



AUDITOR GENERAL

WILLIAM O. MONROE, CPA



DEPARTMENT OF ENVIRONMENTAL PROTECTION PETROLEUM PREAPPROVAL PROGRAM EXPENDITURES AND SITE MANAGEMENT PROCESSES

Operational Audit

SUMMARY

This audit of the Department of Environmental Protection (Department) focused on Petroleum Preapproval Program (Program) expenditures and site management processes during the period July 2003 through February 2005, and selected actions taken through June 2005. As summarized below, improvements are needed in cleanup site file documentation, site management, payment processing, environmental laboratory certifications, and financial reporting.

Finding No. 1: Key Program documents were not always included in scanned cleanup site files used for site management by the Department and other interested parties.

Finding No. 2: For one cleanup site with costs in excess of \$5 million, documentation was not available explaining the Department's decision to use State resources to fully fund the cleanup and not seek any cost recovery from the responsible party.

Finding No. 3: Required annual Site Manager visits were not always performed or documented. As a result, the Department cannot be assured that Site Managers have taken advantage of the benefits to be derived from such visits and complied with Department procedures and guidance.

Finding No. 4: Training records were not always available or complete and did not, in some instances, demonstrate that Site Managers received required health and safety training.

Finding No. 5: Program work orders, change orders, and invoices were not always processed in compliance with Department procedures and guidance.

Finding No. 6: One cleanup site file did not contain documentation evidencing Department reasons for paying \$11,000 for services provided by a subcontractor when the subcontractor did not achieve the goals established in the approved cost proposal.

Finding No. 7: Some cleanup site contractors utilized environmental laboratories that were not certified by the State at the time of certain measurements, which could result in reliance on inaccurate test results.

Finding No. 8: The Department's method for recording retainage withheld on work performed by cleanup site contractors resulted in overstatements of Program expenditures and liabilities and an understatement of encumbrances recorded in the State's accounting system. As of May 2005, each of the three accounts were misstated by \$6.4 million.

BACKGROUND

In 1986, the Inland Protection Trust Fund¹ (IPTF) was created to enable the Department to respond without delay to incidents of inland contamination related to the storage of petroleum and petroleum products.

The IPTF provides most of the funding for the Department's Program. The IPTF is primarily funded

¹ Section 376.3071, Florida Statutes.

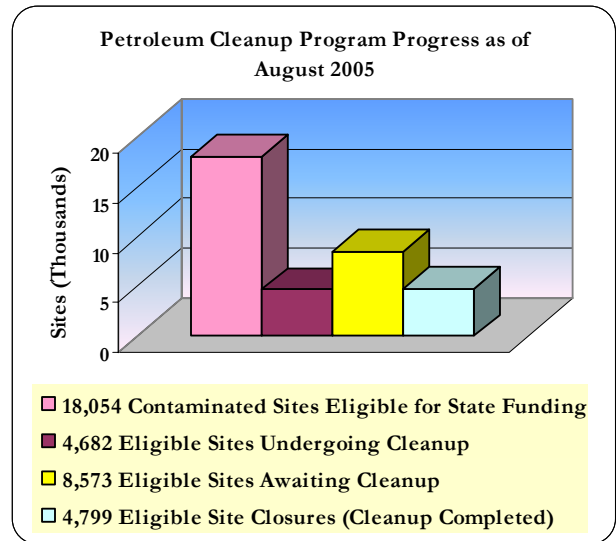
by excise taxes on petroleum and petroleum products, registration fees on petroleum storage tanks, and inspection fees on facilities where petroleum storage tanks are located.² The IPTF fixed capital outlay appropriations for the Program for the 2003-04 and 2004-05 fiscal years totaled \$144 million and \$150 million, respectively.

The Program is managed by the Bureau of Petroleum Storage Systems (BPSS) within the Division of Waste Management. BPSS includes four operational petroleum cleanup sections (Teams 1-4) and two contractor teams (Teams 5 and 6). Outsourced Teams 5 and 6 functions include site management.

The Department established the Local Government Cleanup Contracting Program (Local Government Programs), which outsourced site cleanup functions to 15 counties and local County Health Departments to manage cleanup sites in 24 counties. According to Department personnel, 50 percent of the sites undergoing cleanup are outsourced under contracts with the counties, local County Health Departments, or private contractors.

To facilitate effective and efficient petroleum cleanups, BPSS established a Standard Operating Procedures Manual (SOP)³ that describes the general procedures to be followed and the documents to be completed during the site cleanup process. An overview of certain Program processes relating to remediation contractor payments and site management is shown on Appendix A.

Department personnel indicated the average cost of cleanup in 2004 was \$380,000 per site and that the average site cleanup takes three to five years. Also, Department personnel indicated the following progress has been made towards the cleanup of petroleum contaminated sites.



For the 2003-04 and 2004-05 fiscal years, General Appropriations Act proviso language for the petroleum cleanup appropriations required that, except for unforeseen contingencies, appropriations be made at a uniform rate throughout the fiscal year (i.e., approximately 8.33 percent of the total funds should be encumbered in each month).⁴

BPSS issued Work Orders or task assignments to authorize and encumber the petroleum cleanup work. In order to implement the proviso language, the BPSS established a weekly obligation list that detailed Work Orders, task assignments, and other obligations. The weekly list is approved by the BPSS Bureau Chief and posted on the BPSS website. Appendix B summarizes monthly obligations (encumbrances) reported in the weekly obligation lists for the 2003-04 and 2004-05 fiscal years.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Scanning of Program Documents

Site Managers are responsible for maintaining Program site files, including ensuring that documents are forwarded to the BPSS Document Management

² Sections 206.9935, 206.9945, 376.303, and 376.3072, Florida Statutes.

