

Superfund Cost Recovery Program

History

In 1980 the comprehensive Environmental Response, Compensation and Liability Act (CERCLA) created a \$1.6 billion dollar Trust Fund known as Superfund. The intent was to create a fund that would be self-perpetuating. Funds recovered from the contaminators would be used to finance new cleanup actions. Section 107(a) allows the United States, a State or an Indian tribe to recover the costs of removal or remedial actions incurred by the agency that are not inconsistent with the NCP.

USACE Cost Recovery Mission

Under the USACE/EPA memorandum of agreement, any Corps office performing activities that are either directly or indirectly financed by the Superfund are required to create and maintain site-specific files for a period of not less than 10 years after completion of all work conducted at the site.

In 1989, a memorandum of agreement was signed by USACE/EPA establishing a cost recovery mission (hot button). Under the agreement, EPA agreed to finance a contractor to visit each district, retrieve all the Superfund related financial documents and create the financial site files. USACE agreed to provide a Cost Recovery Task Manager to oversee the contractor's activities and provide the necessary coordination with the local district.

HQUSACE assigned the Task Manager responsibilities to the Missouri River Division. That function now resides with the USACE HTRW Center of Expertise.

CERCLA Requirements

Section 300.160 requires that the documentation maintained by the lead federal agency be sufficient to demonstrate the following factors:

- Source and circumstances of the release
- Identity of responsible parties
- The response action taken and that it was undertaken in substantial compliance with the NCP process
- Accurate accounting of federal, state or private party costs incurred for the response action
- Actual and potential impacts of public health and welfare and the environment from the release.

Types of Records

There are three basic categories of records associated with a recovery action: Project Management, Contractual and Financial. Retention requirements can be found in the Army

Records Information Management System (ARIMS), also known as Army Regulation 25-400-2. The Regulation can be found at: <http://www.arims.army.mil>.

Project Management Records

These records are documents and videotapes created in connection with the investigation, planning, design, remedial actions, technical assistance, operations and maintenance of projects. These records include but are not limited to; environmental assessment reports, project management plans, project budgets and schedules, pre-design and design documents, environmental assessment, QA reports for chemical testing, contract progress reports, inspection reports, minutes from public meetings, manifests, official correspondence, trip reports, and project status reports. Project management records may be found in a number of different locations: Program Management, Engineering, Office of Counsel, Real Estate, and Construction.

Retirement classification: 200 series. Retention period: Permanent

Contractual Records

Contract files include the executed contract, contractor correspondence, government estimates, accepted and unsuccessful bid documents, start and stop orders, property accounts, wage rates, etc.

Retirement classifications: 715 series. Retention Period: 30 years.

Financial Records

These files include all the various financial documents that support the cost incurred on a project from inception:

- a. Certified labor documents
- b. Travel vouchers (to include the travel order, lodging and rental car receipts, airline ticket stubs, and any other receipt required by the Joint Travel Regulation)
- c. Contractor payments (receiving reports, invoices, and disbursement vouchers)
- d. In-house cost distribution vouchers (requisitions for reproduction, laboratory services, government vehicle usage, etc. and the associated billing document)
- e. Journal vouchers – documents used to correct previous document errors (cost transfers).

Retirement Classification: 37 series. Retention Period: 30 years.

Official vs Working files

Official files are those records you are mandated to keep either by law or regulation. Official files and their retention periods are found in AR 25-400-2 (ARIMS). It is important that official files and working files are so identified and kept separate. In a cost recovery case, we are required to produce the official files. We are under no obligation to release working files UNLESS the two are commingled. Working files are things such as notes kept in employee journals or day-planners, copies of the contract scope of work that are not in the official contract file, drafts of various letters or documents. Upon project completion, working files are NOT retired. They are destroyed.

There are some files that are not classified as official files in ARIMS but may meet the official file classification due to the actions of the parties involved. For example, if you make a phone log of conversations relating to the various projects, that phone log is a working file not an official file. If however, there is a written policy that mandates the use of phone logs, that log is now an official file of the organization because the agency has mandated its usage.

Privacy Act Protected Information

Under the Privacy Act, certain information about employees is protected from disclosure. That information includes such things as Social Security numbers, credit card numbers, home addresses, home phone numbers, driver's license numbers etc. Prior to release, all documents must be reviewed to determine if they contain Privacy Act protected information. Any Privacy Act protected information must be redacted before the document is released. DO NOT redact original documents. Make a copy and using dark pens and magic markers, obscure the protected information so that it is illegible. NEVER ALTER OR RELEASE ORIGINAL DOCUMENTS UNLESS ORDERED TO DO SO BY THE COURTS. Specific requirements under the Act can be found at 5 U.S.C. Section 522.

Confidential Business Information

When soliciting bid proposals, the government requires contractors to provide confidential financial or commercial information. This information requires protection because disclosure would give competitors an unfair advantage in competing for future contracts. Information such as labor rates, overhead/profit rates, or details of their overhead expenses are all considered contractor sensitive.

The Federal Rules of Civil Procedure (FRCP) 26(c) allows a party to a case who has received a discovery request to ask a Court to order protection of certain information to include things such as information protected by the Trade Secrets Act, classified documents concerning national security and contractor confidential financial or commercial information. Protective orders often allow attorneys to the case and the Judge to see confidential commercial documents in a controlled location, but not to disclose them to clients or others without further Court order. In any case, before releasing any documents outside of your organization, consult your Office of Counsel. This includes documents being turned over to other Federal agencies such as the Department of Justice.

