equipment. The contractor distributed indirect costs to individual cases using an indirect cost rate calculated on a fiscal year basis.

The indirect cost rate was derived from an ENRD indirect rate and a Superfund-specific indirect rate. To calculate the ENRD indirect rate, the contractor subtracted the amount of ENRD's direct costs from the total costs incurred according to the ENRD's E&A report and divided the remainder by the total direct labor costs for the period. To calculate a Superfund-specific indirect rate, the contractor identified indirect costs that supported only Superfund activities and divided these costs by the Superfund direct labor costs for the period. The rates for FY 2018 are shown in Table 5.

Table 5
Indirect Cost Rates

CATEGORY	FY 2018
ENRD Indirect Rate	169.55%
Superfund-Specific Indirect Rate	28.72%
Combined Indirect Cost Rate	198.27%

Source: Schedule 4 of the contractor's accounting schedules and summaries, percentages rounded to nearest tenth of a percent.

Using the E&A Reports and the contractor's electronic files, we reconciled the total indirect amounts to Schedule 4, Indirect Rate Calculation, to ensure that the contractor used only paid costs to accumulate the expense pool. We determined that the total amount of indirect costs for FY 2018 was \$79,775,581, of which \$9,788,964 was allocated to Superfund cases. We found that this process generally provided for an equitable distribution of indirect costs to Superfund cases during FY 2018.

Other Direct Costs

Table 6 presents the other direct costs, by subobject code, incurred by the ENRD and distributed to Superfund during FY 2018.

Table 6
Superfund Other Direct Costs

SUBOBJECT CODE	DESCRIPTION	FY 2018
11804	Expert Witness Fees	\$1,333,007
21000	Travel and Transportation	213,963
23000-24000	Reporting and Transcripts	1,944
25000 (except 25105)	Research Services	117,055
25105	Litigation Support	416,879
26000	Supplies	241
Total		\$2,083,089

Source: Contractor files for FY 2018

We selected three FY 2018 other direct cost subobject codes to test: (1) 11804 – Expert Witness fees; (2) 21000 – Travel and Transportation, and (3) 25105 – Litigation Support. We note that for FY 2018, these three subobject codes comprised 52 percent of the number of transactions in the other direct cost universe (1,445 of 1,665 transactions) and 94 percent of the FY 2018 other direct cost expenditures (\$1.96 million of \$2.08 million). Considering the possible variation between these three types of transactional activity measures, we employed a stratified random sampling design to provide effective coverage and to obtain precise estimates of the test results' statistics. The set of transactions in the universe was divided into two subsets: high-dollar value transactions and non-high dollar value transactions. We reviewed 37 percent of high-dollar transactions

within these three subobject codes. In total, we reviewed 150 transactions totaling \$1,020,659, as detailed in Table 7.

Table 7
Sampled Other Direct Costs

SUBJECT CODE	DESCRIPTION	NUMBER OF TRANSACTIONS	AMOUNT
11804	Expert Witness Fees	44	\$679,865
21000	Travel and Transportation	54	31,527
25105	Litigation Support	52	309,267
Totals		150	\$1,020,659

Source: OIG

We designed our review of other direct cost transactions to determine if the selected transactions included adequate support based on the following four attributes:

- Subobject code classification – verified that the correct subobject code was used to classify the cost;
- Superfund/non-Superfund case classification – verified that the case number appearing on the documents matched the case number in the Superfund database;
- Dollar amount – verified that the dollar amount listed in the other direct costs database matched the amounts on the supporting documentation; and
- Proper approval – verified that the proper approval was obtained on the vouchers paying the other direct costs.

Our tests resulted in no exceptions.

CONCLUSION AND RECOMMENDATIONS

We found that the cost allocation process used by the ENRD provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases during FY 2018. However, we found one discrepancy in our testing of Superfund case designation where the ENRD erroneously designated a case as a Superfund case when the case opened in FY 2018. Charges associated with this incorrectly designated case resulted in \$164,087 in expenses that should not have been billed to EPA.

We recommend that the ENRD:

1. Remedy \$164,087 in questioned costs.
2. Instruct those who designate cases in each section on how to identify Superfund case criteria.