³ The 2002 SOP was in effect during the audit period. A revised version of the SOP was issued April 2005.

⁴ Chapter 2005-180, Laws of Florida, effective July 2005, amended Section 376.3071, Florida Statutes, to require the Department to establish a process to uniformly encumber appropriated funds throughout the fiscal year.

Center for scanning into the Department's electronic database. The Department uses a document retrieval system known as OCULUS to access the scanned files. OCULUS is available to interested parties (e.g., contractors, subcontractors, and responsible parties) via the BPSS website. After being scanned, the paper documents are filed and are also available to interested parties. Local Government Programs' Site Managers are required to send to the BPSS Document Management Center scannable copies of all documents and correspondence within 60 days of receipt or initiation.

As a part of our audit, we tested 44 OCULUS site files. We reviewed the same sites as those selected in our test of 45 payments to contractors (see Finding No. 5). Two of the 45 payments related to the same site.

The BPSS SOP provides the following guidance regarding document scanning:

- It is very important that copies of all deliverables and reports be incorporated into the electronic and paper copies of the cleanup site files in a timely manner for use by all interested parties. Copies of all deliverable approval letters, orders and other correspondence should also be sent for scanning and filing as soon as possible.
- Work Orders should specify that two copies of all deliverables be provided by the contractor so that one copy can be sent for scanning and filing without delay.
- It is extremely important that a separate copy of each invoice with all attachments be sent to the BPSS Document Management Center for scanning (2005 BPSS SOP).

Our test disclosed 33 site files for which one or more key documents had not been scanned into OCULUS. In all cases, we were able to obtain a copy of the documents from the Site Manager. Examples of documents that had not been scanned and the number of files involved included:

- Deliverables (reports or plans), such as Source Removal Reports and Remedial Action Plan Modifications (6 OCULUS site files).

- Interim deliverables, such as boring logs, field notes, sampling logs, and disposal manifests (8 OCULUS site files).
- Site Inspection Forms documenting Site Managers' site visits (12 OCULUS site files).
- Operation and Maintenance (O&M) Inspection Forms documenting remedial system inspections performed by O&M Inspectors (3 OCULUS site files).
- Subcontractor invoices totaling \$19,148 documenting increases in subcontractor costs (5 OCULUS site files).

Other examples of documents not scanned included deliverable review letters, Verbal Authorization Forms, Consent Orders, and proposals. Also, in four instances, we could not determine whether the interim deliverables had been received and reviewed prior to payment being made (see Finding No. 5).

Responses to our inquiries from Site Managers indicated that five Local Government Programs had not been routinely sending inspection forms for scanning because they were not aware of the requirement. One Site Manager indicated that interim deliverables were not always scanned into OCULUS because the information is usually resubmitted in the final deliverable. Other responses indicated that not sending the documents for scanning was an oversight.

As a result, the OCULUS site files contained incomplete information for interested parties and did not document compliance with applicable provisions in the BPSS SOP.

Recommendation: To promote compliance with Department procedures and guidance and ensure OCULUS site files are complete, we recommend that Department management emphasize to Site Managers the importance of submitting key documents to the BPSS Document Management Center for scanning.

Finding No. 2: Eligibility Program Documentation

One of the sites included in our test of 44 OCULUS site files was the Suwannee County Public Works, which is owned by the Suwannee County Board of County Commissioners (County). The site participated in the cleanup under the Petroleum Cleanup Participation Program (PCPP). Pursuant to law,⁵ PCPP sites are eligible for up to \$300,000 of funding assistance and must demonstrate an ability or inability to meet a 25 percent co-payment obligation. Generally, under PCPP, the responsible party must complete the cleanup at its own expense if the \$300,000 State funding ceiling amount is exceeded.

As shown in Appendix C, in 2001 the Department notified the County of the County’s ability to pay more than \$500,000. However, no County funding participation was obtained, and as of March 2005, the Department had made payments to the cleanup site contractor in excess of \$5 million.

Documentation was not in the OCULUS site file evidencing the factors and circumstances surrounding the Department’s decision to use State resources to fully fund the County cleanup site. Department management, in response to our inquiry, provided the following information and explanations:

- In a letter dated in August 2002, the County requested confirmation of its status under the Department’s Indigent (inability to pay) PCPP Program. Department management indicated that they accepted the County’s claim of inability to pay and the County was not required to pay any of the co-payment amount based on consideration of the financial impact to the County and the small county protection provisions provided in law.⁶ However, Department management indicated that neither the decision to accept the County’s claim nor the factors considered to support the validity of the County’s claim were documented.

- The contamination at the site posed a threat to the environment and public health, and the Department determined that site cleanup had to continue until the cleanup target levels were achieved. In addition, Department management indicated that, pursuant to legislative direction,⁷ the Department responds expeditiously to incidents of petroleum contamination whenever such incidents pose a threat to the environment or the public health, safety, or welfare. However, Department management indicated that the decision to continue the site cleanup after the PCPP ceiling amount was reached and not seek any cost recovery from the County was not documented.
- The reason the original PCPP agreement was amended after the Department made the decision to fully fund the cleanup was that, through an oversight, the individual responsible for maintaining PCPP agreements was not informed of the Department’s decision to accept the County’s claim of inability to pay. Therefore, the normal PCPP procedures were followed and the agreement was amended.

Notwithstanding these explanations, the Department had not adequately documented the factors and circumstances surrounding its decision to use State resources to pay the full cost of the site cleanup for the County and not seek any cost recovery from the County.

