



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Congressional Testimony

Stimulus Status: Two Years and Counting

**Statement of Arthur A. Elkins, Jr.
Inspector General**

**Before the Committee on
Transportation and Infrastructure
U.S. House of Representatives**

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Good morning Chairman Mica, Ranking Member Rahall, and Members of the Committee. I am Arthur Elkins, Jr., Inspector General at the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). I also serve as the Inspector General of the U.S. Chemical Safety and Hazard Investigation Board. I am pleased to appear before you today for the first time since becoming Inspector General in June 2010 to discuss the OIG's American Recovery and Reinvestment Act (Recovery Act) activities. While EPA has successfully awarded and obligated its Recovery Act funds, OIG work has shown that improvement is needed in monitoring and assessing projects to ensure they meet stated environmental goals and are not subject to fraud, waste and abuse.

EPA Recovery Act Funding

The Recovery Act was signed into law on February 17, 2009. The Recovery Act provided funding for a wide range of federal programs intended to create jobs, stimulate economic recovery as quickly as possible, and invest in infrastructure. The Recovery Act's purpose as it applies to EPA is to promote economic recovery by creating jobs while also promoting a healthier environment. Toward that end, the Recovery Act provided EPA with \$7.2 billion, roughly equal to its fiscal year 2009 appropriation, for the following six EPA programs:

- \$4 billion for the Clean Water State Revolving Fund (CWSRF) to provide funds to upgrade wastewater treatment systems.
- \$2 billion for the Drinking Water State Revolving Fund (DWSRF) to provide funds to upgrade drinking water infrastructure.
- \$600 million for the Superfund Program to initiate and accelerate clean-up at National Priorities List sites.
- \$300 million for the Diesel Emissions Reduction Act Program to accelerate emission reductions from diesel engines.
- \$200 million for the Leaking Underground Storage Tank Program to clean up contamination from underground storage tank petroleum leaks.
- \$100 million for the Brownfields Program to carry out revitalization projects at brownfields sites.

A percentage of these funds were allocated to oversee Recovery Act activities. In total, EPA retained \$71.5 million for management and oversight activities.

OIG Recovery Act Funding and Activities

The Recovery Act also created a vital oversight role for Inspectors General within those agencies or departments that received Recovery Act funds to ensure that those funds were properly expended. The EPA OIG received \$20 million for oversight activities, which are available through September 2012. As of April 26, 2011, the OIG has spent over \$10.8 million of its oversight funds, and is on track to expend all remaining funds by September 2012.

The OIG developed an oversight plan soon after the Recovery Act's enactment. The initial focus was on whether EPA used its funds in accordance with applicable requirements and met the accountability objectives defined by the Office of Management and Budget (OMB). The OIG also implemented a three-pronged approach—education, outreach, and investigations—to spread the word about the requirements of the Recovery Act and to deter and detect fraud schemes. As of April 2011, the OIG has:

- Issued 32 audits, evaluations and other special reports.
- Opened 65 cases and closed 26.
- Identified \$5.21 million in questioned costs, cost efficiencies, settlements, fines, penalties, and recoveries.
- Received 61 complaints of potential fraud, waste or abuse.
- Conducted 143 fraud awareness/outreach briefings and training sessions for over 4000 individuals at the federal, state and local levels.

OIG briefings, outreach and training have produced tangible results. For example, a City of Sacramento engineer who attended an OIG fraud training session contacted the OIG when allegations of fraud related to a water meter retrofit project came to the engineer's attention. Upon further investigation, the city terminated the contract and avoided expending approximately \$3.4 million in Recovery Act funds. A federal grand jury returned a 13 count indictment against the company owner and his nephew in July 2010, representing one of the first indictments for a Recovery Act case. The company and two employees were debarred from government contracting, thereby avoiding any additional participation in Recovery Act-funded projects. Additionally, an EPA employee, who also attended an OIG training session, contacted the OIG to report information about potential fraud involving the awarding of Recovery Act grants in Saipan, Commonwealth of the Northern Mariana Islands. The commonwealth is in political union with the United States. While the allegations pertaining to the fraudulent award were unsubstantiated, we discovered during the course of our investigation that the company owner had previously been convicted for bankruptcy fraud. We notified and submitted documentation to EPA. As a result, the principal and his company were debarred from government contracting for four years.

