Office of Inspector General

Audit Report

Assistance Agreements

Statutory Authority for EPA Assistance Agreements

E3AMF8-11-0008-8100209

September 18, 1998

Inspector General Division(s) Conducting the Audit	**Headquarters Audit Division Washington, D.C.**
Region(s) covered	**EPA Headquarters**
Program Office(s) Involved	**Office of Grants and Debarment** **Office of Prevention, Pesticides and Toxic Substances** **Office of Solid Waste and Emergency Response**

MEMORANDUM

SUBJECT: Statutory Authority for EPA Assistance Agreements
Audit Report No. E3AMF8-11-0008-8100209

FROM: Elissa R. Karpf
Deputy Assistant Inspector General
for External Audits (2421)

TO: Alvin M. Pesachowitz
Acting Assistant Administrator
for Administration and Resources Management (3101)

Our final audit report on Statutory Authority for EPA Assistance Agreements is attached. The purpose of this audit was to determine whether the activities funded by EPA were within the Agency's assistance authorities as described in relevant statutes.

This audit report describes findings and corrective actions the Office of the Inspector General (OIG) recommends to strengthen assistance agreement management. It represents the opinion of the OIG. Final determination on matters in this audit report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this report are not binding upon EPA in any enforcement proceedings brought by EPA or the Department of Justice.

Action Required

In accordance with EPA Order 2750, you, as action official, are required to provide this office a written response to the audit report within 90 days of the final audit report date. As the Action Official for this report, you should coordinate preparation of the response with other appropriate Agency officials. Your response to the final report should identify any completed or planned actions related to the report's recommendations. For corrective actions planned but not completed by the response date, reference to specific milestone dates will assist in deciding whether to close this report.

We have no objection to the further release of this report to the public. Should you or your staff have any questions, please contact Norman E. Roth, Divisional Inspector General, Headquarters Audit Division, on (202) 260-5113.

Attachment

EXECUTIVE SUMMARY

INTRODUCTION

Assistance is the transfer of anything of value for a public purpose of support or stimulation authorized by law. EPA program offices provide funding and are responsible for programmatic and technical oversight of the assistance process. The Grants Administration Division (GAD) assures assistance application completeness by performing an administrative review of the assistance application.

OBJECTIVE

Congress has granted EPA authority to enter into assistance agreements in many of the Agency's environmental statutes. The objective of this audit was to determine whether the activities funded by EPA were within EPA's assistance authorities as described in the relevant statutes.

RESULTS IN BRIEF

In our opinion, the cited statutes did not provide authority for 25 of the 57 assistance agreements reviewed:

Assistance agreements reviewed	57	$47,938,613
Assistance agreements questioned	25	8,343,274
Percent questioned	44%	17%

EPA, with the support of the Office of General Counsel (OGC), believes that all but one of the 25 questioned assistance agreements are allowable. EPA has taken a much broader interpretation of its assistance authorities than we believe is warranted to fund a wide range of projects which are related to EPA's mission and stimulate a public purpose. For example, Section 311(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) authorizes research aimed at understanding and mitigating the effects of pollutants on human health, and detection of hazardous substances. We questioned nine assistance agreements citing the use

this authority to support such activities as technical assistance, environmental justice activities, and economic redevelopment studies.

RECOMMENDATIONS

We recommend that: EPA seek clear statutory authority for the types of awards that we identified as questionable; strengthen controls to prevent unauthorized awards; develop guidance to clarify the types of activities EPA will and will not fund; and provide additional training for personnel involved in such decisions.

Agency Response

The Acting Assistant Administrator for Administration and Resources Management stated that "contrary to many of the audit findings, the Agency believes that the activities questioned in the Draft Report are authorized by EPA's grant statutes. Although we disagree with many of the audit findings, we concur with the audit recommendations. The actions recommended will help ensure that our assistance programs continue to be administered properly and that activities funded are within the Agency's assistance authorities." See Appendix B for the full text of EPA's response.

OIG Evaluation

EPA has broadly interpreted its grant-making statutes in order to provide assistance for a wide range of environmental projects. While we understand why EPA has taken this approach, we can find nothing in the statutes themselves or the legislative histories which support EPA's position. We appreciate EPA's willingness to make the process improvements which we have recommended. We hope those actions will reduce or eliminate awarding assistance agreements to unauthorized entities or for unauthorized purposes.

TABLE OF CONTENTS

Page

EXECUTIVE SUMMARY i

FINDINGS AND RECOMMENDATIONS

CHAPTER 1
Introduction
- Objective 1
- Background 1
- Scope and Methodology 2
- Prior Audit Coverage 3

CHAPTER 2
Statutory Authority for Assistance Awards is Questionable 4
- Questionable CERCLA Assistance Awards 4
- Questionable Brownfields Job Training and Development Pilots 7
- Questionable TSCA Assistance Awards 10
- Questionable FIFRA §20 Awards 12
- Questionable FIFRA §23 Awards 12
- Recommendations 15
- Agency Response 16
- OIG Evaluation 16

Appendix A
Questionable Assistance Agreements 17

Appendix B
Agency Responses to the Draft Report 29

Appendix C
Distribution 50

[This page was intentionally left blank]

CHAPTER 1

INTRODUCTION

Objective

Congress has granted EPA authority to enter into assistance agreements in many of the Agency's environmental statutes. The objective of this audit was to determine whether the activities funded by EPA were within the Agency's assistance authorities as described in the relevant statutes.

Background

Assistance is the transfer of anything of value for a public purpose of support or stimulation authorized by law.[1] While every federal agency has inherent authority to enter into contracts to procure goods or services for its own use, there is no comparable inherent authority to provide the government's money or property under assistance agreements. Congress must provide authorization. Therefore, an agency's basic legislation must be studied to determine whether an assistance relationship is authorized at all, and if so, under what circumstances and conditions. EPA's policy is to award assistance agreements that are legal, administratively correct, and support the Agency's mission, as quickly as possible after funds become available.[2]

EPA program offices provide funding and are responsible for programmatic and technical oversight of the assistance process. The program office communicates funding decisions through a Decision Memorandum or an Assistance Funding Order. The program office must designate the statutory authority in the decision memorandum. Grants Management Offices (GMOs) assure assistance application completeness by performing an administrative review of

[1] 31 U.S.C. 6101.

[2] EPA Order 5730.1, Policy and Procedures for Funding Assistance Agreements, January 21, 1994, paragraph 2.

the assistance application. The GMO provides an overall "check and balance" function, assuring the correctness of the statutory authority.[3]

Scope and Methodology

In July 1997, we began an audit of EPA's preaward management of assistance agreements. Our objective was to identify opportunities to improve the Agency's policies and processes for awarding assistance agreements. Our original universe of 1,118 EPA Headquarters assistance agreements, taken from EPA's Grants Information and Control System (GICS), consisted of all active assistance agreements with nonprofit organizations and all active "X"-grants.[4] The results of our original judgmental audit sample revealed that 9 of 30 assistance agreements[5] lacked statutory authority, based on a comparison of the grant-making language in the statutes cited and the description of work to be performed. The questionable assistance agreements cited the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); the Toxic Substances Control Act (TSCA); and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Based on these results, we decided to address the issue of statutory authority in a separate audit report.

We selected an additional judgmental sample of 27 assistance agreements, focusing on those citing CERCLA §311(c), TSCA §10, TSCA §28, FIFRA §20 or FIFRA §23. For each award, we reviewed the grant-making language in the statutes cited as authority for the award and the recipient's proposed work plan.

We conducted this audit in accordance with the Government Auditing Standards (1994 Revision) issued by the Comptroller General of the United States. We

---

[3] EPA Order 5730.1, paragraph 4(b)(2)(a).

[4] The "X" in X-grants, is a GICS code for surveys, studies, investigations and special purpose grants.

[5] Grants and cooperative agreements are types of assistance agreements.

reviewed Federal Managers' Financial Integrity Act (FMFIA) controls related to the audit objective. We also reviewed Agency policies for ensuring the accuracy of the statutory authorities cited for assistance awards. Because our use of GICS was limited to sample selection, we did not evaluate controls over GICS, or the quality or integrity of GICS data.

Prior Audit Coverage

No other OIG reports have been issued on this subject.

CHAPTER 2

Statutory Authority for Assistance Awards is Questionable

Questionable CERCLA Assistance Awards

In our opinion, CERCLA §311(c) does not authorize the work described in nine of the assistance awards reviewed. CERCLA §311(c) authorizes the EPA Administrator to:

> support, through grants, cooperative agreements, and contracts, research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The Administrator shall coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort.

EPA has had internal disagreement since at least 1988 over the scope of CERCLA §311(c). In July 1988, the Office of Research and Development (ORD), the Office of the Comptroller (OC) and the Grants Administration Division (GAD) argued that CERCLA §311(c) authorized only grants for health effects research and monitoring. According to records of a July 29, 1988, meeting:

> GAD expressed concern about taking a broader interpretation because EPA had proposed an addition to [the Superfund Amendments and Reauthorization Act] which would provide CERCLA authority equivalent to section 8001 of [the Resource Conservation and Recovery Act]. However, Congress passed the current 311(c) language instead, severely restricting the Agency's grant authority.
>
> OSWER [the Office of Solid Waste and Emergency Response]'s position was that the program needed to push the use of this authority as far as possible

> because this is the only funding mechanism available to Superfund for these very necessary quasi-research activities conducted for EPA by the various State organizations.
>
> OGC [Office of General Counsel] stated that OSWER/OGC had agreed earlier to take a broader interpretation of the authority, and OGC still believed such an interpretation was possible. . . OGC understood OSWER's need for the quasi-research projects for which **CERCLA provides no specific authority** and for that reason had been willing to adopt the broader interpretation of this authority. (Emphasis added.)

As a basis for their broad interpretation of CERCLA §311(c), Agency representatives point to a February 16, 1994, OGC legal opinion, which explained that EPA offices other than ORD were authorized to fund research, and they could do so from either the Research and Development, or the Abatement Control and Compliance appropriations. That legal opinion quoted a definition of research taken from OMB Circular A-11, *Preparation and Submission of Budget Estimates*. Circular A-11 defined "basic research" as, "systematic study directed toward greater knowledge or understanding of the functional aspects of phenomena and of observable facts without specific applications toward processes or products in mind." OGC's opinion states that:

> The Circular's expansive definition includes research "in all fields, including education and the social sciences." This extends to the economic, socioeconomic, institutional, policy, and education studies, surveys, etc. that are funded by program offices.