Recommendation: To ensure site files are complete and to provide an accurate accounting of activities funded with State resources, we recommend that all management decisions regarding site funding be adequately documented.

Finding No. 3: Site Visits

Site Managers are required by the BPSS SOP to conduct site visits at various intervals. These visits are designed to provide the following benefits to Site Managers:

⁵ Section 376.3071(13), Florida Statutes.
⁶ Chapter 120, Florida Statutes.

⁷ Sections 376.3071(1), (2) and (4), Florida Statutes.

- An understanding of site-specific conditions and to document the existing work completed at each site.
- A better understanding of field work and to learn more cost-effective methods for accomplishing goals.
- An understanding of any constraints that may affect work at the site.

In addition to the Site Manager visits, the Department implemented a contracted inspection program that is performed by the two contractor Teams and by the Local Government Programs.

The contracted inspection program is comprised of Operation and Maintenance (O&M) and field inspections. The O&M inspections were implemented in July 2003 for the active remediation systems in order to have an effective presence in the field during contractor mobilizations and were documented on an O&M Inspection Form. O&M inspections are required to be performed no less than three times a year for applicable sites. Field inspections were implemented in January 2004 to address other types of mobilizations and were to be performed for approximately 25 percent of active sites. The Field Inspection Summary Form was designed to document the inspector’s observations of the work being performed.

The BPSS SOP provided the following guidance regarding site visits:

- Site Managers are required to visit each of their assigned sites at least once a year and complete a Site Inspection Form for every site visit. At a minimum, Site Managers are responsible for conducting at least one site visit at some point in the life of the project.
- Required site visits may be performed with contracted assistance; however, the contracted inspection program is not intended to eliminate site visits by BPSS Site Managers.

As a part of our audit, we tested 44 OCULUS site files. We noted 22 sites for which annual Site Manager visits were not documented. For 16 of the 22 sites, there were no documented site visits during the period

July 2003 through May 2005. Six of the sites did not have one or more annual visits documented. There were also no field or O&M inspections documented in the OCULUS site files for 18 of the 22 sites (see Finding No. 1).

Upon inquiry, Site Managers for 9 of the 22 sites indicated site visits were performed, but no Site Inspection Forms were completed. For other instances, Site Managers indicated the following:

- Site visits were not performed because they were unaware of the requirement to complete a Site Inspection Form, or they thought only one visit during the life of the project was required.
- They were required to visit only 25 percent of the sites yearly and were on travel restrictions.

Although the 25 percent requirement relates to field inspections, some Site Managers may be substituting field inspections for site visits.

For three additional sites, the Site Inspection Forms were not completed; however, inspections were documented by other records based on information provided by Site Managers.

When site visits are not performed or documented, the Department cannot be assured that Site Managers have taken advantage of the benefits to be derived from such visits and complied with the BPSS SOP.

Recommendation: To enhance cleanup site monitoring, we recommend that Department management ensure Site Managers perform and properly document site visits as required by Department procedures. In addition, we recommend Department management consider providing additional training to Site Managers concerning the various required inspections and their frequency.

Finding No. 4: Health and Safety Training

When conducting site visits, Site Managers must observe the instructions of the Contractor’s Health and Safety Officer as well as be familiar with the Contractor’s Health and Safety Plan. In addition, Site

Managers must review and be familiar with Department safety requirements.

The BPSS SOP provides that Site Managers must have 40-hour health and safety training (preferably prior to their first site visit). An annual 8-hour refresher course is required to keep the training current.

As a part of our audit, we tested the training records for the 58 BPSS Site Managers employed by the Department throughout the audit period. The training records provided indicated the date the 40-hour training course was taken by each Site Manager and the attendees of the ten 8-hour refresher courses given during the period January 2002 through April 2005.

Our review of the training records disclosed the following:

- For 20 of the 58 Site Managers, there was no record of their completion of the initial 40-hour course.
- For 39 of the 58 Site Managers, there was no documentation of attendance at 1 or more required annual refresher courses.
- Class rosters were not available for 6 of the 10 refresher courses.
- Eight Site Managers were shown in the training records as having attended a class for which they were listed on the class roster, but did not sign the roster.

In response to our inquiry, Department management indicated the following:

- The 20 Site Managers not listed as completing the 40-hour course did not take the course through the Department. Most Site Managers who come to the Department from private industry or other agencies have completed the course through other venues. The 8-hour refresher course is also taken by some employees outside of the Department. The Department only tracks Department-sponsored course attendees.
- The Division of Waste Management’s Hazardous Waste Regulation Section has a contract with Florida State University that includes the 8-hour refresher courses. If there are seats available, interested BPSS employees

are put in contact with coordinators of these courses. The Department does not receive copies of the roster from these classes.

- Occasionally, attendees will forget to sign the class roster or will be given credit in the training records incorrectly.

In the absence of complete training records, the Department cannot adequately monitor whether Site Managers received the appropriate training and cannot demonstrate compliance with the BPSS SOP.

Recommendation: To enhance employee health and safety during cleanup site visits, we recommend that Department management maintain adequate training records to demonstrate that all Site Managers receive the appropriate training, including tracking of training received outside of the Department.

Finding No. 5: Work Orders, Change Orders, and Invoices

Site Managers are responsible for reviewing contractor proposals for appropriate scopes of work and costs. After a Work Order is executed, any changes to the scope of work must be documented in writing prior to implementation using a Verbal Authorization Form. An Invoice Form is required for payment for work performed (deliverables) as authorized in the executed Work Order and Verbal Authorization Forms (see Appendix A for an overview of Program processes).

