



# THE HAZARDOUS SITES CLEANUP FUND

A SPECIAL PERFORMANCE AUDIT OF THE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARCH 2009

**JACK WAGNER, AUDITOR GENERAL**

**PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL  
BUREAU OF SPECIAL PERFORMANCE AUDITS**

March 5, 2009

The Honorable Edward G. Rendell  
Governor  
Commonwealth of Pennsylvania  
225 Main Capitol Building  
Harrisburg, Pennsylvania 17120

Dear Governor Rendell:

Enclosed is our special performance audit report of the Department of Environmental Protection as it oversees the Hazardous Sites Cleanup Fund, or Cleanup Fund. The audit covers the period of July 1, 2002, through November 30, 2008, with updates through January 2009. This audit is the first special performance audit of D.E.P.'s oversight of the Cleanup Fund and, as such, lays the groundwork for future audits.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained does indeed provide a reasonable basis for our findings and conclusions based on our audit objectives. Our objectives, scope, and methodology are further explained in Appendix A of the report, beginning on page 41.

Overall, we found that monies from the Cleanup Fund were utilized for the purposes established in the Hazardous Sites Cleanup Act. However, based on our audit work, we found a need for D.E.P. to improve its administration, oversight, and reporting of the related activities.

More specifically, although we found that Cleanup Fund monies had been properly accounted for, we found that D.E.P.'s budgeting for the Cleanup Fund resulted in some authorized monies not being spent. Additionally, we found that D.E.P. had not established and implemented written policies and procedures for the assessment and collection of penalties from hazardous waste transporters and management facility operators; did not request applicable reimbursements from the federal government in a timely manner; did not ensure that the annual reports submitted to the General Assembly were always timely, clearly presented, or inclusive of all projected costs; and did not adjust fees charged to hazardous waste transporters and management facilities as

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authorized by the Hazardous Sites Cleanup Act. Regarding the lack of fee adjustments, please let me clarify that we have recommended that D.E.P. should evaluate *if* fees need to be adjusted, but we have not gone so far as to say they *should* be adjusted. That decision is D.E.P.'s to make in concert with your administration. I make this clarification because, in the cover letter that accompanied D.E.P.'s audit response, the Acting Secretary appears to have misinterpreted our recommendation.

We include eight other recommendations in our audit report. The recommendations describe specific improvements in accounting for the Cleanup Fund, enhancing the collection of revenue from hazardous waste transporters and management facility operators, recovering costs from the federal government in a more timely manner, and enhancing the presentation of annual reports for the General Assembly and members of the public.

We appreciate your acceptance of our recommendations, and we trust that D.E.P.'s implementation of them will result in improved administration, reporting, and oversight of this critical program. As provided by government auditing standards under which this audit was conducted, we will follow up on our findings and recommendations to determine their status, and we will do so during our next audit of the Cleanup Fund. In the meantime, please let us know if we can provide you with further information to expedite our recommended improvements.

Sincerely,

**JACK WAGNER**  
Auditor General

Enclosure



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**Results  
in  
Brief**

The Pennsylvania Department of Environmental Protection, or “D.E.P.,” could improve its administration, oversight, and reporting of the activities of its Hazardous Sites Cleanup Fund, or “Cleanup Fund,” as discussed within the findings and recommendations of our audit report. This special performance audit covered the period July 1, 2002, through November 30, 2008, with updates through January 2009, and was conducted in accordance with generally accepted government auditing standards.

The Cleanup Fund was created by Act 58 of 1987.<sup>1</sup> The following year, Act 108 of 1988,<sup>2</sup> which we will refer to as “Act 108,” was passed. Act 108 provides D.E.P. with specific sources of funding to address the cleanup of hazardous sites, conduct investigations to determine liability and cost recovery, and provide for the collection of certain fees, as well as the authority to enforce remedies and penalties. Act 108 also provides the Commonwealth with the ability to respond immediately to public health and safety threats resulting from hazardous substances that were spilled or leaked into the environment.

During the first 14 years of the Cleanup Fund’s existence, the Commonwealth’s Capital Stock<sup>3</sup> and Franchise<sup>4</sup> Tax was the primary source of revenue for the Cleanup Fund. With the adoption of the Commonwealth’s budget in 2002, the legislature eliminated the Capital Stock and Franchise Tax as a source of funding for the Cleanup Fund. Therefore, the Cleanup Fund was dependent upon hazardous waste fees, recovered costs, interest earned by the fund’s investment holdings, as well as monies unspent in prior fiscal years. As a result, the Cleanup Fund did not have a stable source of funding during the period of our audit.

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<sup>1</sup> Act 58 of 1987, as amended, 72 P.S. § 7602.3, repealed by, Act 77 of 2007, 35 P.S. § 6021.1 et seq. (“Act 77”).

<sup>2</sup> Act 108 of 1988, as amended, 35 P.S. § 6020.101 et seq. (“Act 108”).

<sup>3</sup> A capital stock tax is imposed on a domestic corporation’s capital stock value and is essentially a property tax.

<sup>4</sup> A franchise tax is imposed on foreign corporations and is based upon the capital stock value attributable to Pennsylvania; and is for the privilege of doing business within Pennsylvania.

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Summarized in the following paragraphs are our six findings and nine recommendations related to D.E.P.'s administration, oversight, and reporting of the Cleanup Fund's activities.

In **Finding One**, we report that unspent monies in the Cleanup Fund at year-end were properly accounted for and were available for use in the following fiscal year. However, we also noted that the Commonwealth's accounting system recognized the Cleanup Fund as lapsable, even though the unspent monies were not treated as such. In the early part of our audit period, the significant amounts of unspent monies resulted in part from an inadequate budgeting process by D.E.P.

Our recommendations for Finding One can be summarized as follows: D.E.P. should (1) pursue a change in how the Commonwealth recognizes the Cleanup Fund in its accounting records, and (2) continue to improve its tracking of cleanup project spending.

In **Finding Two**, we report that during our audit period D.E.P. expended money from the Cleanup Fund in accordance with the provisions in the law. No recommendations were necessary.

In **Finding Three**, we report that D.E.P. has not adjusted the fees charged to hazardous waste transporters and management facility operators since 1988. Act 108 provides D.E.P. with the authority to increase these fees to collect \$5 million annually.

Additionally, D.E.P. did not collect penalties for the non-reporting or late payment of fees from transporters even though the law provides for such penalties.

Our recommendations for Finding Three can be summarized as follows: D.E.P. should (1) evaluate whether hazardous waste transportation and management facility fees should be adjusted, and (2) establish and implement written policies and procedures for the assessment and collection of penalties from hazardous waste transporters and management facility operators.

In **Finding Four**, we report that D.E.P. did not bill the federal government timely for the reimbursement of costs incurred at



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federal military sites. D.E.P.'s slow billing resulted in delayed revenue and potentially lost interest for the fund.

Our recommendation for Finding Four in summary is that D.E.P. should seek reimbursement from the federal government quarterly and should do so within 60 days of the close of the billing period.

In **Finding Five**, we report that D.E.P. improved its reporting of Superfund activities in its 2008 annual report but did not include an average of \$1.7 million of operational expenses that would be incurred in each coming year.

Our recommendation for Finding Five in summary is that D.E.P. should include in its annual reports all projected expense information regarding financial obligations for cleanup under federal regulations.

In **Finding Six**, we note that the Cleanup Fund annual reports included the information required by Act 108; however, in most cases, this information was not timely or clearly presented.

Our recommendations for Finding Six can be summarized as follows: D.E.P.'s (1) program and fiscal personnel should work together in the preparation of the annual reports, (2) fiscal personnel should prepare standard financial statements for the Cleanup Fund for inclusion in the annual reports, and (3) program personnel should ensure that all program information is included and clearly presented in the annual reports.

D.E.P. has generally concurred with our findings and recommendations. We have included D.E.P.'s full response to this audit beginning on page 45 of this report.



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## **Introduction and Background**

This report by the Department of the Auditor General presents the results of a special performance audit of D.E.P., as it oversees the Cleanup Fund. This is the first such audit of D.E.P.'s administration related to the Cleanup Fund, and is the first of the annual audits that we are required to conduct by Act 77 of 2007.<sup>5</sup>

We undertook this audit based on concerns expressed to us by members of the General Assembly and others that the Cleanup Fund has not had a reliable revenue source since June 30, 2002. Throughout this report, we also expect to provide interested readers with a better understanding of the function and status of the Cleanup Fund.

### **Hazardous waste and hazardous site cleanup defined**

A hazardous waste is a waste with properties that make it dangerous or potentially harmful to human health and/or the environment. It can be generated from many sources, and it can range from being the by-product of industrial manufacturing processes to discarded commercial products, such as batteries or cleaning fluids. Hazardous waste comes in many forms, including liquids, solids, gases, and sludges.<sup>6</sup>

Hazardous substances and contaminants are materials that are defined under Pennsylvania hazardous substance cleanup and federal Superfund law. Three categories of materials include hazardous wastes, pollutants, and other materials that pose a threat to human health and the environment.

Hazardous site cleanup involves the removal or neutralization, by whatever means are reasonable, of a sufficient quantity of

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<sup>5</sup> The Hazardous Sites Cleanup Fund Funding Act (Act 77 of 2007, 35 P.S. § 6021.1 *et seq.* ("Act 77")) requires the Department of the Auditor General to "annually conduct an audit of the fund..." See 35 P.S. § 6021.7. Act 77, and this requirement, became effective on December 18, 2007.

<sup>6</sup> EPA, "RCRA Orientation Manual 2008: Resource Conservation and Recovery Act," [www.epa.gov/osw/inforesources/pubs/orientat/](http://www.epa.gov/osw/inforesources/pubs/orientat/), accessed November 12, 2008, and verified February 2, 2009.