However, this legal opinion was aimed at the broad question of which EPA offices could fund research, and from which appropriations. It was not aimed at interpreting CERCLA §311(c). Notwithstanding this broad interpretation of CERCLA §311(c), in several cases OGC cautioned program office representatives, prior to making assistance awards, that the awards were

questionable. For example, OGC reviewed assistance award CR825713 to the International City/County Managers Association (the work to be done under this agreement is summarized on page 20). OGC's June 10, 1997, memorandum to OSWER stated that:

> An argument can be made that these activities constitute research with respect to the evaluation of the effects on and risks to human health of hazardous substances. Such an argument would be based on the need for a vigorous hazardous waste management program, supported by an analysis of this data.
>
> However, this argument is not without vulnerability. **Section 311(c) does not explicitly authorize the proposed activities**. If you make this award, you and the recipient will be accepting the risk that costs under section 311(c) will be questioned, should the project be audited. Therefore, **we strongly encourage your office to seek explicit statutory authority** to provide assistance for these types of activities. (Emphasis added.)

OGC provided OSWER the same advice on assistance awards to the Northeast-Midwest Institute, CR824570, the U.S. Conference of Mayors (USCM), CR825342, and the National Governors Association (NGA), CR825860. OGC likewise advised EPA's Office of Policy, Planning, and Evaluation concerning award CR825755 to the Northeast-Midwest Institute. Even under its broad interpretation, the Agency agrees with us that training, technical assistance, and public service announcements are not research, and would not be authorized under CERCLA §311(c).

We agree with Agency representatives that the legislative history of CERCLA offers no insight into the meaning of "research" under CERCLA §311(c). Our interpretation of the statute rests on the historical context in which CERCLA was passed, i.e., that Congress was concerned about contamination from manufacturing, municipal landfills, mining, and federal defense and energy activities. Therefore, CERCLA

§311(c) authorized research aimed at understanding and mitigating the effects of pollutants on human health, and detection of hazardous substances. The awards that we question fund technical assistance to state and local governments, address environmental justice issues, study the effects of laws and regulations on the economic redevelopment of brownfield sites, and fund meetings and conferences.

The Agency has determined that publicizing the results of research is an integral component of the research itself; therefore, workshops and conferences would also be authorized. In fact, all nine of the CERCLA §311(c) grants we reviewed included meetings, workshops, and conferences. These appear to be the primary activities for five of these grants. The proposals provide no indication that publicizing the research results is the reason for the meetings/conferences. In fact, the meetings and research appear to be unrelated to each other.

Finally, as noted above, CERCLA §311(c) requires that EPA "coordinate such research with the Secretary of Health and Human Services, acting through the advisory council established under this section, in order to avoid duplication of effort." Agency representatives could provide no record that assistance agreements issued under CERCLA §311(c) were coordinated with HHS.

For all of these reasons we disagree with the Agency's position, and question the allowability of all nine CERCLA §311(c) assistance agreements in our sample.**Questionable Brownfields Job Training and Development Pilots**In August 1998, OSWER awarded 11 Brownfields Job Training and Development Demonstration Pilots (hereinafter, "Pilots"). Each pilot recipient will receive up to $200,000 over two years. In our opinion, CERCLA does not authorize these awards.

According to EPA's Brownfields Economic Redevelopment Initiative Internet page[6], a critical part of EPA's efforts to encourage assessment and cleanup of

[6] http://www.epa.gov/brownfields/html-doc/jtguide.htm

brownfields is participation by affected residents. In addition, EPA works to ensure that disadvantaged residents do not bear a disproportionate burden of the effects of environmental contamination. To help residents take advantage of new jobs created by the assessment and cleanup of brownfields, EPA initiated the Pilots.

Pilot funds may be used to train residents in communities impacted by brownfields in the procedures for the handling and removal of hazardous substances, in the management of facilities at which hazardous substances are located, for response activities associated with cleanups (e.g., landscaping, demolition, groundwater extraction), for development of training curricula, and for outreach activities directed toward improving participation in this training. Pilot funds should, whenever possible, be used to ensure that training participants include, but are not limited to, the unemployed, welfare to work, environmental justice communities, and other disadvantaged communities.

CERCLA §311(b), Alternative or Innovative Treatment Technology Research and Demonstration Program, provides, in pertinent part:

> (1) ESTABLISHMENT.--The Administrator is authorized and directed to carry out a program of research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies (hereinafter in this subsection referred to as the “program”) which may be utilized in response actions to achieve more permanent protection of human health and welfare and the environment.
>
> (9) TRAINING.--The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:
>
> (A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.

> (B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

Based on a May 29, 1997, memorandum from the Office of General Counsel, OSWER cites CERCLA §311(b) as authority to award assistance agreements for training. We disagree with the Agency on the scope of the training program, and on who is eligible for training.

Scope of the Training Program

OGC advised OSWER that training "in the procedures for the handling and removal of hazardous substances," and "in the management of facilities at which hazardous substances are located," are not limited only to training in alternative and innovative (A&I) treatment technologies.

The preamble language of §311 favors the interpretation that the training must be related to A&I technologies. One of the stated purposes of §311 was:

> to establish a comprehensive and coordinated Federal program of research, development, demonstration, and training **for the purpose of promoting the development of alternative and innovative treatment technologies** . . . . (emphasis added)[7]

With this purpose, it is difficult to see how the training authorized under §311(b) could be divorced from any A&I relationship. It is illogical to expect that training unrelated to A&I treatment technologies would promote the development of such technologies.

Who Are Eligible Trainees?

With respect to who can be trained, the Agency asserts that the requirement to train "employees" is satisfied if the training is provided for individuals to become employed in the field of handling hazardous substances. To interpret the term "employees" to mean those

---

[7] Superfund Amendments and Reauthorization Act of 1986, §209(a).

currently handling hazardous waste and persons who might someday join the field, renders the term meaningless by excluding no one.

The training is intended for persons already working in the hazardous materials field. This interpretation is consistent with the term "employee," which is defined to mean someone working for another for financial compensation. Senator Stafford's remarks upon first introducing the research and training amendment further support this interpretation. Senator Stafford remarked that the amendment was designed to:

> provide research and training authority to both EPA and HHS ... [since they] have the broad range of experience necessary to plan and implement the variety of activities that are needed to strengthen current research efforts and to increase through graduate training and continuing education the cadre of appropriately trained personnel.[8]

We believe that assistance agreements for §311(b) training must be related to A&I treatment technologies, and must be intended to train employees who handle hazardous substances. Training the unemployed or unskilled for routine construction tasks (landscaping, demolition, groundwater extraction) would, in our opinion, be an unauthorized use of assistance agreements.

Questionable TSCA Assistance Awards

We reviewed nine assistance agreements citing TSCA, i.e., five issued under TSCA §10, Research, Development, Collection, Dissemination and Utilization of Data; and four citing TSCA §28, State Programs. We questioned three of the five TSCA §10 awards and three of the four TSCA §28 awards. Under TSCA §10(a):

---

[8] Congressional Record, September 16, 1985; reprinted in Congressional Research Service, A Legislative History of the Superfund Amendments and Reauthorization Act of 1986, at 1118 (1990).

> The [EPA] Administrator shall, in consultation and cooperation with the Secretary of Health and Human Services and with other heads of appropriate departments and agencies, conduct such research, development and monitoring as is necessary to carry out the purposes of this [Act].

We questioned assistance awards that were neither research, development, nor monitoring. Instead, these awards fund public outreach, training and environmental justice activities. Agency representatives suggest that training falls within the scope of "development," because training is a developmental activity. We do not believe that the training funded by these agreements falls within TSCA §10. The only training authorized under TSCA §10 is training for federal laboratory and technical personnel in existing or newly developed screening or monitoring techniques (TSCA §10(f)).

As for the requirement that EPA conduct research "in consultation and coordination with the Secretary of Health and Human Services and other heads of appropriate departments and agencies," OPPTS representatives indicated that when TSCA §10 was written, the research that was envisioned primarily concerned hazard research, and it was closely coordinated with groups like the National Institutes of Health (NIH) and the Toxics Control Program (also managed by the Department of Health and Human Services). Since 1978, interaction between EPA and DHHS has diminished significantly, and is now limited to OPPTS' lead program (which also involves the Center for Disease Control - part of DHHS), and the Toxic Release Inventory data base, which EPA makes available to the public through a system maintained by the National Library of Medicine (also part of NIH/DHHS).

We questioned three assistance agreements citing TSCA §28. Two agreements, one with the Rhode Island Department of Environmental Management, and one with the Nevada Department of Conservation and Natural Resources, assist the states in developing state accidental release prevention programs under the Clean

Air Act (CAA) §112(r), Prevention of Accidental Releases. TSCA §28 authorizes:

> grants to States for the establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture **and with respect to which the [EPA] Administrator is unable or is not likely to take action** under this Act for their prevention or elimination. (Emphasis added.)

Neither work plan establishes that the states will address chemicals with respect to whether EPA is unable or unlikely to take action. Further, we believe that the proper statutory authority for establishing CAA §112(r) programs is CAA §112(l), State Programs.

Grant X822739 to the Unison Institute, was an award to an ineligible recipient. Unison maintains a Right to Know (RTK) internet site. TSCA §28 authorizes assistance to states. Unison is a nonprofit organization, and therefore not eligible for a TSCA §28 assistance award. The grant was later amended to cite TSCA §10 rather than TSCA §28. However, maintaining an internet site is not research, development or monitoring as authorized under TSCA §10.

Questionable FIFRA §20 Awards

We questioned four of five assistance agreements citing as authority FIFRA §20. FIFRA §20, Research and Monitoring, authorizes research as may be necessary to carry out the purposes of the Act, and research into integrated pest management in coordination with the Secretary of Agriculture. The questioned assistance agreements fund training, or the assessment of training programs. These activities do not constitute research or monitoring.