As part of our audit, we tested 45 payments to contractors totaling approximately \$8 million. Overall, our testing indicated that payments were generally made in accordance with applicable laws, rules, BPSS SOP guidance, and other procedures. However, improvements could be made in the following areas.

Work Order Processing

The BPSS SOP provides the following guidance regarding contractor proposals, Work Orders, and changes to original proposals:

- Site Managers are allowed 14 days to review a proposal and 14 days to issue a Work Order

after the proposal review is completed, for a 28-day turnaround time.

- When the 28-day turnaround time is delayed because of a pending contractor response, then that time should not be counted towards the processing time. The Site Manager should properly document the reason for the delay.
- Changes to the original proposal should be documented on the proposal itself or in detail on the Work Order.

Our test disclosed nine instances in which the 28-day turnaround time was exceeded by more than 30 days, without adequate documentation of the delays incurred awaiting a response from a contractor. The number of days from the date the proposals were received to the date the Work Orders were issued ranged from 59 to 129, excluding any documented delays. In some cases, Site Managers were able to provide various explanations or e-mail records for the delays. However, without adequate documentation of the specific dates and explanations for the delays, management cannot monitor compliance with the turnaround times provided in the BPSS SOP to ensure work progresses in a timely manner.

Our test included a comparison of 42 proposals to approved Work Orders to determine if changes in scope of work and costs were documented. In four instances, Site Manager changes to proposals that ranged from a reduction of \$614 to an increase of \$10,942 were not documented. Upon inquiry, Site Managers were unable to provide us with documentation explaining the changes. Absent adequately documented Site Manager changes to proposals, Department personnel may not be able to reconstruct decisions regarding scope of work and costs.

Approval of Verbal Authorization Forms

Program Spending Procedures for the fiscal years ended June 30, 2004, and 2005, provide the following guidance regarding Verbal Authorization Form approvals:

- Verbal Authorization Forms greater than \$2,500 require Cost Center Administrator approval (sign-off on Verbal Authorization Form).
- Changes that have not been properly and completely executed on the Verbal Authorization Form prior to the performance of the work shall not be payable.

In addition, the BPSS SOP provides that the Verbal Authorization Form should be signed by both the Site Manager and contractor before implementation of the revised scope of work or time frame. Signatures, on an after-the-fact basis, are not acceptable since this may lead to disagreements on the specific details of what was verbally discussed.

Verbal Authorization Forms were applicable for 13 of the 45 payments we tested. Our test of Verbal Authorization Forms associated with 5 of the 13 payments disclosed 8 Verbal Authorization Forms exceeding \$2,500 that were not properly approved, as follows:

- Cost Center Administrator approval was not documented for seven Verbal Authorization Forms which increased costs by a total of \$273,988.
- For one Verbal Authorization Form totaling \$31,781, Site Manager approval was on January 25, 2005, and contractor acceptance signature was on January 31, 2005, both of which were after the applicable invoice dates. A portion of the Verbal Authorization Form related to laboratory work with invoices dated from September 29, 2004, through November 24, 2004, that totaled \$1,108. In response to our inquiry, the Site Manager indicated that a quick response was needed for the laboratory work. The invoice for the remaining \$30,673 for a canopy replacement was dated January 11, 2005. The Site Manager response indicated that the delay was for time to review the documentation for the increase in the canopy cost.

Absent compliance with the BPSS SOP, the Department cannot be assured that all reviews of the Verbal Authorization Forms were properly completed

and all questions resolved to ensure that all activities are authorized prior to completion and payment.

Acceptance of Deliverables for Invoice Processing

Work Orders specify the deliverables and their due dates. A deliverable is generally a written report of work performed. Site Managers may authorize interim deliverables, such as field notes, sampling logs, laboratory reports, and disposal manifests. Pursuant to the BPSS SOP, Site Managers are responsible for verifying and approving invoices and ensuring that the work invoiced has been completed. The BPSS SOP also provides that deliverables specified on one Work Order should not be moved to a subsequent Work Order.

Our test disclosed the following instances in which receipt and review of deliverables were not documented or compliance with the BPSS SOP was not demonstrated:

- For four payments totaling \$59,475 made during September 2003 through December 2004, there was no documentation that interim deliverables were received prior to payment. Although Site Managers were able to provide us with deliverable documents in three instances, there was no documentation of the dates received. In the remaining instance, a payment (\$1,865) for a report (which was apparently lost in the mail) was made prior to the documented receipt date.

Also, three of the four instances involved interim deliverables that were not scanned into OCULUS with the invoice package (see Finding No. 1).

- The Department paid for laboratory tests totaling \$4,073, but did not obtain the test results or require that they be submitted prior to the invoice payment in January 2005. The Site Manager indicated that they expected all the relevant laboratory data to be submitted to the Department in the Startup Report (Report). The Report was removed from the Work Order we tested and included in a subsequent Work Order. The Report was not received or reviewed as of July 7, 2005.

- An invoice approved for payment on October 6, 2004, for field notes included \$757 for a monthly O&M site visit that occurred on October 14, 2004, which is subsequent to the approval date.

Failure to properly document the receipt and review of deliverables may result in the Department paying for services not received.

Recommendation: To promote compliance with Department procedures and guidance, we recommend the Department ensure that Site Managers:

- Attempt to minimize delays, and if delays occur, document the dates and explanations for delays in reviewing proposals and processing Work Orders.
- Adequately document changes to the original proposals.
- Timely obtain and document approval of Verbal Authorization Forms.
- Properly document the receipt of deliverables.

