



Audit of Superfund Activities in the Environment
and Natural Resources Division for
Fiscal Years 2019 and 2020



22-008

NOVEMBER 2021



EXECUTIVE SUMMARY

Audit of the Superfund Activities in the Environment and Natural Resources Division for Fiscal Years 2019 and 2020

Objective

The objective of this audit was to determine if the Environment and Natural Resources Division (ENRD) provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases during fiscal years (FY) 2019 and 2020.

Results in Brief

The ENRD provided an equitable distribution of costs to FY 2019 and FY 2020 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 two exceptions pertaining to the billing of charges associated with cases that the ENRD incorrectly classified as a Superfund case, resulting in \$73,421 in questioned costs.

Recommendations

Our report provides two recommendations pertaining to ENRD addressing the \$73,421 in questioned costs billed to the EPA. We requested a response to our draft audit report from ENRD and their response is appended to this audit report at Appendix 6. ENRD concurred with both recommendations. Our analysis of their response can be found at Appendix 7.

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.

While our testing identified specific errors, our overall assessment of Superfund charges for FY 2019 and FY 2020 determined that the ENRD generally provided an equitable distribution of total labor costs, other direct costs, and indirect costs to Superfund cases. Specifically, we found that the ENRD generally adhered to its case determination procedures for designating cases as Superfund or non-Superfund, although we noted two exceptions. 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 Expenditure and Allotment 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.

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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.

The EPA established interagency agreements with the ENRD to reimburse the ENRD for its litigation costs related to CERCLA activities. As shown in Table 1, cumulative budgeted reimbursements for Superfund litigation totaled over \$884 million since FY 1987. This represented over 25 percent of the ENRD's total budget during this period.

¹ 42 U.S.C. Chapter 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 2020)

| 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 |
| 2019 | 109,422,000 | 17,857,000 | 127,279,000 |
| 2020 | 109,432,000 | 16,405,000 | 125,837,000 |
| Totals | \$2,636,948,114 | \$884,119,160 | \$3,521,067,274 |

Source: ENRD Budget History Report for FYs 1987 through 2020

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 \$17.9 million during FY 2019 and \$16.4 million during FY 2020 in accordance with the most recent EPA Interagency Agreement DW-015-92496201 Modifications 3 thru 7.³

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

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 effectively considered no-year money as ENRD is able to apply unused funds from a previous fiscal year within the interagency agreement to supplement the current year's agreement 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.

commitments and recoveries that the EPA has obtained. Between FYs 1987 and 2020, the EPA received over \$15 billion in commitments to clean up hazardous waste sites and recovered over \$10 billion from potentially responsible parties, as shown in Table 2.⁵

Table 2

**Estimated Commitments and Recoveries
(FYs 1987 through 2020)**

| FY | Commitment | Recovery |
|--------------------|-------------------------|-------------------------|
| 1987 - 2009 | \$7,361,000,000 | \$5,516,000,000 |
| 2010 | 753,000,000 | 726,000,000 |
| 2011 | 902,000,000 | 376,000,000 |
| 2012 | 118,000,000 | 132,000,000 |
| 2013 | 1,051,000,000 | 637,000,000 |
| 2014 | 49,000,000 | 163,000,000 |
| 2015 | 2,548,000,000 | 1,769,000,000 |
| 2016 | 335,000,000 | 63,000,000 |
| 2017 | 1,659,000,000 | 176,000,000 |
| 2018 | 171,000,000 | 89,000,000 |
| 2019 | 187,000,000 | 327,000,000 |
| 2020 | 284,315,340 | 41,666,202 |
| Totals | \$15,418,315,340 | \$10,015,666,202 |

Source: ENRD Commitment and Recovery Reports,
FYs 1987 to 2020

OIG Audit Approach

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 2019 and FY 2020. 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 2019 and FY 2020 (see Appendix 4 and Appendix 5) 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:

- 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;

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.

- 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; and
- 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 actual total annual costs, 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 2019 and FY 2020.

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

Audit Results

Our assessment of FY 2019 and FY 2020 Superfund charges determined that the ENRD generally provided an equitable distribution of total labor costs, other direct costs, and indirect costs to its Superfund cases. While the ENRD generally adhered to its procedures for designating cases as Superfund or non-Superfund, we identified two cases that the ENRD should not have classified as a Superfund case. This resulted in \$73,421 in unallowable expenses that were incorrectly billed to EPA. In addition, ENRD accounting records reconciled to costs reported in the system designed to process Superfund-related financial data from the ENRD's E&A Reports.

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 \$136 million in FY 2019 and over \$133 million in FY 2020, as shown in Table 3.

Table 3

Total ENRD Expenses

| Description | FY 2019 | FY 2020 |
|-------------|---------------|---------------|
| Salaries | \$78,418,964 | \$79,121,333 |
| Benefits | 23,845,316 | 25,600,285 |
| Travel | 2,599,027 | 1,418,671 |
| Freight | 54,693 | 43,087 |
| Rent | 17,151,188 | 10,274,003 |
| Printing | 6,898 | 42,146 |
| Services | 14,349,030 | 16,767,884 |
| Supplies | 484,447 | 547,398 |
| Equipment | 76,158 | 26,265 |
| Total | \$136,985,721 | \$133,841,072 |

Source: ENRD E&A Reports for FY 2019 and FY 2020

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 621 Superfund cases in FY 2019 and 529 Superfund cases in FY 2020 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 a sample of 14 cases from across different ENRD divisions as listed in the FY 2019 and FY 2020 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 14 cases, we found exceptions pertaining to the designation of 2 cases. The first case (90-11-6-21361) was from ENRD's Defense section and the second (90-1-24-05076) was from the ENRD's Law and Policy section.

