



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 05 2017

OFFICE OF
INSPECTOR GENERAL

The Honorable Tim Murphy
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

The Honorable Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
House of Representatives
Washington, D.C. 20515

Dear Chairman Murphy and Ranking Member DeGette:

Thank you for allowing me to testify on September 6, 2017, before your Subcommittee on Oversight and Investigations, about the U.S. Environmental Protection Agency (EPA) Office of Inspector General's (OIG's) recommendations to the EPA that remain unimplemented. I have enclosed for the Congressional Record responses to questions that were asked of me by members of your subcommittee.

We appreciate your interest in the work of the OIG. If you have any questions about this or any other matter, please contact me at (202) 566-2391.

Sincerely,

A handwritten signature in dark ink, appearing to read "Alan S. Larsen", is written over a horizontal line.

Alan S. Larsen
Counsel to the Inspector General

cc: The Honorable Michael C. Burgess

Enclosure

House Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
Hearing titled "EPA Oversight: Unimplemented Inspector General and GAO Recommendations"

Questions for the Record, Alan Larsen, Counsel to the Inspector General

Questions from Chairman Murphy

- 1. In its FY 2017 Management Challenges Report OIG highlighted "current audit work continues to note that EPA lacks a holistic approach to managing accountability over its contractors and ensuring personnel responsible for overseeing contractors are aware of their responsibilities." Could you expand on this finding and inform the Committee what led OIG to include it in its latest Management Challenges Report?**

Response: Since 2013, the OIG has identified contracts management as an agency-level weakness. Audits have routinely found that while the agency has incorporated internal controls into its policies and procedures, the policies and procedures are not being followed. This affects the agency's ability to ensure it obtains reasonable prices for goods and services and receives the goods and services it paid for. In the past month, the OIG issued a report on the EPA's management of a contract to support its implementation of alternative dispute resolution and public involvement. The OIG found that the monthly progress reports and contractor invoices did not contain information required by the contract, which hindered the agency's ability to properly oversee the contract.¹

In October 2016, the OIG issued a report on the EPA's use of purchase orders.² The report found that the EPA could have saved approximately \$592,000 annually by using purchase cards rather than purchase orders. This condition occurred due to the purchaser's lack of knowledge about purchase card alternative methods, not being sufficiently trained, and/or not having clear guidance or direction from the contracting officer.

- 2. The Committee is interested in the recommendations from OIG's March 2016 report entitled: "Drinking Water: EPA Needs to Take Additional Steps to Ensure Small Community Water Systems Designated as Serious Violators Achieve Compliance." Our committee just reported a Safe Drinking Water Act reauthorization that placed some new requirements on small water systems. How widespread is EPA's practice, in formal enforcement actions, of providing information regarding how noncompliant systems can access compliance assistance resources?**

Response: Our March 2016 report examined EPA enforcement in Regions 2, 6 and 7. Only Region 6 included compliance assistance information in its orders. For a nationwide perspective, the subcommittee may wish to direct this question to the EPA.

¹ EPA's *Alternative Dispute Resolution and Public Involvement Contract Needs Better Management*, Report No. 17-P-0380, issued September 12, 2017.

² EPA's *Purchase Order Process Needs to Improve and Achieve Better Value*, Report No. 17-P-0001, issued October 13, 2016.

a. How much of a hindrance is this to aiding smaller systems in achieving compliance?

Response: Achieving compliance depends on many factors. Our March 2016 report found that the practice of informing systems of compliance assistance resources can help achieve compliance. We did not evaluate whether the absence of this practice was a hindrance.

b. What is the status of EPA's work to implement your recommendations?

Response: The EPA completed corrective actions for all but one of our recommendations. The remaining unimplemented recommendation, Recommendation 2, is that the agency include in Region 2 formal enforcement orders information about how noncompliant systems can access compliance assistance resources available through the Puerto Rico coordinating committee established under Recommendation 1. Corrective actions for Recommendation 2 are scheduled to be completed by December 31, 2017.

3. One of the recommendations OIG made in July 2016 entitled "EPA Regional Offices Need to More Consistently Conduct Required Annual Reviews of Clean Water State Revolving Funds" was that EPA should "evaluate regional approaches to conducting the annual reviews of Clean Water State Revolving Fund programs, and address issues to ensure regions perform consistent reviews in accordance with the annual review guidance." Is this same type of review and coordination needed for the Drinking Water Revolving Loan Fund as well?

Response: The EPA is required by law to conduct annual reviews of state Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs. The July 2016 report only focused on annual reviews of the CWSRF program. The OIG has not conducted a separate audit of the DWSRF annual review program. Annual reviews for both programs are similar and therefore similar issues may exist.

The agency does use information from the CWSRF and DWSRF annual reviews in preparing its annual report on improper payments. As required by law, the OIG does review the EPA's annual report on improper payments. OIG reports on improper payments issued in FYs 2014 and 2015 identified concerns with how regions were reporting improper payments as part of the annual reviews of the CWSRF and DWSRF.³ The two most recent OIG audits of improper payments, issued in FYs 2016 and 2017, did not identify concerns with the improper payment portions of the annual CWSRF and DWSRF annual reviews.⁴ However, the OIG only reviews a small number of CWSRF and DWSRF annual reviews as part of annual improper payment audits.

a. What about other EPA programs?