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hazardous substances and/or contaminants so that the site no longer poses an unacceptable risk to human health and/or the environment.<sup>7</sup>

**Revenue sources for the  
Hazardous Sites Cleanup Fund**

Section 901 of Act 108 specifically addresses the Cleanup Fund, including reporting for it, authorized expenditures, and permanent sources of revenue. Permanent sources of revenue include, but are not limited to, the following:

- Hazardous waste transportation and management fees
- Recovery of response costs from persons responsible for the actual or potential release of a hazardous substance
- Money appropriated by the General Assembly
- Interest from the investment of Cleanup Fund monies<sup>8</sup>

Regarding the transportation fees, these are assessed on the shipping of hazardous waste within the Commonwealth, regardless of whether the waste originated within the state or out of state.<sup>9</sup> As of June 2008, there were 220 licensed transporters who potentially would have paid these transportation fees.

Regarding the management fees, operators of hazardous waste facilities within the Commonwealth are assessed these fees for waste stored, treated, or disposed of at their facilities.<sup>10</sup> As of May 2008, there were 43 facilities in the Commonwealth whose operators would have potentially paid these management fees.

See Finding Three for more information about these fees.

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<sup>7</sup> This definition was based on an interview with D.E.P.'s hazardous sites cleanup staff and confirmed by D.E.P. management on February 12, 2009.

<sup>8</sup> 35 P.S. § 6020.901(c).

<sup>9</sup> 35 P.S. § 6020.903(b).

<sup>10</sup> Id. § 6020.903(c)(1).

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To date, the revenue received from hazardous waste fees, recovery costs, and interest have not been sufficient to render the Cleanup Fund self-sustaining; therefore, unrelated sources of revenue have helped to sustain the fund.

Beginning in 1988, the Cleanup Fund annually received a portion of the revenue raised from the Commonwealth's Capital Stock and Franchise Tax. However, Act 23 of 2000 began a phase-out of this tax; beginning in 2002, no further Capital Stock and Franchise Tax revenues were transferred into the Cleanup Fund. Despite no longer having this dependable source of funding, the hazardous sites cleanup program continued to operate in fiscal years ended June 30, 2003, 2004, and 2005, using funds generated from hazardous waste fees, cost recovery from responsible parties, interest earned on fund monies, and funds unspent in prior fiscal years.

Infusions of \$20 million and \$30 million, respectively, were made into the Cleanup Fund for the fiscal years ended June 30, 2006 and 2007. This "stopgap emergency funding" was included as part of a larger voter-approved bond initiative passed by the legislature and enacted by the Governor.<sup>11</sup> Subsequently, the Governor signed Act 77 into law, enabling the transfer of \$12.8 million to the Cleanup Fund from legislative accounts for the fiscal year that ended June 30, 2008. Act 77 also authorized transfers of \$40 million each year beginning with the 2008-09 fiscal year,<sup>12</sup> again from the Capital Stock and Franchise Tax.<sup>13</sup> However, these transfers essentially continue to be stopgap measures, and the Cleanup Fund will once again be without a reliable source of funding beginning July 1, 2011.

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<sup>11</sup> From the testimony of Kathleen A. McGinty, then Secretary of D.E.P., before the Pennsylvania Senate Environmental Resources and Energy Committee, October 16, 2006.

<sup>12</sup> 35 P.S. §§ 6021.3-6021.4.

<sup>13</sup> Because the Capital Stock and Franchise Tax will be phased out by December 2010, this source of funding will end at that time.

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**Allowable expenses of  
the Hazardous Sites Cleanup Fund**

Authorized Cleanup Fund expenditures include the following:

- Response actions at hazardous sites and emergency responses, such as the flooding in Pennsylvania that occurred in late June 2006
- Replacement of contaminated public and private water supplies
- Required share of costs for cleanup at federal hazardous sites within the Commonwealth
- Grants to municipalities for conducting an independent review of a proposed cleanup<sup>14</sup>

**Hazardous waste acknowledged  
as serious problem in the 1960s**

During the 1960s, the nation first began to recognize the negative impact that waste, and the pollution it caused, had on people and the environment. At that time, U.S. companies were manufacturing more than four million chemicals. The manufacturing process often resulted in toxic by-products, or hazardous waste, which companies disposed of with little or no regulation. In other words, hazardous wastes were commonly poured down drains or buried in the ground at unidentified sites throughout the nation, and these wastes often spread and impacted the surrounding environment. These hazardous wastes continue to be discovered, most often at non-operating industrial sites.

To address these problems and to oversee aspects of the environment, the federal government created the U.S. Environmental Protection Agency, or EPA, in 1970. The federal government directed the EPA to work with both states and industry to address identification and management of

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<sup>14</sup> 35 P.S. § 6020.902(a).

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hazardous waste, among other activities related to the environment.

As part of fulfilling its responsibility to work with the states, the EPA divided the country into ten regions. Pennsylvania is part of the Mid-Atlantic States Region, or Region 3, which also includes Delaware, Maryland, Virginia, and West Virginia, as well as the District of Columbia. One of Region 3's major program divisions is Hazardous Site Cleanup, which has the responsibility for the cleanup of abandoned hazardous sites.

**Federal Resource Conservation  
and Recovery Act**

According to the EPA, the federal Resource Conservation and Recovery Act,<sup>15</sup> which passed in 1976, provided for the following:

- Ensuring that wastes are managed in a manner that protects human health and the environment
- Reducing or eliminating the amount of waste generated, including hazardous waste
- Mandating strict federal and state regulations for the treatment, storage, and disposal of hazardous waste<sup>16</sup>

According to the EPA, the federal government subsequently expanded and strengthened the Resource Conservation and Recovery Act through the Hazardous and Solid Waste Amendments passed in 1984. These amendments created land disposal restrictions, established corrective action requirements, specified permitting deadlines for hazardous waste facilities, and regulated businesses that generated even small amounts of hazardous waste.<sup>17</sup>

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<sup>15</sup> 42 U.S.C. § 6901 *et seq.*

<sup>16</sup> EPA, "25 Years of RCRA: Building on Our Past To Protect Our Future," <http://epa.gov/wastes/inforesources/pubs/k02027.pdf>, accessed November 12, 2008, and verified February 3, 2009.

<sup>17</sup> *Ibid.*

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**Role of the “Superfund”**

In 1980, the U.S. Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act,<sup>18</sup> also commonly known as Superfund, to address, for example, hazardous substance and contaminant problems not addressed under the Resource Conservation and Recovery Act.

According to the EPA,<sup>19</sup> under Superfund, the EPA has the authority and responsibility to assess these sites, place them on the National Priorities List, and establish appropriate cleanup plans. Because the cleanup of these Superfund sites is a joint effort between federal and state governments, Pennsylvania has financial obligations for a portion of the cleanup cost at Superfund sites within the Commonwealth.

In 1981, the EPA identified its first top-priority Superfund sites on the National Priorities List. As of February 23, 2009, Pennsylvania had 96 listed and proposed sites. Also as of that date, 28 other Pennsylvania sites had been remediated and therefore removed from the EPA’s National Priorities List.

**The role of Pennsylvania state government in  
hazardous sites cleanup**

Act 275 of 1970 established Pennsylvania’s Department of Environmental Resources. This agency was formed by consolidating 17 existing pollution control and resource management agencies, boards, and commissions. In 1995, the General Assembly enacted legislation splitting the agency into D.E.P., to house traditional environmental protection programs, and the Department of Conservation and Natural Resources, to house state parks and state forest programs.<sup>20</sup> D.E.P. is the agency in Pennsylvania responsible for hazardous sites cleanup.

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<sup>18</sup> 42 U.S.C. § 9601 *et seq.*

<sup>19</sup> EPA, “RCRA Orientation Manual 2008: Resource Conservation and Recovery Act,” [www.epa.gov/osw/inforesources/pubs/orientat/](http://www.epa.gov/osw/inforesources/pubs/orientat/), accessed November 12, 2008, and verified February 2, 2009.

<sup>20</sup> 71 P.S. § 1340.501; 71 P.S. § 1340.503(a).



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D.E.P.'s Bureau of Waste Management oversees the implementation of hazardous sites cleanup, Superfund, and the Resource Conservation and Recovery Act, as well as other programs.

In addition to the authority under the federal Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation, and Liability Act, D.E.P. also has authority to address hazardous sites under the Commonwealth's Solid Waste Management Act,<sup>21</sup> the Land Recycling and Environmental Remediation Standards Act,<sup>22</sup> and the Hazardous Sites Cleanup Act.

**D.E.P.'s role in hazardous sites cleanup on  
military installations**

D.E.P. has entered into two agreements with the U.S. Department of Defense regarding the federal government's cleanup of hazardous sites on active and former military installations throughout the Commonwealth.

The first of these agreements, dated April 1994, provides for D.E.P.'s participation in cleanup activities at these federal military installations, and also for D.E.P.'s reimbursement from the federal government for eligible costs incurred for these cleanup activities. Finding Four discusses these reimbursements in more detail.

The second agreement,<sup>23</sup> dated July 1998, is between D.E.P. and the U.S. Departments of the Army, Navy, and Air Force, as well as the Defense Logistics Agency. This agreement provides a framework for the assessment, prioritization, and cleanup of

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<sup>21</sup> Act 97 of 1980, as amended, 35 P.S. § 6018.101 et seq.

<sup>22</sup> Act 2 of 1995, 35 P.S. § 6026 et seq.

<sup>23</sup> The second agreement signed was the Cooperative Multi-Site Agreement. This agreement does not apply to military installations closed under the Base Realignment and Closure Program, sites on the Superfund National Priorities List, sites where military responsibility has not been established, or military installations that are covered by the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) or the Resource Conservation and Recovery Act.

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contamination at 1,095 sites<sup>24</sup> within the Commonwealth. The overall goal of this voluntary agreement is to resolve all scheduled and study sites<sup>25</sup> by September 30, 2010.