Noteworthy EPA Achievements

EPA's senior leadership has demonstrated a strong commitment to meeting the requirements of the Recovery Act. As of April 2011, EPA reported that it has obligated over 99 percent of its Recovery Act funds. For the State Revolving Fund (SRF) programs, which account for \$6 billion of its \$7.2 billion Recovery Act funds, EPA stated that all of its SRF funds awarded to states were under contract or construction by the February 17, 2010, statutory deadline. We expressed concerns about EPA being able to meet this deadline, and to their credit, they accomplished this task. Additionally, EPA reported that all of its funds for Superfund projects have been obligated.

Related to the CWSRF program, EPA Region 6 identified over \$1 million in unallowable grant costs charged by seven subrecipients that will be reprogrammed by the

Texas Water Development Board (TWDB) for other eligible state water projects. According to EPA Region 6, OIG involvement in this matter based on a hotline complaint, helped to ensure that these funds are put to better use. Region 6 believes the OIG's involvement helped to expedite the TWDB's recognition that bond counsel and financial advisory fees are not allowable costs.

Despite the billions EPA received under the Recovery Act, the OIG has detected limited fraud of EPA funds expended so far. The OIG has received fewer Recovery Act-related hotline complaints than anticipated. Recipient reporting requirements and greater transparency seem to have made a positive impact. In addition, EPA regional staff conducted training for recipients, contractors, and vendors on Recovery Act requirements and preventing fraud, waste, and abuse that supplement OIG efforts. Moreover, the Recovery Act's emphasis on awarding funds to "shovel ready" projects may have influenced the low incidents of fraud in this effort because "shovel ready" recipients tend to be better organized. However, experience shows that complex fraud schemes take time to surface, so sustained vigilance is necessary.

Recovery Act Issues Facing EPA

OIG work assessing EPA's progress in implementing and monitoring Recovery Act projects has raised several issues, including: targeting of Recovery Act funds; Buy American and Davis-Bacon provisions; Brownfields assessment grants; contractor performance evaluations; and grants and contracts workforce and workload.

Targeting of Recovery Act Funds

The Recovery Act was expected to achieve results not traditionally tracked by EPA. Anticipated results were to include creating and retaining jobs, promoting economic recovery, and assisting those most impacted by the recession. Moreover, EPA sought to address location-specific, community-based public health and environmental needs of its own volition, and it cited environmental justice as a factor in Recovery Act implementation.

Despite obligating over \$7 billion, EPA is unable, both on a programmatic and national basis, to assess the overall impact of its Recovery Act funds on disadvantaged or environmental justice communities. EPA considered but could not execute an effort to track the distribution of its Recovery Act funds to economically disadvantaged communities. The effort was hindered by the absence of definitions, data, and measures. Rather, EPA collected success stories that some Recovery Act projects reached economically disadvantaged communities, which provide only anecdotal evidence. EPA needs to include and use targeting data in allocating funds so that it can effectively describe the impact its funds had on economically disadvantaged communities and explain how it helped achieve the purposes of the Recovery Act.

Multiple constraints limited EPA's ability to target funds to preserve and create jobs, as well as reach those most impacted by the recession. Of note was the "shovel

ready” requirement and the short timeframes to allocate funds. EPA programs require all applicants to meet program criteria. For Superfund eligibility, the community must have already been on the National Priorities List. For water and wastewater projects, applicants had to demonstrate some preparedness, including completion of design plans and permitting processes. However, communities most in need often lacked the financial resources to develop the necessary design plans or to prepare applications. The pressure to meet the short timeframes to allocate funds under the Recovery Act meant that communities who did not have the necessary materials prepared in advance were unable to compete for Recovery Act funds. In addition, among the Recovery Act-funded programs at EPA, states made the funding decisions for 86 percent of the funds. Whether and how socioeconomic conditions influenced project selection was at their discretion. The result was that EPA’s ability to target economically disadvantaged areas that have environmental needs was adversely impacted.

Buy American and Davis-Bacon Provisions

The Recovery Act includes Buy American and Davis-Bacon provisions. Specifically, section 1605 prohibits the use of Recovery Act funds for a project unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The regulation requires that this prohibition be consistent with U.S. obligations under international agreements, and provides for a waiver under certain circumstances. A manufactured good that consists in whole or in part of materials from another country may be considered domestic if it meets the substantial transformation test. Section 1606 of the Recovery Act requires all laborers and mechanics employed on projects that are funded in whole or in part by the Recovery Act be paid Davis-Bacon Act rates. These are rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor.