SCHEDULE OF DOLLAR-RELATED FINDINGS

<u>Description</u>	Amount	Page
Questioned Costs: ⁹		
Unallowable charges associated with case number 90-13-9-15339	\$164,087	6
TOTAL DOLLAR-RELATED FINDINGS	<u>\$164,087</u>	

⁹ **Questioned Costs** are expenditures that do not comply with legal, regulatory, or contractual requirements; are not supported by adequate documentation at the time of the audit; or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, the provision of supporting documentation or contract ratification, where appropriate.

APPENDIX 1

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of this audit was to determine if the cost allocation process used by the ENRD and its contractor provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases during FY 2018.

Scope and Methodology

To accomplish the overall objective, we assessed whether: (1) the ENRD identified Superfund cases based on appropriate criteria, (2) costs distributed to cases were limited to costs reported in the E&A Reports, and (3) adequate internal controls existed over the recording of direct labor time to cases and the recording of other direct charges to accounting records and Superfund cases.

The audit covered, but was not limited to, financial activities and the procedures used by the ENRD to document, compile, and allocate direct and indirect costs charged to Superfund cases from October 1, 2017, through September 30, 2018. We compared total costs recorded as paid on the ENRD's E&A Report to the amounts reported as Total Amounts Paid on the contractor's year end accounting schedules and summaries, and traced the costs to the Superfund cases for FY 2018. We also reviewed the contractor's methodology for distributing direct labor costs and indirect costs to Superfund cases for FY 2018. In addition, we reviewed the ENRD's methodology for categorizing Superfund cases by comparing a select number of Superfund cases to the ENRD's Superfund case designation criteria for FY 2018.

Statement on Compliance with Generally Accepted Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). 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.

Internal Controls

In this audit we performed testing, as appropriate, of internal controls significant within the context of our audit objectives. A deficiency in internal control design exists when a necessary control is missing or is not properly designed so that even if the control operates as designed, the control objective would not be met. A deficiency in implementation exists when a control is properly designed but not implemented correctly in the internal control system. A deficiency in operating effectiveness exists when a properly designed control does not operate as designed

or the person performing the control does not have the necessary competence or authority to perform the control effectively.¹⁰

Through this testing, we did not identify any deficiencies in the ENRD's internal controls that are significant within the context of the audit objectives and based upon the audit work performed that we believe would affect the ENRD's ability to effectively and efficiently operate, to correctly state financial and performance information, and to ensure compliance with laws and regulations.

Sample-based Testing

To accomplish our audit objectives, we performed sample-based testing of other direct costs for FY 2018. Considering the possible variation between subobject codes 11804, 21000, and 25105, we employed a stratified random sampling design to provide effective coverage and to obtain precise estimates of the test results' statistics. We reviewed 37 percent of transactions (75) in one stratum that consisted of high-dollar transactions within these three subobject codes.

Additionally, we employed a stratified sample design for the non-high dollar transactions with 95 percent confidence interval, 3-percent precision rate, and weighted average of 3-percent estimated exception rate. The non-high dollar sample size was 75 transactions. We determined the transaction costs were properly charged and approved; therefore, we have no exception in the non-high dollar sample strata. Since there were no noted errors we did not project any errors to the universe.

In addition to this effort, we also employed a judgmental sampling design to obtain broad exposure to numerous facets of the cases and areas we reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

Computer-Processed Data

During our audit, we obtained information from the Unified Financial Management System. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems were verified with documentation from other sources.

¹⁰ Our evaluation of the ENRD's internal controls was not made for the purpose of providing assurance on its internal control structure as a whole. The ENRD management is responsible for the establishment and maintenance of internal controls. Because we are not expressing an opinion on the ENRD's internal control structure as a whole, this statement is intended solely for the information and use of the ENRD. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

APPENDIX 2

FY 2018 CASES IN SAMPLE REVIEW

COUNT	CASE NUMBER	CLASSIFICATION
1	90-1-23-10202	General Lit
2	90-1-23-14081	General Lit
3	90-11-6-16908	Defense
4	90-11-6-05232	Defense
5	90-11-6-18099/1	Defense
6	90-11-6-21247	Defense
7	90-11-6-21361	Defense
8	90-11-3-643/17	Enforcement
9	90-11-3-90/4	Enforcement
10	90-11-3-194/2	Enforcement
11	90-11-3-11966	Enforcement
12	90-11-3-11815	Enforcement
13	198-50-01044	Criminal
14	198-01380	Criminal
15	198-01667/1	Criminal
16	90-13-9-15339	Appellate
17	90-12-15375	Appellate