- Case 90-11-6-21361. This matter called for ENRD to defend the EPA's remedy (not to defend the case itself) and a new manager within the section classified the case erroneously. The ENRD informed us that it had classified this matter as a Superfund case when it opened in 2018. An ENRD official stated that ENRD will re-classify the matter as a non-Superfund charge. The expenses incurred for this matter during the scope of the audit was \$72,187.
- Case 90-1-24-05076. The ENRD received the matter as a result of the Clean Air and Clean Water Acts whereby the plaintiff can sue the polluters directly; and if settled, the ENRD opens a review in a database known as the Case Management System (CMS). As such, this case should not have been identified as a Superfund case. An ENRD clerk erroneously noted the matter as a Superfund case on the matter's intake form, which resulted in CMS tracking time as Superfund billable. The expenses incurred for this matter during the scope of the audit was \$1,234.

For these two cases, the ENRD incorrectly charged 333.75 hours, reflecting \$73,421 in total expenses (i.e., direct and indirect) to the EPA between FYs 2019 and 2020. As these billings are not allowable under the terms of ENRD's interagency agreement with the EPA, we recommend that the ENRD remedy \$73,421 in questioned costs pertaining to unallowable case determination. To mitigate the risk of future improper case

⁶ See Appendix 3 for a complete listing of the cases in our sample.

billings, we also recommend that the ENRD perform periodic reviews of cases within each section to confirm Superfund case designations.

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 are shown in Table 4.

Table 4

Superfund Distributed Costs

| Cost Categories | FY 2019 | FY 2020 |
|--------------------------|--------------|--------------|
| Labor | \$4,637,617 | \$5,870,257 |
| Other Direct Costs | 1,737,853 | 2,282,354 |
| Indirect Costs | 9,391,532 | 9,339,145 |
| Unliquidated Obligations | 5,440,907 | 7,128,365 |
| Total | \$21,207,909 | \$24,620,121 |

Note: The amounts listed in this table reflect obligations and payments allocated to prior year interagency agreements, as detailed in the accounting schedules and summaries included at Appendices 4 and 5 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.⁷

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 2019 and FY 2020;

⁷ The National Finance Center processes bi-weekly payroll information for many federal government agencies, including DOJ.

- 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;
- extracted Superfund case costs from the contractor files by using validated Superfund case numbers; and
- reconciled 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 70,357 hours working on 621 Superfund cases in FY 2019, and a total of 87,782 hours working on 529 Superfund cases in FY 2020. We verified that the contractor made a similar determination in its billing schedules. To determine if the contractor's billing summaries for direct labor, which totaled \$4,637,617 for FY 2019 and \$5,870,257 for FY 2020, were reasonably 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 2019 and FY 2020.

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 the sum of 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. Table 5 shows the rates for FY 2019 and FY 2020.

Table 5

Indirect Cost Rates

| Category | FY 2019 | FY 2020 |
|----------------------------------|---------|---------|
| ENRD Indirect Rate | 170.62% | 130.54% |
| Superfund-Specific Indirect Rate | 31.89% | 28.55% |
| Combined Indirect Cost Rate | 202.51% | 159.09% |

Source: Schedule 4 of the contractor's accounting schedules and summaries.

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 2019 was \$73,505,716, of which \$9,391,532 was allocated to Superfund cases and the total amount of indirect costs for FY 2020 was \$61,718,627, of which \$9,339,146 was allocated to Superfund cases. We found that this process generally provided for an equitable distribution of indirect costs to Superfund cases during FY 2019 and FY 2020.

Other Direct Costs

Table 6 presents the other direct costs, by subobject code, incurred by the ENRD and distributed to Superfund during FY 2019 and FY 2020.

Table 6

Superfund Other Direct Costs

| Subobject Code | Description | FY 2019 | FY 2020 |
|----------------|--------------------------------|--------------------|--------------------|
| 11000 | Special Masters | \$ 0 | \$ 41,586 |
| 11804 | Expert Witness Fees | 1,533,688 | 1,561,882 |
| 21000 | Travel and Transportation | 124,895 | 97,371 |
| 24000 | Printing and Court Instruments | 114 | 237 |
| 25000 | Reporting and Transcripts | 22,274 | 82,658 |
| 26000 | Supplies | 49 | 878 |
| 25105 | Litigation Support | 220,920 | 497,742 |
| Total | | \$1,901,940 | \$2,282,354 |

Source: Contractor files for FY 2019 and FY 2020

We selected three FY 2019 other direct cost subobject codes to test: (1) 11804 – Expert Witness fees; (2) 21000 – Travel and Transportation, and (3) 25105 – Litigation Support. These three subobject codes comprised almost 99 percent of the value of the other direct cost expenditures for that year. Considering the possible variation between these three types of transactional activity measures, we employed a stratified judgmental 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 100 percent of high-dollar transactions within two of the three subobject codes and judgmentally selected transactions in different stratifications

within the third subobject code. In total, we reviewed 60 transactions totaling \$835,967, as detailed in Table 7.