Under the terms of these agreements, the military branches of the U.S. Department of Defense (or “Defense Department”) are responsible for the cleanup of hazardous substances at the sites agreed to by D.E.P. and the Defense Department. In addition to the actual cleanup, the military branches are also responsible for the following:

- Coordinating and prioritizing the cleanup activities
- Providing an interagency coordinator to facilitate the collective efforts of all military branches
- Modifying site-specific schedules in order to accommodate D.E.P.’s regional workload issues

D.E.P. is responsible for monitoring the activities undertaken by federal personnel to ensure that their actions comply with applicable state laws and state regulations, as well as approved cleanup plans. These monitoring responsibilities include the following:

- Participating in public meetings to provide information and address concerns with stakeholders
- Participating in identifying other potentially responsible parties, and considering enforcement or other action against these parties when their participation is critical to site resolution
- Providing state money and services as permitted by law

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<sup>24</sup> In reviewing the list of 1,095 sites, we noted that a single military installation can, and usually does, have multiple hazardous sites; therefore, this number does not represent the total number of military installations with hazardous sites within the Commonwealth.

<sup>25</sup> A scheduled site is defined as a site listed in the Cooperative Multi-Site Agreement master plan that has undergone an environmental evaluation, has a tentative cleanup schedule, and is eligible for funding from the responsible military branch. A study site is defined as a site which the military has deemed complete but which D.E.P. has not reviewed.

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*Finding One*

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**Finding One**

**The Department of Environmental Protection did not spend as much as it was authorized to spend each year from the Hazardous Sites Cleanup Fund. Nevertheless, unspent monies were not “lost” but instead remained in the fund and were available for use in the next year.**

In response to concerns that were raised to us regarding whether D.E.P. had utilized monies in accordance with the fund’s governing statute, we examined the funds that the Governor authorized to be spent from the Cleanup Fund for each fiscal year of the audit period. As a result of our testing, we determined that all monies remaining within the fund at fiscal year-end stayed within the Cleanup Fund and were available for use in the next fiscal year. Because the Cleanup Fund was established as a special revenue fund, monies within the fund did not lapse into the state’s General Fund.

Confusion as to whether D.E.P. lapsed, and therefore lost, the use of fund monies stems in part from how the Cleanup Fund is recorded within the Commonwealth’s accounting records. Specifically, we found that these records identify the Cleanup fund as a lapsable fund. Additionally, these same records show specific amounts of monies as lapsed each year. However, our testing clearly demonstrated that these monies remained in the fund.

To help clarify this issue, D.E.P. provided an opinion from its legal staff affirming its treatment of fund monies as a continuing appropriation. D.E.P. interpreted Section 901 of Act 108 as having established the Cleanup Fund as a special fund that could serve as an ongoing funding source for hazardous sites cleanup within the Commonwealth. D.E.P. also focused on the *absence* of any language in the fund’s governing statutes that expressly indicated that the unexpended fund balances should lapse and be transferred to the General Fund.

Finding One

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We spoke with D.E.P. to gain an understanding of why significant amounts of monies remained unspent at year-end. D.E.P. stated that budgeting for cleanup projects involves many unknowns that can significantly impact the completion times and the final cleanup costs. For example:

- D.E.P. could not predict precisely when cleanup projects would begin without knowing how long it would take to get various permits or how many citizens' comments it would need to consider; or the types of access agreements that it would need prior to beginning work.
- D.E.P. halted work temporarily when it subsequently identified a responsible party<sup>26</sup> to help in the cleanup.
- D.E.P. needed to provide for emergencies or contingencies, such as in 2006 when the federal government requested an additional \$500,000 for the Commonwealth's share of a Superfund cleanup.

However, other reasons as to why monies remained unspent at year-end were more avoidable. For example, D.E.P. acknowledged to us that, when it had a dependable source of funding through the Capital Stock and Franchise Tax (up to July 2002), it did not exercise its best efforts to track project budgets. Under that scenario, D.E.P. could not base its spending requests on the most precise data available. However, we found that, in more recent years, D.E.P. put significant efforts into tracking project spending and, therefore, was able to estimate its needs more accurately. Accordingly, D.E.P. left less money unspent and, in fact, had just \$4.7 million left over for its operations at the fiscal year ended June 30, 2008.

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<sup>26</sup> A responsible party is someone who causes a release or threat of release of a hazardous substance and who is therefore liable for the response costs and for damages to natural resources. 35 P.S. § 6020.103; 35 P.S. § 6020.507(a).

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**Recommendations**

1. D.E.P. should pursue a change in how the Commonwealth recognizes the Cleanup Fund in its accounting records so that the Cleanup Fund is reported as a continuing appropriation.
2. D.E.P. should continue to improve its tracking of cleanup project spending so that it can request annual funding authorizations that are as close as possible to the amounts that will actually be used.

Finding Two

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**Finding Two**

**The Department of Environmental Protection expended money from the Hazardous Sites Cleanup Fund for authorized purposes.**

As we stated in the introduction and background section of this report, Act 108 authorizes the types of expenditures D.E.P. can make from the fund. In particular, Act 108 states that D.E.P. shall use the fund for certain purposes, including the following:<sup>27</sup>

- Preparation by D.E.P. or its agents for taking response actions, which include emergency responses, investigations, testing activities, contracting, excavation, and administrative and enforcement efforts relating to the release or threatened release of hazardous substances or contaminants
- Response actions taken or authorized by D.E.P., including related enforcement and compliance efforts
- Payment of the state's share of the cost of remedial responses which may be carried out under an agreement or contract with the federal government pursuant to the federal Superfund act
- Replacement of public or private water supplies deemed necessary by D.E.P. to protect public health from contamination resulting from the release of a hazardous substance or contaminant

When D.E.P. incurs expenses related to hazardous site cleanup activities, it categorizes them as either personnel, operational, grants, or administrative. Each of these is described in the narrative that follows.

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<sup>27</sup> 35 P.S. § 6020.902(a).

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Overall, we determined that expenditures from the Cleanup Fund for the fiscal years ended June 30, 2005, through 2007, were as follows:

<b>Expense category</b>	<b>FY 2004-05</b>	<b>FY 2005-06</b>	<b>FY 2006-07</b>
Personnel expenses	\$13,362,507	\$12,192,427	\$12,155,738
Operational expenses	24,066,864	6,193,208	13,142,222
Grant expenses	3,036,518	15,477,453	5,388,597
Administrative transfers	<u>7,457,039</u>	<u>502,862</u>	<u>(811)</u>
<b>Fund total</b>	<b>\$47,922,928</b>	<b>\$34,365,950</b>	<b>\$30,685,745</b>

As the table shows, total expenditures declined for the past three fiscal years. This decline in spending is a direct result of decreasing revenue sources for the Cleanup Fund. It should also be noted that D.E.P.'s categorization of certain expenditures was at D.E.P.'s discretion. For example, some grant expenditures were for the replacement of water lines, which also could have been considered an operational expenditure.

In order to determine if D.E.P.'s expenditures from the Cleanup Fund complied with those authorized, we randomly chose samples from each of the four expenditure categories for the fiscal years ended June 30, 2006 and 2007. In general, we noted that the expenditures in our sample were properly documented and that D.E.P. had the necessary internal controls in place.

**Personnel costs.** We tested the two-week pay periods ended September 16, 2005, and December 1, 2006. Total personnel expenditures from the Cleanup Fund for the September period were \$279,265, and total expenditures for the December period were \$193,488. From these two pay periods, we selected a total of 60 personnel transactions – 30 from each pay period – for testing.

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During our detailed testing, we:

- Traced the individual projects worked on to D.E.P.'s list of hazardous sites
- Reviewed job titles and verified that each employee would have had responsibilities related to hazardous cleanup
- Chose five employees and verified that the documentation of the hours worked was complete, and reconciled the hours

Additionally, we interviewed D.E.P. personnel to obtain an understanding of internal controls for personnel expenditures.

We determined that D.E.P. personnel expenditures covered employee costs that were incurred either for site-specific work or for general administrative work related to cleanup projects. We also determined that appropriate internal controls were in place.

As of July 2008, the hazardous sites cleanup program had 283 authorized positions, with 231 of these positions filled by D.E.P. personnel. These positions ranged from attorneys and environmental chemists to clerks and administrative assistants.

**Operational expenses.** We tested operational expenses from fiscal years ended June 30, 2006 and 2007. We used both random selection and professional judgment to determine our samples, resulting in 73 items totaling \$655,598.

During our detailed testing, we did the following to verify these payments:

- Noted the name of the hazardous site for which D.E.P. made payment and traced the site name to D.E.P.'s list of hazardous sites
- Noted whether the payee had a contract with D.E.P. and reviewed that contract



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- Noted the D.E.P. account that was charged for the payment and noted its relationship to hazardous sites cleanup

Additionally, we interviewed D.E.P. personnel regarding the contracting and invoice payment processes.

We noted that operational expenses were often for payments to third parties for items or services such as bottled water, court reporting at hearings, or lab work, and were usually related to a specific hazardous site.

**Grant expenditures.** We tested grant expenditures from fiscal years ended June 30, 2006 and 2007. Our samples were chosen randomly and included ten items totaling \$470,600.

During our detailed testing, we reviewed D.E.P.'s documentation, including requests from the grantees, as well as D.E.P.'s authorization of these requests. We also interviewed D.E.P. personnel regarding the grant process and obtained related D.E.P. policies and procedures.

We noted that expenditures for grants were typically for water system replacements, or for grants of up to \$7,500, which were authorized under the Small Business Advantage Grant Program and awarded to reduce waste and pollution.<sup>28</sup> An example of a grant for which we reviewed documentation was an upgrade of dry-cleaning equipment to reduce or eliminate the use of certain hazardous chemicals during the dry-cleaning process.

