Review of Outcomes from the Ability to Pay Process

Division of Waste Management
Bureau of Petroleum Storage Systems
Report: A-1213DEP-059

Office of Inspector General
Internal Audit Section
Florida Department of Environmental Protection
October 17, 2013

Final Report
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Scope & Objectives

The scope of this review included outcomes from the ability to pay processes related to site remediation through the Petroleum Cleanup Participation Program (PCPP) between 2008 and 2012.

The objective of this review was to determine the disposition of payment contributions provided by the responsible parties/responsible parties for site remediation evaluated under the ability to pay process.

Methodology

This review was conducted under the authority of Section 20.055, Florida Statutes. The review was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors. This review included an examination of records provided by members of the Bureau of Petroleum Storage Systems (Bureau), Office of General Counsel (OGC) and contractors providing remediation services for PCPP or enforcement cases.

Background

The PCPP provides cost share assistance for responsible parties/responsible parties to clean up petroleum discharges and/or products of existing or previously removed petroleum storage systems. In order to qualify for this program, the discharges must have occurred prior to January 1, 1995.

The cleanup of PCPP sites are prioritized by the Department based on health, safety and environmental risks. As funds are available, responsible parties are responsible for providing the Department a limited contamination assessment report (LCAR) to establish the extent of the contaminated areas and the cleanup process. Responsible parties are required to pay for the LCAR, along with a 25 percent copayment for the cleanup costs. They must also demonstrate their financial ability to be able to meet the copayment obligation. If it is determined that
responsible parties are unable to pay, the cost of the LCAR and copayment obligation may be reduced or eliminated.

This guidance for the PCPP is provided by Florida Statutes 376.3071(13) (c) which states that “the owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they are financially unable to comply with the copayment and limited contamination assessment report requirements.”

Ability to pay determinations are sought by the Bureau to determine if responsible parties have the financial resources to pay the 25 percent share of the cleanup costs or a reduced amount. In this process, an independent analysis is conducted on the participant’s financial ability to provide funding for their portion of the program costs.

In some cases, responsible parties may receive a determination of the amount of their ability to pay, which may cover all or partial costs of the limited contamination assessment report and cleanup. The determination of how much the responsible party is to pay is outlined in the PCPP agreement. Cost share payments by the responsible parties are typically paid directly to the contractor conducting the remediation work.

According to the PCPP agreement, proof of payment should be reported to the Department in a timely manner. Section 10 of the PCPP agreement provides that, “The participant shall be subject to the prompt payment provisions of Section 215.422, F.S., upon receipt of an invoice for its cost share commitment from the Designated Contractor, when such invoice is accompanied by a written approval by the Department of the work completed. Within 40 days of payment to the Designated Contractor, the Participant shall provide to the Department proof of such payment, which shall include a copy of the Participant’s paid and canceled check to the Designated Contractor or a certification by the Designated Contractor that the invoice amount specified in the certification was paid and indicating the date such payment was received by the Designated Contractor from the Participant.”
Results & Conclusions

Data provided by the Bureau indicated 22 ability to pay determinations were made for participation in the PCPP between 2008 and 2012. We examined 20 ability to pay determinations for participation in the PCPP to determine if site managers with the Bureau, county and municipal agencies collected or requested payment proof from the responsible parties and/or contractors. According to interviews with Bureau, city and county site managers of 17 PCPP sites, payment documentation from either responsible parties or contractors is not provided to the Department. The site managers do not request or verify payment documentation from responsible parties or contractors to ensure the cost share is paid. Site managers of three PCPP sites did not provide a response.

The Bureau has sought an independent financial analysis of the responsible party’s ability to contribute to their share of clean up costs. Based on the ability to pay analysis, results are reported in one of four ways.

- **Yes:** The analysis results determined the responsible party had the financial ability to pay their share of costs.
- **Limited:** The analysis results determined the responsible party had a limited financial ability to pay their share of costs.
- **No:** The analysis results determined the responsible party did not have the financial ability to pay their share of costs.
- **No Finding:** The analysis was inconclusive due to the lack of adequate financial support to make a determination.
The following table shows the results of the 20 ability to pay determinations reviewed between 2008 and 2012.