Questionable FIFRA §23 Awards

Of 13 assistance agreements citing as authority FIFRA §23, State Cooperation, Aid, and Training, we questioned five. FIFRA §23(a)(1) authorizes cooperative agreements with states and tribes to cooperate in the enforcement of FIFRA; to train state

and tribal personnel to cooperate in the enforcement of FIFRA; and to assist states and tribes in implementing cooperative enforcement programs. In addition, FIFRA §23(a)(2) authorizes cooperative agreements:

> to assist States in developing and administering State programs, and Indian tribes that enter into cooperative agreements, to train and certify applicators consistent with the standards the Administrator prescribes . . . there are authorized to be appropriated annually such funds as may be necessary for the Administrator to provide through cooperative agreements an amount equal to 50 percent of the anticipated cost to each State or Indian tribe, as agreed to under such cooperative agreements, of conducting training and certification programs during such fiscal year. If funds sufficient to pay 50 percent of the costs for any year are not appropriated, the share of each State and Indian tribe shall be reduced in a like proportion in allocating available funds.

The activities funded by the FIFRA §23 agreements listed in Appendix 1 were neither enforcement activities nor applicator training. The activities constitute research on the effects of pesticides and pest management. The awards, although not authorized by FIFRA §23, would be authorized by FIFRA §20.

Old Statutes vs. New Agency Initiatives

The Agency, with OGC's advice and support, has taken a much broader interpretation of its assistance authority than is warranted, to fund a wide range of projects which are related to EPA's mission and stimulate a public purpose. Some of the Agency's grant-making authorities (Clean Air Act, Clean Water Act) are broad enough to encompass most public purpose projects proposed under their guise. For example, the Clean Water Act allows the Agency to make grants to state agencies, other public or nonprofit private agencies, institutions, organizations, and individuals to conduct and promote the coordination and acceleration of research, investigations, experiments, training, demonstrations, surveys, and studies relating to the

causes, effects, extent, prevention, reduction, and elimination of pollution.Contrast this explicitly broad authority under the Clean Water Act §104 with the grant-making authority of CERCLA §311(c). (See page 4 of this report.) In order to fund under CERCLA §311(c) what the Agency considers to be worthwhile projects proposed by nonprofit groups, EPA has had to relate these projects to health effects research.

OPPTS officials have struggled to overcome restrictive assistance authority under its program statutes. The Toxic Substances Control Act was passed in 1978. Many new programs and initiatives have been undertaken since then. The restrictive assistance authority in TSCA §10 (research, development and monitoring) coupled with a "mature statute" which never contemplated current-day environmental initiatives, has resulted in the Agency stretching its assistance authority.

The same can be said of FIFRA. For example, OPPTS has interpreted FIFRA §23 (grants to states and tribes for FIFRA enforcement programs) to encompass a wide variety of activities which when accomplished would preclude the need for enforcement actions. Therefore, authorized activities would include public outreach, pesticides management training, workshops, and conferences.

The responsibility for identifying statutory authority rests with the program offices. The Grants Administration Division (GAD) is tasked with serving a "check and balance" function. GAD representatives told us that grants specialists question statutory authority for assistance agreements if an award seems improper, but they are not checking statutory authority in any systematic way.

It is unrealistic to expect GAD to understand assistance authorities better than the affected program offices. We found resource officials in OSWER and OPPTS to be very cognizant of their statutes with respect to assistance authority. As we mentioned earlier, we saw

evidence that when this authority was in doubt, the program office sought the advice of OGC before entering into the assistance agreement. However, our interpretation of the response from OGC was diametrically opposed to the program offices'. Where we viewed the OGC response as a reason not to initiate the agreement, OSWER saw it as the opposite. Since OGC told OSWER that "an argument could be made" for awarding the agreement, they did so.

Since there is no evidence in published legislative histories as to how Congress intended the restrictive assistance authorities to be interpreted, program offices and the OIG now differ about the extent of the Agency's assistance authority. While some may see this as a black or white issue, numerous discussions among all parties have made it clear that reasonable people have differing opinions. By laying out these differences we hope that Congress will assist EPA to clarify congressional intent.

In the meantime, there are some actions that the Agency can take to reduce its vulnerability to issuing assistance agreements without statutory authority. Most of these actions revolve around guidance and training.

RECOMMENDATIONS

We recommend that the Acting Assistant Administrator for Administration and Resources Management:

2-1 Coordinate with the Assistant Administrators for OSWER and OPPTS and the Associate Administrator for Congressional and Intergovernmental Relations to obtain clear statutory authority to fund assistance agreements for the types of activities questioned in this report, i.e., technical assistance, environmental justice, and economic redevelopment studies under CERCLA; public outreach, training and environmental justice activities under TSCA; and training and training assessments under FIFRA.

2-2 Clarify existing policies and guidance. EPA Order 5730.1 requires program offices to designate the statutory authority in the decision memorandum. Rather than merely citing a

statute, the program offices should be required to briefly explain how the proposed work is authorized by the cited statute. Grants Management Offices should return any funding package missing this information.

2-3 Work with Senior Resource Officials to issue interim guidance to clarify the types of activities that their respective program offices will and will not fund, including examples of the types of projects the Agency should not fund.

2-4 Require the Grants Administration Division, in coordination with Senior Resource Officials, to incorporate into project officers and managers training, information on the types of awards the Agency should, and should not, fund.

We recommend that the Assistant Administrator for OSWER coordinate all CERCLA §311(c) assistance awards with the Secretary of Health and Human Services, as required by the statute.

AGENCY RESPONSE

On July 8, 1998, the Acting Assistant Administrator for Administration and Resources Management stated that "contrary to many of the audit findings, the Agency believes that the activities questioned in the Draft Report are authorized by EPA's grant statutes. Although we disagree with many of the audit findings, we concur with the audit recommendations. The actions recommended will help ensure that our assistance programs continue to be administered properly and that activities funded are within the Agency's assistance authorities." See page 29 for the Agency's response.

OIG EVALUATION

EPA has broadly interpreted its grant-making statutes in order to fund a wide range of environmental projects. While we understand why the Agency has taken this approach, we can find nothing in the statutes themselves or the legislative histories which supports the Agency's position. We appreciate the Agency's willingness to make the process improvements which we have recommended. We believe those actions will reduce or eliminate awarding assistance agreements to unauthorized entities or for questionable purposes.

Appendix A: Questionable Assistance Awards			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of CERCLA §311
CR822610	CERCLA §311(b) §311(c)	Institute for Responsible Management (IRM)	IRM advises states and localities addressing environmental justice issues and economic redevelopment of hazardous waste sites. Tasks include: •Providing assistance to the Cuyahoga County Site Assessment program. •Identify and document problems and solutions to promote site cleanup coordinated with economic development. •Develop criteria for the selection of additional demonstration project sites. •Organize conferences for state and local government agencies, development associations, business and trade associations, environmental groups, community leaders. Such tasks are not authorized by the cited statutes. CERCLA §311(b) provides for research, evaluation, testing, development, and demonstration of alternative or innovative treatment technologies. We believe that the "research, evaluation, testing, development, and demonstrations" of CERCLA §311(b) pertain to physical means of mitigating contamination, not the resolution of socio-economic issues. We believe that §311(c) authorizes research on the effects of pollutants on human health. For a detailed discussion of OIG and EPA interpretations of CERCLA §311(c) this provision see page 4 of this report.

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of CERCLA §311
CR824570	CERCLA §311	Northeast-Midwest Institute (NMI)	NMI proposed to research and publish 20 case studies on the efforts of communities and industries to clean up and restore contaminated sites, providing insights about risk, liability, chain of ownership, financing, and other key issues associated with industrial site reuse. NMI will then organize constituent meetings hosted by federal lawmakers. In our opinion, research into redevelopment issues such as liability, chain of ownership, and financing are not the type of research authorized by CERCLA §311(c).
CR825342	CERCLA §311	US Conference of Mayors (USCM) Research and Education Foundation	• USCM will establish the National Brownfields Roundtable, a series of meetings to identify barriers to brownfield development, to educate the public and private sectors on EPA's brownfields administrative reforms, and to highlight innovative development scenarios for brownfield revitalization. • Using questionnaires, USCM will develop and maintain a National Brownfield Redevelopment Data Base, which will provide data for an annual Report to the Nation on Brownfield Redevelopment. • USCM will provide "technical assistance, outreach, and education of local governments, including a "peer to peer network of local officials," technical assistance to local government officials by telephone and in person. • USCM will publish a bi-monthly newspaper, and articles on brownfields best practices. We do not believe that technical assistance, outreach, periodical publishing, education of local government officials, and meetings qualify as research under CERCLA §311(c).

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of CERCLA §311
CR825713	CERCLA §311	International City/County Managers Assoc. (ICMA)	ICMA conducts economic and social science research and outreach on Brownfields sites. Activities include: • Brownfields peer exchange program • Brownfields local government coordination activities • Brownfields workshops and meetings • international Brownfields case studies • Superfund institutional control roundtables • Brownfields booklet and a showcase on community progress • Superfund risk assessment forums We believe that §311(c) authorizes research on the effects on and risks to human health of pollutants, and the detection of pollutants.
CR825755	CERCLA §311	Northeast-Midwest Institute (NMI)	MNI will identify how hazardous materials liability, economic redevelopment costs, and federal and local policies encourage or discourage brownfields redevelopment, including: • Research the framework for an infill development planning model, considering funding strategies, local/state/federal statutes and regulations, surveys about the economic and financial results of infill development projects. • Conduct a conference to discuss the above research. • Issue a series of research papers evaluating how federal and local policies can encourage or discourage brownfield development. We do not believe that CERCLA §311(c) authorizes this type of socio-economic research.