FY 2018 ACCOUNTING SCHEDULES AND SUMMARIES

AFA Consulting, LLC

14505 Edenmore Ct, Laurel MD, 20707

May 7, 2019

Mr. Andrew Collier
U.S. Department of Justice
Environment and Natural Resources Division
Suite 2038
601 D Street N.W.
Washington, DC. 20004

Dear Mr. Collier:

Enclosed please find the following final fiscal year 2018 year end accounting schedules and summaries relating to costs incurred by the United States Department of Justice (DOJ), Environment and Natural Resources Division (ENRD) on behalf of the Environmental Protection Agency (EPA) under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Superfund Amendments and Reauthorization Act of 1986 (SARA or, hereafter, Superfund):

- EPA Billing Summary - Schedules 1-7
September 30, 2018
- DOJ - Superfund Case Cost Summary (electronic copy)
As of September 30, 2018
- DOJ - Superfund Cases - Time By Attorney/Paralegal
Year Ended September 30, 2018 (electronic copy)
- DOJ - Superfund Direct Costs (electronic copy)
Year Ended September 30, 2018

The schedules represent the final fiscal year 2018 amounts and establish an indirect cost rate applicable to the entire fiscal year. As a result, the summaries included supersede all prior preliminary information processed by us relating to fiscal year 2018.

The schedules, summaries and calculations have been prepared by us based on information supplied to us by the ENRD. Professional time charges, salary data, and other case specific cost expenditures have been input or translated by us to produce the aforementioned reports. Total costs incurred or obligated by the ENRD as reflected in the Expenditure and Allotment Reports (E&A) for the period have been used to calculate the total amount due from EPA relating to the Superfund cases. Computer-generated time reporting information supplied to us by DOJ (based on ENRD's accumulation of attorney and paralegal hours) along with the resulting hourly rate calculations made by us based on ENRD-supplied employee salary files, have been reviewed by us to assess the reasonableness of the calculated hourly rates. All obligated labor amounts reflected on the E&A's as of September 30, 2018, which are not identified as case specific, have been classified as indirect labor.

Our requested scope of services did not constitute an audit of the aforementioned schedules and summaries and, accordingly, we do not express an opinion on them. However, the methodology utilized by us to assign and allocate costs to specific cases is based on generally accepted accounting principles, including references to cost allocation guidelines outlined in the Federal Acquisition Regulations and Cost Accounting Standards. In addition, we understand that the DOJ audit staff will continue to perform periodic audits of the source documentation and summarized time reporting information accumulated by ENRD and supplied to us. Our accounting reports, schedules and summaries will, therefore, be made available to DOJ as part of this audit process. Beyond the specific representations made above, we make no other form of assurance on the aforementioned schedules and summaries.

Very truly yours,

A handwritten signature in black ink, appearing to read 'W. M. Kime', with a stylized flourish at the end.

William Kime
AFA Consulting, LLC

**EPA BILLING SUMMARY
SUMMARY OF AMOUNTS DUE
BY INTERAGENCY AGREEMENT
September 30, 2018**

		<u>Fiscal Years</u>					
		<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>
EPA Billing Summary - Amount Paid	\$	14,459,150 (a)	\$ 17,918,421 (b)	\$ 19,515,727 (b)	\$ 20,675,660 (b)	\$ 22,052,280 (b)	\$ 22,717,605 (b)
<u>Add:</u>							
Payments in FY 2018 for 2017 (a)			1,991,365				
Payments in FY 2018 for 2016 (a)				340,689			
Payments in FY 2018 for 2015 (a)					4,830		
Payments in FY 2018 for 2014 (a)						13,237	
Payments in FY 2018 for 2013 (a)							-
Subtotal		<u>14,459,150</u>	<u>19,909,786</u>	<u>19,856,416</u>	<u>20,680,490</u>	<u>22,065,517</u>	<u>22,717,605</u>
Unliquidated Obligations (c)		<u>4,194,068</u>	<u>2,562,518</u>	<u>57,921</u>	<u>1,503</u>	<u>67,595</u>	<u>-</u>
Total	\$	<u>18,653,218</u>	<u>22,472,304</u>	<u>19,914,337</u>	<u>20,681,993</u>	<u>22,133,112</u>	<u>22,717,605</u>

(a) See EPA Billing Summary, Schedule 2, September 30, 2018
(b) See EPA Billing Summary, Schedule 1, September 30, 2017
(c) See EPA Billing Summary, Schedule 3, September 30, 2018

