Hazardous Discharge Fund and the Hazardous Discharge Site Cleanup Fund

July 1, 1996 to December 11, 1997
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Enclosed is our report on the audit of the Hazardous Discharge Fund and the Hazardous Discharge Site Cleanup Fund for the period July 1, 1996 to December 11, 1997.

If you would like a personal briefing, please call me at (609) 292-3700.
HAZARDOUS DISCHARGE FUND AND THE
HAZARDOUS DISCHARGE SITE CLEANUP FUND

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Hazardous Discharge Site Cleanup Fund

Scope

We have completed an audit of the Hazardous Discharge Fund and the Hazardous Discharge Site Cleanup Fund for the period July 1, 1996 to December 11, 1997. These funds are administered by the Department of Environmental Protection (DEP).

Annual expenditures of the funds were $26 million. The prime responsibility of the funds is the identification, cleanup, and removal of hazardous discharges and the remediation of contaminated groundwater supplies. Annual revenues of the funds totaled $18 million and the major component of revenue was recoveries of current and prior years’ program oversight costs.

Objectives

The objectives of our audit were to determine whether sufficient efforts have been made to collect all funds due to the Site Remediation Program, to determine whether the Hazardous Discharge Site Cleanup Fund reimbursed administrative costs that related only to DEP’s hazardous discharge program, and to test compliance with the terms of the funds’ enabling statutes. We also tested for resolution of significant conditions noted in our prior report.

This audit was conducted pursuant to the State Auditor’s responsibilities as set forth in Article VII, Section 1, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with Government Auditing Standards, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, administrative code, circular letters promulgated by the State Comptroller, and policies of the agency. Provisions that we considered significant were documented and compliance with those requirements was verified by interview and observation and through our samples.
of financial transactions. We also read the budget message, reviewed financial trends, and interviewed agency personnel to obtain an understanding of the programs and the internal control structure.

We tested cost recovery procedures by reviewing the records maintained by the department’s cost recovery unit, analyzing the collection activity for open cases, and interviewing cost recovery negotiators. Expenditures from the General Fund administrative cost accounts which were reimbursed by the Hazardous Discharge Site Cleanup Fund were reviewed to determine whether costs related to the hazardous discharge program.

A nonstatistical sampling approach was used. Our samples of financial transactions and cost recovery cases were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Sample populations were stratified and large dollar transactions were examined. Other transactions were judgmentally selected.

To ascertain the status of findings included in our prior report, we identified corrective action, if any, taken by the agency and walked through the system to determine if the corrective action was effective.

**Conclusions**

We found that DEP has instituted satisfactory procedures for the collection of funds due to the Site Remediation Program, but that cost recovery cases should be handled in a more timely manner. For the most part, the Hazardous Discharge Site Cleanup Fund reimbursed administrative costs that related to DEP’s hazardous discharge program, although some exceptions were noted. The department has complied with the terms of the funds’ enabling statutes.

We also found that the agency has not fully resolved the significant issues noted in our prior report. It has not complied with our recommendations regarding Program Goals, Annual Work Plans, and Project Schedules, because it did not agree with the recommendations and does not intend to change its proce-
dures. The Office of Management and Budget has not yet complied with the recommendation that it perform the required annual analysis of DEP’s hazardous discharge cleanup program, but it is planning to conduct this analysis sometime in fiscal year 1998. The department is still not in compliance with our recommendation regarding the site remediation indirect cost rate. This issue has been updated and restated in our current report.
Cost Recoveries

Cost recoveries represent funds collected from responsible parties for site remediation and administrative oversight costs incurred by DEP’s Site Remediation Program. These cost recoveries are deposited in the Hazardous Discharge Site Cleanup Fund and are used to pay for the administrative costs of the Division of Responsible Party Site Remediation. The Site Remediation Program created a Cost Recovery Unit in fiscal year 1996 to place the initial responsibility for recovering cleanup costs and delinquent oversight costs within the program itself. Previously, all cost recovery efforts were made by the Division of Law within the Department of Law and Public Safety.

Total cost recoveries of the Hazardous Discharge Site Cleanup Fund during fiscal year 1997 were $17 million. The amount collected by the Cost Recovery Unit was $2.5 million. The current caseload of the Cost Recovery Unit is approximately 600. It is projected that, due to several factors, the caseload will increase to as much as 2000 by the end of fiscal year 1998. There are three cost recovery negotiators in the unit.