Table 7

Sampled Other Direct Costs

| Subobject Code | Description | Number of Transactions Tested | Amount |
|----------------|---------------------------|-------------------------------|------------------|
| 11804 | Expert Witness Fees | 27 | \$690,066 |
| 21000 | Travel and Transportation | 19 | 8,475 |
| 25105 | Litigation Support | 14 | 137,426 |
| Totals | | 60 | \$835,967 |

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 testing identified 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 2019 and FY 2020. However, we found two discrepancies in our testing of Superfund case designation where the ENRD erroneously designated a case as a Superfund case. Charges associated with these incorrectly designated cases resulted in \$73,421 in expenses that should not have been billed to the EPA.

We recommend that the ENRD:

1. Remedy \$73,421 in questioned costs pertaining to unallowable case determination.
2. Perform periodic reviews of cases within each section to confirm Superfund case designations.

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 2019 and FY 2020.

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, 2018, through September 30, 2020. 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 2019 and FY 2020. We also reviewed the contractor's methodology for distributing direct labor costs and indirect costs to Superfund cases for FY 2019 and FY 2020. 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 2019 and FY 2020.

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 of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of ENRD to provide assurance on its internal control structure as a whole. ENRD management is responsible for the establishment and maintenance of internal controls in accordance with OMB Circular A-123. Because we do not express an opinion on the ENRD's internal control structure as a whole, we offer this statement solely for the information and use of the ENRD.⁸

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

⁸ This restriction is not intended to limit the distribution of this report, which is a matter of public record.

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 2019. We selected three FY 2019 other direct cost subobject codes to test: (1) 11804 – Expert Witness Fees; (2) 21000 – Travel and Transportation, and (3) 25105 – Litigation Support. Considering the possible variation between these three types of transactional activity measures, we employed a stratified judgmental sampling design to provide effective coverage. The set of transactions in the universe was divided into two subsets: (1) high-dollar value transactions and (2) non-high dollar value transactions. We reviewed 100 percent of high-dollar transactions within two of the three subobject codes and judgmentally selected transactions within different stratifications within the third subobject code. In total, we reviewed 60 transactions totaling \$835,967. We determined the transaction costs were generally charged and approved properly.

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.

APPENDIX 2: Schedule of Dollar-Related Findings

| Description | Case Number | Amount | Page |
|---|---------------|-----------------|------|
| Questioned Costs⁹: | | | |
| Unallowable non-Superfund charges to a Superfund case | 90-11-6-21361 | \$72,187 | 6 |
| Unallowable non-Superfund charges to a Superfund case | 90-1-24-05076 | 1,234 | 6 |
| Unallowable Costs | | \$73,421 | |
| TOTAL DOLLAR-RELATED FINDINGS | | \$73,421 | |

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 3: Sample of FY 2019 and FY 2020 Cases

| COUNT | CASE NUMBER | CLASSIFICATION |
|-------|-----------------|----------------|
| 1 | 90-12-15375 | Appellate |
| 2 | 90-11-6-18099/1 | Defense |
| 3 | 90-11-6-21361 | Defense |
| 4 | 90-11-3-11727/1 | Enforcement |
| 5 | 90-11-2-407/5 | Enforcement |
| 6 | 90-11-3-11108/1 | Enforcement |
| 7 | 90-11-3-11711/1 | Enforcement |
| 8 | 90-11-3-1149/6 | Enforcement |
| 9 | 90-11-2-3A | Enforcement |
| 10 | 90-11-2-12315 | Enforcement |
| 11 | 90-11-3-10295 | Enforcement |
| 12 | 90-11-2-10823 | Enforcement |
| 13 | 90-11-3-830/1 | Enforcement |
| 14 | 90-1-24-05076 | Law & Policy |

APPENDIX 4: FY 2019 Accounting Schedules and Summaries

AFA Consulting, LLC

10-201 Riverview Ct., Laurel MD, 20707

April 4, 2020

Mr. Andrew Collier
U.S. Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, DC. 20530-0001

Dear Mr. Collier:

Enclosed please find the following final fiscal year 2019 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, 2019
- DOJ - Superfund Case Cost Summary (electronic copy)
As of September 30, 2019
- DOJ - Superfund Cases - Time By Attorney/Paralegal
Year Ended September 30, 2019 (electronic copy)
- DOJ - Superfund Direct Costs (electronic copy)
Year Ended September 30, 2019

The schedules represent the final fiscal year 2019 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 2019.

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, 2019, 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'.

William Kime
AFA Consulting, LLC

**EPA BILLING SUMMARY
SUMMARY OF AMOUNTS DUE
BY INTERAGENCY AGREEMENT
September 30, 2019**

| | <u>Fiscal Years</u> | | | | | |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | <u>2019</u> | <u>2018</u> | <u>2017</u> | <u>2016</u> | <u>2015</u> | <u>2014</u> |
| EPA Billing Summary - Amount Paid | \$ 13,516,231 (a) | \$ 14,459,151 (b) | \$ 19,909,786 (b) | \$ 19,856,416 (b) | \$ 20,680,490 (b) | \$ 22,065,517 (b) |
| <u>Add:</u> | | | | | | |
| Payments in FY 2019 for 2018 (a) | | 2,033,446 | | | | |
| Payments in FY 2019 for 2017 (a) | | | 93,929 | | | |
| Payments in FY 2019 for 2016 (a) | | | | 38,714 | | |
| Payments in FY 2019 for 2015 (a) | | | | | 10,164 | |
| Payments in FY 2019 for 2014 (a) | | | | | | 74,518 |
| Subtotal | <u>13,516,231</u> | <u>16,492,597</u> | <u>20,003,715</u> | <u>19,895,130</u> | <u>20,690,654</u> | <u>22,140,035</u> |
| Unliquidated Obligations (c) | <u>2,990,461</u> | <u>2,234,094</u> | <u>195,505</u> | <u>20,847</u> | <u>-</u> | <u>-</u> |
| Total | <u>\$ 16,506,692</u> | <u>\$ 18,726,691</u> | <u>\$ 20,199,220</u> | <u>\$ 19,915,977</u> | <u>\$ 20,690,654</u> | <u>\$ 22,140,035</u> |