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of CERCLA §311
CR825860	CERCLA §311	National Governors Association (NGA)	NGA will research successful state brownfields projects; hold brownfields workshops; publish a brownfields "Issues Brief;" track state hazardous waste and brownfields programs and provide outreach and communication to state brownfield staff on best practices; prepare the 1997 report "Emergency Planning and Community Right To Know Act: A Status of State Actions;" co-sponsor a hazardous materials spills conference; host an executive-level workshop on chemical emergency management; and attend state emergency response commission meetings and national conferences. We do not believe that publications, outreach, meetings and workshops constitute research within the scope of CERCLA §311(c).
CR826290	CERCLA §311	National Council for Urban Economic Development (CUED)	CUED will help economic development professionals better understand the links between economic development and the effects of hazardous substances at brownfields sites. •CUED will produce a report on best practices in achieving health and environmental protection and positive economic impacts, by gathering data on impacts of brownfields conversions, including number of jobs; quality of jobs; amount of land cleared; impact on tax base; impact on commercial development; impact on community quality of life, including protection of human health. • CUED will conduct workshops on brownfields cleanup and redevelopment, and on federal, state and local policies and regulations that impact the links between economic redevelopment and the detection, assessment, and evaluation of hazardous substances at brownfields sites. We do not believe that these activities constitute research within the scope of CERCLA §311(c).

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of CERCLA §311
R824450	CERCLA §311	Association of State and Territorial Solid Waste Management Officials (ASTSWMO)	•Administrative Support covers administrative costs for ASTSWMO's Washington, D.C. office, i.e., maintaining ASTSWMO's mailing list, and mailing information to members. • State-Federal Interaction Support provides travel funds for state experts to exchange information at ASTSWMO subcommittee, task force and subgroup meetings, to attend State/EPA Implementation Issues Meetings, and ASTSWMO's mid-year and annual meetings. •State Program Enhancement Support funds the maintenance of ASTSWMO's "peer match" directory, and posting the directory in ASTSWMO's space on EPA's CLU-IN internet site; travel to a State Superfund Managers Conference, and State Superfund Workshops. ASTSWMO's proposal describes these tasks collectively as "technical assistance and research forums ... to assist States in developing their program capabilities to manage and remediate hazardous wastes ...." EPA's Office of General Counsel has advised that technical assistance does not qualify as research under CERCLA §311(c).

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of CERCLA §311
T826274	CERCLA §311	NW Partnership for Environmental Technical Education (NW PETE)	Ineligible recipient. Through this training grant NW PETE will help tribal colleges to understand Superfund and related programs by conducting mini-conferences; facilitating faculty exchanges and internships; maintaining an Internet site; and maintaining faculty contacts using e-mail, Internet, faxes, interactive television, and phone teleconferencing. CERCLA §311(a)(3) authorizes training grants to accredited institutions of higher learning. NW PETE is not an accredited institution of higher learning.
CX825486	TSCA §10	American Institute for Pollution Prevention (AIPP)	AIPP was tasked with taking over from EPA staff the job of involving trade associations in promoting pollution prevention (P2). To accomplish this, AIPP will: • identify industry groups most desirable for engagement; • using questionnaires and telephone surveys, develop examples of initiatives or activities in which these identified groups might engage; • hold monthly "Morning Dialogue Session" meetings, publish an updated P2 Resource Document, and plan and execute the 1997 Trade Association Symposium. In our opinion, these activities are not "research, development, and monitoring" as authorized by TSCA §10.

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of TSCA
X824529	TSCA §10	Missoula Housing Authority	This is an Environmental Justice Initiative. It provides: • Training for lead abatement workers, inspector technicians, supervisors and contractors. • A Community Education and Hazard Identification Program (CEHIP). Community education will be achieved using handouts for door-to-door distribution; posters; public meetings; programs on local access television; display of literature at county fairs, health fairs and shopping malls; and public service announcements. • A 1-800 Hotline in the CEHIP office. In our opinion, training and public education are not research, development and monitoring within the scope of TSCA §10.
X824610	TSCA §10	City of Memphis	This Environmental Justice grant provides for: • Community Needs Assessment. A nurse will conduct door-to-door blood lead screenings. • Community Outreach. – 12 weeks of pre-training for 15 licensed practical nurse candidates; – lead based paint abatement training program; – YWCA program administration costs. Training and community outreach activities are not research, development or monitoring within the scope of TSCA §10.

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of TSCA
CX825670	TSCA §28	Nevada Dept. of Conservation and Natural Resources	Nevada will develop a state accidental release prevention program under the Clean Air Act §112(r); §112(r) delegation packages; and conduct community outreach to assist the regulated community to comply with §112(r) requirements. As described on page 12 of this report, funding this grant under TSCA §28 requires that the state address chemical substances or mixtures with respect to which [EPA] is unable or is not likely to take action under this Act for their prevention or elimination. The work plan does not indicate that Nevada will address chemicals with respect to which EPA is unable or unlikely to take action. Further, we believe that the proper statutory authority for establishing CAA §112(r) programs is CAA §112(l), State Programs.
CX825684	TSCA §28	Rhode Island Department of Environmental Management	This agreement is virtually identical to the Nevada agreement described above. Our objections are the same as those stated above.
X822739	TSCA §28 TSCA §10	Unison Institute Maintain the RTK NET Internet site.	Ineligible recipient. The original award cited TSCA §28 and the Solid Waste Disposal Act. As TSCA §28 authorizes grants to states, Unison was not an eligible recipient. Although the grant was later amended to cite TSCA §10 rather than TSCA §28, at the time of award Unison was not an eligible recipient under TSCA §28. Further, maintaining an Internet site is not research, development or monitoring as authorized under TSCA §10.

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	Activities Outside The Scope of FIFRA §20
CX820822	FIFRA §20	National Foundation for IPM Education	The recipient will conduct educational workshops to communicate pest management techniques to growers, state/local officials, and environmentalists. FIFRA §20 authorizes research and monitoring. Educational workshops are neither.
CX825997	FIFRA §20	Jobs and Environment Campaign	This award provides for training and assistance to Indian tribes to develop ground water management plans. Such training and assistance are not "research" within the meaning of FIFRA §20.
CR825080	FIFRA §20	Yakima Valley Farmworkers Clinic	This award funds a study designed to research and evaluate pesticide safety training programs, materials and delivery systems. Evaluating educational programs is not within the scope of FIFRA §20.
CX825849	FIFRA §20	Assoc. of Farmworker Opportunity Programs (AFOP)	AFOP will evaluate the effectiveness of programs designed to teach farm workers to protect themselves from pesticides. Evaluating educational programs is not within the scope of FIFRA §20.

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	This Work Would Be Authorized Under FIFRA §20
E999393	FIFRA §23	California Department of Pesticide Regulations	This award funds a study of the potential impact of herbicides on northern California Native Americans. This would be authorized by FIFRA §20, but not by FIFRA §23.
MM998750	FIFRA §23	Confederated Salish and Kootenai Tribes	The Tribes proposed to study the possible effects of pesticides on plants used for cultural purposes from food to medicine. This would be authorized by FIFRA §20, but not by FIFRA §23.
X985497	FIFRA §23	University of Wisconsin Department of Entomology	This grant will: • Examine the impacts of foliar insecticides on predators and parasites in potatoes; • Develop and test integrated pest management programs which conserve naturally occurring beneficial arthropod populations and increase biological control of key insect pests. This would be authorized by FIFRA §20, but not by FIFRA §23.
X985735	FIFRA §23	Purdue University Developing pesticide applicator training software.	Ineligible recipient, inadequate match. FIFRA §23(a)(2) authorizes assistance to States and Indian Tribes to train and certify applicators. Purdue University, although state assisted, is not a state. Further, FIFRA §23 contains a 50% matching requirement for training and certification programs. The EPA share of this award is 95%.

Appendix A: Questionable Assistance Agreements			
Award Number	Primary Authority	Recipient	This Work Would Be Authorized Under FIFRA §20
X985736	FIFRA §23	Purdue Research Foundation	This project attempts to develop practical, real-time sensing technologies which detect features necessary to site-specifically apply chemicals onto selected, individual weeds, thereby reducing the amount of chemical required to effectively control weeds. We believe that FIFRA §20 is the proper authority for this award.

Appendix A: Questionable Assistance Agreements			
Award Number	Authorities	Recipient	Why This Award Is Unauthorized
CR824479	Clean Air Act (CAA) §103 Clean Water Act (CWA) §104 Solid Waste Disposal Act (SWDA) §8001	Global Environment and Trade Study (GETS)	GETS will produce four research papers: 1. Environmental regulation and competitiveness: a study of the link between environmental protection (particularly high environmental standards) and competitiveness. 2. Eco-labeling (a special seal or mark indicating that a product is less harmful to the environment than most other similar products): Can protectionism be avoided through harmonization of labeling systems or mutual recognition? 3. Multilateral environmental agreements: a study of the use of trade measures in environmental treaties. 4. Regional free trade agreements: Identifying the types of environmental impacts that could arise as a result of expanded trade and investment activities. CAA §103 addresses research and development programs for preventing and controlling air pollution. The thrust of Section 103 is "scientific" research designed to (1) identify harmful pollutants, (2) the effects on human health and the environment of such pollutants, and (3) the means of preventing or mitigating such effects. CWA §104 and CAA §103 are parallel provisions. They mirror each other and were passed into law by a Congress sensitized to the need for scientific advancement in air and water pollution arenas. With respect to SWDA §8001, we also believe that the research, etc., contemplated by this section refers to scientific exploration, not the socio-economic research proposed in this grant. In our judgement, none of the authorities cited can support this award.

APPENDIX B

Agency Response to the Draft Report

July 8, 1998

MEMORANDUM

SUBJECT: Response to OIG's Draft Audit Report on Statutory Authority for EPA Assistance Agreements Draft Audit Report No. E3AMF8-11-0008

FROM: Alvin M. Pesachowitz /s/
Acting Assistant Administrator
for Administration and Resources Management (3101)

TO: Elissa R. Karpf
Deputy Assistant Inspector General
for External Audits (2421)

Thank you for the opportunity to provide comments on the Draft Audit Report on Statutory Authority for EPA Assistance Agreements E3AMF8-11-0008. This audit raised some very important issues and we appreciate the chance to respond to your findings. We also appreciate your office's professional attitude and thoughtful approach in alerting us to your concerns.