Finding No. 6: Subcontractor Payments

Our test of 45 contractor payments disclosed one instance where the Department paid \$11,000 for services provided by a subcontractor that were in excess of the amount allowed by the approved cost proposal. The services were provided on a pay-for-performance basis for a lump sum of \$44,000. An initial fee of 50 percent or \$22,000 was due upon signing of the proposal and the initial treatment of the affected groundwater and soil. The remainder of the fee was to be paid in increments based on the achievement of certain percentage reductions in contaminant levels to Site Target Levels.

However, due to errors made in the Work Order, the Department paid \$31,900 in May 2002 for the proposal signing and initial treatment. Our review of the final invoice paid in April 2004 disclosed that, although no significant reduction in contaminants levels had been achieved, the subcontractor was paid a

total of \$33,000 for the services. As a result, the subcontractor was paid \$11,000 more than the amount provided from the approved cost proposal.

In response to our inquiry, the Site Manager indicated that since the subcontractor had conducted significantly more bioremediation treatments than were anticipated, and since the presence of smear zone soil contamination violated the terms specified in the subcontractor’s proposal, it was determined to pay the subcontractor despite the failure to meet the Site Target Levels. However, the decision to continue to pay for services that were not achieving the established reduction levels was not documented.

Recommendation: To ensure that adequate documentation is included in the site files supporting Program payments, we recommend that Department management require Site Managers to document the reasons for paying for services in excess of amounts allowed in the proposal.

Finding No. 7: Environmental Laboratory Certifications

During the assessment and remediation of petroleum contaminated sites, contractors utilize services provided by environmental laboratories. These services generally include analyzing soil and ground water samples to determine the concentration of petroleum product contaminants. The results of the analyses provide both the Department and contractors with information that is utilized in the decision-making process during the cleanup. For example, the analyses:

- Provide a basis for determining the degree and extent of petroleum contamination at the site.
- Aid in the determination of which remediation method should be utilized for the site.
- Measure whether the remediation method utilized was the appropriate method for the contamination present at the site and whether the method was successful in cleaning up the contamination.

The Department established Quality Assurance Rules⁸ for the purpose of ensuring that certain data used by the Department is appropriate and reliable, and is collected and analyzed by scientifically sound procedures. The Rules require all laboratories generating environmental data for submission to the Department or for its use in Department activities to hold certification from the Department of Health Environmental Laboratory Certification Program (DOH ELCP).⁹ Such certification is required for all test method¹⁰ and analyte¹¹ combinations being measured.

DOH has established an electronic laboratory database that shows the test method and analyte combination certified for by each matrix (predominant material) and the certification date. The database is available via the BPSS website. According to Department personnel, Program procedures do not require Site Managers to verify that laboratories are certified for the services performed. Instead, the Department relies on the contractors to verify such certification for the subcontracted laboratories.

As part of our audit, we reviewed laboratory reports submitted by 22 laboratories to the Department related to 42 Work Orders for ground water and soil analyses. We determined whether the laboratories were shown in DOH’s database as certified at the time of measurement for the test method and analyte combinations included in the reports. For the 42 Work Orders, we reviewed reports for 1,585 test method and analyte combinations of which 99 (6.25 percent) were measured by laboratories that were not shown in DOH’s database as being certified at the time of measurement for the applicable test method and analyte combinations, as indicated below.

⁸ Department of Environmental Protection Rules, Chapter 62-160, Florida Administrative Code.

⁹ Authorized by Section 381.00591, Florida Statutes, and recognized by the National Environmental Laboratory Accreditation Program.

¹⁰ Laboratory analysis procedures generally established by the Department or the U.S. Environmental Protection Agency (e.g., EPA Methods 8021, 8260, and 8310).

¹¹ Examples of analytes measured included benzene, toluene, ethylbenzene, and acenaphthene.

Lab Analysis April 2003 - February 2005		
Matrix (Predominant Material)	No. of Labs Not Certified for Test Method and Analyte Combinations (1)	No. of Test Method and Analyte Combinations Measured by Labs Not Properly Certified (1)
Ground Water	10	72
Soil	<u>1</u> (2)	<u>27</u>
Total	<u>11</u> (3)	<u>99</u>

(1) Based on DOH's database as of August 2005.
 (2) Laboratory was not certified for the matrix measured.
 (3) 80 of the 99 exceptions related to three laboratories.

In response to our inquiry, Department management concurred that environmental laboratories should be properly certified and indicated new procedures would be incorporated in the next interim SOP update in 2006. Department management also indicated that DOH's electronic database was not available to the Department and the public until mid-2004.

Since laboratory analysis is an integral component in the cleanup process, the failure to use properly certified laboratories could result in inaccurate test results, the use of which could affect decisions, such as whether the appropriate remediation method was selected and whether it was successful in cleaning up the contamination.

Recommendation: To promote compliance with Department rules and reliability of laboratory reports, we recommend Department management ensure that the new procedures for laboratory certification verification are timely communicated to appropriate Program and contractor personnel and incorporated in the SOP.

Finding No. 8: Retainage Withheld Procedures

As part of our audit of the Program, we reviewed Department procedures for recording retainage withheld for work performed by cleanup site contractors. Based on Department procedures in place during our audit period for a Work Order or Change Order issued to a contractor, 90 percent of the Work Order or Change Order amount was recorded

as an encumbrance and 10 percent (retainage) was recorded as a Program expenditure and liability (accounts payable). These amounts are recorded in the Florida Accounting Information Resource Subsystem (FLAIR) and are presented on the State's basic financial statements in the Environment, Recreation and Conservation Fund.