(a) See EPA Billing Summary, Schedule 2, September 30, 2019

(b) See EPA Billing Summary, Schedule 1, September 30, 2018

(c) See EPA Billing Summary, Schedule 3, September 30, 2019

EPA BILLING SUMMARY
 SUPERFUND OBLIGATION AND PAYMENT ACTIVITY DURING 2019
 BY FISCAL YEAR OF OBLIGATION

| | <u>Fiscal Years</u> | | | | | | |
|-------------------------------------|----------------------|---------------------|-------------------|------------------|------------------|------------------|----------------------|
| | <u>2019</u> | <u>2018</u> | <u>2017</u> | <u>2016</u> | <u>2015</u> | <u>2014</u> | <u>Total</u> |
| <u>Amounts Paid:</u> | | | | | | | |
| Labor | \$ 4,637,617 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 4,637,617 |
| Other Direct Costs | 909,235 | 748,050 | 71,104 | (700) | 10,164 | - | 1,737,853 |
| Indirect Costs | <u>7,969,379</u> | <u>1,285,396</u> | <u>22,825</u> | <u>39,414</u> | <u>-</u> | <u>74,518</u> | <u>9,391,532</u> |
| Subtotal | 13,516,231 | 2,033,446 | 93,929 | 38,714 | 10,164 | 74,518 | 15,767,002 |
| Unliquidated Obligations (a) | <u>2,990,461</u> | <u>2,234,094</u> | <u>195,505</u> | <u>20,847</u> | <u>-</u> | <u>-</u> | <u>5,440,907</u> |
| Totals | <u>\$ 16,506,692</u> | <u>\$ 4,267,540</u> | <u>\$ 289,434</u> | <u>\$ 59,561</u> | <u>\$ 10,164</u> | <u>\$ 74,518</u> | <u>\$ 21,207,909</u> |

(a) See Schedule 3

EPA BILLING SUMMARY
FISCAL YEARS 2019, 2018, 2017, 2016, AND 2015 UNLIQUIDATED OBLIGATIONS
September 30, 2019

| | <u>Fiscal Years</u> | | | | |
|--|---------------------|---------------------|-------------------|------------------|-------------|
| | <u>2019</u> | <u>2018</u> | <u>2017</u> | <u>2016</u> | <u>2015</u> |
| ENRD Unliquidated Obligations at September 30, 2019 | \$ 32,067,285 | \$ 10,355,723 | \$ 2,996,505 | \$ 2,032,450 | \$ 608,475 |
| Less: Unliquidated Obligations: | | | | | |
| Section 1595 (a) | 13,798,198 | 3,160,864 | 1,650,987 | 1,741,470 | 608,475 |
| Section 1596 (b) | 4,588,282 | - | 10,980 | 126,644 | - |
| Section 1598 (c) | 1,700,818 | 1,652,533 | 35,448 | 7 | - |
| Subtotal | 20,087,298 | 4,813,397 | 1,697,415 | 1,868,121 | 608,475 |
| Net Unliquidated Obligations - ENRD | 11,979,987 | 5,542,326 | 1,299,090 | 164,329 | - |
| Superfund percentage (d) | 10.7650% | 10.4931% | 12.3207% | 12.6818% | 13.4825% |
| Superfund portion of Unliquidated Obligations | 1,289,643 | 581,561 | 160,057 | 20,840.00 | - |
| Add - Section 1598 Unliquidated Obligations | 1,700,818 | 1,652,533 | 35,448 | 7 | - |
| Total Superfund Unliquidated Obligations (e) | <u>\$ 2,990,461</u> | <u>\$ 2,234,094</u> | <u>\$ 195,505</u> | <u>\$ 20,847</u> | <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 2019**

| Description | Total Amounts Paid (a) |
|--|---------------------------------------|
| Indirect labor (b) | \$28,111,212 |
| Fringes | 18,994,326 |
| Indirect travel | 409,886 |
| Freight | 54,693 |
| Office space and utilities | 17,133,826 |
| Printing(forms, etc.) | 779 |
| Training and other services | 8,242,061 |
| Supplies | 482,775 |
| Non-capitalized equipment and miscellaneous | 76,158 |
| Subtotal | 73,505,716 |
| Total Direct Labor | 43,080,602 |
| ENRD Indirect Costs Rate - F/Y 2019 Obligations | 170.6237% |
| Plus: Superfund Indirect Costs for Prior Year Obligations (c) and Superfund Specific Costs (d) | |
| 2019 | \$ 56,506 |
| 2018 | 1,285,396 |
| 2017 | 22,825 |
| 2016 | 39,414 |
| 2015 | - |
| 2014 | 74,518 |
| Total | 1,478,659 |
| Superfund Direct Labor | 4,637,617 |
| Superfund Indirect Rate | 31.8840% |
| Total Indirect Rate | 202.5077% |

- (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; \$1,245,440, \$17,957, \$39,509, \$0 and \$74,518; for F/Y 2018 through F/Y 2014 respectively.
- (d) The balance of the charges in the totals presented were paid during fiscal year 2019 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 \$56,506; \$39,956 and \$4,868; F/Y 2019, F/Y2018 and F/Y 2017 respectively.

