

**OVERSIGHT OF THE MANAGEMENT OF THE
FEDERAL ENVIRONMENTAL PROTECTION,
CHEMICAL SAFETY, AND FISH AND WILDLIFE
AGENCIES**

HEARING

BEFORE THE

SUBCOMMITTEE ON SUPERFUND, WASTE
MANAGEMENT, AND REGULATORY OVERSIGHT

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

APRIL 14, 2015

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**OVERSIGHT OF THE MANAGEMENT OF THE
FEDERAL ENVIRONMENTAL PROTECTION,
CHEMICAL SAFETY, AND FISH AND WILD-
LIFE AGENCIES**

TUESDAY, APRIL 14, 2015

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON SUPERFUND, WASTE MANAGEMENT,
AND REGULATORY OVERSIGHT,
Washington, DC.

The committee met, pursuant to notice, at 9:32 a.m. in room 406, Dirksen Senate Building, Hon. Mike Rounds (chairman of the subcommittee) presiding.

Present: Senators Rounds, Inhofe, Crapo, and Markey.

**OPENING STATEMENT OF HON. MIKE ROUNDS,
U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA**

Senator ROUNDS. Good morning.

I am very happy to be chairing the first Superfund, Waste Management, and Regulatory Oversight Subcommittee hearing.

Ladies and gentlemen, we will begin this on time and we are going to try to be done in about 20 minutes after the hour in deference to Secretary Kerry. We will try to get through as much of today's testimony as possible. We will ask the members to submit any additional questions for the record and ask that you respond to those appropriately. We appreciate your being here.

The Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight is meeting for the first time today to conduct a hearing on oversight of the management of the Federal environmental protection, chemical safety and fish and wildlife agencies.

I would like to thank our witnesses, Inspector General Arthur Elkins of the U.S. Environmental Protection Agency and Deputy Inspector General Mary Kendall of the U.S. Department of the Interior, for taking time out of their schedules to be with us today.

I am honored to be chairing this subcommittee in the 114th Congress with my friend from Massachusetts, Senator Ed Markey, as Ranking Member. As subcommittee chairman, I plan to conduct full oversight of the Environmental Protection Agency and the Department of the Interior.

The Inspectors General from these agencies can and should serve as a resource for these reviews and today's hearings serve as a starting point for this oversight plan. Inspectors General are

tasked with independently conducting audits and investigations relating to agency actions and programmatic mismanagement.

Not only are they an asset to congressional oversight, but their recommendations are effective in correcting mismanagement, waste, fraud and abuse at the EPA and the Department of the Interior. It is essential that the Inspectors General view Congress as a partner in this oversight process.

Throughout this Congress, we will be focusing chiefly on good governance and making certain the agencies are operating transparently, responsibly managing taxpayer dollars and working to achieve their core missions without regulatory overreach so prevalent in agency actions today.

More than ever, we are seeing agency regulatory regimes expanding Federal jurisdiction beyond their statutory limits, encroaching into private businesses, landowners' rights, and the States' ability to manage and regulate the environment and land within their own borders.

Additionally, the EPA and the Department of the Interior are moving forward with implementing major environmental regulations impacting every sector of the U.S. economy and affecting hundreds of thousands of American jobs.

We must make certain that the regulations these agencies implement are being written in an open, transparent process that allows for full public participation taking into account all views regardless of the agencies' notions of their goals.

The EPA and Fish and Wildlife Service owe it to the American people to not only provide a thorough, transparent and honest analysis of how regulations will affect them but also to base these regulations on the most current and reliable economic data and sound science.

Notably, these IGs have conducted recent investigations on mismanagement at the Chemical Safety Board, grant management, and administrative management issues. I look forward to hearing a review of the work the IGs have done regarding management of the EPA, CSB, and Fish and Wildlife Service along with an update of the reviews the IGs are currently undertaking.

Again, I would like to thank our witnesses for being with us today and for presenting their testimony.

Now, I would like to recognize my friend, Senator Markey, for his opening statement as well.