Generally accepted accounting principles require that expenditures be recorded when the related liability is due. Since the Department has no obligation to make any payments to the contractor until the contractor has completed some portion of the required work, no liability is incurred by the Department at the time Work Orders and Change Orders are issued. As a result of the Department's recording process, reported Program expenditures and accounts payable are overstated and encumbrances understated for these Department accounts.

In May 2005, Department personnel implemented new procedures to record retainage withheld at 10 percent of each invoice approved for payment (i.e., when a liability is incurred). As a result of the change in procedures, Department personnel decreased expenditures and accounts payable and increased encumbrances by \$6.4 million. A similar misstatement amount for these accounts occurred for the 2003-04 fiscal year.¹²

Recommendation: We recommend that Department personnel continue to ensure that financial transactions related to the Program are properly recorded in FLAIR.

¹² The misstatement was not material to the State's basic financial statements for the fiscal year ended June 30, 2004, in that the misstatement was less than two percent of the Environment, Recreation and Conservation Fund's total current liabilities.

OBJECTIVES, SCOPE, AND METHODOLOGY

This operational audit focused on the Department’s Petroleum Preapproval Program expenditures and site management processes. Our objectives were to determine whether:

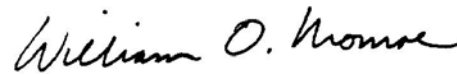
- The Department established effective site management procedures over work performed by remediation contractors at petroleum cleanup sites.
- The Work Order scopes, costs, and rates were negotiated by Site Managers in accordance with established guidelines and that site files included sufficient justification for any instances in which established costs or rates were exceeded.
- The Department implemented effective controls for review, approval, payment, processing, and recording of Program disbursements.
- Program funds were obligated at a uniform rate throughout the fiscal year.

In conducting our audit, we interviewed Department, outsourced contractor, and Local Government Programs personnel; examined

transactions and records; and performed various other procedures as deemed necessary in the circumstances. Our audit included an examination of various transactions (as well as events and conditions) occurring during the period July 2003 through February 2005, and selected actions taken through June 2005.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



William O. Monroe, CPA
Auditor General

MANAGEMENT RESPONSE

In a letter dated October 28, 2005, the Secretary generally concurred with our findings and recommendations and described corrective actions already taken or planned for future implementation. This letter is included at the end of this report as Appendix D.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was made in accordance with applicable *Government Auditing Standards* issued by the Comptroller General of the United States. This audit was conducted by Suzanne Sullenberger, CPA, and supervised by Marcella A. Strange, CPA. Please address inquiries regarding this report to David R. Vick, CPA, Audit Manager, via e-mail at davidvick@aud.state.fl.us or by telephone at (850) 487-9100.

This report and audit reports prepared by the Auditor General can be obtained on our Web site (<http://www.state.fl.us/audgen>); by telephone ((850) 487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

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APPENDIX A
OVERVIEW OF PETROLEUM PREAPPROVAL PROGRAM PROCESSES

The following are certain processes involved in the Petroleum Preapproval Program (Program), as it relates to remediation contractor payments and site management.

- The Program uses, for most common activities, preapproved scopes of work and fixed and quoted costs to manage the petroleum cleanup projects. Generally, only sites eligible for one of the funding assistance programs can participate in the Program.
- Sites receive priority scores based upon the potential threat to human health, public welfare, and the environment. The priority score is based largely on a site's proximity to drinking water supplies.
- Generally, site owners or responsible parties select a contractor from the list of contractors meeting certain statutory requirements¹ or request that the Department select a State cleanup contractor. This selection is accomplished by completion of a Contractor Designation Form. The Bureau of Petroleum Storage Systems (BPSS) Standard Operating Procedures (SOP) effective April 2005 allows site owners to change contractors twice a year during the petroleum cleanup project. Previously, site owners were allowed to change contractors multiple times during the petroleum cleanup project.
- The Site Manager reviews and negotiates the scope of work and costs with the contractor using guidelines established by the BPSS SOP. In addition, the Site Manager prepares Work Orders which serve as the official preapproved agreement and Verbal Authorization Forms for changes to the scope of work, costs, deliverable due dates, or period of service.
- Site management includes all aspects of oversight by the Site Manager for work performed at petroleum cleanup sites, as follows:
 - Monitoring contractors' work for timeliness and compliance with established rules and guidelines, and approving deliverables and invoices for payment. Department personnel indicated that approximately 4,000 Work Orders and 10,000 invoices are processed each year.
 - Coordinating activities with the contractor and Department technical personnel to ensure effective and efficient petroleum cleanups.
 - Conducting periodic site visits during the petroleum cleanup process.
- Contractor payments for a majority of the petroleum cleanup sites are made under the traditional approach (preapproval), whereby payments are based upon efforts expended regardless of the effectiveness of the work in achieving measurable progress towards the cleanup goals. However, ineffective remediation strategies are evaluated and addressed as the site proceeds through cleanup because of the uncertainties that can exist related to site specific conditions, such as soil permeability, hydrology, and the extent of the plume. The Department also has another contractor payment option available (performance based) which is used at a minority of the petroleum cleanup sites and is based upon measurable progress towards reaching the cleanup goals.² Because the contractor assumes more risk for cleanup success, typically these types of cleanup occur at sites where soil and hydrology are favorable for predictable cleanup projections and the extent of the plume can be quantified.
- Contractor invoice packages are reviewed and approved by the Site Manager and Cost Center Administrator and then processed through the BPSS Accounting Section and forwarded to the Bureau of Finance and Accounting for payment processing.

¹Minimum contractor qualifications are specified in Sections 376.30711(2)(b) and (c), Florida Statutes.