EPA BILLING SUMMARY
 SUPERFUND COSTS BY OBJECT CLASSIFICATION
 September 30, 2019

| Object Class. | Description | Direct Expenses | Indirect Expenses | Unliquidated Obligations (b) | Total |
|---------------|--------------|---------------------|---------------------|------------------------------|----------------------|
| 11 | Salaries (a) | \$ 5,410,823 | \$ 3,082,656 | \$ 1,939,833 | \$ 10,433,311 |
| 12 | Benefits | - | 2,044,735 | 128,098 | 2,172,833 |
| 21 | Travel | 123,066 | 44,124 | 41,759 | 208,949 |
| 22 | Freight | - | 5,888 | 5,495 | 11,383 |
| 23 | Rent | - | 1,844,452 | 189,036 | 2,033,488 |
| 24 | Printing | 114 | 84 | 580 | 778 |
| 25 | Services | 12,801 | 887,272 | 601,278 | 1,501,351 |
| 26 | Supplies | 49 | 51,971 | 2,232 | 54,252 |
| 31 | Equipment | - | 8,198 | 82,150 | 90,348 |
| | Total | <u>\$ 5,546,853</u> | <u>\$ 7,969,379</u> | <u>\$ 2,990,461</u> | <u>\$ 16,506,693</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, 2019

| Object Class. | Description | ---Superfund--- | | ---Non-Superfund--- | | Indirect Section 1595 & 1596 Expenses | Total Amounts Paid |
|------------------|-------------|---------------------|----------------------|----------------------|----------------------|--|--------------------------|
| | | Direct Expenses | Indirect Expenses | Direct Expenses | Indirect Expenses | | |
| 11 | Salaries | \$ 5,410,822 | \$ 3,082,656 | \$ 38,443,114 | \$ 25,085,046 | \$ 6,397,327 | \$ 78,418,964 |
| 12 | Benefits | - | 2,044,735 | 13 | 16,949,591 | 4,850,977 | 23,845,316 |
| 21 | Travel | 123,066 | 44,124 | 1,895,698 | 365,761 | 170,377 | 2,599,027 |
| 22 | Freight | - | 5,888 | - | 48,805 | - | 54,693 |
| 23 | Rent | - | 1,844,452 | 17,362 | 15,289,374 | - | 17,151,188 |
| 24 | Printing | 114 | 84 | 6,005 | 695 | - | 6,898 |
| 25 | Services | 12,801 | 887,272 | 2,597,354 | 7,354,805 | 3,496,798 | 14,349,030 |
| 26 | Supplies | 49 | 51,971 | 258 | 430,804 | 1,365 | 484,447 |
| 31 & 42 | Equipment | - | 8,198 | - | 67,960 | - | 76,158 |
| Total | | <u>\$ 5,546,852</u> | <u>\$ 7,969,379</u> | <u>\$ 42,959,804</u> | <u>\$ 65,592,841</u> | <u>\$ 14,916,844</u> | <u>\$ 136,985,721</u> |

DEPARTMENT OF JUSTICE
 ENVIRONMENT AND NATURAL RESOURCES DIVISION
 September 30, 2019

| Section | Hours | Direct Labor | Other Direct Costs | Indirect | Total | Cases |
|-------------|---------------|---------------------|---------------------|---------------------|----------------------|------------|
| Appellate | 1,050 | \$ 69,373 | \$ - | \$ 140,486 | \$ 209,859 | 6 |
| Criminal | 54 | 2,834 | 1,033 | 5,739 | 9,606 | 2 |
| Defense | 677 | 47,288 | 290 | 95,762 | 143,340 | 14 |
| Enforcement | 68,564 | 4,517,277 | 1,736,530 | 9,147,834 | 15,401,641 | 597 |
| Policy | 12 | 845 | - | 1,711 | 2,556 | 6 |
| Total | <u>70,357</u> | <u>\$ 4,637,617</u> | <u>\$ 1,737,853</u> | <u>\$ 9,391,532</u> | <u>\$ 15,767,002</u> | <u>625</u> |

APPENDIX 5: FY 2020 Accounting Schedules and Summaries



U.S. Department of Justice

Environment and Natural Resources Division

Executive Office
P.O. Box 7611
Washington, DC 20044

Telephone (202) 616-3100
Facsimile (202) 616-3531

January 12, 2021

MEMORANDUM

To: Andrew Collier
Executive Director

From: William (Bill) Kime
Forensic Accountant

Re: Fiscal Year 2020 Yearend Closeout Accounting

Attached please find the following final fiscal year 2020 year end accounting schedules and summaries relating to costs incurred by 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, 2020

The following schedules are stored on the shared drive and are available for use.

- Superfund Case Cost Summary
As of September 30, 2020
- Superfund Cases - Time by Attorney/Paralegal
Year Ended September 30, 2020
- Superfund Direct Costs
Year Ended September 30, 2020

The schedules represent the final fiscal year 2020 amounts and establish an indirect cost rate applicable to the entire fiscal year.