The Office of Grants and Debarment (OGD) has worked with the Office of General Counsel (OGC), the Office of Prevention, Pesticides and Toxic Substances (OPPTS), and the Outreach and Special Projects Staff (OSPS) within the Office of Solid Waste and Emergency Response (OSWER) to provide comments on the OIG's findings and recommendations. All of the offices were very cooperative and helpful and each reviewed and provided comments on the Draft Report. As indicated below, contrary to many of the audit findings, the Agency believes that the activities questioned in the Draft Report are authorized by EPA's grant statutes. Although we disagree with many of the audit findings, we concur with the audit recommendations. The actions recommended will help ensure that our assistance programs continue to be administered properly and that activities funded by EPA are within the Agency's assistance authorities.

Set forth below are our comments on the scope of the Agency's grant-making authorities and the Agency's response to the recommendations contained in the Draft Report. Attached are memoranda containing the specific comments made by OPPTS and OSWER on the Draft Report.

I. STATUTORY AUTHORITIES

The Draft Report identifies 25 assistance agreements the OIG believes are not authorized by the statutes cited in the respective award documents, focusing in particular on the grant authorities provided in CERCLA §311(c), TSCA §10(a), FIFRA §20 and FIFRA §23. These statutes authorize grants for activities such as "research," "development," "monitoring," "enforcement," and "training." None of these terms are defined in their respective statutes. Nor, as the OIG acknowledges, do the legislative histories of these provisions provide evidence as to how Congress intended these terms to be interpreted. As a result, the OIG's interpretations are based on its opinions and beliefs as to their meanings. As the Draft Report indicates, the issues involved in the interpretation of these provisions are not clear-cut and reasonable people may have differing opinions regarding the scope of these authorities.

When, as here, there are a range of permissible legal interpretations, it is within the Agency's discretion to adopt the interpretation that it believes will best enable it to meet statutory goals and objectives. As discussed below, in the absence of statutory definitions or clarifying legislative history, the Agency has adopted what it believes are permissible interpretations of the terms that further the goals and objectives of CERCLA, TSCA, and FIFRA. While the Agency believes that the statutes permit these grants, we concur with the recommendation that EPA should seek broader authority to clarify that supported activities are authorized and to permit the Agency to provide financial assistance for a wider range of activities.

Awards Made Under CERCLA

CERCLA §311(c)

The Draft Report concludes that nine assistance agreements were not authorized by CERCLA §311(c), which provides for grants to "support...research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment." Based on the discussion in the Draft Report and the analysis provided in Appendix A, it appears the OIG objects to these grants on two grounds. The first is that the term "research" as used in CERCLA §311(c) cannot be interpreted to include socio-economic research. The second is that improper methodologies were used to conduct the research, e.g. the use of meetings, conferences, and newsletters.

This provision was added to CERCLA in 1986 as part of the Superfund Reauthorization Act (SARA), but, as the OIG indicates, the legislative history of the provision offers no insight with regard to the scope of the term "research." In the absence of such guidance, the Draft Report states that the OIG bases its opinion regarding the interpretation of the statute upon on what it considers to be the "historical context in which CERCLA was passed, i.e., that Congress was concerned about contamination from manufacturing, municipal landfills, mining, and federal defense and energy activities." Based on this "historical context," the OIG believes CERCLA §311(c) authorizes research "aimed at understanding and mitigating the effects of pollutants on

human health" and objects to awards to "fund technical assistance to state and local government officials, address environmental justice issues, study the effects of laws and regulations on the economic redevelopment of brownfields sites, and fund meetings and conferences."

The Agency believes that the scope of CERCLA §311(c) research, even as defined by the OIG, would encompass what is referred to in the Draft Report as socio-economic research, as this research is aimed at understanding and mitigating the effects of pollutants on human health. The types of research projects that the OIG questions -- projects addressing environmental justice issues, studying the effects of law and regulations on the economic redevelopment of brownfields sites, and funding meetings and conferences -- may very well be aimed at "understanding and mitigating the effects of pollutants on human health," depending on the specific activities involved. Thus, under the OIG's standard, those projects arguably would be authorized under CERCLA §311(c). (We agree that technical assistance generally is not research.).

More importantly, the plain language of the statute does not limit the term "research" to exclude the activities funded under these agreements. EPA has interpreted "research" to include study that extends to the social sciences, including socioeconomic, institutional, and public policy issues, as well as the "natural" sciences. CERCLA §311(c) includes two separate clauses modifying the term "research": research with respect to the "detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances" and research with respect to the "detection of hazardous substances in the environment." Nothing in either of these clauses limits the research to the "natural" sciences. Furthermore, limiting the definition to include only research on the effects on "human health" would render superfluous a second phrase that modifies the term "research" i.e., "detection of hazardous substances in the environment." Pursuant to principles of statutory construction, the statute thus carries a broader meaning than the one advanced by the OIG. This interpretation of "research" under CERCLA §311(c) is consistent with §102(2)(A) of the National Environmental Policy Act (NEPA), 42 U.S.C. §4332(2)(A) (directing agencies to use an interdisciplinary approach ensuring the integrated use of the natural and social sciences).

The OIG's second objection to these awards is that research under CERCLA §311(c) cannot include the funding of meetings, conferences, and workshops. "Research," however, can be carried out through a range of activities, including not only "bench" science, but also other forms of information gathering and exchange, such as conferences and newsletters. Among other things, conferences can be used to obtain additional information, refine methodologies and findings, and stimulate further research through dialogues with affected groups, as well as to publicize or explain the results of a research project. Research encompasses more than theoretical inquiries characteristic of a laboratory or academic setting.

However, we agree with the OIG's assessment that the Agency could do a better job of ensuring that recipients explain how funded activities further the research objective of the agreement. As the OIG notes, additional training and guidance for program offices would be useful, and we will consider including a provision in the guidance about linking conference

funding with the research aims of the award. Additionally, OSWER has begun requiring that CERCLA §311(c) recipients agree to a term and condition ensuring that their activities remain focused on research authorized by the statute.

The Draft Report notes several instances in which OGC advised OSWER that while CERCLA §311(c) could be interpreted to encompass a broad range of research activities, because certain activities were not explicitly authorized, they might be challenged if audited. OIG interprets this advice as barring the awards. OGC, however, did not say that the activities were not legally supportable. Given several legally supportable positions, OSWER made a reasoned judgement, within its discretion, to award the grants.

Finally, the OIG recommends that in order to comply with CERCLA §311(c), all awards must be coordinated with the Secretary of HHS. While the statute requires the Agency to coordinate its research with HHS to avoid duplication of effort, the statute does not require that each award must be coordinated with HHS. As indicated in the attached response from OSWER, they will undertake additional efforts to better coordinate their CERCLA §311(c) research with HHS.

CERCLA §§ 311(b)(3) and (b)(9)A)

In an addendum to the statutory authority report, the OIG questioned whether CERCLA §§ 311(b)(3) and (9) authorize grants for Brownfields Job Training and Development Demonstration Pilots. CERCLA § 311(b)(3) provides:

> In carrying out the program, the Administrator is authorized to enter into contracts and cooperative agreements with, and make grants to, persons, public entities, and nonprofit private entities which are exempt from tax under section 501(c)(3) of Title 26. The Administrator shall, to the extent possible, enter into appropriate cost sharing arrangements under this subsection.

CERCLA §311 (b)(9) provides:

> The Administrator is authorized and directed to carry out, through the Office of Technology Demonstration, a program of training and an evaluation of training needs for each of the following:
>
> > (A) Training in the procedures for the handling and removal of hazardous substances for employees who handle hazardous substances.
> > (B) Training in the management of facilities at which hazardous substances are located and in the evaluation of the hazards to human health presented by such facilities for State and local health and environment agency personnel.

CERCLA §311(b)(10) provides:

> For the purposes of this subsection, the term "alternative or innovative treatment technologies" means those technologies, including proprietary or patented methods, which permanently alter the composition of hazardous waste through chemical, biological, or physical means so as to significantly reduce the toxicity, mobility, or volume (or any combination thereof) of the hazardous waste or contaminated materials being treated. The term also includes technologies that characterize or assess the extent of contamination, the chemical and physical character of the contaminants, and the stresses imposed by the contaminants on complex ecosystems at sites.

The OIG considered an OGC memorandum of May 29, 1997, in which OGC concluded that §311 (b)(9) authorizes EPA to conduct a training program not limited to training in alternative and innovative technologies and to make grants for that purpose under §311(b)(3). The OIG disagreed with that conclusion, maintaining that the better interpretation of CERCLA §§311(b)(3) and (b)(9) is that they authorize the Agency to make grants for training but only insofar as the training is related to alternative or innovative treatment technologies. The Brownfields Training and Development Pilots, according to the OIG, "have nothing to do with alternative or innovative technologies and are not targeted at the audience (personnel handling hazardous waste and/or managing hazardous waste facilities) that Congress contemplated when it passed §311(b)(9)." The OIG believes that EPA is only authorized to make grants for training "related to alternative or innovative treatment technologies, i.e., training intended to acquaint personnel handling hazardous waste and/or managing hazardous waste facilities with changed procedures wrought by alternative or innovative treatment technologies." Subsequently, in a meeting attended by the OIG, OGC, and OSWER, it became clear that the OIG also believes that the training programs funded by grants under CERCLA §§311(b)(3) and (9) can only be for individuals already employed in handling hazardous substances at the time they receive the training.

Eligible Training Activities

As a result of the OIG memo, OGC has reevaluated its interpretation of CERCLA §§ 311(b)(3) and (9) and has identified what it now believes is a more defensible interpretation. OGC does not believe that the following interpretation of the statute is the only one possible; other broader interpretations could also be defended. Nonetheless, OGC will, as a prudential matter, encourage programs to adhere to its new interpretation.

The context in which alternative or innovative technologies are implemented -- hazardous waste site cleanups -- is the same context in which non-alternative or innovative treatment technologies are used. Consequently, if the training authorized by §311(b)(9) were limited to training in skills that are only used in the implementation of alternative or innovative treatment technologies, then only a very limited range of skills could be taught to trainees. Such a narrow interpretation of §311(b)(9) would be difficult to defend particularly because §311(b)(9) does not

make any reference to a requirement that authorized activities be limited to training in alternative or innovative treatment technologies and the plain language of §311(b)(9) authorizes training in a much broader range of activities -- "the handling and removal of hazardous substances." Moreover, there is nothing in the legislative history that suggests that Congress intended the training to be limited to training in skills that have an exclusive relationship to alternative or innovative treatment technologies.

