CERCLA Cost Recovery Program

Program Manager 402-697-2434

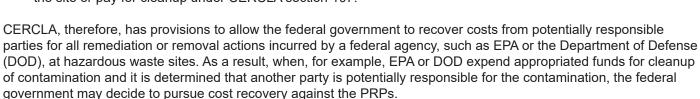**U.S. ARMY CORPS OF ENGINEERS**   **BUILDING STRONG** ®

The objective of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) is to reduce and eliminate threats to human health and the environment posed by uncontrolled hazardous waste sites. To meet this objective, CERCLA created:

- A hazardous waste site response program; and
- A comprehensive liability scheme that authorizes the government to hold persons who caused or contributed to the release of hazardous substances liable for the cost or performance of cleanups.

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CERCLA provides the Environmental Protection Agency (EPA) three basic options for cleaning up a hazardous waste site:

- Under CERCLA sections 104 and 107, EPA can perform a response action at the site using Superfund money and recover response costs from potentially responsible parties (PRPs).
- Under CERCLA section 106, EPA can order, or ask a court to order, PRPs to clean up the site.
- Under CERCLA section 122, EPA can enter into settlement agreements with PRPs that require PRPs to clean up the site or pay for cleanup under CERCLA section 107.

CERCLA, therefore, has provisions to allow the federal government to recover costs from potentially responsible parties for all remediation or removal actions incurred by a federal agency, such as EPA or the Department of Defense (DOD), at hazardous waste sites. As a result, when, for example, EPA or DOD expend appropriated funds for cleanup of contamination and it is determined that another party is potentially responsible for the contamination, the federal government may decide to pursue cost recovery against the PRPs.

In 1989, the U.S. Army Corps of Engineers (USACE) and EPA signed a Memorandum of Agreement to establish a USACE cost recovery program to primarily support the EPA Superfund Program. Under the agreement, EPA agreed to finance a USACE staff and a USACE contractor to create financial site files. In return, USACE agreed to provide a cost recovery coordinator to manage and oversee the USACE contractor activities and provide the necessary coordination with Corps districts nationwide.

The cost recovery mission resides with the Environmental and Munitions Center of Expertise (EM CX), part of the U.S. Army Engineering and Support Center, Huntsville.

Capabilities and Support
In order to be successful in cost recovery litigation, a federal agency represented the Department of Justice (DOJ) must

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be able to prove that the agency performed work at the site and that the agency can accurately document the costs of the work. The Army Corps of Engineers' cost recovery program focuses on accurately documenting the costs of that work when there has been USACE involvement.

Cost recovery personnel collect and compile legally sufficient, project-specific documentation on expenditures for contract support, in-house labor, commercial and credit card purchases, travel, real estate transactions and in-house technical support.

The documentation packages include electronic documents from the Corps financial accounting system as well as original source documents such as receipts and invoices. Cost recovery personnel can also provide expert testimony in court proceedings concerning Corps financial records, policies and procedures. However, to ensure a successful cost recovery, it is imperative that USACE financial site files be in good order and that districts maintain source documents that support expenditures.

While the cost recovery team at the EM CX predominately compiles financial documentation to support legal cost recovery actions for EPA Superfund projects, the CX can also support PRP investigations and cost recovery work for all other cleanup programs such as Formerly Used Defense Sites (FUDS), Installation Restoration Program, Base Realignment and Closure (BRAC) and Formerly Utilized Sites Remedial Action Program (FUSRAP).

Costs

The EM CX cost recovery program is currently funded only for Superfund projects. Other programs may obtain assistance in the preparation or consolidation of cost recovery packages by providing funding to the EM CX. The necessary funding will vary, dependent on the size of the project.

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