Alternate Storage Media

An organization may utilize alternate storage media such as microfilm and ODI (Optical Disk Imaging) as long the criteria defined in 29 U.S.C. 1732 is followed. The statute states:

If... a department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not....

Corps of Engineers Financial Management System (CEFMS)

Under CEFMS, all financial documents with the exception of invoices and traveler receipts are electronic “documents” not paper. When documenting CEFMS costs, facsimile copies of the electronic records are created and submitted as evidence.

With the electronic records/signature capability comes the added burden of being able to demonstrate the system securities that insure the electronically signed record has not/cannot be altered undetected. The retention and security responsibilities for these records reside with the CEFMS Systems staff under the direction of the Finance Center.

Under CEFMS there is still a requirement for certain hardcopy documents. Those documents are as follows:

Travel – Copies of the traveler’s lodging receipts, rental car, airline ticket stubs, receipts for miscellaneous claims over \$75. (Note: If the traveler did not electronically sign the travel voucher, a manually signed copy is needed).

Contractor Payments – An invoice is needed unless it is a progress payment contract in which case the ENG 93 is sufficient.

Airline Ticket Vouchers – A copy of the credit card invoice is required.

Other Credit Card Purchases – A copy of the credit card invoice is required.

Cost Transfers – If the cost transfer justification in CEFMS states “See memo”. A copy of the memo is required. If the actual justification from the memo is inserted in the justification field, the memo is not required.

The above listed documents are financial records regardless of which office retains them. For travel vouchers, the ARIMS classification can be found in the “Office Administrative Housekeeping Files”. The other files can be found in the Financial Administration series. All the files listed carry a retention period of 30 years if they are associated with an environmental project.

USACE Finance Center

The Finance Center is now utilizing an ODI system to capture all the invoices received. For credit card purchases however, the Finance Center only maintains the total page. The local Corps office is still the record holder for the supporting documentation (invoices) for credit card purchases. The ARIMS classification to be used for these records is 37-2-10s2, which carries a retention period of 30 years.

Documentation Process (CEFMS)

For Superfund projects, site financial files are being created on a daily basis for all IAGs. The site files are assembled and held at a central storage facility in Omaha until an actual documentation request is received.

Under the guidance and control of the Cost Recovery Task Managers, the USACE contractor will pull all the financial documents available in CEFMS directly from the local District’s database. For all vendor payments and travel payments, a file will be generated identifying the documents required from the local district and from the Finance Center. The lists will be sent to the appropriate Finance

and Accounting Officer (FAO) or designated POC. Invoices required from the Finance Center will be obtained through the on-line invoice imaging system.

The site files will be held in Omaha until a request is received from either the EPA Region or the Department of Justice. If the local district receives a request for financial records from either the EPA region or DOJ, they should immediately contact the HTRW-CX. A written request is needed from the Region identifying the site, the period for which the documents are needed, the interagency agreement numbers and a due date. Upon receipt, the CX Cost Recovery Task Managers will verify the agreement number(s) against the USACE master database. The recovery coordinator will also verify that Corps records agree with the EPA SCORPIO report (previous known as the IFMS Reconciliation report) to insure there are no discrepancies between the two agencies. The contractor will then be directed to copy the site file. The original copy will remain at the CX, the copy will be redacted and prepared for release to the requestor. The Cost Recovery Task Managers will conduct a 100% QA of the project, prepare cost summary reports and detailed missing document lists that will be sent with the site files. A manual describing the site file structure and various types of documents will also be provided.

The current USACE Task Managers for the Cost Recovery Program are Lucy Harris (402) 697-2433 and Cheryl Young (402) 697-2434. They can also be reached via email at Lucy.A.Harris@usace.army.mil or Cheryl.L.Young@usace.army.mil. It is requested that any document requests or inquires be sent to both Task Managers to insure the request is responded to in a timely fashion.

Improving USACE Documentation

The following identifies actions that can be taken to improve the quality of the records.

Work Item Title

Always include the site name in the title. Adding the name reinforces the tie between the documents and the project. On the certified labor document only the ordering work item is listed. Therefore, if the project name appears in the parent work item and not the children, the certified labor document will not identify the project being charged. The absence of the project name does not make it a bad document, but its presence does reinforce the relationship between the transaction and the project.

Requisitions

Insure the PR&C description identifies a clear and concise relationship between the item being procured and the project. Again, include the project name in the description.

Travel

Include site name and brief description in the Purpose Block. Create a special office file to retain all HTRW related travel vouchers. Label the file in accordance with ARIMS guidance. Insure the file label identifies a retention period of 30 years. Retain all HTRW travel voucher with the required (original) receipts in this file. If a traveler does not electronically sign his/her travel voucher be sure they manually sign the hard copy.

MIPRs

When issuing MIPRs to another Corps Office it is important not only to identify the project or site name, but also to clearly identify the funding source (Superfund, FUDS, FUSRAP). If the RM office does not know the fund source (especially for Superfund and FUSRAP), the proper Category/Class Code will not be used (For example: all Superfund projects should be established with a category class code of "B"). Everyone needs to be put on notice that the special HTRW document retention requirements apply to the MIPR.

OTHER RELATED GUIDANCE

January 1989 Superfund Financial Management and Recordkeeping Guidance for Federal Agencies

CEIM-PD memo dated 26 July 1991, subject: Interim Policy Guidance Regarding the Retention of Environmental Restoration Records

CEIM-PD memo dated 17 March 1992, subject: Preservation of Environmental Restoration Records

CERM-F memo dated 7 June 1996, subject: Policy for Retention of Travel Expense Receipts

CERM-F memo dated 7 July 2000, subject: CEFMS and Superfund Cost Documentation