[The prepared statement of Senator Rounds follows:]

STATEMENT OF HON. MIKE ROUNDS, U.S. SENATOR
FROM THE STATE OF SOUTH DAKOTA

The Environment and Public Works Subcommittee on Superfund, Waste Management, and Regulatory Oversight is meeting for the first time today to conduct a hearing on "Oversight of the Management of the Federal Environmental Protection, Chemical Safety, and Fish and Wildlife Agencies." I'd like to thank our witnesses, Inspector General Arthur Elkins of the Environmental Protection Agency, and Deputy Inspector General Mary Kendall of the Department of the Interior for taking time out of their schedules to be with us today.

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tasked with independently conducting audits and investigation relating to agency actions and programmatic mismanagement. Not only are they an asset to congressional oversight, but their recommendations are effective at correcting mismanagement, waste, fraud, and abuse, at the EPA and Department of the Interior. It is essential the Inspectors General view Congress as a partner in this oversight process.

Throughout this Congress we will be focusing chiefly on good governance and making certain the agencies are operating transparently, responsibly managing taxpayer dollars and working to achieve their core missions without the regulatory overreach so prevalent in agency actions today. More than ever we are seeing agency regulatory regimes expanding Federal jurisdiction beyond their statutory limits, encroaching into private businesses, landowners' rights, and the States' ability to manage and regulate the environment and land within their own borders.

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**OPENING STATEMENT OF HON. EDWARD J. MARKEY,
U.S. SENATOR FROM THE STATE OF MASSACHUSETTS**

Senator MARKEY. Thank you very much.

I want to thank you, Chairman Rounds, for holding this first hearing of the subcommittee. I am looking forward very much to working with you in this Congress on these very important issues.

The offices of Inspector General are tremendously important to governmental integrity. These watchdogs must be independent, non-partisan and maintain the highest ethical standards to ensure the public's trust.

In addition to fighting fraud, waste and abuse of power, they ensure the Government works the way Congress intended and the public deserves. For example, the Securities and Exchange Commission Inspector General uncovered the mishandling of whistleblowers' tips in the Madoff Ponzi scheme and the failure to take basic steps to stop it.

In response, Congress passed the Dodd-Frank Act to protect whistleblowers and provide incentives and mechanisms to report and promptly remedy misconduct.

Inspectors general also save billions of taxpayer dollars each year. For example, the Special Inspectors General for Afghanistan and Iraq reconstruction together recovered almost \$3 billion related to waste and fraud associated with the government's reconstruction work.

Your offices have also made notable contributions. For example, the former Department of Interior Inspector General identified a culture of ethical failure that occurred when the same office was responsible for oil and gas leases, revenue collection and enforcement of drilling safety and environmental regulations.

Following this report, the department implemented a more robust ethics program and announced a major departmental reorganization to eliminate those conflicts of interest.

The Environmental Protection Agency Inspector General has also done significant work in overseeing management and personnel challenges at both the Environmental Protection Agency and the Chemical Safety Board.

The Inspector General has also found that the Environmental Protection Agency needs to improve oversight of the States' implementation and enforcement. In a 2014 memo, the Inspector General raised concerns about States' implementation and enforcement of environmental programs assigned to protect the public from beaches contaminated by dangerous levels of bacteria and to ensure proper long term monitoring of Superfund sites so that they are safe for reuse.

For oversight by Inspectors General to garner public trust, transparency is key. Inspectors General have a responsibility to promptly report their activities, findings and recommendations to Congress and the public. Yet, in 2014, the Department of Interior, Office of Inspector General, closed 533 investigations and released just 55 public reports.

Inspectors General also rely on the cooperation of the agencies they oversee. As Mr. Elkins' 2014 testimony indicated when an Inspector General is faced with obstruction and obfuscation by an agency, inefficiency thrives unchecked and potential wrongdoing evades both notice and consequences.

I agree with that. Agencies must cooperate to guarantee access to the information you need and to take corrective actions in response to your findings.

I look forward to your testimony about the important work you do and how Congress can help you to do better do your job.

I yield back the balance of my time.

Senator ROUNDS. Thank you, Senator, for sharing your thoughts.

Now, we will turn to our first witness, Mr. Elkins from the EPA, for 5 minutes. Mr. Elkins, you may begin.