The schedules, summaries and calculations have been prepared based on information maintained by the ENRD. Professional time charges, salary data, and other case specific cost expenditures have been used as input to produce the above 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. Time reporting information, based on ENRD's employee's reporting of hours, along with the resulting hourly rate calculations based on employee salary data, have been reviewed for reasonableness of the calculated hourly rates. All obligated labor amounts reflected on the E&A's as of September 30, 2020, which are not identified as case specific, have been classified as indirect labor.

The methodology used to assign and allocate costs to specific cases is consistent with prior years and is based on generally accepted accounting principles, including references to cost allocation guidelines outlined in the Federal Acquisition Regulations and Cost Accounting Standards. These reports, schedules and summaries will be made available to DOJ Inspector General as part of the annual audit process.

A handwritten signature in black ink, appearing to read "M/M Kei".

**EPA BILLING SUMMARY
SUMMARY OF AMOUNTS DUE
BY INTERAGENCY AGREEMENT
September 30, 2020**

| | <u>Fiscal Years</u> | | | | | |
|--|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| | <u>2020</u> | <u>2019</u> | <u>2018</u> | <u>2017</u> | <u>2016</u> | <u>2015</u> |
| EPA Billing Summary - Amount Paid | \$ 14,753,900 (a) | \$ 13,516,231 (b) | \$ 16,492,597 (b) | \$ 20,003,715 (b) | \$ 19,895,130 (b) | \$ 20,690,654 (b) |
| <u>Add:</u> | | | | | | |
| Payments in FY 2020 for 2019 (a) | | 1,759,231 | | | | |
| Payments in FY 2020 for 2018 (a) | | | 649,588 | | | |
| Payments in FY 2020 for 2017 (a) | | | | 248,838 | | |
| Payments in FY 2020 for 2016 (a) | | | | | (1,668) | |
| Payments in FY 2020 for 2015 (a) | | | | | | 81,867 |
| Subtotal | <u>14,753,900</u> | <u>15,275,462</u> | <u>17,142,185</u> | <u>20,252,553</u> | <u>19,893,462</u> | <u>20,772,521</u> |
| Unliquidated Obligations (c) | <u>5,324,068</u> | <u>1,008,962</u> | <u>714,828</u> | <u>60,036</u> | <u>20,471</u> | <u>-</u> |
| Total | <u>\$ 20,077,968</u> | <u>\$ 16,284,424</u> | <u>\$ 17,857,013</u> | <u>\$ 20,312,589</u> | <u>\$ 19,913,933</u> | <u>\$ 20,772,521</u> |

(a) See EPA Billing Summary, Schedule 2, September 30, 2020

(b) See EPA Billing Summary, Schedule 1, September 30, 2019

(c) See EPA Billing Summary, Schedule 3, September 30, 2020

EPA BILLING SUMMARY
 SUPERFUND OBLIGATION AND PAYMENT ACTIVITY DURING 2020
 BY FISCAL YEAR OF OBLIGATION

| | <u>Fiscal Years</u> | | | | | | |
|-------------------------------------|----------------------|---------------------|---------------------|-------------------|------------------|------------------|----------------------|
| | <u>2020</u> | <u>2019</u> | <u>2018</u> | <u>2017</u> | <u>2016</u> | <u>2015</u> | <u>Total</u> |
| <u>Amounts Paid:</u> | | | | | | | |
| Labor | \$ 5,870,257 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 5,870,257 |
| Other Direct Costs | 995,645 | 745,409 | 540,600 | 700 | - | - | 2,282,354 |
| Indirect Costs | <u>7,887,998</u> | <u>1,013,822</u> | <u>108,988</u> | <u>248,138</u> | <u>(1,668)</u> | <u>81,867</u> | <u>9,339,145</u> |
| Subtotal | 14,753,900 | 1,759,231 | 649,588 | 248,838 | (1,668) | 81,867 | 17,491,756 |
| Unliquidated Obligations (a) | <u>5,324,068</u> | <u>1,008,962</u> | <u>714,828</u> | <u>60,036</u> | <u>20,471</u> | <u>-</u> | <u>7,128,365</u> |
| Totals | <u>\$ 20,077,968</u> | <u>\$ 2,768,193</u> | <u>\$ 1,364,416</u> | <u>\$ 308,874</u> | <u>\$ 18,803</u> | <u>\$ 81,867</u> | <u>\$ 24,620,121</u> |