The OIG has been conducting unannounced site visits as part of our responsibility under the Recovery Act. The purpose of these site visits is to determine project compliance with selected requirements of the Recovery Act, including Buy American and Davis-Bacon provisions. We have issued 10 reports to date with others ongoing or planned. While we found no compliance issues at most of these sites, OIG auditors have found potential violations at other sites that warranted referrals to our investigators. Those cases are ongoing. The lack of Buy American violations at the sites we visited may be attributed to the fact that the projects were less complex, such as the installation of pipes. As we visit sites with more extensive projects, such as plant rehabilitation, the likelihood of violations occurring increases. We did find during a site visit that a CWSRF project in Long Beach, California, was not fully complying with Davis-Bacon requirements and recommended that EPA Region 9 verify that the city implement controls to ensure compliance with wage requirements. Region 9 and the California State Water Resources Control Board have since verified that the city has implemented the controls necessary to comply with the Davis-Bacon Act.

From an investigative perspective, Buy American cases make up the majority of the OIG’s Recovery Act caseload. Of the 65 cases opened since the Recovery Act was

enacted, 39 relate to Buy American. In one case, a foreign based manufacturer and its U.S. subsidiary were awarded numerous Recovery Act-funded contracts to provide equipment used in wastewater treatment facilities across the country. The company received these contracts after falsely certifying that their equipment met the Buy American provision through substantial transformation at their U.S. facility. The investigation to date, including the execution of a search warrant, has determined that the equipment did not meet the substantial transformation requirements. Equipment valued in excess of \$1.1 million has been seized and additional seizures are expected. Additionally, OIG auditors observed and photographed during a site visit foreign-made steel piping in a Recovery Act-funded project at a Superfund site. OIG investigators confirmed that foreign pipe was used in the project and as a result, a stop work order was issued by EPA. Additional administrative actions have occurred. Both investigations are ongoing.

Brownfields Assessment Grants

EPA's Brownfields Program awards grants for the assessment and cleanup of potentially contaminated properties that are being considered for reuse or redevelopment. Assessment grants provide funding to inventory, characterize, assess, and conduct planning and community involvement activities related to brownfields properties. All appropriate inquiries (AAI), also called "environmental due diligence," is the process of evaluating a property for potential environmental contamination. Grantees must ensure that AAIs are conducted by environmental professionals in accordance with federal law and regulations, and that reports are issued on their findings. The Recovery Act provided \$25.8 million for assessment grants.

EPA does not review AAI reports submitted by grantees to assure that they comply with federal requirements. Rather, EPA has relied on the environmental professional conducting the AAI to self-certify that requirements are met. Of the 35 AAI reports we reviewed from three EPA regions, none contained all the required documentation elements. This occurred because EPA does not have management controls requiring project officers to conduct oversight of AAI reports. These shortcomings also can be applied to Recovery Act-funded Brownfields grants. EPA has issued guidance and implemented management controls for Recovery Act grant funds. However, it lacks guidance and controls to assure that deliverables from Recovery Act-funded Brownfields grants, such as AAI reports, adhere to federal requirements.

Due to EPA's lack of oversight and reliance on self-certifications by environmental professionals, AAI investigations not meeting federal requirements may go undetected by EPA staff. The OIG found instances of noncompliance that were not detected. Improper AAI investigations introduce risk that the environmental conditions of a property have not been properly or adequately assessed, which may lead to improper decisions about appropriate uses of brownfields properties. Ultimately, threats to human health and the environment could go unrecognized.

Contractor Performance Evaluations

In 2009, EPA decided to obligate approximately \$211 million in Recovery Act funds to Superfund contractors. Considering contractor performance evaluations for prior contracts reduces the risk that EPA will award Recovery Act funds to contractors with a history of poor performance.

Contracting officers (COs) are required to complete and document performance evaluations for contractors awarded Recovery Act funds within 95 business days after each 12 months of contract performance. EPA had not completed in a timely manner 83 percent of the required contractor performance evaluations for contractors awarded Recovery Act funds. On average, EPA completed the evaluations 109 business days late, generally because there was no system in place to monitor evaluation timeliness. Consequently, contractor past performance evaluation information was not available to EPA when it awarded a new Recovery Act contract totaling \$5.4 million.