Caseload

We tested 43 cost recovery cases (with total cost recovery amounts of $15 million) that were open as of August 20, 1997 and found that 16 of these cases (with cost recovery amounts totaling $1.5 million) had remained open from 12 to 26 months with little or no progress made in collecting the amounts due. The Site Remediation Program’s Cost Recovery Guidance Document states that cost recovery resources should be “directed towards those cases which have the highest potential for cost recovery”. Cases were not closed out in a timely manner because of understaffing and because unit personnel keep cases open as long as there is some chance of collection. The Cost Recovery Unit’s caseload is growing and is expected to expand rapidly in the near future. This increased caseload
could result in decreased attention to individual cases and delayed collections for the Hazardous Discharge Site Cleanup Fund.

**Recommendation**

We recommend that the Site Remediation Program allocate additional resources to the Cost Recovery Unit so that it can handle the increased caseload with improved collections. In addition, we recommend that the Cost Recovery Unit consider the use of other agencies and programs such as the SOIL program and the direct billing program located in the Division of Revenue within the Department of the Treasury.

**Auditee’s Response**

The audit report cites that there are currently three cost recovery negotiators with a caseload of approximately 600. Further, the audit report notes that the caseload will increase to as much as 2000 cases by the end of fiscal year 1998. There are two main reasons for the increase in cases. Initially, the increase in the number of cases was anticipated to be caused due to the advent of the Direct Billing System (DBS). The Direct Billing Unit’s first goal was to identify and catalog the complete universe of billable cases within the division. Due to automation of the DBS, it was anticipated that the number of cases, which would enter the Cost Recovery Unit, would dramatically increase during the next calendar year. The DBS has obviated the former manual requirements of case identification, invoicing, and referral to the Cost Recovery Unit. The Cost Recovery Unit receives a copy of the letter, generated by the DBS, referring the responsible party and the Invoice from Direct Billing to the Cost Recovery Unit. In anticipation of the increasing workload in the Cost Recovery Unit, the intention of the bureau’s management has been to reallocate resources from the Direct Billing Unit to the Cost Recovery Unit. This personnel reallocation will be possible due to productivity gains from automated DBS. It should also be noted that our projections indicate that the increase in cases is not expected to be sustained. Rather, it is expected that a gradual decrease in referrals to the Cost Recovery Unit will be observed in the third quarter of Fiscal Year 1999.
More recently, due to a recent Division of Law Interpre-itation of the Statute of Limitation’s clause within the Spill Act, the Cost Recovery Unit will have to realign its cost recovery caselist to incorporate cases which are now subject to a limited timeframe, defined by the Spill Act, within which substantial legal action must take place in order for the department to reserve its rights to collect costs.

Caseload

As was cited within the audit report, the Cost Recovery Guidance Document states that cost recovery resources should be “Directed toward cases which have the highest potential for cost recovery”. Realizing that the cases being transferred from the Direct Billing Unit are more likely to settle quickly, thus resulting in oversight income, the audit report is accurate in stating that there may be a delay in activating this type of case. The department is in agreement with the audit report. Additional resources would undeniably result in the activation of more direct billing cases, in turn, resulting in higher cost recovery dollars in the short term. These resources would also allow for the legal actions necessary, pursuant to the Statute of Limitations, to reserve the department’s rights to collect on cases which will take significantly more time before the cost recovery income would be realized. Accordingly, the department will assess its staffing levels in that specific area.

The audit report states that Cost Recovery cases were not closed out in a timely manner because unit person- nel keep cases open as long as there is some chance of collection. Recalcitrant responsible parties tend to delay the payment of oversight costs as long as possible, prior to imminent legal action, despite a contractual obligation to the department to pay these costs pursuant to either Administrative Consent Orders (ACOs) or Memorandums of Agreement (MOAs). In cases where the recalcitrant’s property is subjected to a Spill Fund lien, we find that this type of recalcitrant would rather continue with such an encumbrance upon their property and until such time as they find it
necessary to have the lien removed for reasons other than their contractual commitment to the department. It is only at that time the recalcitrant party would entertain paying the department its just and due oversight costs. In situations such as this, the Cost Recovery personnel have little recourse, except to implement a slow and deliberate course of action against a responsible party to recover oversight costs.

Although the staff continues to reprioritize the larger dollar cases into the workload, it is our belief that it would be counter-productive to log or chart the progress of an individual case along a generic schedule to ascertain its potential success or failure for ultimate cost recovery. Because there is no or little progress made “collecting the dollars due” does not mean that the negotiations have stalled or come to a standstill. Even if that were the case, the department can foresee little advantage to writing off these cases and their respective oversight costs as uncollectible. The Cost Recovery Unit will continue to investigate every conceivable avenue for collection before a case is considered uncollectible.