(a) See Schedule 3

EPA BILLING SUMMARY
FISCAL YEARS 2020, 2019, 2018, 2017, AND 2016 UNLIQUIDATED OBLIGATIONS
September 30, 2020

| | <u>Fiscal Years</u> | | | | |
|--|---------------------|---------------------|-------------------|------------------|------------------|
| | <u>2020</u> | <u>2019</u> | <u>2018</u> | <u>2017</u> | <u>2016</u> |
| ENRD Unliquidated Obligations at September 30, 2020 | \$ 34,403,118 | \$ 7,072,936 | \$ 4,165,894 | \$ 1,141,648 | \$ 488,989 |
| Less: Unliquidated Obligations: | | | | | |
| Section 1595 (a) | 9,273,008 | 2,939,337 | 1,349,015 | 890,325 | 200,976 |
| Section 1596 (b) | 5,000,000 | 808,725 | - | 10,981 | 126,644 |
| Section 1598 (c) | 3,225,078 | 729,578 | 468,400 | 34,699 | 7 |
| Subtotal | 17,498,086 | 4,477,640 | 1,817,415 | 936,005 | 327,627 |
| Net Unliquidated Obligations - ENRD | 16,905,032 | 2,595,296 | 2,348,479 | 205,643 | 161,362 |
| Superfund percentage (d) | 12.4164% | 10.7650% | 10.4931% | 12.3207% | 12.6818% |
| Superfund portion of Unliquidated Obligations | 2,098,990 | 279,384 | 246,428 | 25,337.00 | 20,464 |
| Add - Section 1598 Unliquidated Obligations | 3,225,078 | 729,578 | 468,400 | 34,699 | 7 |
| Total Superfund Unliquidated Obligations (e) | \$ 5,324,068 | \$ 1,008,962 | \$ 714,828 | \$ 60,036 | \$ 20,471 |

(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 2020**

| <u>Description</u> | <u>Total Amounts Paid (a)</u> |
|---|---------------------------------------|
| Indirect labor (b) | \$21,665,762 |
| Fringes | 20,885,440 |
| Indirect travel | 286,712 |
| Freight | 43,087 |
| Office space and utilities | 10,273,424 |
| Printing(forms, etc.) | 1,317 |
| Training and other services | 7,996,302 |
| Supplies | 540,318 |
| Non-capitalized equipment and miscellaneous | 26,265 |
| | <hr/> |
| Subtotal | 61,718,627 |
| Total Direct Labor | 47,278,395 |
| ENRD Indirect Costs Rate - F/Y 2020 Obligations | 130.5430% |
| Plus: Superfund Indirect Costs for Prior Year Obligations (c) and Superfund Specific Costs (d) | |
| | 2020 \$ 224,789 |
| | 2019 1,013,822 |
| | 2018 108,988 |
| | 2017 248,138 |
| | 2016 (1,668) |
| | 2015 81,867 |
| | <hr/> |
| Total | 1,675,937 |
| Superfund Direct Labor | 5,870,257 |
| Superfund Indirect Rate | 28.5496% |
| Total Indirect Rate | <u><u>159.0926%</u></u> |

- (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; \$972,080, \$70,382, \$112,597, \$(1,668) and \$2,378; for F/Y 2019 through F/Y 2015 respectively.
- (d) The balance of the charges in the totals presented were paid during fiscal year 2020 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 \$224,789; \$41,742, \$38,606, \$135,541 and \$79,489; F/Y 2020, 2019, 2018, 2017 and 2015 respectively.

EPA BILLING SUMMARY
 SUPERFUND COSTS BY OBJECT CLASSIFICATION
 September 30, 2020

| Object Class. | Description | Direct Expenses | Indirect Expenses | Unliquidated Obligations (b) | Total |
|---------------|--------------|---------------------|---------------------|------------------------------|----------------------|
| 11 | Salaries (a) | \$ 6,664,516 | \$ 2,884,880 | \$ 3,537,854 | \$ 13,087,250 |
| 12 | Benefits | - | 2,593,212 | 207,550 | 2,800,762 |
| 21 | Travel | 83,366 | 35,599 | 6,071 | 125,036 |
| 22 | Freight | - | 5,350 | 858 | 6,208 |
| 23 | Rent | - | 1,275,586 | 799,082 | 2,074,668 |
| 24 | Printing | 237 | 164 | 106 | 507 |
| 25 | Services | 116,905 | 1,022,859 | 754,174 | 1,893,938 |
| 26 | Supplies | 878 | 67,088 | 1,023 | 68,988 |
| 31 | Equipment | - | 3,261 | 17,350 | 20,611 |
| | Total | <u>\$ 6,865,902</u> | <u>\$ 7,887,998</u> | <u>\$ 5,324,068</u> | <u>\$ 20,077,968</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

| | | 9/30/2020 | | | | | |
|-----------------|-------------|---------------------|----------------------|----------------------|----------------------|--|--------------------------|
| Object Class | Description | ---Superfund--- | | ---Non-Superfund--- | | Indirect Section 1595 & 1596 Expenses | Total Amounts Paid |
| | | Direct Expenses | Indirect Expenses | Direct Expenses | Indirect Expenses | | |
| 11 | Salaries | \$ 6,664,516 | \$ 2,884,880 | \$ 41,492,555 | \$ 18,975,662 | \$ 9,103,720 | \$ 79,121,333 |
| 12 | Benefits | - | 2,593,212 | 35 | 18,292,228 | 4,714,810 | 25,600,285 |
| 21 | Travel | 83,366 | 35,599 | 970,482 | 251,112 | 78,111 | 1,418,671 |
| 22 | Freight | - | 5,350 | - | 37,737 | - | 43,087 |
| 23 | Rent | - | 1,275,586 | 579 | 8,997,838 | - | 10,274,003 |
| 24 | Printing | 237 | 164 | 40,592 | 1,153 | - | 42,146 |
| 25 | Services | 116,905 | 1,022,859 | 1,125,429 | 7,003,452 | 7,499,239 | 16,767,884 |
| 26 | Supplies | 878 | 67,088 | 6,202 | 473,230 | - | 547,398 |
| 31 & 42 | Equipment | - | 3,261 | - | 23,004 | - | 26,265 |
| Total | | <u>\$ 6,865,902</u> | <u>\$ 7,887,998</u> | <u>\$ 43,635,874</u> | <u>\$ 54,055,416</u> | <u>\$ 21,395,880</u> | <u>\$ 133,841,071</u> |