Therefore, OGC interprets CERCLA §§311(b)(3) and (b)(9)(A) to authorize grants for training in "the handling and removal of hazardous substances" which bears a relationship to the use of alternative or innovative treatment technologies in the context of a cleanup. Under this interpretation, grantees could teach trainees skills that would be applicable both to cleanups employing an alternative or innovative treatment technology and to cleanups employing non-alternative or innovative treatment technology. For example, training programs could teach the following skills that are needed to carry out alternative/innovative bioremediation of contaminants for either on- or off-site treatment of contaminated soils: excavation skills for removing contaminated soils to the treatment area, use of heavy equipment skills for turning of contaminated soils to ensure bioremediation occurs, and monitoring skills to determine levels of toxic materials. These same skills would be useful in non-alternative or innovative treatment technologies.

Accordingly, in awarding training grants under CERCLA §§311(b)(3) and (b)(9), the program office would have to determine that the training activities could be usefully applied to a cleanup employing an alternative or innovative technology. The determination would be documented in the decision memorandum associated with the assistance award. In addition, a term and condition would be included in each assistance agreement so that the grantee would be adequately informed of this limitation on the types of activities for which training could be provided. Both the decision memo and the assistance agreement would include a statement or condition such as:

> The training provided by the recipient must be training in the handling and removal of hazardous substances related to the implementation of alternative or innovative treatment technologies as defined in section 311(b)(10) of CERCLA. The recipient may teach trainees skills that are relevant to the implementation of both alternative or innovative treatment technologies and non-alternative or innovative treatment technologies.

Eligible Trainees

In its memorandum, the OIG does not discuss the issue of eligible trainees. In a subsequent meeting, however, the OIG asserted that the training authorized under §311(b)(9) may only be provided to individuals already employed in the field at the time they receive the training.

The Agency disagrees. CERCLA §311(b)(9) authorizes training "for employees who handle hazardous substances." There is nothing in §311(b)(9), however, that requires that trainees must be currently employed in handling hazardous substances before they receive training in the handling and removal of hazardous substances. The requirement that the training be "for employees" is satisfied if the training is provided for the purpose of training individuals to *become employed* in the field of handling hazardous substances. This is consistent with one of the goals Congress sought to accomplish by enacting §311 of CERCLA: "to *increase* . . . the cadre of appropriately trained personnel." *Congressional Record*, September 16, 1985; reprinted in Congressional Research Service, *A Legislative History of the Superfund Amendments and Reauthorization Act of 1986*, at 1118 (1990)(emphasis added).

Awards Made Under TSCA

TSCA §10(a)

The OIG objects to three awards made under TSCA §10(a) to support training and public outreach activities, two of which involve environmental justice initiatives. TSCA §10(a) authorizes the award of grants for "research, development and monitoring" as is necessary to carry out the purposes of TSCA. The OIG objects that training and public outreach are not research, development, or monitoring.

The Agency interprets the term "development" to include many training and public outreach activities. In the absence of a statutory definition or any legislative history regarding the term, the Agency has adopted a permissible interpretation that is consistent with the dictionary definition of the term. Included within that definition are activities that expand the capability or capacity of an individual or an organization. Training and outreach activities expand the capability and capacity of individuals by broadening their knowledge base and thus the Agency has determined that they are activities encompassed within the term "development." (As under CERCLA §311(c), "environmental justice activities" may or may not be eligible, depending on the specific activities.)

In support of its objection, the OIG states that the only training authorized in TSCA §10 is the training for federal laboratory and technical personnel authorized by TSCA §10(f). This provision requires EPA to train and facilitate the training of Federal workers, an activity directly benefitting the Federal government and one properly funded through a contract. This is a separate, distinct requirement that is unrelated to the Agency's grant-making authority under TSCA. The requirement that the Agency train its own personnel does not limit its authority to provide grants to support other types of development, including training, under TSCA §10(a).

With regard to the TSCA §10(a) requirement for consultation with HHS and other agencies, as indicated in the attached OPPTS response, although some areas of activity have diminished, others have expanded and OPPTS continues to consult and coordinate its activities with HHS and other Federal agencies.

TSCA §28(a)

The OIG objected to two awards made under TSCA §28(a), which authorizes grants to States for the "establishment and operation of programs to prevent or eliminate unreasonable risks within the States to health or the environment which are associated with a chemical substance or mixture and with respect to which the Administrator is unable or is not likely to take action under [TSCA] for their prevention or elimination." The OIG objects that the grantees' work plans did not establish that the States will address chemicals with respect to which EPA is unable or unlikely to take action.

However, the plain language of the statute does not require a grantee to affirmatively demonstrate in its work plan that the Administrator is unable or unlikely to take action. In most cases, the grantee cannot be expected to know whether the Agency is unable or unlikely to address a particular risk. The Agency interprets the statute as requiring the grant program to be administered in a manner that complements, but avoids duplication of, Federal action. Under this interpretation, EPA does not award grants to address risks that the Agency expects to address itself. However, given the standard in the statute -- "not likely to take action" -- there is a possibility that changed conditions might result in a decision by the Agency to take an action in the future with regard to a particular risk, even though at the time of the award it did not appear likely. Furthermore, there is no indication in the Draft Report that at the time of the questioned awards, or subsequently, that the particular risks addressed in the grants were or were likely to become the subject of Federal action. For these reasons, we disagree with the OIG's position.

The Agency concurs that the proper authority for providing grants to States to develop and implement CAA §112(r) programs is CAA §122(l)(4).

Awards Made Under FIFRA

FIFRA §20(a)

The OIG objects to the funding of what it terms "training" and the "assessment of training programs" under FIFRA § 20 which authorizes grants for research necessary to carry out the purposes of FIFRA and for research into integrated pest management. The agency concurs that the term "research" generally does not include training. However, as discussed above with regard to CERCLA §311(c), the term is not restricted to "bench science" and may be carried out through a variety of methodologies, including workshops and conferences. Furthermore, with regard to the specific activities questioned by the OIG, the Agency believes that research on and the evaluation of a training program are types of research and thus are within the scope of the authority.

FIFRA §23(a)

The Draft Report questions five awards made under FIFRA §23(a) because the OIG believes they are "neither enforcement activities nor applicator training," but, instead, research authorized under FIFRA §20. FIFRA §23(a) authorizes cooperative agreements with States and Tribes:

> (1) to delegate to any State or Indian tribe the authority to cooperate in the enforcement of this subchapter through the use of its personnel or facilities, to train personnel of the State or Indian tribe to cooperate in the enforcement of this subchapter, and to assist States and Indian tribes in implementing cooperative enforcement programs through grants-in-aid; and
>
> (2) to assist States in developing and administering State programs, and Indian tribes that enter into cooperative agreements, to train and certify applicators consistent with the standards the Administrator prescribes.

This provision authorizes assistance awards for a comprehensive enforcement program. The Agency has interpreted this broad authority reasonably to include a wide variety of activities, including those that when accomplished would preclude the need to take additional enforcement actions. However, consistent with the OIG's recommendation, the Agency has requested in the President's Fiscal Year 1999 Budget Request enactment of the following clarifying language:

> "Provided further, That beginning in fiscal year 1999 and thereafter, pesticide program implementation grants under section 23(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, shall be available for pesticide program development and implementation, including enforcement and compliance activities."

Awards Made Under CAA §103, CWA §104, and SWDA §8001

Although not addressed in the text of the Draft Report, Appendix A indicates the OIG also objects to an award to the Global Environment and Trade Study for research on environmental regulation and competitiveness, eco-labeling, use of trade measures in environmental treaties and the environmental impacts of regional trade agreements. The OIG objects on the grounds that the grant authorities cited, CAA §103, CWA §104, and SWDA §8001, authorize only what the OIG terms "scientific" research and not what it terms "socio-economic" research.

As discussed above, these statutory provisions do not require, and the Agency does not interpret, the term "research" to be confined to the "natural" sciences. Furthermore, as the Draft Report acknowledges, these three statutes are so broadly worded that they authorize many types of activities, not just research, and certainly not just "scientific" research. For example, §104 of the Clean Water Act authorizes grants to "conduct and promote the coordination and acceleration

of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, reduction, and elimination of pollution." Such activities are not limited to the "natural" sciences, but may include a variety of socio-economic, institutional, and public policy issues that relate to the "causes, effects, extent, prevention, reduction and elimination of pollution." A similar enumeration of authorized activities under CAA §103 includes the following phrase: "...studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution" (emphasis added), indicating that the activities include, but are not limited to, "scientific", "health effects" research.

II. RESPONSE TO RECOMMENDATIONS

Recommendation 1 (to Assistant Administrator for OARM):

- Coordinate with the Assistant Administrators for OSWER and OPPTS and the Associate Administrator for Congressional and Intergovernmental Relations to obtain clear statutory authority to fund assistance agreements for the types of activities questioned in this report, i.e., technical assistance, environmental justice, and economic redevelopment studies under CERCLA; public outreach, training and environmental justice activities under TSCA; and training and training assessments under FIFRA.

OARM Response:

OARM agrees with this recommendation. We will work with the Program Offices and OGC to obtain the statutory changes necessary to clarify and expand the existing grant authorities.

Beginning in 1994, OSWER requested that Administration proposals for Superfund Reauthorization include a provision which would have clarified the types of activities that could be funded under CERCLA §311(c). OSWER has continued to seek this clarification through successive rounds of proposed legislation and they agree to continue to work with OARM and OCIR toward this end.

In addition, as indicated previously, in the President's Fiscal Year 1999 Budget Request EPA requested enactment of the following clarifying language:

> "Provided further, that, beginning in fiscal year 1999 and thereafter, pesticide program implementation grants under section 23(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, shall be available for pesticide program development and implementation, including enforcement and compliance activities."

Recommendation 2 (to Assistant Administrator for OARM):

- Clarify existing policies and guidance. EPA Order 5730.1 requires program offices to designate the program element, statutory authority, and delegation of authority in the decision memorandum. Rather than merely citing a statute, the program offices should be required to briefly explain how the proposed work relates to the authorizing statute. Grants Management Offices should return any funding package missing this information.