**EPA BILLING SUMMARY
SUPERFUND OBLIGATION AND PAYMENT ACTIVITY DURING 2018
BY FISCAL YEAR OF OBLIGATION**

	<u>Fiscal Years</u>					
	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>Total</u>
<u>Amounts Paid:</u>						
Labor	\$ 4,937,219	\$ -	\$ -	\$ -	\$ -	\$ 4,937,219
Other Direct Costs	1,108,227	948,721	15,120	3,823	7,197	2,083,088
Indirect Costs	<u>8,413,704</u>	<u>1,042,644</u>	<u>325,569</u>	<u>1,007</u>	<u>6,040.33</u>	<u>9,788,964</u>
Subtotal	14,459,150	1,991,365	340,689	4,830	13,237	16,809,271
Unliquidated Obligations (a)	<u>4,194,068</u>	<u>2,562,518</u>	<u>57,921</u>	<u>1,503</u>	<u>67,595</u>	<u>6,883,605</u>
Totals	<u>\$ 18,653,218</u>	<u>\$ 4,553,883</u>	<u>\$ 398,610</u>	<u>\$ 6,333</u>	<u>\$ 80,832</u>	<u>\$ 23,692,876</u>

(a) See Schedule 3

EPA BILLING SUMMARY
FISCAL YEARS 2018, 2017, 2016, 2015, AND 2014 UNLIQUIDATED OBLIGATIONS
September 30, 2018

	<u>Fiscal Years</u>				
	<u>2018</u>	<u>2017</u>	<u>2016</u>	<u>2015</u>	<u>2014</u>
ENRD Unliquidated Obligations at September 30, 2018	\$ 38,847,929	\$ 10,706,877	\$ 3,704,979	\$ 1,001,584	\$ 578,404
Less: Unliquidated Obligations:					
Section 1595 (a)	15,678,065	6,036,429	3,121,661	1,000,074	121,174
Section 1596 (b)	5,050,000	829,925	126,644	6	64
Section 1598 (c)	<u>2,561,518</u>	<u>2,382,933</u>	<u>7</u>	<u>1,503</u>	<u>5</u>
Subtotal	<u>23,289,583</u>	<u>9,249,287</u>	<u>3,248,312</u>	<u>1,001,583</u>	<u>121,243</u>
Net Unliquidated Obligations - ENRD	15,558,346	1,457,590	456,667	1	457,161
Superfund percentage (d)	<u>10.4931%</u>	<u>12.3207%</u>	<u>12.6818%</u>	<u>13.4825%</u>	<u>14.7848%</u>
Superfund portion of Unliquidated Obligations	1,632,550	179,585	57,914	-	67,590
Add - Section 1598 Unliquidated Obligations	<u>2,561,518</u>	<u>2,382,933</u>	<u>7</u>	<u>1,503</u>	<u>5</u>
Total Superfund Unliquidated Obligations (e)	<u><u>\$ 4,194,068</u></u>	<u><u>\$ 2,562,518</u></u>	<u><u>\$ 57,921</u></u>	<u><u>\$ 1,503</u></u>	<u><u>\$ 67,595</u></u>

(a) Section 1595 relates to reimbursable amounts from agencies other than EPA.

(b) Section 1596 relates to non-Superfund charges.

(c) Section 1598 relates to charges that are Superfund specific.

(d) Superfund percentage of unliquidated obligations was calculated by dividing year to date Superfund direct labor by the total direct labor for each of the fiscal years.

(e) Relates only to unliquidated obligations for the fiscal year indicated.

**EPA BILLING SUMMARY
INDIRECT RATE CALCULATION
FISCAL YEAR 2018**

<u>Description</u>	<u>Total Amounts Paid (a)</u>
Indirect labor (b)	\$30,643,067
Fringes	24,166,386
Indirect travel	360,394
Freight	58,596
Office space and utilities	16,693,175
Printing(forms, etc.)	105
Training and other services	7,452,073
Supplies	360,915
Non-capitalized equipment and miscellaneous	40,869
Subtotal	79,775,581
Total Direct Labor	47,052,143
ENRD Indirect Costs Rate - F/Y 2018 Obligations	169.5472%
Plus: Superfund Indirect Costs for Prior Year Obligations (c) and Superfund Specific Costs (d)	
2018	\$ 42,789
2017	1,042,644
2016	325,569
2015	1,007
2014	6,040
Total	1,418,049
Superfund Direct Labor	4,937,219
Superfund Indirect Rate	28.7216%
Total Indirect Rate	198.2688%