Response: Even though other EPA programs do not have legal requirements for annual reviews, the EPA does conduct less extensive annual reviews, referred to as baseline

³ *EPA Needs to Continue to Improve Controls for Improper Payment Identification*, Report No. 14-P-071, issued April 10, 2014; and *EPA Complied With Improper Payment Legislation, But Opportunities for Improvement Exist*, Report No. 15-P-0152, issued May 1, 2015.

⁴ *EPA Complied With Improper Payment Legislation, but Stronger Internal Controls are Needed*, Report No. 16-P-0167, issued May 10, 2016; and *EPA Complied With Improper Payment Legislation, but Testing Can Be Improved*, Report No. 17-P-0212, issued May 10, 2017.

monitoring, of all EPA grants. In FY 2016, the OIG issued an audit on the baseline monitoring of San Francisco Water Quality Improvement Fund grants.⁵ Similar to the CWSRF report, we found EPA Region 9 project officers and grant specialists were not always following EPA guidance or accurately completing the baseline monitoring reviews. When baseline monitoring is not performed properly, the EPA does not have reasonable assurance that funds are being used responsibly and for the intended purpose.

In addition, the EPA conducts advanced monitoring on a statistical sample of grants each year. Advanced monitoring involves an in-depth assessment of a grant recipient's progress and management of grants. A June 2015 OIG audit of the EPA's advanced monitoring reviews found the reviews were not always effective to ensure grant recipient costs were allowable.⁶ The report included recommendations for improving national guidance and the quality of advanced monitoring reviews. The EPA agreed with the recommendations and implemented corrective actions.

b. Are there any updates that the Committee should know about with regard to EPA's efforts?

Response: In response to the recommendation, the EPA Office of Water stated it would participate with some regions in state annual reviews and share their observations with the regional offices. The EPA proposed a corrective action completion date of September 30, 2016. The OIG reported in its most recent Semiannual Report to Congress, dated May 2017, that the EPA's implementation of the recommendation was delayed. The EPA had participated in some annual reviews and planned to continue the practice in the future.

Questions from Representative Burgess

1. While Title 42 appointments were designed to attract specialists in specific scientific fields, the OIG report points out that 78% of the ORD's Title 42 appointments were in management positions.

a. How does this compare to HHS' use of Title 42?

Response: The OIG did not compare the EPA Office of Research and Development's (ORD's) use of Title 42 with how the Department of Health and Human Services (HHS) was using the authority. The Government Accountability Office did issue a report in July 2012 on HHS' and the EPA's use of Title 42 and other special hiring authorities.⁷

b. Did the OIG find the ORD's use of Title 42 in these positions to agree with the intent of the program?

⁵ *EPA Region 9 Needs to Improve Oversight of San Francisco Bay Water Quality Improvement Fund Grants*, Report No. 16-P-0276, issued August 22, 2016.

⁶ *Improved Oversight of EPA's Grant Monitoring Program Will Decrease the Risk of Improper Payments*, Report No. 15-P-0166, issued June 11, 2015.

⁷ Government Accountability Office, *HHS and EPA Can Improve Practices Under Special Hiring Authorities*, GAO-12-692, issued July 2012.

Response: According to 40 CFR § 18.3, Title 42 may be used to secure the services of scientists and engineers for a period of limited duration and for research that furthers the agency's mission where the nature of the work or the character of the individual's service render customary employment methods impracticable or less effective. Based on our review of job announcement documentation to fill the 23 ORD positions under Title 42 authority, there was limited evidence that demonstrated customary employment methods were impractical or less effective.

- 2. The report also states that the EPA had no strategic plan or process to fill positions in 2015. Has the EPA since made efforts to develop such a plan?**

Response: The OIG is not aware of EPA efforts to develop a strategic plan or process to fill Title 42 positions. The report did recommend that the EPA be more transparent in its decisions to use Title 42 and in demonstrating that other hiring methods were impractical. The OIG met with EPA senior managers a number of times to reach agreement on the appropriate action to address the recommendation. To make its decision-making process more transparent, the EPA agreed to justify its use of Title 42 authority as part of the recruitment request and to periodically inform staff when the Title 42 authority was used.

- 3. The report states that the OIG "found that ORD did not always demonstrate the need to use Title 42 to recruit or retain staff for these 19 positions to achieve the level of expertise it needed."**

- a. How often did ORD fail to demonstrate such a need?**

Response: As stated in the report, for 19 of 23 Title 42 positions we reviewed, the positions were previously held by Title 5 employees at lower salaries. The EPA Title 42 Operations Manual states that the authority is a mechanism to be used when individual salary needs cannot be met or customary employment methods are impractical or less effective. Based on our review of job announcement documentation to fill the 23 ORD positions under Title 42 authority, there is limited evidence that demonstrated customary employment methods were impractical or less effective.

- b. What is their justification for using Title 42 to hire or retain any individual if there was no such need?**

Response: The audit found that the EPA's ORD's justification for using its Title 42 hiring authority to fill positions was ambiguous. ORD does not have any requirement to demonstrate that a position could not be filled under any other authority before recruiting under Title 42.

- 4. How many current EPA employees are being paid under the Title 42 special pay program?**

- a. How many employees, new or existing, does EPA expect to be paid under the Title 42 authority during FY 18?**

Response: The OIG's report on the EPA's Title 42 hiring authority was issued in 2015.⁸ The OIG does not have any current ongoing reviews of the Title 42 program and therefore does not have information on current and future staffing levels.

⁸ *EPA Needs to Justify How It Is Using Title 42 Hiring Authority*, Report No. 15-P-0109, issued March 5, 2015.