<table>
<thead>
<tr>
<th>Ability To Pay Determination</th>
<th>Total Number of ATP Determinations</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Limited</td>
<td>1</td>
<td>According to the OGC, the agreement reached with the responsible party provided that the Department select the contractor, waive the LCAR, determine the cleanup costs and then develop a payment plan to recoup a portion of the costs.</td>
</tr>
<tr>
<td>No</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>No Finding</td>
<td>2</td>
<td>One of the sites lost eligibility in the PCPP, and the owner no longer responds to the OGC for requests of information. The second site fell below the threshold of 46 and there has not been any activity since 2008.</td>
</tr>
<tr>
<td>Moved to OGC</td>
<td>1</td>
<td>Case moved to OGC as participant did not submit all necessary documents to conduct an ATP analysis.</td>
</tr>
<tr>
<td>Total</td>
<td>20</td>
<td></td>
</tr>
</tbody>
</table>

From the 20 PCPP sites in our sample, 12 resulted in the responsible party having the ability to pay their portion of clean up costs. Of those 12, there were nine (9) sites in which responsible parties had agreements established with the Department to cover some of the financial responsibilities for cleanup processes.

We contacted the Bureau and remediation contractors to obtain payment verification for work conducted during the time period of January 2008 through June 2013. Out of the nine (9) sites, we were able to verify that five (5) responsible parties paid their financial obligation of the cleanup costs. Four of these responsible parties were required to pay a specific amount towards the cleanup, and one participated in the 25 percent cost share agreement. Contractors of three (3) other PCPP sites indicated that payment had been received from the responsible parties; however this could not be verified. One other site was inactive because the responsible party claimed indigence and did not pay the contractor the 25 percent copayment for the remediation work.

The following table illustrates the amounts obligated from responsible parties for remediation work along with payment amounts from responsible parties that we were able to verify.
Review of Outcomes from the Ability to Pay Process
DIVISION OF WASTE MANAGEMENT
Bureau of Petroleum Storage Systems
A-1213DEP-059

<table>
<thead>
<tr>
<th>Site</th>
<th>Responsible Party Obligation</th>
<th>Verified Amount Paid by Responsible Party</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$8,756.29</td>
<td>$8,756.29</td>
<td>Paid upfront to DEP, responsible party obligation paid. Site cleanup completed.</td>
</tr>
<tr>
<td>2</td>
<td>$13,751</td>
<td>$13,751</td>
<td>Responsible party obligation paid. Department covers remainder of cleanup costs.</td>
</tr>
<tr>
<td>3</td>
<td>$11,696</td>
<td>$11,696</td>
<td>Responsible party obligation paid. Department covers remainder of cleanup costs.</td>
</tr>
<tr>
<td>4</td>
<td>ATP $6,118 to prepare LCAR and cleanup.</td>
<td>$6,118.00</td>
<td>Responsible party obligation paid. Department covers remainder of cleanup costs.</td>
</tr>
<tr>
<td>5</td>
<td>$3,825.50 (25% copayment)</td>
<td>$3,825.50</td>
<td>Responsible party paid 25% obligation. Department paid $11,476.52. Site currently inactive.</td>
</tr>
<tr>
<td>6</td>
<td>$30,983.87 (25% copayment)</td>
<td>$0</td>
<td>$27,800.17 indicated but unverified. Department paid $92,951.61.</td>
</tr>
<tr>
<td>7</td>
<td>$21,085.31 (25% copayment)</td>
<td>$0</td>
<td>$33,536.68 indicated but unverified. Department paid $63,255.93</td>
</tr>
<tr>
<td>8</td>
<td>$8,337.82 (25% copayment)</td>
<td>$0</td>
<td>$8,026.79 unverified. Department paid $25,013.47.</td>
</tr>
<tr>
<td>9</td>
<td>$1,936.83 (25% copayment)</td>
<td>$0</td>
<td>Department paid $5,810.45. Site inactive because responsible party has claimed indigence and has not paid contractor.</td>
</tr>
</tbody>
</table>