**Administrative expenses.** We tested administrative expenses from the fiscal year ended June 30, 2007. Our samples were chosen randomly and included three items totaling \$415,835.

During our detailed testing, we:

- Reviewed D.E.P.'s process for charging computer usage to the Cleanup Fund

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<sup>28</sup> This program is authorized under Section 208 of the Small Business and Household Pollution Prevention Program Act (Act 190 of 1996), 35 P.S. § 6029.208.

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- Reviewed D.E.P.'s process for adjusting personnel costs
  - Verified expenditures made for an emergency cleanup involving federal disaster reimbursement

During detailed testing, we observed the following specific examples of proper documentation of expenditures:

- Documentation for expenditures made in response to the flooding that occurred after Hurricane Agnes in June 2006 included a copy of the Governor's proclamation of disaster emergency, which qualified the cleanup for money from the fund, as well as detailed invoices that showed the specific materials and quantities of material used in the cleanup. For example, as a result of the 2006 flood, D.E.P. contracted for hazmat spill response services for flood victims whose home heating oil tanks had upset or been damaged, creating spills. Technicians used various techniques from absorbent materials, vacuums, and separators to absorb and remove the fuel.
- Invoices from third-party vendors provided detailed listings of the services provided, vendor contract numbers, as well as the name of the hazardous site at which the services were provided. For example, we received documentation of the collection and analysis of water samples from a stream. The services from contracted vendors ranged from site evaluation and project management to cleanup and lab services.

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During detailed testing, we observed the following specific examples of internal controls:

- D.E.P.'s allocation of costs for computer system usage was performed electronically each time a D.E.P. employee signed onto the system.
- D.E.P.'s contracts with third parties, such as laboratories, included detailed schedules that listed the various rates for their services.
- Small Business Advantage Grants were approved by several offices within D.E.P., with ultimate approval by the executive deputy secretary for the office of policy and communications.

In summary, D.E.P. expended money from the Hazardous Sites Cleanup Fund for the authorized purposes; therefore, no recommendation is necessary.

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**For more than 20 years, the Department of Environmental Protection charged the same fees to hazardous waste transporters and management facilities, thereby missing an opportunity to maximize its revenue source and to depend less on the transfer of monies from other funds. Additionally, D.E.P. did not collect penalties from hazardous waste transporters who did not report and/or pay their fees in a timely manner.**

As we discussed in the introduction and background section of this report, Act 108 provided for permanent sources of revenue to the Cleanup Fund, including but not limited to hazardous waste transportation and management fees, as well as interest and penalties on these fees.<sup>29</sup>

Because the revenues were not sufficient to render the fund self-sustaining, transfers of monies from other funds were needed to meet expenditures. Such transfers will occur again beginning in fiscal year 2008-09. Act 77 of 2007 authorized transfers to the Cleanup Fund of \$40 million in each year after 2008 from the Capital Stock and Franchise Tax.<sup>30</sup>

**D.E.P. did not adjust hazardous waste transportation and management fees in more than 20 years, relying instead on transfers of revenues from other funds and thereby missing an opportunity to maximize a ready revenue source**

Act 108 provides that a transporter of hazardous waste will be assessed a fee on all hazardous waste transported within the Commonwealth, regardless of whether the waste originated within the state or out of state.<sup>31</sup> Act 108 also provides that an operator of a hazardous waste facility in Pennsylvania will be

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<sup>29</sup> 35 P.S. § 6020.901(c)(1).

<sup>30</sup> 35 P.S. §§ 6021.3-6021.4.

<sup>31</sup> 35 P.S. § 6020.903(b).

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assessed a management fee for hazardous waste stored, treated, or disposed of at a facility.<sup>32</sup> The listed fees are shown in the table that follows.<sup>33</sup>

<b>Type of fee</b>	<b>Amount of fee</b>
Transportation of hazardous waste	\$3.00 per ton
Transportation of hazardous waste to or from a recycler	\$1.50 per ton
Storage of hazardous waste at a commercial hazardous waste management facility	\$2.00 per ton
Treatment or incineration of hazardous waste at a commercial disposal facility	\$5.00 per ton
Disposal of hazardous waste at a commercial disposal facility	\$12.00 per ton
Disposal of hazardous waste on the site at which it was generated or at a captive facility	\$8.00 per ton

In addition to establishing hazardous waste transportation and management fees, Act 108 also granted D.E.P. the authority to adjust these fees:

The secretary may, by regulation, adjust the rates as appropriate in accordance with the following formula: (1) The fees shall be calculated and **rates adjusted to collect projected annual revenues of \$5,000,000** plus the reasonably projected administrative cost of collecting the fee.<sup>34</sup>

In reviewing the Cleanup Fund's statements of cash receipts and disbursements for the fiscal years from 2003 to 2008, we noted that D.E.P. collected less than

<sup>32</sup> 35 P.S. § 6020.903(c)(1).

<sup>33</sup> See 35 P.S. § 6020.903(d).

<sup>34</sup> 35 P.S. § 6020.903(g)(1) (emphasis added).

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half of the amount authorized by law each year. Specifically, instead of collecting approximately \$5 million in each of the last six years, D.E.P. collected about \$2 million each year in hazardous waste transportation and management fees:

<b>Revenue from hazardous waste transporter and management facility fees<sup>35</sup></b>		
<i>Fiscal year ended June 30</i>	<i>Revenue collected</i>	<i>Potential revenue not collected</i>
2003	\$2,004,000	\$2,996,000
2004	\$2,067,000	\$2,933,000
2005	\$2,033,000	\$2,967,000
2006	\$2,075,000	\$2,925,000
2007	\$2,280,000	\$2,720,000
2008	\$2,000,000	\$3,000,000
Total	\$12,459,000	\$17,541,000

As the table shows, if D.E.P. had collected \$5 million annually in each of the last six years, **it could have added an additional \$17.5 million to the Cleanup Fund**, thereby providing D.E.P. with additional resources for the investigation and cleanup of hazardous sites.

We also found that D.E.P.'s rates for fees charged during the audit period were the same as the rates for fees charged when the Cleanup Fund was created in 1988, or more than 20 years ago. If these fees had been adjusted for inflation in 2008, based on our calculations, D.E.P. could have received approximately 79 percent more for the same amount of tonnage of hazardous waste transported and stored, or an additional \$3,580,000 in fee revenue. For example, adjusting the original \$3.00/ton rate for transportation of hazardous waste to 2008 prices results in a revised rate of \$5.39/ton, and adjusting the

<sup>35</sup> Data obtained from the Governor's Office of the Budget Web site, [http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4571&&level=1&css=L1&mode=2&in\\_hi\\_userid=2&cached=true](http://www.portal.state.pa.us/portal/server.pt?open=512&objID=4571&&level=1&css=L1&mode=2&in_hi_userid=2&cached=true), Governor's Executive Budget for fiscal years ended June 30, 2002, through and including 2008. Accessed September 17, 2008, and verified January 29, 2009.

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original \$12.00/ton rate for disposal of hazardous waste to 2008 prices results in a revised rate of \$21.55/ton.<sup>36</sup>

When we asked D.E.P. officials about this issue, they explained that any such decision would be a matter of policy that would need to be addressed by the current D.E.P. administration.

By not adjusting the fees as it was authorized to do, D.E.P. missed the opportunity to provide additional revenues for hazardous sites cleanup activities. Furthermore, expenditures for cleanup activities have not remained the same as such costs in 1988; as a result, the expenditures have far outgrown the revenue sources.

It is interesting to note that, in January 2005, D.E.P. did consider an adjustment in the hazardous waste fees. D.E.P.'s January 2005 summary of draft proposed rulemaking provisions<sup>37</sup> included a proposal to raise fees in order to collect annual revenues of \$5 million as authorized. However, as evidenced by the current rate of collections, this proposal to adjust fees was not adopted.

While it may not be prudent for D.E.P. to adjust fees drastically in one year to reach the \$5 million authorized level quickly, D.E.P. should consider adjusting fees over time to compensate for the increased expenditures. If D.E.P. believes that \$5 million in fees is unattainable, then it should seek an amendment to the act to have that amount adjusted. When doing so, it should provide justification to the General Assembly as to why fees have not reached the authorized \$5 million level.

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<sup>36</sup> These adjusted fees were calculated using the U.S. Department of Labor, Bureau of Labor Statistics inflation calculator at [http://www.bls.gov/data/inflation\\_calculation.htm](http://www.bls.gov/data/inflation_calculation.htm). We note that such an adjustment is not required by law.

<sup>37</sup> Document obtained from the Pennsylvania Department of Environmental Protection Web site, <http://www.dep.state.pa.us/dep/subject/advoun/solidwst/2005/Jan13/HazWasteSummary.pdf>. Accessed December 10, 2008, and verified January 29, 2009.

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**Although authorized to do so, D.E.P. did not collect penalties for non-reporting or for late payment of fees from hazardous waste transporters, thereby overlooking a potential source of revenue for the fund**

According to state environmental regulations, hazardous waste transporters and management facility operators must pay applicable fees to D.E.P. each quarter. In addition, transporters and facility operators must also complete activity reports for each quarter, and these reports must be submitted to D.E.P. with the payment of the quarterly fees. If such fees and reports are not received on time, then D.E.P. may, and in some cases *will*, charge penalties.

Regarding *management facility operators*, we found they submitted no late payments for the time period that we sampled; regarding *waste transporters*, we found they had many late payments. These issues are discussed in more detail below.

**Late payment fees for operators of hazardous waste management facilities.** If a hazardous waste facility is late with its management fee or does not submit all required reports to D.E.P., state regulations provide that D.E.P. *will* assess a minimum civil penalty of \$500 for submissions which are less than 15 days late, and assess a penalty of \$500 per day each day thereafter.<sup>38</sup>

According to D.E.P., hazardous waste management facility operators are “rarely late” in submitting their required documents and payments. This statement was supported by our testing of payments made in the fiscal year ended June 30, 2007, which revealed that none of the hazardous waste management facility operators in our sample submitted late payments. Further, the list of late payment violators in the 2008 annual report did not include any facility operators.