**Settlements**

The Cost Recovery Unit has the right to reduce the amount that a responsible party owes to DEP when there are mitigating circumstances. These reductions are known as settlements. Although supervisory approval had been given, we found no written evidence of the required approval on the settlement letter or closeout memorandum for four of the seven settlements we tested. These four settlements had original cost recovery amounts totaling $70,000 and were settled for $28,000. The Site Remediation Program Cost Recovery Guidance Document establishes the approval authority for the different levels of settlements. The greater the reduction in the original cost recovery amount (both dollar and percentage), the higher the level of approval is needed. Cost Recovery Unit personnel did not ensure in these cases that
supervisory approvals were documented on the settlement letter or the close out memorandum.

**Recommendation**

We recommend that Site Remediation Program personnel ensure that the required supervisory approvals are obtained and documented. The use of a standard approval memo would help to ensure the documentation of the proper approvals.

**Auditee’s Response**

The audit report correctly identifies an area where better written records are required. The Cost Recovery Unit has the right to reduce the amount that a responsible party owes the DEP when there are mitigating circumstances. These reductions are known as settlements. Although supervisory approval had been given, the auditors found no written evidence of the required approval on several settlements. This circumstance will be remedied by documentation of our strict adherence to the Standard Operating Procedures (SOPs) which are currently in place. As a point of information the SOPs in place at this time are under review for updating, including the creation of a settlement signature tracking sheet. The first draft is projected to be reviewed by the Assistant Director for the Responsible Party Cleanup Element by Friday, February 20, 1998.

**Administrative Cost Reimbursement**

The annual appropriations act states that administrative costs associated with the cleanup of hazardous waste sites are to be paid from the Hazardous Discharge Site Cleanup Fund. These costs are originally paid by a General Fund account and are reimbursed by the Hazardous Discharge Site Cleanup Fund. The hazardous discharge General Fund account incurred expenditures of $16 million during fiscal year 1997, for which it was reimbursed by the Hazardous Discharge Site Cleanup Fund. Our review of these expenditures revealed that $132,000 did not relate to the purposes of the Hazardous Discharge program and
therefore should not have been reimbursed. These expenditures consisted primarily of excessive administrative overhead charges caused by the use of salary estimates when actual expenditures were available; and the charging of unrelated salary costs to cover a shortfall in the Office of Regulatory and Governmental Affairs. Department personnel did not revise their estimate when the actual cost data became available.

Recommendation

We recommend that department personnel review administrative costs to ensure that only those costs related to the Hazardous Discharge program are reimbursed by the Hazardous Discharge Site Cleanup Fund. In addition, the department should use actual data when calculating the administrative overhead charge.

Auditee’s Response

We concur with the recommendation and will endeavor to base future reimbursements on actual salary costs incurred. To do so, we will perform a year-end reconciliation, prior to the close of the fiscal year, to ensure that only those costs related to the Hazardous Discharge program are reimbursed by the Hazardous Discharge Site Cleanup Fund.

Prior Finding

The department should revise the methodology for preparing site remediation indirect costs.

Our fiscal year 1995 report found that the site remediation indirect cost rate for that year was inaccurate because of the use of inaccurate expenditures. We recommended that procedures be revised to ensure that accurate costs are included in the proper categories in future indirect cost calculations. This finding was repeated in last year’s audit report. The department has still not revised the procedures used to calculate indirect costs because there has been no rate calculation for a subsequent year since the issuance of our fiscal year 1995 report.
**Recommendation**

We recommend that Site Remediation Program personnel use the revised procedures suggested in our fiscal year 1995 audit when they recalculate the site remediation indirect cost rate. These procedures include the review of nonpayroll charges to salary accounts, the exclusion of direct program expenditures from site remediation indirect costs, and the exercise of greater care when entering and reviewing project activity codes on invoices.

**Auditee’s Response**

The Site Remediation program must have the department’s indirect rate supplied in order to conduct the program’s calculations and provide the final program indirect rate. The program has strived to implement achievable recommendations in its calculation of the program’s Indirect Rate for fiscal year 1996. The language for posting the fiscal year 96 Indirect Rate in the NJ Register has been forwarded to the Division of Law for review. The Site Remediation program has not yet initiated its’ indirect rate calculation for fiscal year 97 or fiscal year 98, since no final rates have been approved for the department.