- (a) Indirect cost rate calculations are presented on a fiscal year-to-date basis. All case specific and other unallowable costs (Section 1595 and 1596) have been removed.
- (b) Indirect labor and fringes include certain month-end obligation accruals.
- (c) Indirect cost payments for the prior year obligations included in the totals presented are as follows; \$1,004,277; \$325,569; \$1,007 and \$6,040; for F/Y 2017 through F/Y 2014 respectively.
- (d) The balance of the charges in the totals presented were paid during fiscal year 2018 to maintain Superfund case information or perform other Superfund Specific activities. These charges were initiated as a result of Superfund and are of benefit only to the Superfund Program. They have been allocated only to Superfund cases through this separate indirect approach. The charges are \$42,789; and \$38,367; F/Y2018 and F/Y 2017 respectively.

EPA BILLING SUMMARY
SUPERFUND COSTS BY OBJECT CLASSIFICATION
September 30, 2018

Object Class.	Description	Direct Expenses	Indirect Expenses	Unliquidated Obligations (b)	Total
11	Salaries (a)	\$ 5,641,876	\$ 3,258,147	\$ 2,192,904	\$ 11,092,927
12	Benefits	-	2,535,798	98,006	2,633,804
21	Travel	211,805	37,816	21,600	271,222
22	Freight	-	6,149	4,379	10,528
23	Rent	1,769	1,751,628	169,792	1,923,190
24	Printing	175	11	2,933	3,119
25	Services	189,580	781,996	1,518,977	2,490,552
26	Supplies	241	37,871	271	38,383
31	Equipment	-	4,288	185,205	189,494
	Total	<u>\$ 6,045,446</u>	<u>\$ 8,413,704</u>	<u>\$ 4,194,068</u>	<u>\$ 18,653,218</u>

(a) Includes costs for direct labor, special masters and expert witnesses.

(b) Represents the Superfund portion of unliquidated obligations.

**EPA BILLING SUMMARY
RECONCILIATION OF TOTAL ENRD PAID EXPENSES**

September 30, 2018

Object Class.	Description	---Superfund---		---Non-Superfund---		Indirect Section 1595 & 1596 Expenses	Total Amounts Paid
		Direct Expenses	Indirect Expenses	Direct Expenses	Indirect Expenses		
11	Salaries	\$ 5,641,876	\$ 3,258,147	\$ 42,114,935	\$ 27,427,666	\$ -	\$ 78,442,624
12	Benefits	-	2,535,798	-	21,630,588	-	24,166,386
21	Travel	211,805	37,816	2,110,696	322,577	198,206	2,881,101
22	Freight	-	6,149	50	52,447	-	58,646
23	Rent	1,769	1,751,628	23,072	14,941,547	-	16,718,016
24	Printing	175	11	9,230	94	-	9,510
25	Services	189,580	781,996	2,161,324	6,670,121	605,519	10,408,540
26	Supplies	241	37,871	1,173	323,044	-	362,329
31 & 42	Equipment	-	4,288	-	36,581	-	40,869
Total		<u>\$ 6,045,446</u>	<u>\$ 8,413,704</u>	<u>\$ 46,420,480</u>	<u>\$ 71,404,665</u>	<u>\$ 803,725</u>	<u>\$ 133,088,021</u>

DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
September 30, 2018

Section	Hours	Direct Labor	Other Direct Costs	Indirect	Total	Cases
Appellate	1,264	\$ 84,953	\$ -	\$ 168,435	\$ 253,388	4
Criminal	246	18,378	1,167	36,438	55,983	3
Defense	972	65,754	-	130,370	196,124	22
Enforcement	74,892	4,766,184	2,081,921	9,449,856	16,297,961	664
Bank	1	42	-	83	125	1
Policy	3	273	-	540	813	1
General Lit	23	1,635	-	3,242	4,877	2
Total	<u>77,401</u>	<u>\$ 4,937,219</u>	<u>\$ 2,083,088</u>	<u>\$ 9,788,964</u>	<u>\$ 16,809,271</u>	<u>697</u>