STATEMENT OF ARTHUR ELKINS, INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. ELKINS. Good morning, Chairman Rounds, Ranking Member Markey and members of the subcommittee.

I am Arthur Elkins, Inspector General for EPA and CSB.

Thank you for inviting me to appear before you today. This morning I will touch on a few matters I believe will be of special interest. However, my written statement provides much greater detail on these and additional topics. I will begin with audit highlights.

Following OIG's criminal investigation of John Beale, an EPA senior policy advisor who defrauded the Government of nearly \$900,000 while pretending to be an undercover agent for the CIA, OIG commenced a series of audits examining certain EPA processes.

Two of those audits on timekeeping and use of administrative leave are ongoing. We expect to issue our reports in mid-June and late summer respectively.

Simultaneously, OIG is conducting a program evaluation of how EPA and States are using their authorities to manage the potential impacts of hydraulic fracturing on water resources. This report too is on track for issuance in late summer.

On the investigative front, last month, Florida jury convicted two scientists, a married couple, of wire fraud, identity theft and obstruction. They had fraudulently obtained about \$10.5 million in small research awards, including several contracts with EPA, by using stolen identities of real people to create false endorsements. The investigative team included the EPA OIG. Sentencing in that case has been set for May 28 of this year.

As an independent and objective office charged under the IG Act with oversight of management and program performance, it is critical that an OIG be able to carry out its work without obstruction.

Two impediment issues, one at EPA and one at CSB, have forced Congress to become actively involved during this past year. At EPA, a unit called the Office of Homeland Security has impeded OIG's authority to investigate threats against employees and facilities and certain misconduct allegations and computer intrusions.

After saying otherwise for months, OHAS now agrees that there is no category of activity at EPA to which OIG does not have unfettered access. FBI senior management confirms that FBI does not require EPA to withhold information from the OIG.

Still, EPA has not rescinded a memorandum of understanding with the FBI that has precluded such information sharing. Also, important is the fact that OIG has been unable to resolve the issue of OAH's having an assigned criminal investigator while lacking any investigative authority.

The second impediment to OIG relates to CSB. We requested documents following complaints alleging use of non-governmental email accounts to conduct official business which CSB officials refused to provide for more than a year.

Not until I sent a 7-day letter and the House Committee on Oversight and Government Reform's Chairman and Ranking Member instructed Chairman Rafael Moure-Eraso to provide the documents did CSB substantially comply with the OIG's request.

OIG's investigation found evidence sufficient to support the conclusion that the CSB Chair and two of its senior officials had violated the Federal Records Act in implementing regulations by using non-governmental email systems to conduct official Government business and not capturing those emails in the CSB records system.

Ultimately, President Obama requested that the Chair resign. Mr. Moure-Eraso stepped down from that role last month and ended his membership on the Board this past Friday.

Meanwhile, a former CSB Chief Information Officer has provided to the OIG a sworn statement alleging inconsistencies in the Chair's communication to me as well as during another HOCR hearing last month. My Office of Investigations has notified the U.S. Attorney's Office that the Chair may have committed perjury and certain other crimes.

These items represent a sampling of OIG's work and challenges. We will continue to work with management at both EPA and CSB

to help ensure that appropriated funds are properly managed and executed and accurate information is reported.

I would like to leave the subcommittee with a thought. An OIG's recommendations are only as good as an agency's implementation of them. At this time, many of this OIG's recommendations to the agencies for which I have oversight are unimplemented and way past due. Money left on the table, so to speak, does a tremendous disservice to the taxpayers.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions you or subcommittee members may have.