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<sup>38</sup> 25 Pa. Code § 264a.81(b).



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**Late payment fees for transporters of hazardous waste.**

Regarding penalties for hazardous waste transporters, D.E.P. may assess the same penalties as those that are required to be assessed against management facility operators.<sup>39</sup> In other words, unlike for facility operators, D.E.P. appears to have a choice regarding whether or not to penalize hazardous waste transporters who fail to submit the required reports and/or fail to pay the required fees on time.

**Testing of hazardous waste fees.** In order to determine the extent to which hazardous waste transporters and management facility operators submitted late payments to D.E.P., we sampled 32 deposits of fees received from transporters and facility operators. These 32 deposits were randomly chosen from the 74 deposits of hazardous waste fees made by D.E.P. during the fiscal year ended June 30, 2007. Our testing of the checks we reviewed for these 32 deposits revealed the following:

- The 32 deposits included 326 checks.
- 63 of the 326 checks were dated after the due date for the preceding quarter.
- These 63 checks were received from 54 hazardous waste transporters.
- 11 percent of the 326 checks appeared to have been received more than 5 business days after the due date.

As part of our testing, we also reviewed the companies that were listed in the 2008 annual report as having received a notice of violation regarding the reporting and/or payment of hazardous waste fees. Our review revealed the following:

- 45 notices of violation were issued in the year ended June 30, 2008.
- The 45 notices went to 34 hazardous waste transporters.

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<sup>39</sup> 25 Pa. Code § 263a.26(b).

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- 11 of the 34 transporters that received a notice of violation were also identified in our previously referenced sample of deposits as having submitted a check that was dated after the due date in fiscal year ended June 30, 2007.

When questioned regarding whether these transporters that were listed in the 2008 annual report had been assessed a penalty, D.E.P. replied that they had not. D.E.P. further stated that some transporters have been late with their reports every quarter. In other words, certain known transporters repeatedly ignored the deadline and either reported and/or paid their hazardous waste transportation fees late without being assessed a penalty by D.E.P.

As we noted previously, each time a transporter is late with a fee and/or report, D.E.P. *could* assess a penalty. Further, the imposition of such a penalty might encourage transporters to pay their fees in a timely manner, as seems to be the case with management facility operators who know they will be penalized for non-reporting or late payments.

When we asked D.E.P. why no penalties had been imposed on transporters, D.E.P. stated it did not know why penalties had not been assessed previously; accordingly, current D.E.P. personnel are developing written policies related to the payment of fees and assessment of penalties.

According to D.E.P., a penalty for late payment of hazardous waste fees must be assessed through a consent assessment of civil penalty. D.E.P. further stated that this process requires the involvement of legal staff because the transporter can negotiate for a lower penalty.

In conclusion, we note that D.E.P. should determine whether, by not assessing penalties against those who submit late reports and/or payments, it is sending a message to chronic violators that their violations are acceptable.

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**Recommendations**

3. D.E.P. should evaluate if it should adjust hazardous waste transportation and management facility fees as authorized.
4. D.E.P. should establish and implement written policies and procedures for the assessment and collection of penalties from hazardous waste transporters and management facilities that do not report and/or pay fees timely.

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## Finding Four

**The Department of Environmental Protection did not ensure that requests to the federal government for reimbursement of costs incurred at federal military sites were submitted in a timely manner. As a result, D.E.P. delayed the receipt of revenue and, at the same time, potentially lost interest on that revenue.**

As we discussed in the introduction and background section of this report, D.E.P. entered into two agreements with the U.S. Department of Defense regarding the federal government's cleanup of hazardous sites on active and former military installations throughout the Commonwealth.

As outlined in these agreements, the U.S. Department of Defense agreed to reimburse D.E.P. for eligible costs related to the monitoring responsibilities D.E.P. undertakes in ensuring that federal cleanup activities comply with state laws and regulations. To obtain this reimbursement, D.E.P. must bill the federal government. While the agreements do not state a time period in which D.E.P. should seek the federal reimbursements, it is incumbent upon D.E.P. to exercise prudent business practices and to request the reimbursement of funds as soon as possible after they are incurred.

To seek these federal reimbursements, D.E.P. submits the federal project cost information to the Commonwealth's Office of the Comptroller, who, in turn, electronically submits bills to the federal government.

In auditing the receipt of federal reimbursements into the Cleanup Fund, we obtained and reviewed the notes from D.E.P.'s annual meeting with federal officials held on January 27, 2005.<sup>40</sup> The following statement was made in these

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<sup>40</sup> Document obtained from the Pennsylvania Department of Environmental Protection's Web site, <http://www.dep.state.pa.us/dep/subject/advcoun/solidwst/2005/Jan13/HazWasteSummary.pdf> (accessed December 10, 2008, and verified January 29, 2009). D.E.P. did not have this same report available for subsequent years.

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meeting notes: “DSMOA<sup>41</sup> reimbursement of state oversight efforts have not been billed by the state to Army Corps of Engineers since June 2003 due to personnel changes, implementation of [the Commonwealth’s accounting information system] and several other factors.”

In looking further into this matter, we obtained and analyzed D.E.P.’s documentation for reimbursement from the federal government for fiscal years ended June 30, 2004, through June 30, 2008, and noted the following:

<b>Billing period<sup>42</sup></b>	<b>Invoice date<sup>43</sup></b>	<b>Amount received</b>	<b>Date payment received</b>
July 1, 2003, to June 30, 2004	May 18, 2005	\$230,132	Sept. 27, 2005
July 1, 2004, to June 30, 2005	May 12, 2006	\$178,456	June 12, 2006
July 1, 2005, to June 30, 2006	Dec. 14, 2006	\$120,030	March 13, 2007
June 1, 2006, to June 30, 2006	Aug. 17, 2007	\$140,478	Sept. 11, 2007
July 1, 2006, to June 30, 2007	Jan. 15, 2008	\$138,918	Feb. 13, 2008
July 1, 2006, to June 30, 2007	Aug. 15, 2008	\$59,289	Sept. 11, 2008
July 1, 2007, to Dec. 31, 2007	Oct. 14, 2008	\$111,901	Nov. 4, 2008
Jan. 1, 2008, to June 30, 2008	Oct. 14, 2008	\$65,804	Nov. 4, 2008
<b>Total:</b>		<b>\$1,045,008</b>	

Overall, we noted that, while the federal government reimbursed D.E.P. timely, D.E.P. did not request the reimbursements in a timely manner. Specifically, we noted that, for six of the eight reimbursements listed above, the

<sup>41</sup> This abbreviation refers to the Department of Defense and Commonwealth Memorandum of Agreement, which provides for the reimbursement of certain D.E.P. costs.

<sup>42</sup> Two requests for reimbursement were submitted to the federal government for fiscal years ended June 30, 2006 and 2007. According to D.E.P. officials, the federal government did not make all monies available to D.E.P. at one time; therefore, D.E.P. needed to submit a second billing to collect the balance of money due to it during these time periods.

<sup>43</sup> The two invoices with the same date of October 14, 2008, related to costs for two different billing periods as indicated in the table. However, we note that the latter invoice illustrates that D.E.P. is able to prepare invoices soon after the billing period for which they apply and should not have to prepare the invoices more than a year later.

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federal government reimbursed D.E.P. in one month or less after the request for reimbursement was submitted. The other two reimbursements—which were for years 2004 and 2006—came four and three months later than submitted, respectively.

Because we were unable to ascertain the exact dates for which D.E.P. incurred expenses for cleanup activities at military sites, we cannot state with certainty the length of time it took D.E.P. to submit billings for these expenses. But if we look at the end of the billing cycle as a minimum measure, we can see it took D.E.P. between four and 14 months from the close of a billing period to submit invoices for reimbursement to the federal government. Based on the previous table showing that, with only two exceptions, the federal government paid D.E.P. invoices only a month after the invoice dates, D.E.P. should have acted more quickly.

When questioned, D.E.P. stated that its goal is to request reimbursement on a quarterly basis. However, as we have shown, D.E.P. did not meet this quarterly goal.

As a result of D.E.P.'s delayed billings for these federal reimbursements, monies due to the fund were received generally at least one year after D.E.P. had expended the money. Consequently, D.E.P. did not earn additional interest on these reimbursements because each month that the reimbursements were not deposited into the fund was another month for which interest was lost. Given that the General Assembly has had to transfer funds from the Environmental Stewardship Fund and legislative accounts over the course of our audit period to supplement fund revenues, it is imperative that D.E.P. collect all monies available to the Cleanup Fund as quickly as possible. Not only is timely collection of reimbursements a good business practice but—even more important—it is also D.E.P.'s fiduciary responsibility.

**Recommendation**

5. D.E.P. should seek reimbursement from the federal government on a quarterly basis for all costs incurred by D.E.P. at federal military sites. Additionally, these

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quarterly requests for reimbursement should be submitted to the federal government within 60 days of the close of the billing period.

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**Finding Five**

**The Department of Environmental Protection went beyond the Superfund reporting requirements in its 2008 annual report but did not note that an average of \$1.7 million would be needed every year for operating and personnel costs.**

As we discussed in the introduction and background section of this report, the Commonwealth has financial obligations for hazardous sites cleanup under the federal Comprehensive Environmental Response, Compensation, and Liability Act, more commonly known as Superfund. One of Superfund's purposes is to clean up the nation's inactive and abandoned hazardous sites where no responsible party can be identified or where the responsible party cannot pay or unwilling to pay for the site cleanup.