²The Department is authorized, pursuant to Section 376.30711(2)(a), Florida Statutes, to competitively bid or negotiate petroleum cleanup projects through performance based contracts. According to Department records, for the 1996-97 through 2003-04 fiscal years, the Department has used performance based contracting for 308 sites. Of these contracts, 29 had been terminated or canceled.

**APPENDIX B
PETROLEUM PREAPPROVAL PROGRAM MONTHLY ENCUMBRANCE AMOUNTS**

The obligations (encumbrances) reported in the Bureau of Petroleum Storage Systems' weekly obligation lists are summarized below. These amounts were compared to the monthly uniform rate and resulted in (over)/under encumbrance amounts.

Month and Year	Encumbrances (including retainage)(1)	Uniform Rate (2)	Encumbrances (Over)/Under (3)
<i>2003-04 Fiscal Year:</i>			
July 2003	\$ 11,800,293	\$ 11,975,000	\$ 174,707
August	12,099,080	11,975,000	(124,080)
September	12,050,043	11,975,000	(75,043)
October	11,611,401	11,975,000	363,599
November	9,815,048	11,975,000	2,159,952
December	12,474,136	11,975,000	(499,136)
January 2004	8,799,842	11,975,000	3,175,158
February	7,471,946	11,975,000	4,503,054
March	9,563,221	11,975,000	2,411,779
April	15,943,534	11,975,000	(3,968,534)
May	9,619,508	11,975,000	2,355,492
June	13,325,033	11,975,000	(1,350,033)
July	6,404,557	-	6,404,557
August	6,019,143	-	6,019,143
September	3,303,948	-	3,303,948
Total	150,300,733	143,700,000	(6,600,733)
Note (4)	(8,086,535)	-	(8,086,535)
<i>Adjusted Total</i>	<u>\$ 142,214,198</u>	<u>\$ 143,700,000</u>	<u>\$ 1,485,802</u>
<i>2004-05 Fiscal Year</i>			
July 2004	\$ -	\$ 12,500,000	\$ 12,500,000
August	-	12,500,000	12,500,000
September	10,993,332	12,500,000	1,506,668
October	9,678,231	12,500,000	2,821,769
November	18,852,563	12,500,000	(6,352,563)
December	21,031,494	12,500,000	(8,531,494)
January 2005	14,674,327	12,500,000	(2,174,327)
February	13,217,772	12,500,000	(717,772)
March	23,724,495	12,500,000	(11,224,495)
April	8,969,460	12,500,000	3,530,540
May	12,250,539	12,500,000	249,461
<i>2004-05 Total To Date</i>	<u>\$ 133,392,213</u>	<u>\$ 137,500,000 (5)</u>	<u>\$ 4,107,787</u>
(1) Based on the Bureau of Petroleum Storage Systems' weekly obligation lists. (2) Annual appropriations divided by 12 months. (3) Uniform rate amount less encumbrances. (4) Work orders issued in the 2003-04 fiscal year and applied to the 2002-03 fiscal year appropriations. (5) Appropriations for the 2004-05 fiscal year totaled \$150,000,000.			

APPENDIX C
SUWANNEE COUNTY PUBLIC WORKS OCULUS SITE FILE INFORMATION

The OCULUS site file for Suwannee County Public Works included, in part, the following information:

- The petroleum discharge was discovered in September 1994 and was approved for State funding in May 1999 under the Petroleum Cleanup Participation Program (PCPP).
- In July 2000, the standard PCPP agreement was executed with the responsible party (Suwannee County Board of County Commissioners (County)) that included the standard PCPP terms for a \$300,000 ceiling amount and a 25 percent co-payment obligation. The agreement was valid for 48 months.
- In August 2001, the Department sent a letter to the County indicating that, based on a review of ability to pay analysis information provided by the County, it was determined that the County could pay up to \$578,450. However, no payments were made by the County.
- In December 2003, a Work Order authorizing work totaling approximately \$3.2 million was executed and by May 2004 Department expenditures had exceeded \$1 million.
- In June 2004, an amendment to the July 2000 PCPP agreement was executed to extend the term of the agreement because it was expiring. The amendment did not alter the original standard PCPP terms regarding the ceiling amount and co-payment requirements.
- As of March 2005, Department payments to the cleanup contractor were in excess of \$5 million.

APPENDIX D
MANAGEMENT RESPONSE



Jeb Bush
Governor

Department of Environmental Protection

Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32399-2400

Colleen M. Castille
Secretary

October 28, 2005

Mr. William O. Monroe, CPA
Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

Dear Mr. Monroe:

In accordance with Section 11.45(4)(d), Florida Statutes, this memo will constitute the Department of Environmental Protection's (Department) response to the findings contained in the Auditor General's audit report of the Department of Environmental Protection Petroleum Preapproval Program Expenditure and Site Management Processes. We have responded below to each numbered finding and have addressed each of the specific recommendations.

Finding 1: Key program documents were not always included in scanned cleanup site files used by the Department and other interested parties.

Response: The Department concurs with this finding. The Department will emphasize to all site managers the importance of providing documents and correspondence to the Division of Waste Management's Document Management Center for scanning. All parties participating in the pre-approval program know that while the vast majority of documents related to cleanup of closed and active sites can be found on the Division's web site via OCULUS, our public records center located in Tallahassee as well as the public records centers located in the DEP district and county cleanup offices may also contain relevant documents.

Please note that the Division's OCULUS web site also states that not every document associated with a cleanup site is in OCULUS.