[The prepared statement of Mr. Elkins follows:]



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

**Management and Performance Oversight by
the Office of Inspector General
for the EPA and CSB**

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

**Before the Subcommittee on Superfund, Waste Management,
and Regulatory Oversight
Committee on Environment and Public Works
United States Senate**

April 14, 2015

**Statement of
Arthur A. Elkins Jr.
Inspector General
Office of Inspector General
U.S. Environmental Protection Agency
Before the
Subcommittee on Superfund, Waste Management, and Regulatory Oversight
Committee on Environment and Public Works
United States Senate
April 14, 2015**

Good morning, Chairman Rounds, Ranking Member Markey and members of the subcommittee. I am Arthur Elkins, Inspector General (IG) at the U.S. Environmental Protection Agency (EPA). Thank you for inviting me to appear before you today. I am prepared to provide you with a snapshot of my office's oversight related to the management and performance of the EPA and the U.S. Chemical Safety and Hazard Investigation Board (CSB). Before I begin, I would like to publicly commend the expertise, dedication, diligence and professionalism of Office of Inspector General (OIG) staff—not only at the EPA, but across the federal government—who work hard each day to carry out our very important mission of promoting economy, efficiency and effectiveness; and preventing and detecting fraud, waste and abuse through independent oversight of programs and operations.

Overview of the OIG of the EPA and CSB

It is important to remind everyone present that the OIG is an independent and objective office. Congress has entrusted the EPA OIG with serving as the OIG for both the EPA and the CSB. The EPA OIG operates with a budget and decision-making authority separate from both agencies, and senior leaders at the agencies may not prohibit, prevent or obstruct us from conducting our work.

In accordance with the IG Act of 1978, as amended, the EPA OIG's mission is to: conduct independent and objective audits and investigations related to programs and operations at the EPA and CSB; prevent and detect waste, fraud and abuse; promote economy, effectiveness and efficiency; review pending legislation and regulations; and keep the agency heads and Congress fully and currently informed. We fulfill our mission primarily by issuing reports that include recommendations for corrective actions, conducting investigations and referring criminal cases to the U.S. Department of Justice (DOJ) for prosecution.

OIG FY 2014 Performance Results

Before I talk about some of our more recent audits and investigations, as well as some ongoing work and the challenges faced by my office, I will mention some of the OIG's performance results in fiscal year (FY) 2014. The following information may be found in its entirety on our website in our last *Semiannual Report to Congress*:

Monetary return on investment:

- \$54.5 million in questioned costs
- \$321.7 million in recommended efficiencies and costs saved
- \$3.8 million in fines, penalties, settlements and restitutions

Criminal, civil and administrative actions reducing risk or loss/operational integrity:

- 19 criminal convictions
- 50 indictments, informations and complaints
- 3 civil actions
- 76 administrative actions
- 54 suspension or debarment actions
- 11 allegations disproved

Savings and recommendations sustained from current and prior periods:

- \$29.8 million in questioned costs sustained
- \$292.4 million in funds put to better use

Total reports issued:

- 66 reports issued by the OIG
- 300 Single Audit report memos issued to the EPA for action

Environmental and business outcome actions taken or realized by the EPA:

- 306 environmental and management actions implemented or improvements made
- 17 critical congressional and public concerns addressed

OIG environmental and business output recommendations, awareness briefing or testimony:

- 766 environmental and management recommendations or referrals for action
- 57 environmental and management certifications, verifications and validations
- 31 environmental and management risks and vulnerabilities identified
- 90 external awareness briefings, training or testimony given

OIG Office of Audit

The OIG's Office of Audit (OA) designs and implements long-term, nationwide audit plans to improve the economy, efficiency and effectiveness of agency programs and prevent fraud, waste, and mismanagement. OA also leads and participates in multi-agency projects to address government-wide management issues.

OA conducts financial, performance, forensic and external audits related to the following areas: financial statements, contracts, assistance agreements and systems of internal control. Some of the mandatory audits that we conduct are: EPA and CSB computer security program under the Federal Information Security Management Act, EPA financial statements, CSB financial statements, EPA and CSB improper payments, and EPA purchase and travel cards.

Final Report: "EPA Needs to Justify How It Is Using Title 42 Hiring Authority"

On March 5, 2015, the OIG issued a report initiated to determine whether the EPA is properly managing its "Title 42" hiring authority. The agency's Office of Research and Development (ORD) was given special hiring authority under U.S. Code Title 42 in 2006 and is the only office within the EPA that has it. ORD uses this authority to recruit and retain scientific leaders and

talent in its different research programs. ORD is authorized up to 50 Title 42 employees. As of February 24, 2014, ORD had 23 Title 42 employees.