To fund the cleanup at Superfund sites, the federal government pays 90 percent of the cleanup costs at these sites, and the state in which the site is located<sup>44</sup> pays the remaining ten percent. This ten percent is referred to as the state's matching cost. When cleanup is completed at a Superfund site, the state assumes full responsibility for the site, both financially<sup>45</sup> and operationally.

As we noted in Finding One, D.E.P. is required to provide specific program information in its annual report to the General Assembly.<sup>46</sup> One required category of information is "[t]he number of Federal Superfund sites in which the Commonwealth participates in response activities, and the State matching costs incurred."<sup>47</sup>

D.E.P. did indeed provide the basic Superfund information in its annual reports for each year of the audit period and, in fact,

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<sup>44</sup> When a site is located in more than one state, this ten-percent matching cost is shared between/among the states in which the site is located.

<sup>45</sup> Laboratory testing is one example of a common post-cleanup cost.

<sup>46</sup> 35 P.S. § 6020.902(c).

<sup>47</sup> *Id.* § 6020.902(c)(5).



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went a step further in the 2008 annual report (fiscal year ended June 30, 2008) by also including schedules of current and potential future Superfund sites within the Commonwealth. For the fiscal year ending June 30, 2009, for example, D.E.P. projected that the state would be obligated to pay \$2.7 million for Superfund. D.E.P.'s 2008 annual report projected that, over the next nine years (fiscal year ending June 30, 2009, through fiscal year ending June 30, 2017), D.E.P. will need \$18.7 million to cover its Superfund obligations.

However, in reviewing D.E.P.'s projections, we found that each year's projected costs were for contract costs *only* and *did not include* D.E.P.'s estimated personnel and administrative operating costs to oversee the Superfund activities. For the fiscal year ended June 30, 2008, D.E.P. estimated these costs to be \$1.7 million and, in fact, included this \$1.7 million within totals elsewhere in the report but did not break out this figure specifically. Therefore, users of the 2008 annual report—including members of the General Assembly who must make funding decisions—would not have seen from D.E.P.'s Superfund listing that the state would need an average of \$1.7 million more in *each* of the next nine years, for *a total of \$15.3 million*. The table on the next page illustrates what D.E.P. reported versus what it could have reported by adding an average of \$1.7 million in costs each year. [Note: Due to the rounding of D.E.P. projections in the table, the difference in the totals is \$15.2 million instead of \$15.3 million.]

## Finding Five

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<b>Pennsylvania's projected annual obligations for Superfund projects as D.E.P. reported in its 2008 annual report</b>		<b>What D.E.P. would have reported by adding personnel and operating costs</b>
<b>Fiscal year ending:</b>	<b>D.E.P. projection:</b>	
06-30-09	\$2.7 million	\$4.4 million
06-30-10	\$2.0 million	\$3.7 million
06-30-11	\$3.1 million	\$4.8 million
06-30-12	\$1.7 million	\$3.4 million
06-30-13	\$1.7 million	\$3.4 million
06-30-14	\$2.0 million	\$3.7 million
06-30-15	\$1.7 million	\$3.4 million
06-30-16	\$2.1 million	\$3.8 million
06-30-17	\$1.7 million	\$3.3 million
<b>Nine-year total as D.E.P. projected = \$18.7 million</b>		<b>Total = \$33.9 million</b>

We note that, for the fiscal year ending June 30, 2009, \$1.7 million in personnel and operating costs would represent 38 percent of D.E.P.'s projected Superfund costs.

D.E.P. agreed to clarify this issue in future reports and also noted that personnel and operating costs could vary significantly from year to year based on the actions needed at particular sites.

#### **Recommendation**

- D.E.P. should include all projected expense information in its annual reports to the General Assembly regarding the Commonwealth's financial obligations for hazardous sites cleanup under federal regulations to ensure that legislators have sufficient information to assess the fund's current and future operational budget requirements.

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**Finding Six**

**The Department of Environmental Protection prepared annual reports of the Hazardous Sites Cleanup Fund that contained the required information, but these annual reports were not always timely or clearly presented. As a result, legislators and other decision-makers may not have had the most useful or current facts to make informed decisions regarding program funding and expenditures.**

Annual reports about the Cleanup Fund have been especially critical to members of the General Assembly because the reports served as the most consistently available vehicle for Cleanup Fund information. Knowing that the fund had no stable source of revenue from June 2002 until July 2008, legislators needed to have access to well-presented annual reports to determine funding for subsequent years.

At their most basic, the annual reports should include information about expenditures and program activities related to the Cleanup Fund for the preceding fiscal year.<sup>48</sup> Act 108 is specific about the information that D.E.P. should communicate:

. . . Included in this report shall be information concerning all revenues and receipts deposited into the Hazardous Site Cleanup Fund, all expenditures, including, but not limited to, expenditures for personnel, operating expenses, the purchase of fixed assets, grants and subsidies, other major objects of expenditures where appropriate and information detailing [D.E.P.'s] efforts to obtain contributions for response actions from potentially responsible parties and a listing of sites where mixed funding as described in [this law] was utilized for cleanup. The secretary

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<sup>48</sup> 35 P.S. § 6020.902(c).

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[of D.E.P.] shall also supply information on both authorized and filled complement and information concerning program activities, including, but not limited to:

- (1) The number of response actions initiated and completed, and the costs incurred, in the aggregate and for each action.
- (2) The number of public or private water supply replacements, and the costs incurred.
- (3) Expenditures for the rehabilitation, restoration or acquisition of natural resources.
- (4) Expenditures for intervention and environmental mediation.
- (5) The number of Federal Superfund sites in which the Commonwealth participates in response activities, and the State matching costs incurred.
- (6) The number of health effect studies undertaken, and the costs incurred.
- (7) The number of grants provided to municipalities under [a specific section of Act 108], and the amounts granted.
- (8) The number of reimbursement of expenses under [a specific section of Act 108], and the amounts reimbursed.<sup>49</sup>

**Timely submission of the annual report**

We reviewed the annual reports prepared by D.E.P. for fiscal years ended June 30, 2003, through June 30, 2008. Act 108 required the reports to be submitted to the General Assembly every year by October 1. Act 77 now requires the reports to be submitted every year by August 31.<sup>50</sup>

When reports were due by October 1, that deadline meant that D.E.P. had three months to finalize its accounting of activities

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<sup>49</sup> Id.

<sup>50</sup> 35 P.S. § 6021.6(a).

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for the year ended June 30. For reports due now on August 31, D.E.P. has just two months to finalize accounting of the year just ended on June 30. Based on our review according to the schedule we just described, it appears that D.E.P. published only one report on time.

D.E.P. provided the following information on the publication of its annual reports.

<b>Fiscal year ended June 30</b>	<b>Date published</b>	<b>Date due</b>	<b>Months late</b>
2008	September 2008	August 2008	1
2007	October 2007	October 2007	0
2006	October 2007	October 2006	12
2005	October 2006	October 2005	12
2004	September 2005	October 2004	11
2003	October 2004	October 2003	12

D.E.P. officials told us they believed they were doing the right thing by waiting until the next year to publish the annual reports. The officials said that, otherwise, they would have had to publish estimated figures since actual figures would not yet have been finalized. However, beginning with the annual report for the fiscal year ended June 30, 2007, D.E.P. addressed this concern by publishing data for two years—estimated figures for the most recent fiscal year and actual figures for the year before.

**Presentation of financial information  
could be improved**

To assist legislators and other decision-makers as they evaluate the program and determine funding, we offer the following suggestion. D.E.P. could improve the presentation and usefulness of the financial information contained in its annual reports on the Cleanup Fund by including standard financial statements, making changes to the report appendices, and by revising earlier reports on its Web site.

**Standard financial statements.** We recognize that, although Act 108 does not mandate the precise manner in which

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financial information must be presented, governmental accounting standards offer guidance on the form and content of financial statements. Specifically, Governmental Accounting Standards Board Statement No. 34 outlines reporting standards for governmental entities and recommends the inclusion of a balance sheet, as well as a statement of revenues, expenditures, and changes in fund balance.<sup>51</sup> Governmental Accounting Standards Board Statement No. 34 also includes standardized reporting formats for these statements but does *not require* the statements be audited.

Balance sheets are important because they are used to report an entity's total assets and total liabilities, including *anticipated* assets and liabilities. Inclusion of a balance sheet in the Cleanup Fund annual reports would make the following information available to decision-makers:

- Anticipated fund assets, which include monies currently due from the federal government and other responsible parties for services provided by D.E.P. at military and privately owned hazardous sites
- Anticipated fund liabilities, which include:
  - the Commonwealth's required share of Superfund sites cleanup costs
  - commitments for the contracts into which D.E.P. has entered
  - current<sup>52</sup> estimated costs for projects that are not Superfund sites

Inclusion of a standard statement of revenues, expenditures, and changes in fund balance in the Cleanup Fund annual reports would also make the following information available to decision-makers:

- Identification of which was greater – revenue or expenditures

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<sup>51</sup> Statement No. 34, *Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments*, June 1999, Governmental Accounting Standards Board (GASB).

<sup>52</sup> For accounting purposes, current assets and liabilities are those that are expected to be acquired or incurred within the next 12 months.

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- Net change in fund balance during the current year

We further suggest that, to clearly present the preceding information, D.E.P. should list transfers into the fund separately from revenues.

Finally, we suggest that D.E.P. prepare these standard financial statements quarterly. Doing so would facilitate preparation of the statements for the annual reports and D.E.P.'s monitoring of fund monies during the year, as well as align D.E.P.'s reporting of the Cleanup Fund with the Commonwealth's annual reporting process. Further, to enhance communication with the General Assembly, we suggest that D.E.P. provide these quarterly statements to members of relevant legislative committees.