Finding 2: For one cleanup site with costs in excess of \$5 million, documentation was not available explaining the Department's decision to use state resources to fully fund the cleanup and not seek any cost recovery from the responsible party.

Response: The Department concurs with this finding. The responsible party for this site is Suwannee County. The Department made the decision to accept the County's claim of an inability to pay based on consideration of the financial impact to the County and the small county protection provisions provided in Chapter 120, Florida Statutes. When the

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APPENDIX D
MANAGEMENT RESPONSE (CONTINUED)

William O. Monroe
Page 2
October 28, 2005

responsible party is a governmental entity and they cannot pay for the cleanup, the Department typically proceeds with the cleanup and does not execute a consent order. Consent Orders generally contain specific payment, timeframe details and potential future cost recovery options.

Please note that in accordance with legislative direction for the petroleum cleanup program, the Department's first obligation is to protect human health and the environment (see section 376.3071(1) and (2) F.S.). The Department has also been given clear direction by the legislature to respond expeditiously to incidents of petroleum contamination whenever such incidents pose a threat to the environment or the public health, safety or welfare (see section 376.3071 (4) F.S.).

While the Department will continue to aid governmental entities whenever needed, we will strive to adequately document the reason for our decision to proceed with a cleanup on behalf of a governmental entity.

Finding 3: Required annual Site Manager visits were not always performed or documented. As a result, the Department cannot be assured that Site Managers have taken advantage of the benefits to be derived from such visits and complied with Department procedures and guidance.

Response: The Department concurs with this finding. While the pre-approval program Standard Operating Procedures (SOP) requires at least one site visit per year by the site manager, visits to active remediation systems and announced and unannounced site visits, while contractors are mobilized to a site, are being conducted via operations and maintenance inspectors and mobilization inspectors. All inspectors provide reports of their visits to both the program managers and the contractors.

The Department plans on re-evaluating the SOP site manager visit requirement in the spring of 2006 given the documentation provided in the audit report.

Finding 4: Training records were not always available or complete and did not, in some instances, demonstrate that Site Managers received required health and safety training.

Response: The Department concurs with this finding. We will improve our maintenance of health and safety training records to demonstrate that all Site Managers receive the appropriate training, including tracking of training received outside of the Department.

Finding 5: Program work orders, change orders, and invoices were not always processed in compliance with Department procedures and guidance.

APPENDIX D
MANAGEMENT RESPONSE (CONTINUED)

William O. Monroe
Page 3
October 28, 2005

Response: The Department concurs with this finding. Site managers will continue to receive training at the program's annual workshop, and we will emphasize the importance of following procedures and guidance.

Finding 6: One cleanup site file did not contain documentation evidencing Department reasons for paying \$11,000 for services provided by a subcontractor when the subcontractor did not achieve the goals established in the approved cost proposal.

Response: The Department concurs with this finding. Site managers who are responsible for sites with associated performance based contracts or work orders will receive reminder instructions that when decisions are made to provide payment when goals are not achieved, such decisions shall be carefully documented.

Finding 7: Some cleanup site contractors utilized environmental laboratories that were not certified by the State for the type of testing performed at the time of certain measurements, which could result in reliance on inaccurate test results.

Response: The Department concurs with this finding. Every laboratory utilized in the Petroleum Cleanup Program must be properly certified by the Department of Health (DOH) Environmental Laboratory Certification Program (ELCP) as delegated by the National Environmental Laboratory Certification Program (NELAP). Since laboratories are subcontracted by the cleanup contractors, we have determined that it is the contractor's responsibility to make sure that the laboratories are properly certified. This responsibility is analogous to the contractor's responsibility for verifying that all sub-contractors carry proper insurance and are licensed for the work they are sub-contracted to perform. It is evident from the audit report that the cleanup contractors are not performing this verification, and the heavy workload of the site managers prohibits appropriate follow-up.

We have determined that the most effective way to correct this problem is to require cleanup contractors to include in their work proposals an affirmative statement for each laboratory proposed to be utilized, that provides the laboratory DOH identification number and confirms that the laboratory is certified for the appropriate matrix/method/analytical combination for all analyses proposed to be performed on soil and groundwater samples. In addition, we will require that submission of invoices which include laboratory costs include an affidavit stating that the laboratory has the proper certifications. These new procedures will be incorporated into the next interim SOP update scheduled for the spring of 2006.

Finding 8: The Department's method for recording retainage withheld on work performed by cleanup site contractors resulted in overstatements of Program expenditures and liabilities and an understatement of encumbrances recorded in the State's accounting system. As of May 2005, each of the three accounts were misstated by \$6.4 million.

APPENDIX D
MANAGEMENT RESPONSE (CONTINUED)

William O. Monroe
Page 4
October 28, 2005

Response: New procedures were implemented in May 2005 to ensure that the retainage portion of contractor invoices is properly recorded. The work order amounts including the 10 percent retainage portion will be recorded as an encumbrance after being signed and issued. The retainage portion of the workorders will be recorded as an expenditure when the corresponding services are provided and the invoice is approved and paid. Adjustments were also recorded in May 2005, to correct amounts previously recorded incorrectly. As a result of the new procedures and adjustments recorded in May 2005, amounts for expenditures, payables and encumbrances for the Petroleum Preapproval Program were properly recorded and reported for Fiscal Year 2004-2005. Department personnel will continue to monitor financial transactions related to the Petroleum Preapproval Program to ensure that these transactions are properly recorded in FLAIR.

If you have questions or need additional information, please call Joe Aita, Director of Auditing at (850)245-8013.

Sincerely,



Colleen M. Castille
Secretary

CMC/ja/ksr