OARM Response:

We agree with the OIG recommendation. We will modify EPA Order 5730.1 to include language that specifically requires that all future funding packages include an explanation of how the proposed grant award relates to the authorizing statute. As a component of the current assistance funding packages, the decision memorandum must cite the statutory authority which authorizes proposed grant activities. The Grants Specialist reviews the decision memorandum to ensure the proposed project objectives are consistent with the intent of the statutory authority. In the future we will require the Program Offices to provide written clarification of how the award relates to the statutory authority and, if necessary, forward it to OGC for their review and opinion.

OPPTS has already taken action to implement this recommendation. In December, 1997, they issued guidance to all their grants project officers requiring detailed information in grant decision memoranda. They have also established a single point of contact within each Office to review all grants and ensure the proposed activities are authorized under EPA's grant authorities.

Recommendation 3 (to Assistant Administrator for OARM):

- Work with Senior Resource Officials [SRO] to issue interim guidance to clarify the types of activities that their respective program offices will and will not fund, including examples of the types of projects the Agency should not fund.

OARM Response:

OARM agrees with the recommendation and will work with OSWER and OPPTS to develop guidance to clarify the types of activities that the Agency will and will not fund under the grant authorities.

In addition, working in close coordination with each of their cooperative agreement recipients, OSPS will develop an additional term and condition for all cooperative agreements, which will require recipients to establish administrative controls to ensure that all CERCLA §311(c) funds are spent only to conduct and disseminate research (including scientific, socio-economic, institutional and public policy research) relating to the effects and risks of hazardous substances and detection of hazardous substances in the environment.

Recommendation 4 (to Assistant Administrator for OARM:

- Require the Grants Administration Division, in coordination with Senior Resource Officials, to incorporate into project officers and managers training, information on the types of awards the Agency should, and should not, fund.

OARM Response

We agree that grants training material should be modified to incorporate specific information about grant authorities. We will add these changes to the project officer training classes and to the one-day project officer refresher course which will begin next year. We will also include the modified EPA Order 5730.1 as part of the handout materials. OPPTS and OSWER training will also be tailored to emphasize issues specific to their statutory authorities.

Recommendation to the Assistant Administrator for OSWER:

- We recommend that the Assistant Administrator for OSWER coordinate all CERCLA 311(c) assistance awards with the Secretary of Health and Human Services [HHS], as required by the statute.

OSWER Response:

OSWER has been unable to confirm the existence of the "advisory council" referred to in CERCLA §311(c). Nonetheless, in recognition of the importance of avoiding duplication of effort in our research activities, OSPS will work with the SRO for OSWER to establish better coordination of our CERCLA §311(c) research efforts with HHS. This coordination may occur through OSWER's existing relationships with the National Institute for Environmental Health Sciences (NIEHS) and the Agency for Toxic Substances and Disease Registry (ATSDR), whose activities we already evaluate through the annual Superfund budget formulation process, or we may choose to coordinate through other means.

Thank you again for providing us with the opportunity to comment on the Draft Report. If you or your staff have any questions or need additional information, please contact Bruce Feldman at 202-564-5325.

Attachments

cc: Steve Pressman
Jim Drummond
Steve Swartz
Andrew Kreider
Susan Lee
Leslie Darman
Susan Wayland
Linda Garczynski

June 5, 1998

MEMORANDUM

SUBJECT: OSPS Response to OIG Draft Audit Report No. E3AMF8-11-0008
Statutory Authority for EPA Assistance Agreements

FROM: Linda Garczynski, Director /s/ (Ann McDonough, for)
Outreach and Special Projects Staff

TO: Gary Katz, Director
Grants Administration Division

At an April 23, 1998 meeting with your staff, the Outreach and Special Projects Staff (OSPS) in the Office of Solid Waste and Emergency Response (OSWER) was asked to provide comments on the subject OIG draft audit report. It is our understanding that the Office of General Counsel (OGC) will provide a summary response to the legal issues raised in the draft audit report. For this reason, our comments will address only the programmatic issues discussed therein.

It should be noted, however, that OSPS agrees with OGC's interpretation of CERCLA Sec. 311(c). We have made a concerted effort to ensure proper adherence to the provisions of the statute, as interpreted by the Agency, through close working relationships with our cooperative agreement recipients and by including OGC review and concurrence as an integral part of our grant application review process.

Our responses to specific recommendations, as well as general comments, follow below:

Recommendation 1 (to Assistant Administrator for OARM):

- Coordinate with the Assistant Administrators for OSWER and OPPE and the Associate Administrator for Congressional and Intergovernmental Relations to obtain clear statutory authority to fund assistance agreements for the types of activities questioned in this report, i.e., technical assistance, environmental justice, and economic redevelopment studies under CERCLA; public outreach, training and environmental justice activities under TSCA; and training and training assessments under FIFRA.

OSPS Response:

As early as 1994, OSWER requested that Administration proposals for Superfund reauthorization include a provision which would have clarified the types of activities that could be funded under CERCLA Sec. 311(c). We have continued to seek this clarification through successive rounds of proposed legislation, and we agree to continue to work with OARM and OCIR toward this end.

Recommendation 3 (to Assistant Administrator for OARM):

- Work with Senior Resource Officials [SRO] to issue interim guidance to clarify the types of activities that their respective program offices will and will not fund, including examples of the types of projects the Agency should not fund.

OSPS Response:

OSPS will work with the SRO for OSWER, in coordination with OARM and OGC, to develop interim guidance to clarify the types of activities that our program office will and will not fund.

Working in close coordination with each of our cooperative agreement recipients, we will also develop an additional term and condition for all current and future cooperative agreements, which will require recipients to establish administrative controls to ensure that all CERCLA Sec. 311(c) funds are spent only to conduct and disseminate research (including scientific, socio-economic, institutional and public policy research) relating to the effects and risks of hazardous substances and detection of hazardous substances in the environment.

Recommendation to the Assistant Administrator for OSWER:

- We recommend that the Assistant Administrator for OSWER coordinate all CERCLA 311(c) assistance awards with the Secretary of Health and Human Services [HHS], as required by the statute.

OSPS Response:

OSPS has been unable to confirm the existence of the “advisory council” referred to in CERCLA Sec. 311(c). Nonetheless, in recognition of the importance of avoiding duplication of effort in our research activities, OSPS will work with the SRO for OSWER to establish better coordination of our CERCLA Sec. 311(c) research efforts with HHS. This coordination may occur through our existing relationships with the National Institute for Environmental Health Sciences (NIEHS) and the Agency for Toxic Substances and Disease Registry (ATSDR), whose activities we already evaluate through the annual Superfund budget formulation process, or we may choose to coordinate through other means.

General Comments on Appendix A:

We have chosen not to respond on a point-by-point basis to OIG's descriptions of CERCLA Sec. 311(c) grants and cooperative agreements as they are listed in Appendix A. We wish to note, however, that Appendix A as currently written may inadvertently encourage a misinterpretation of the purposes and content of each of our cooperative agreements. In most cases, the activities described by OIG relating to CERCLA Sec. 311(c) cooperative agreements managed by OSPS have been taken out of context, and represent only a portion of the work included in the original proposals and current agreements.

For example, the Institute for Responsible Management (IRM) is funded under CERCLA Sec. 311(c) to research and disseminate information about the social, economic, and other barriers to the detection, assessment, evaluation, and cleanup of hazardous substances at Brownfield sites, with a specific focus on issues encountered by communities with active Brownfields assessment and cleanup projects. This research will be disseminated in a number of ways, including the development of a research book containing lessons learned from these communities' efforts to address their Brownfields problems. These activities, which represent the largest portion of IRM's work, are not accounted for in the OIG description contained in Appendix A.

Similarly, the activities listed for the U.S. Conference of Mayors (USCM), including the National Brownfields Roundtable, the National Brownfield Redevelopment Data Base, research into the establishment of a peer-to-peer network of local officials, and the bi-monthly newsletters, all fit into the scope of USCM's broader agenda for research and research dissemination. The OIG description of these activities is presented without any explanation of the research that USCM must conduct in order to complete them, and as such may lead to misinterpretations of the true nature of the agreement.

These represent just two examples of what we believe to be incomplete descriptions of the true content of our cooperative agreements. We believe that the activities undertaken by our cooperative agreement recipients are allowable according to the statutory interpretation given by OGC, and we will continue to work to ensure that all CERCLA Sec. 311(c) research activities adhere to this interpretation.

Thank you for your assistance in coordinating a response to the subject draft audit report. If you have any questions, please have your staff contact Andrew Kreider at 260-9192.

cc: Tim Fields
David Sutton
Steve Pressman
Andrew Kreider
Ellen O'Boyle
Mike Shapiro
Ken Adams
Jim Drummond
Liz Harris

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

Final Copy, Signed on June 3, 1998

OFFICE OF
PREVENTION, PESTICIDES AND
TOXIC SUBSTANCES

MEMORANDUM

SUBJECT: OPPTS Comments on Draft Audit Report on Statutory Authority for EPA Assistance Agreements

FROM: Susan H. Wayland
Deputy Assistant Administrator

TO: Gary Katz
Director, Grants Administration Division (3903R)

Thank you for the opportunity to provide comments to the Draft Audit Report on Statutory Authority for EPA Assistance Agreements. This audit has raised some very important issues. Although our interpretation of statutory authority allows for a wider scope of assistance activity, we agree with the audits recommendations. Positive actions in those areas identified will help ensure our assistance program is conducted properly. We would also like you to include a message in your comments to the IG, showing our appreciation for their professional attitude and thoughtful approach in alerting us to their concerns.

We recommend your office disagree with most of the audit's findings on questionable grants. Based upon OGC guidance, which establishes a broader interpretation of statutory authorities, we believe most of our grants were appropriate. OGC's comments on statutory authority interpretation, which are concurrently being provided to your office, should provide a cornerstone for your response in this area. Our comments will address three other areas including; a) Comments to individual awards identified as questionable (includes acknowledgment or disagreement to IG position, b) Comments on coordinating actions with other Federal Agencies, and 3) Comments to IG Recommendations.