**Changes to the report appendices.** In the report appendices, D.E.P. lists hazardous sites projects, which are categorized by projects funded under the Hazardous Sites Cleanup Act, sites with an identified responsible party, federal military sites, Superfund sites, and Resource Conservation and Recovery Act sites. To enhance the ability of decision-makers to evaluate the expenditures and future financial needs regarding each individual project, we suggest that D.E.P. include the total amount of Cleanup Fund monies expended during the fiscal year at each individual site. Additionally, for each site where a responsible party has been identified, we suggest that D.E.P. include the total amount of monies recovered at those sites during the fiscal year. If no monies were expended or recovered during the year at a particular site, it should be noted. Finally, it would be helpful if D.E.P. totaled the dollars in each appendix.

**Revision of earlier reports.** D.E.P. is aware that, during our audit work and through the publication of this report, some of the earlier annual reports on its Web site contain errors in the beginning and ending balances. While these errors could create confusion in the mind of the reader, it should be noted that they did not impact the actual amount of monies in the Cleanup Fund. In other words, all fund monies were

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appropriately accounted for within the Commonwealth's accounting records.

However, to ensure that readers who access the earlier reports on D.E.P.'s Web site see accurate information, we strongly suggest that D.E.P. make appropriate revisions and/or notations to those reports where the prior year ending fund balance was not carried forward as the next year's beginning balance.

**Reporting of program information**

As discussed earlier, Act 108 lists specific items of program information that must be included in D.E.P.'s annual report but also states clearly that the annual report *should not be limited to* these items.<sup>53</sup>

To determine whether D.E.P. provided this basic program information sufficiently in its annual reports, we reviewed each of the reports from 2003 to 2008. While it appears that D.E.P. did attempt to report the program information required by Act 108, changes to the presentation of the information as well as the inclusion of more details would ensure that all required information can be readily discerned by report readers.

To that end, we offer some general as well as specific suggestions. Overall, we suggest that the body of the report have clearly identified sections for each category of program activity required by Act 108. Further, to direct report readers to relevant details contained in the appendices, we suggest that D.E.P. include appropriate references in each of these sections.

Examples of specific suggestions for changes to the annual report format that D.E.P. should consider are:

- Providing greater information regarding the steps taken to recover monies from responsible parties at private and federal sites, and information on those responsible parties from whom D.E.P. was unable to recover monies

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<sup>53</sup> 35 P.S. § 6020.902(c).



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- Providing a description of secondary activities associated with public and private water supply replacement, including actions such as supplying bottled water
  - Clearly stating in the appendices the date each project began and ended to better inform the reader as to each project's stage

Finally, we suggest these general changes to the appendices' format:

- On the cover page, include a description of the program under which the included sites fall, as well as how this program is relevant to the Cleanup Fund
- On the cover page, include a statement that clearly indicates that the sites listed in each appendix had cleanup activities and/or costs during the preceding fiscal year
- In each appendix, include a legend that defines uncommon terms or abbreviations

**Recommendations**

7. D.E.P.'s program and fiscal personnel should work together to ensure that Cleanup Fund annual reports are complete, accurate, and clearly presented so they can be relied upon by legislators, other decision-makers, and other readers.
8. More specifically, D.E.P. fiscal personnel should:
  - a. Prepare a fiscal year-end balance sheet; and statement of revenues, expenditures, and changes in fund balance that are reconciled to the information in the Commonwealth's accounting system. These statements can be non-audited; however, both statements should be presented in the format prescribed by the Governmental Accounting Standards Board and they should be included in the annual report.

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- b. Prepare and provide to legislators the above-referenced balance sheet; and a statement of revenues, expenditures, and changes in fund balance at the end of each quarter.
9. D.E.P. hazardous sites program personnel should ensure that the Cleanup Fund annual reports include the following:
    - a. All program information required by Act 108, and presented according to the appropriate fiscal year. Furthermore, if no expenditures were made and/or no activity occurred in a specific category, D.E.P. should provide an explanation.
    - b. A presentation that allows legislators, other decision-makers, and other readers to find and understand the information easily. Tables and appendices should supplement information presented in the main body of the report, and should be accurate, concise, clearly labeled, and reader-friendly.
    - c. Where helpful, expanded information that provides clarification and/or further insight into the workings of the program.

**The Hazardous Sites Cleanup Fund**

*Appendix A*

*Pennsylvania Department of the Auditor General  
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## **Appendix A**

### **Objectives, Scope, and Methodology**

The Department of the Auditor General conducted this special performance audit of the Cleanup Fund in order to provide an independent assessment of its financial status and D.E.P.'s oversight of the fund. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such testing of the records and other auditing procedures as we considered necessary under the circumstances.

#### **Objectives**

Our special performance audit of the Cleanup Fund began on December 13, 2007, and had the following objectives:

1. Determine whether D.E.P. carried over Cleanup Fund monies from one fiscal year to the next, and whether these monies were available for use in hazardous sites cleanup
2. Determine whether D.E.P. expended Cleanup Fund monies in accordance with Act 108
3. Determine whether D.E.P. collected and deposited into the Cleanup Fund the fees authorized under Act 108
4. Determine the amount of monies needed to fund cleanup of federal hazardous sites, such as Superfund sites

#### **Scope**

Our audit period was from July 1, 2002, through November 30, 2008, with updates through January 2009. This audit covered financial and any related program aspects of the fund. Specifically, we reviewed the annual reports submitted to the General Assembly, the state's financial obligations to the federal government, the accounting of fund monies, expenditures made from the fund, and fund revenue received through the collection of hazardous waste fees.

## The Hazardous Sites Cleanup Fund

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### Methodology

To address our audit objectives, we performed the following procedures:

- Reviewed and analyzed pertinent federal and state laws and regulations, available D.E.P. policies and procedures, as well as applicable Commonwealth management directives and *Government Accounting Standards* to gather background information and to establish appropriate audit criteria
- Interviewed D.E.P.'s hazardous sites cleanup personnel, both financial and program, as well as personnel from the Commonwealth's Comptroller's Office, and spoke with D.E.P. contractors in the field to obtain an understanding of the hazardous sites cleanup program and its implementation
- Reviewed and analyzed the annual reports D.E.P. submitted to the General Assembly for the fiscal years ended June 30, 2003, through and including 2008, to determine the completeness and accuracy of the information presented
- Reviewed contracts and other documents related to Commonwealth actions and responsibilities pertaining to hazardous sites cleanup at Superfund sites and the Commonwealth's military installations to determine if D.E.P. was fulfilling its responsibilities regarding these two programs
- Reviewed and analyzed the Commonwealth's accounting records pertaining to expenditures and revenues, and used these records to select our samples for testing
- Tested fund expenditures from fiscal years ended June 30, 2006, and 2007, to ensure D.E.P., when making these expenditures, had complied with Act 108 of 1988. Expenditures tested included:
  - 60 D.E.P. personnel expenditures
  - 73 operational expenditures

**The Hazardous Sites Cleanup Fund**

*Appendix A*

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- 10 grants, and
  - 3 administrative transfers
  
  - Tested 32 deposits of hazardous waste fees made during the fiscal year ended June 30, 2007, and 18 deposits of hazardous waste fees made during the fiscal year ended June 30, 2006, to ensure D.E.P. had complied with Act 108 of 1988
  
  - Reviewed and analyzed the Office of the Budget status of appropriations reports, quarterly financial statements on the fund, and status of current year executive authorizations, as well as D.E.P.'s annual financial statements on the fund, to ensure the fund was accounted for properly
  
  - Toured two hazardous cleanup sites – one site in Berks County where cleanup had been completed and one site in Montgomery County where cleanup was in progress – to observe the cleanup program first hand

We completed our field work on November 30, 2008. We continued our contacts with D.E.P. through January 2009 as we wrote this report. On Monday, February 9, 2009, we held an exit conference with D.E.P. and provided our draft report to D.E.P. on Thursday, February 12. We received D.E.P.'s response to our draft report on February 27, 2009, and include it beginning on page 45 of this report.

**Findings and Recommendations**

We developed six findings during our performance audit of the Cleanup Fund, and we present nine recommendations to address the issues we identified. During our next audit of the Cleanup Fund in 2009, we will follow up to determine the status of the recommendations. In so doing, we will work collaboratively with D.E.P. to meet an important government auditing standard that promotes government accountability:

Providing continuing attention to significant findings and recommendations is important to ensure that the

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benefits of audit work are realized. Ultimately, the benefits of an audit occur when officials of the audited entity take meaningful action in response to the auditors' findings and recommendations. Officials of the audited entity are responsible for resolving audit findings and recommendations directed to them and for having a process to track their status. If the audited entity does not have such a process, auditors may wish to establish their own process.<sup>54</sup>

At the time of our follow-up, we will determine a subsequent course of action. For example, we may issue a separate report on our follow-up, or we may include our follow-up in our next audit report.

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<sup>54</sup> Standard 7.30, *Government Auditing Standards*, 2007 revision, U.S. Government Accountability Office.

**The Hazardous Sites Cleanup Fund**

*Response from  
D.E.P.*

*Pennsylvania Department of the Auditor General  
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**Response  
from  
D.E.P.**

The Pennsylvania Department of Environmental Protection's full response to this audit report is reproduced on the following pages.

The Department of the Auditor General thanks D.E.P. for its cooperation during this audit process, and we have only one comment related to our evaluation of D.E.P.'s written response. Specifically, regarding our Finding 3 and the lack of fee adjustments, we clarify here that our recommendation states that D.E.P. should evaluate *if* fees need to be adjusted, but we have not gone so far as to say that the fees *should* be adjusted. We are making this clarification because, in the cover letter accompanying D.E.P.'s response, the Acting Secretary appears to have misinterpreted our recommendation.



## Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building  
P.O. Box 2063  
Harrisburg, PA 17105-2063  
February 27, 2009

Secretary

717-787-2814

The Honorable Jack Wagner  
Department of the Auditor General  
Finance Building  
Harrisburg, PA 17120-0018

Dear Auditor General Wagner:

On behalf of the Department of Environmental Protection (DEP), I would like to thank you for the special performance audit of the Hazardous Sites Cleanup Program. The DEP appreciates the professionalism and cooperation of the Department of the Auditor General personnel during the audit.