Further, COs did not consider all available sources of information when preparing performance evaluations for contractors to which they awarded Recovery Act funding. For example, EPA's process did not consider Financial Monitoring Reviews, Defense Contract Audit Agency or OIG reports, which may contain performance issues that COs should be aware of. When EPA awarded funding to contractors and did not consider all sources of information, it increased the risk of fraud, waste, abuse, and mismanagement of Recovery Act funds. EPA awarded \$109 million in Recovery Act funds to contractors with cost control and other performance issues.

EPA Grants and Contracts Workforce and Workload

OMB's Recovery Act implementation guidance stated that agencies are responsible for initiating risk mitigation actions. This included evaluating their current workforce needs and identifying any future skill gaps created by implementing Recovery Act requirements. Heightened attention to acquisition planning was needed to ensure agencies had the necessary contracting officers and other program managers with the skills and qualifications needed to award and monitor complex Recovery Act contracts.

EPA made the Recovery Act a top priority by shifting its existing contract and grant administration staff to Recovery Act activities. However, EPA's process for distributing the \$71.5 million in management and oversight funds to regional offices was not always based on workforce analyses of the actual staffing levels needed to accomplish Recovery Act activities or of the impact those activities would have on staff workloads. Such analyses would have identified regions and divisions that were over- or understaffed. In addition, EPA lacks agency-wide performance measures for contract functions that could provide valuable information to help EPA effectively and efficiently manage its workforce and workload, and quickly address emerging issues such as impacts from Recovery Act work. Non-Recovery Act resources were devoted to Recovery Act activities, leaving less time for staff to focus on non-Recovery Act

administration, monitoring, and oversight. Diminished monitoring and oversight of contract and grants leaves EPA susceptible to undetected errors.

Lessons Learned

The goals of the Recovery Act are to create and retain jobs, promote economic recovery, and assist those most impacted by the recession. However, these goals are outside of EPA's mission to protect human health and the environment and their intended results are not traditionally tracked by EPA. As a result, OIG work shows that EPA has had difficulty in identifying and targeting economically disadvantaged communities. In addition, the Recovery Act's emphasis on "shovel ready" projects in EPA's case posed an unintended barrier to funding that many of these needy communities could not overcome. In the future, there should be better alignment between legislative goals and the mission and capabilities of those who will be tasked to implement it.

The Recovery Act emphasized the need for clear, comprehensive and timely guidance for recipients. EPA did not always develop such guidance. Without it, EPA cannot provide a reasonable assurance that projects are in compliance or will meet their intended goals. For example, EPA did not provide clear and comprehensive guidance to States for how to determine the eligibility of green reserve projects. EPA was promoting a green approach to wastewater and drinking water programs for at least a year prior to the Recovery Act's enactment. Despite that experience, EPA did not develop and issue comprehensive guidance in time to meet many of the States' needs. Specifically, EPA did not provide guidance on how to solicit and select green projects until after many States had finished doing so, and some States felt the need to re-solicit for green projects while others did not. Moreover, EPA's guidance and subsequent updates have not addressed important aspects of project selection. As a result, EPA could not provide a reasonable assurance that its green reserve projects will meet Congress' objectives.

The Recovery Act emphasized that funds be awarded quickly to help spur economic recovery. However, this increases the likelihood of fraud, waste and abuse of funds. Congress recognized the need for oversight when it established the Recovery Accountability and Transparency Board and provided additional funding for selected Inspectors General, including the EPA OIG. Yet the OIG's funding for Recovery Act oversight is less than one-third of one percent of the \$7.2 billion EPA received under the Recovery Act. While I believe this small investment in oversight has made a positive difference at EPA, with more funding for Inspectors General, the impact within our respective agencies could have been even greater.

Conclusion

Now that Recovery Act funds have been awarded, effective oversight by EPA is crucial. The OIG remains concerned that there may be insufficient EPA oversight to ensure that projects are completed timely and environmental objectives are achieved. As of April 25, 2011, EPA had only obligated about 73 percent of its management and oversight funds. While EPA must obligate its oversight funds before the end of fiscal

year 2011, many Recovery Act projects will not be completed by that date. Given the number and scope of projects funded by the Recovery Act, effective oversight will be a challenge for EPA and its state partners. The OIG will continue to monitor and assess EPA's Recovery Act activities in these and other areas.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions the Committee may have.