Comments to specific awards identified as questionable:

Awards under FIFRA Section 20 - Research and Monitoring. Under 20(a) OPP awards grants with other Federal Agencies, Universities and others to undertake research as necessary to carry out the purposes of the Act, and to conduct research into integrated pest management in coordination with Agriculture.

1) CX-820822- National Foundation for IPM Education - We believe this grant is research and appropriate. The purpose of this Co-op is to research programs to increase the use of integrated pest management in U.S. Agriculture. Although IPM is a long-standing system that EPA believes can reduce pesticide risks, it was not widely adopted when this co-op was started. As a result of the 1992 National IPM Forum, co-sponsored by EPA, it was determined that applied research were needed to increase IPM implementation. This co-op was established to work toward that goal. In its final technical report, the co-op stated that "at the end of this five-year agreement, we are at the point where IPM has become the accepted way of reducing environmental risks and minimizing risks from pesticide use".

2) CX-825997 - Native Ecology Initiative - We believe this grant is research and appropriate. The purpose of this grant is to help Indian Tribes develop groundwater management plans. OPP has never done this specifically for the tribes before. The Native Ecology Initiative must research an appropriate training approach necessary to develop a tribal educational framework that recognizes and incorporates tribal cultural perspectives on environment and land stewardship. They must also research available data sources, current studies to develop training materials and provide assistance to Tribes in developing their groundwater management plans.

3) CR-825080 - Yakima Valley Farm workers Clinic - We believe this grant is research and appropriate. This cooperative agreement will expire in September, 1998. The purpose of the agreement is to research the pesticide safety training programs and materials that are used for agricultural workers on farms, nurseries, greenhouses, and forests. The Clinic conducted research about programs and materials designed to help Farm workers reduce their risks from pesticide hazards. As part of this project, no training was performed. Research was conducted through analysis of data gathered from direct interviews and focus groups of growers, farm worker organizations, state and local farm worker service agencies and other members of the agricultural community across the country. Research also included gathering, analyzing and assessing national data and information about studies, tools and mechanisms to reach Farm workers about pesticide safety.

4) CX-825849 - Association of Farm worker Opportunity Programs (AFOP) - We believe this grant is research and appropriate. The purpose of this agreement is to research and assess the effectiveness of the National Americorps pesticide safety environmental education program. They are not providing the training. They are assessing a national program to help Farm workers and agricultural communities to reduce risks from occupational and environmental exposure to pesticides. This cooperative agreement is designed to conduct research and make observations about the effectiveness of risk reduction measures utilized in the program. Researching the needs, effectiveness of occupational and environmental risk reduction measures will help the agricultural community develop a strategy for protecting the health and safety of agricultural workers and rural communities from pesticide hazards.

FIFRA Section 23 - State Cooperation, Aid, and Training. Under 23(a)(1) OPP awards grants to States and Indian Tribes in order to cooperate in the enforcement of the Act, and to assist States and Indian Tribes in implementing cooperative enforcement programs; and under Section 23(a)(2), OPP awards grants to States and Indian Tribes in order to develop and administer certification and training programs. Under the C&T awards, there is a 50% match of funds.

1) E999393 - California Department of Pesticide Regulations - OPP transferred funds to Region IX in order for the Region to award a grant with the California Indian Basket weavers Association. The purpose of the grant is for 1) community meetings on herbicide problems and 2) residue study on 3 or 4 herbicides in plants. This project is commonly called California Basket Weavers Association. When this grant was awarded, the region decided that they could not use FIFRA Section 20 as their authority. We are researching the basis for this decision and will provide additional information at a later date.

2) MM998750 - Confederated Salish and Kootenai Tribes - OPP transferred funds to the Region in order for the Region to award a grant with the Confederated Salish and Kootenai Tribes. When this grant was awarded, the region decided that they could not use FIFRA Section 20 as their authority. We are researching the basis for this decision and will provide additional information at a later date.

We have researched the next three grants and going back as far as FY 94, OPP does not have a record of awarding these grants. We are continuing to research these grants and will provide information later.

3) X985497 - University of Wisconsin Department of Entomology

4) X985735 - Purdue University - Developing pesticide applicator training software

5) X985736 - Purdue University Foundation

Awards under TSCA Section 10

1) CX825486 - American Institute for Pollution Prevention - Under this grant, the awardee was to develop a system that would identify pollution prevention methodologies that worked at an industry group facility, develop these into examples of pollution prevention, and present them at “Morning Dialogue Sessions” where they might be used by industry participants. In our opinion, the primary objective of these activities is clearly developmental.

2) X824529 - Missoula Housing Authority and X824610 - City of Memphis - These are Environmental Justice Cooperative Agreements. Their scope of work covers activities

which develop a lead poisoning prevention program and monitoring activities in the areas of home hazard assessment and blood lead level screening. We believe these are development type of actions and are appropriate grants under TSCA Section 10.

Awards under TSCA Section 28

1) CX825670 - Nevada Dept. of Conservation and Natural Resources and CX825684 - Rhode Island Department of Environmental Management - We agree with the IG's statement that we used the wrong authority for these grants and we should have used CAA Section 112(l) instead of CAA Section 112(r). We will use the correct authority in the future.

   According to TSCA Section 28, these type of grants are made to states for activities associated with chemical substances or mixtures for which the "Administrator is unable or is not likely to take action". We disagree with the IG statement that our work plan did not state that activities would address chemicals to which EPA is unable or unlikely to take action on. The Statute does not require for an "affirmative finding" up front.

2) X822739 - OPPT agrees this is not an appropriate award

Comments on coordinating actions with other Federal Agencies

The IG's Draft Audit cites "...the requirement the EPA conduct research 'in consultation and coordination with the Secretary of Health and Human Services and other heads of appropriate departments and agencies,'". The report states that "Since 1978, interaction between EPA and DHHS has diminished significantly, and is now limited to OPPTS' lead program (which also involves the Center for Disease Control-part of DHHS), and the Toxic Release Inventory data base, which EPA makes available to the public through a system maintained by the National Library of Medicine (also part of NIH/DHHS)."

The Inspector Generals Office is correct in pointing out that interaction between EPA and DHHS has diminished significantly since TSCA was passed. However, OPPT has maintained open lines of communication with DHHS as well as instituting new lines of communication with other Departments and Agencies as our work has changed over time and the need for new consultation and coordination has arisen. We believe that TSCA was intended to be an evolving Act, not a static Act.

OPPTS does continue to interact with DHHS through the Interagency Testing Committee. This Committee was formed specifically at the direction of Congress, for priority testing of chemical substances under TSCA. OPPTS's Administrator, Dr. Goldman, also frequently talks to and works closely with the DHHS secretary on major health initiatives for children.

OPPTS also coordinates with many other federal agencies through committees and programs such as: The ONE (OSHA,NIOSH,EPA) Committee; the TAC (Toxics and Consumer Product Safety Commission); the CIAQ (an Interagency Committee on Indoor Air Quality which includes DHHS); the Green Chemistry program with works with the National Science Foundation, NHIST, and DOE; the Partnership for Environmental Technology and Education (PETE) program works with NSF, DOE, Canada, and Mexico; the ACE (Agriculture in Concert with the Environment) program is a cooperative effort with US Dept. Of Agriculture; the EP3 program (Environmental Pollution Prevention Project) works with USAID; our PPD division works with the FOSTTA Pollution Prevention Forum, a group made up of 12 Senior State Officials to coordinate pollution prevention and reduction activities and programs throughout the country; and we work with the National Pollution Prevention Round table to coordinate pollution prevention programs at the national, state and local levels.

This is just a brief list of Departments and Agencies that OPPT maintains contact with and shares information with about our constantly changing programs and operations. If desired, a much more extensive list can be compiled and forwarded.

Comments to IG Recommendations.

Recommendation 1.

OPPTS agrees with this recommendation. We have submitted language with our FY 99 State and Tribal Assistance Grants (STAG) appropriation, that will provide the following wording to clarify FIFRA - Section 23:

"Provided further, that, beginning in fiscal year 1999 and thereafter, pesticide program implementation grants under section 23(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, shall be available for pesticide program development and implementation, including enforcement and compliance activities."

We further recommend the Comptroller's Office, GAD, and the Program Office's meet to discuss an Agency approach to the question of seeking statutory clarification.

Recommendation 2.

OPPTS has already taken action to implement this recommendation within our AA'ship. In December 97, after information about this audit was becoming available, we issued guidance to all our grants project officers requiring detailed information in grant decision memorandums. We have established a single point of contact within each Office to review all grants and ensure their quality. In addition, all grants in excess of 250K are reviewed at the AA's office and approved by the SRO.

Recommendation 3.

OPPTS agrees with recommendation 3. We have already met with GAD and OGC to discuss this issue. We will be working with these offices to develop this guidance in accordance with our understanding of the statutory authority..

Recommendation 4.

We agree grants training material should be modified to incorporate information about statutory authority. OPPTS training will also be tailored to emphasize issues specific to our statutory authorities.

APPENDIX C

Distribution

Office of Inspector General

Acting Inspector General
Assistant Inspector General for Audit
Deputy Assistant Inspector General for Internal Audits
Divisional Inspectors General

EPA Headquarters Offices

Agency Followup Official (2710)
Agency Followup Coordinator (2724)
Acting Assistant Administrator for Solid Waste and Emergency Response (5101)
Assistant Administrator for Prevention, Pesticides and Toxic Substances (7101)
Associate Administrator for Communications, Education and Public Affairs (1701)
Associate Administrator for Congressional and Intergovernmental Relations (1301)
Associate General Counsel, Finance and Operations Law Office (2377)
Comptroller (2731)
Director, Office of Grants and Debarment (3901R)
Senior Resource Officials and Audit Liaisons:

- Office of the Administrator
- Office of Administration and Resources Management
- Office of Air and Radiation
- Office of Enforcement and Compliance Assurance
- Office of International Activities
- Office of Policy, Planning and Evaluation
- Office of Prevention, Pesticides and Toxic Substances
- Office of Research and Development
- Office of Solid Waste and Emergency Response
- Office of Water