APPENDIX 4

ENVIRONMENT AND NATURAL RESOURCES DIVISION'S RESPONSE TO THE DRAFT AUDIT REPORT



U.S. Department of Justice
Environment and Natural Resources Division

*Executive Office
150 M Street, N.E., 2nd Floor
Washington, DC 20530*

*Telephone (202) 616-3100
Facsimile (202) 616-3531
Andrew.Coltier@usdoj.gov*

April 14, 2020

Jason R. Malmstrom
Assistant Inspector General for Audit
Office of the Inspector General
150 M Street, N.E., 12th Floor
Washington, D.C. 20530

Re: Audit of Superfund Activities in ENRD for Fiscal Year 2018

Dear Mr. Malmstrom:

I am writing to thank you for the professional and careful audit work performed by staff from the Office of the Inspector General ("OIG") during the recent audit of the Superfund program in the Environment and Natural Resources Division ("ENRD"), and to address the draft audit report's recommendations. For more than 30 years, ENRD has relied on your office to provide sound advice to help ensure that our accounting systems and operations meet rigorous standards for quality. Through the constructive process of regular audits, ENRD has strengthened its accounting, which has helped the government recover billions of dollars in cost recovery litigation over the years. These audits are instrumental in maintaining the integrity, reliability and accountability of the Division's Superfund program. We greatly appreciate the role that the OIG plays in this process. We also appreciate the opportunity to review the draft audit report and to respond to the recommendations.

The objective of this audit was to determine if the cost allocation process used by ENRD and its contractor provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases during the subject fiscal year. We are pleased with OIG's conclusion that "ENRD appropriately allocated incurred costs to Superfund and non-Superfund cases, based on the correct totals for the fiscal years ... [and] further, we found that selected costs charged to Superfund were adequately supported and allocable to Superfund."

We agree with the recommendations described in the draft audit report, and we have described below the corrective actions we plan to take to address the recommendations.

RECOMMENDATION #1: Remedy \$164,087 in questioned costs.

RESPONSE: We concur with this recommendation. As described in the draft audit report, charges associated with a case in ENRD's Appellate Section (*Sierra Club vs. Army Corps of Engineers, et. al*, DJ #90-13-9-15339) were incorrectly charged against the Superfund interagency agreement in FY 2018. The case was changed (by way of establishing a new DJ Number) to "non-Superfund" for FY 2019 and subsequent years. To remedy this recommendation, ENRD will credit-bill EPA \$164,087. Once completed, we will provide OIG with documentation supporting that the transaction has been completed.

RECOMMENDATION #2: Instruct those who designate cases in each section on how to identify Superfund case criteria.

RESPONSE: We concur with this recommendation. We will distribute to the Case Managers, and others in the sections who designate cases as Superfund/non-Superfund, a document outlining how to determine/identify Superfund eligible cases and matters in the Division. We will provide OIG with the document and evidence of its distribution once this action has been completed.

ENRD is committed to maintaining a reliable and efficient system for allocating Superfund costs. This audit significantly benefits the government's efforts to recover federal funds spent to clean the environment. In this era of tight budgets, we very much appreciate the Inspector General's willingness to conduct audits of the Superfund program. Should you or your staff require further information, please do not hesitate to contact me.

Sincerely,



Andrew T. Collier
Executive Officer
Environment and Natural Resources Division

APPENDIX 5

OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to the ENRD. We incorporated the ENRD's response in Appendix 4 of this final report. In response to our audit report, the ENRD concurred with our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of the actions necessary to close the report.

Recommendations for the ENRD:

1. Remedy \$164,087 in questioned costs.

Resolved. The ENRD concurred with our recommendation. The ENRD stated in its response that charges associated with a case in ENRD's Appellate Section were incorrectly charged against the Superfund interagency agreement in FY 2018. The case was changed (by way of establishing a new DJ Number) to "non-Superfund" for FY 2019 and subsequent years. To remedy this recommendation, ENRD stated it will credit-bill EPA \$164,087.

This recommendation can be closed when ENRD provides evidence that the \$164,087 credit has been made.

2. Instruct those who designate cases in each section on how to identify Superfund case criteria.

Resolved. The ENRD concurred with our recommendation. The ENRD stated in its response that it will distribute to its Case Managers, and others who designate cases as Superfund or non-Superfund, a document outlining how to determine and identify Superfund eligible cases and matters.

This recommendation can be closed when ENRD provides evidence of the creation and distribution of guidance about how to identify Superfund or non-Superfund case criteria for Case Managers and others who designate cases.



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950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

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