Finding & Recommendation

Verification of Payment

The Bureau has incorporated the ability to pay analysis in its process of administering portions of the program where participation is required. However, the Department does not require responsible parties and/or contractors to provide payment verification to the Department as designated in Section 10 of the PCPP agreement. This makes it difficult to determine if responsible parties are fulfilling their financial obligations to the Department.

Recommendation:

We recommend the Bureau verify payment from responsible parties and/or contractors in compliance with Section 10 of the PCPP agreement.
Based on the practices observed during this review, for programs requiring responsible party financial participation, the process of assuring responsible parties’ cleanup contribution does not appear to be centrally controlled or consistently applied. To guard the Department’s interests in holding responsible parties accountable for their obligation towards cleanup costs, we recommend the Bureau develop processes to document and make every effort to collect payments. The Division of Waste Management should consider incorporating this effort into the Bureau’s performance measures to promote responsible and accountable financial stewardship for site remediation cleanup costs.

To promote accountability, integrity and efficiency in state government, the OIG completes audits and reviews of agency programs, activities, and functions. Our audit was conducted under the authority of section 20.055, F.S., and in conformance with the International Standards for the Professional Practice of Internal Auditing, published by the Institute of Internal Auditors, and Principles and Standards for Offices of Inspector General, published by the Association of Inspectors General. The audit was conducted by Management Review Specialist Hyatt Sudano, and supervised by the Director of Auditing Valerie Peacock.

Please address inquiries regarding this report to the OIG’s Audit Director by telephone at (850) 245-3151. Copies of final reports may be viewed and downloaded via the internet at http://www.dep.state.fl.us/ig/reports.htm. Copies may also be obtained by telephone (850) 245-3151, by fax (850)245-2994, in person or by mail at Department of Environmental Protection, Office of Inspector General, 3900 Commonwealth Boulevard, Mail Station #41, Tallahassee, FL 32399.
TO: Valerie Peacock, Director of Auditing  
Office of Inspector General

FROM: Jorge R. Caspary, P.G., Director  
Division of Waste Management

DATE: October 4, 2013

SUBJECT: Response to Preliminary Audit Report No. A-1213DEP-059 Draft Audit of the Ability to Pay Process

The Division of Waste Management has reviewed the Office of Inspector General’s (OIG) September 19, 2013 Preliminary Audit Report for the Ability to Pay Process. The period audited was between 2008 and 2012.

Office of Inspector General Findings:

Finding 1: Verification of Payment. The Department does not require the responsible parties and/or contractors to provide payment verification to the Department as designated in Section 10 of the Petroleum Cleanup Participation Program (PCPP) Agreement. This makes it difficult to determine if responsible parties are fulfilling their financial obligations.

Office of Inspector General Recommendations:

The OIG recommends the Division verify payment from responsible parties and/or contractors in compliance with Section 10 of the PCPP agreement.

Response from the Division of Waste Management:

The Bureau of Petroleum Storage Systems (now the Petroleum Restoration Program (PRP) agrees with the recommendation to verify payment of required cost share amounts and has taken the following actions to this end.

- Site managers are now required to send a “Request for Confirmation of Cost Share Payment” letter to the responsible party when the contractor that is performing cleanup activities submits an invoice. The letter, written for use with existing PCPP agreements, notifies the responsible party that they will be required to pay the contractor their share of the completed cleanup activities and provide proof of that payment to the PRP.
- The PCPP agreement will be cancelled if the responsible party fails to provide proof that it has paid the contractor its share of the costs.
- PCPP contract templates and other procedures including tracking of financial participation are being re-evaluated and rewritten.

Thank you for your continuing efforts to help the Division improve its programs and processes through quality audits.

JRC/wk