DEPARTMENT OF JUSTICE
 ENVIRONMENT AND NATURAL RESOURCES DIVISION
 September 30, 2020

| Section | Hours | Direct Labor | Other Direct Costs | Indirect | Total | Cases |
|-------------|--------|--------------|--------------------|--------------|---------------|-------|
| Appellate | 573 | \$ 38,822 | \$ 2,086 | \$ 61,763 | \$ 102,671 | 3 |
| Criminal | 83 | 5,011 | - | 7,972 | 12,983 | 1 |
| Defense | 451 | 28,748 | - | 45,736 | 74,484 | 11 |
| Enforcement | 86,674 | 5,797,621 | 2,280,268 | 9,223,587 | 17,301,476 | 517 |
| Policy | 1 | 55 | - | 88 | 143 | 1 |
| Total | 87,782 | \$ 5,870,257 | \$ 2,282,354 | \$ 9,339,146 | \$ 17,491,757 | 533 |

APPENDIX 6: Environment and Natural Resources Division's Response to the Draft Audit Report



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

Executive Office
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October 29, 2021

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 Years 2019 and 2020

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 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 the OIG's conclusion, finding that "ENRD appropriately allocated incurred costs to Superfund and non-Superfund cases, based on the correct totals for the fiscal years ... [and] 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, or have taken, to address the recommendations.

RECOMMENDATION #1: Remedy \$73,421 in questioned costs pertaining to unallowable case determination.

RESPONSE: We concur with this recommendation. As described in the draft audit report, charges associated with two ENRD cases – DJ #90-11-6-21361, *In Re: Hydromex Superfund Site* (Environmental Defense Section); and DJ #90-1-24-05076, *San Diego Coastkeeper, et al. v. Palomar Transfer Station, Inc., et al.* (Law & Policy Section) – were incorrectly charged against the Superfund interagency agreement in the subject fiscal years. To remedy this recommendation, in conjunction with an upcoming regular billing cycle, ENRD will credit-bill EPA \$73,421 in the appropriate fiscal years. Once completed, we will provide the OIG with documentation supporting that the transaction has been completed.

RECOMMENDATION #2: Perform periodic reviews of cases within each section to confirm Superfund case designations.

RESPONSE: We concur with this recommendation. ENRD's sections have performed periodic (biannual) reviews of cases and matters since 2010. (Please see Section V. of the attached ENRD Directive, 2010-04, which describes the Division's "Time Data Integrity" program). However, in response to the two anomalies described above (as well as a discrepancy identified in the OIG's Audit of FY 2018 Superfund Activities), we have recently instituted additional measures to further enhance the Division's controls in this area.

Beginning in April 2021 (at the end of FY 2021 Q2), ENRD began generating and propagating four new reports – in addition to those already generated during the biannual Time Data Integrity process – that are provided to the sections to review in January, April, July and October each year. The quarterly reports are generated and distributed in an automated fashion from the Division's Case Management System (CMSweb); and the reports focus ENRD managers and case management liaisons on Superfund cases in their respective sections.

The four new reports are:

1. Superfund cases with time billed for the quarter;
2. Superfund cases with no time billed for the quarter;
3. New Superfund cases created during the quarter; and
4. Cases where the Superfund flag has changed during the quarter.

Examples of the automated emails and above-described reports are attached to this letter. (There were no quarterly results/reports for the fourth report (i.e., no changed Superfund flags), so we included a report with five years' worth of data, by way of example).

In light of the above-described recently-instituted enhanced controls, and subject to your agreement, we respectfully ask the OIG to consider closing Recommendation #2 when the Final Audit Report is issued.

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 and competing demands, 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 7: 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 Environmental and Natural Resources Division (ENRD). We incorporated the ENRD's response in Appendix 6 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 actions necessary to close the report.

Recommendations for ENRD:

- 1. We recommend that ENRD remedy \$73,421 in questioned costs pertaining to unallowable case determination.**

Resolved. The ENRD concurred with our recommendation. The ENRD stated in its response that charges associated with two cases—one in ENRD's Environmental Defense Section and one in ENRD's Law & Policy Section—were incorrectly charged against the Superfund interagency agreement in FY 2019 and FY 2020. To remedy this recommendation, ENRD stated it will credit-bill the Environmental Protection Agency (EPA) \$73,421 in conjunction with an upcoming regular billing cycle.

This recommendation can be closed when ENRD provides evidence that the \$73,421 credit has been made.

- 2. We recommend that ENRD perform periodic reviews of cases within each section to confirm Superfund case designations.**

Resolved. The ENRD concurred with our recommendation. The ENRD stated in its response that it began generating and propagating four new reports that are provided periodically to each section to review. We reviewed the reports provided by ENRD and found that while these reports provide ENRD sections additional tools to assist in the periodic reviews of Superfund case designation, ENRD provided evidence of the emails and reports submitted to its Environment Enforcement Section only. Despite the Environment Enforcement Section having the majority of Superfund cases, the cases that this audit identified as misclassified were derived from other sections that did not routinely work on Superfund matters.

This recommendation can be closed when ENRD provides evidence of the emails and reports generated for all sections within the ENRD.