I am pleased that the audit found that DEP has implemented the program in accordance with the requirements of the Hazardous Sites Cleanup Act and has administered Commonwealth funds with proper controls. Additionally, you found that the annual reports submitted to the General Assembly also meet the requirements of the Act. These findings are a reflection of the diligence and careful management shown routinely by those staff responsible for administering this critical program.

The DEP acknowledges the recommendations for improving the content of the reports, including the format of financial statements; taking stronger enforcement action regarding late fee reports and payments; and timely submission of reimbursements for federal monies. The DEP intends to promptly address these items. Further, your recommendation for increasing hazardous waste fees as authorized by the Act will be subject to further analysis by our agency. In particular, as you note, funding for the program is currently scheduled to cease on July 1, 2011, and the Commonwealth will need to weigh options for future funding. The DEP offers the enclosed comments to the specific findings and recommendations contained in the report.

Our industrial past has left a legacy of pollution, which often times occurred well before comprehensive environmental controls were implemented to protect our citizens and the environment and is a challenge that remains for us to address. To that end, the Hazardous Sites Cleanup Program is critically important to providing a healthy and safe environment for the citizens of the Commonwealth. The DEP is committed to that mission and appreciates the support provided by the findings of your report.

Sincerely,

  
John Hanger  
Acting Secretary

Enclosure



**Comments from the Department of Environmental Protection  
Special Performance Audit  
Hazardous Sites Cleanup Program**

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The Department of Environmental Protection (DEP) offers these comments in response to the findings and recommendations contained in the February 2009 special performance audit report.

**Finding 1** – “The Department of Environmental Protection did not spend as much as it was authorized to spend each year from the Hazardous Sites Cleanup Fund. Nevertheless, unspent monies were not “lost” but instead remained in the fund and were available for use in the next year.”

**Recommendation** – “D.E.P. should pursue a change in how the Commonwealth recognizes the Cleanup Fund in its accounting records so that the Cleanup Fund is reported as a continuing appropriation.”

**DEP Comment:** DEP will work through the Budget Office to pursue implementation of the recommended change.

**Recommendation** – “D.E.P. should continue to improve its tracking of cleanup project spending so that it can request annual funding authorizations that are as close as possible to the amounts that will actually be used.”

**DEP Comment:** The audit report notes that DEP reviews project spending on a monthly basis and recommends that DEP continue those efforts. DEP strives to ensure all annual spending authorizations are used and will continue to strive to achieve this goal.

**Finding 2** – “The Department of Environmental Protection expended money from the Hazardous Sites Cleanup Fund for authorized purposes.”

**DEP Comment:** DEP is pleased that the audit found that monies were appropriately spent and proper internal controls were present and operating.

**Finding 3** – “For more than 20 years, the Department of Environmental Protection charged the same fees to hazardous waste transporters and management facilities, thereby missing an opportunity to maximize its revenue source and to depend less on the transfer of monies from other funds. Additionally, D.E.P. did not collect penalties from hazardous waste transporters who did not report and/or pay their fees in a timely manner.”

**Recommendation** – “D.E.P. should evaluate if it should adjust hazardous waste transportation and management fees as authorized.”

**DEP Comment:** HSCA provides that DEP may increase hazardous waste management and transportation fees by regulation. As noted in the report, the revenue from the Capital Stock and Franchise Tax, which largely supports the Hazardous Sites Cleanup Program, is scheduled to end on June 30, 2011. DEP

**Comments from the Department of Environmental Protection  
Special Performance Audit  
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will assess an increase in fees as it evaluates options for funding the program beyond that date.

**Recommendation** – “D.E.P. should establish and implement written policies and procedures for the assessment and collection of penalties from hazardous waste transporters and management facilities that do not report and/or pay fees timely.”

**DEP Comment:** DEP does have written compliance and enforcement policies that are published as technical guidance on the DEP website. Under those policies, a penalty is not automatically assessed for every Notice of Violation (NOV). When implementing the policies in the fee collection area, DEP issues NOVs to transporters who fail to file reports and pay fees. DEP allows the non-compliant entity a fifteen (15) day period to come into compliance prior to considering a penalty, which is consistent with these policies. DEP will, as recommended in the audit, review its fee and penalty assessment process regarding late registrations and reports.

**Finding 4** – “The Department of Environmental Protection did not ensure that requests to the federal government for reimbursement of costs incurred at federal military sites were submitted in a timely manner. As a result, D.E.P. delayed the receipt of revenue and, at the same time, potentially lost interest on that revenue.”

**Recommendation** – “D.E.P. should seek reimbursement from the federal government on a quarterly basis for all costs incurred by D.E.P. at federal military sites. Additionally, these quarterly requests for reimbursement should be submitted to the federal government within 60 days of the close of the billing period.”

**DEP Comment:** DEP has submitted requests for all the expenses it can claim for overseeing military cleanups in Pennsylvania. DEP recognizes that the requests have been delayed due to various issues noted in the report. DEP agrees that the time suggested in the recommendation is appropriate and intends to further evaluate its processes so this goal can be consistently met.

**Finding 5** – “The Department of Environmental Protection went beyond the Superfund reporting requirements in its 2008 annual report, but did not note that an average of \$1.7 million would be needed every year for operating and personnel costs.”

**Recommendation** – “D.E.P. should include all projected expense information in its annual reports to the General Assembly regarding the Commonwealth’s financial obligations for hazardous sites cleanup under federal regulations to ensure that legislators have sufficient information to assess the fund’s current and future operational budget requirements.”

**Comments from the Department of Environmental Protection  
Special Performance Audit  
Hazardous Sites Cleanup Program**

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**DEP Comment:** DEP is pleased the auditors noted our attempt to fully report on federal Superfund obligations beyond the statute's limited requirements. DEP will include the cost estimates recommended in future annual reports.

**Finding 6** – “The Department of Environmental Protection prepared annual reports of the Hazardous Sites Cleanup Fund that contained the required information, but these annual reports were not always timely or clearly presented. As a result, legislators and other decision-makers may not have had the most useful or current facts to make informed decisions regarding program funding and expenditures.”

**Recommendation** – “D.E.P. program and fiscal personnel should work closely together to ensure that Cleanup Fund annual reports are complete, accurate and clearly presented so they can be relied upon by legislators, other decision-makers, and other readers.”

**DEP Comment:** As stated in Finding 6, DEP has provided all the required information in the annual reports in accordance with the Act. The Auditor General's recommendations to revise portions of the report for clarity are certainly appreciated and will be implemented in the 2009 Annual Report.

The audit recognizes that DEP resolved the timeliness of annual reports by implementing a revised report format commencing with the Annual Report issued in October 2007.

**Recommendation** – “More specifically, D.E.P. fiscal personnel should:

- a. Prepare a fiscal year-end balance sheet; and statement of revenues, expenditures, and changes in fund balance that are reconciled to the information in the Commonwealth's accounting system. These statements can be non-audited; however, both statements should be presented in the format prescribed by the Governmental Accounting Standards Board and they should be included in the annual report.
- b. Prepare and provide to legislators the above-referenced balance sheet; and a statement of revenues, expenditures, and changes in fund balance at the end of each quarter.”

**DEP Comment:** DEP will work with the Comptroller's Office to have statements prepared in a format consistent with GASB standards. Currently, quarterly statements are prepared by the Comptroller's Office and submitted to the legislators. DEP would like to note that audited financial information is not available until November, so the annual report may contain preliminary information that may conflict with later reports. In addition, it would be very beneficial for the General Assembly via legislation to change the reporting

**Comments from the Department of Environmental Protection  
Special Performance Audit  
Hazardous Sites Cleanup Program**

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deadline to a later date, e.g., December 31, so DEP can use complete audited financial information.

**Recommendation** – “D.E.P. hazardous sites program personnel should ensure that the Cleanup Fund annual reports include the following:

- a. All program information required by Act 108, and presented according to the appropriate fiscal year. Furthermore, if no expenditures were made and/or no activity occurred in a specific category, D.E.P. should provide an explanation.
- b. A presentation that allows legislators, other decision-makers, and other readers to find and understand the information easily. Tables and appendices should supplement information presented in the main body of the report, and should be accurate, concise, clearly labeled, and reader-friendly.
- c. Where helpful, expand information that provides clarification and/or further insight into the workings of the program.”

**DEP Comment:** DEP appreciates the specific suggestions and will incorporate the improvements in the future annual reports.

**The Hazardous Sites Cleanup Fund**

*Audit Report  
Distribution List*

*Pennsylvania Department of the Auditor General  
Jack Wagner, Auditor General  
March 2009*

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**Audit Report  
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This report was distributed to the following individuals upon its release:

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Commonwealth of Pennsylvania

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Lieutenant Governor  
Commonwealth of Pennsylvania

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Appropriations Committee  
Pennsylvania House of Representatives

The Honorable Robert M. McCord  
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Commonwealth of Pennsylvania

The Honorable Mario J. Civera, Jr.  
Republican Chair  
Appropriations Committee  
Pennsylvania House of Representatives

The Honorable John Hanger  
Acting Secretary  
Department of Environmental Protection  
Commonwealth of Pennsylvania

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Senate of Pennsylvania

**The Hazardous Sites Cleanup Fund**

*Pennsylvania Department of the Auditor General  
Jack Wagner, Auditor General  
March 2009*

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Pennsylvania Department of Environmental Protection

Thomas Fidler  
Deputy Secretary  
Bureau of Waste, Air and Radiation  
Management  
Department of Environmental Protection

Ken Reisinger  
Director  
Bureau of Waste Management  
Department of Environmental Protection

Patricia A. Sale  
Director  
Bureau of Fiscal Management  
Department of Environmental Protection