Our review concluded that ORD's reasoning for using its Title 42 hiring authority to fill management positions is ambiguous. The EPA Title 42 Operations Manual states that ORD will establish and oversee the process for developing recommendations for the allocation of Title 42 positions.

Factors contributing to these findings include that ORD does not have a process to annually develop recommendations for allocating Title 42 positions and believes it has justified using the Title 42 hiring authority as an overall organizational need. In addition, ORD has not always demonstrated a need to use Title 42 to recruit or retain staff for these positions to achieve the level of expertise the office needed.

Because ORD has not articulated its approach for allocating the 50 Title 42 appointments it is authorized, or justified the need to use the hiring authority to fill positions, it is susceptible to concerns about how it is using this authority. By articulating its approach, the EPA will be showing how the remaining appointments—with a potential annual salary total between \$3.5 million and \$6.75 million—could be used to fulfill the agency's mission. We recommended that ORD justify its need to use the Title 42 authority and the need for more transparency in its decisions to use that authority.

Ongoing Audit: “Audit of EPA’s Processes for Preserving Text Messages”

Next, I will discuss two ongoing audits of interest to this subcommittee. First, as a result of a November 2014 request by Chairman Lamar Smith of the House Committee on Science, Space, and Technology, we initiated in January 2015 an audit to examine the EPA's processes for preserving text messages. Our objective is to determine whether the EPA adhered to applicable laws, regulations, and agency policies and procedures for records management, and preserved text messages when conducting official business. Specifically, we plan to determine whether the EPA:

- Implemented policies and procedures to determine which text messages to preserve and steps to ensure employees are knowledgeable of this guidance.
- Implemented processes to respond to congressional and Freedom of Information Act (FOIA) requests involving agency employees' text messages.
- Used text messages (on government-issued or personal devices) for official business.
- Deleted, destroyed, lost or misplaced text messages needed for records management, and, if applicable, the rationale for destroying text communications records.
- Took disciplinary actions against employees for deleting, destroying, losing or misplacing text communication records.
- Notified the National Archives and Records Administration about the potential loss of any federal text records and how often the losses occurred.

To address these objectives, we are interviewing the EPA's Administrator, Deputy Administrator and headquarters program office's Assistant Administrators, as well as sampling headquarters

personnel who are frequent text communication users to determine awareness of internal guidance, specifically guidance regarding saving and deleting text messages. We are reviewing text messages usage reports and identifying frequent users of text messages. We also are obtaining and documenting headquarters and regional policies and procedures that pertain to responding to congressional and FOIA requests related to text communication to determine compliance with federal requirements.

We expect to issue our final report in fall 2015.

Ongoing Audit: “EPA Processes for Timekeeping”

On August 27, 2013, Senator Vitter, then Ranking Member of the full Senate Committee on Environment and Public Works, requested that the OIG initiate work in connection with fraud committed by John C. Beale, a former Senior Policy Advisor with the EPA’s Office of Air and Radiation who had falsely claimed to be away from the EPA for extended periods because he was working for the Central Intelligence Agency. The OIG commenced a series of audits to determine whether conditions existed in EPA processes that contributed to Mr. Beale’s and possibly other, similar fraud. This series included audits of passports, travel, retention incentive pay, hiring processes, statutory pay and timekeeping.

For our ongoing timekeeping audit, the objective is to identify potential time and attendance fraud at the EPA in connection with employees who received salary payments while on extended absence from their duties.

To assess this risk, we have reviewed the agency’s time and attendance policies and discussed with agency officials existing controls for time card review and approval. For two separate months representing four pay periods, we assessed whether all employees paid by the EPA were actually present for duty based on their use of the EPA computer network. The final report is expected to be issued in June 2015.

In the course of our audit work following the Beale investigation, we identified a concern about the use of administrative leave for eight employees totaling 20,926 hours and \$1,096,868. We reported this condition on November 19, 2014, in a report titled *Early Warning Report: Some EPA Employees Found to Be on Paid Administrative Leave for Years* (Report No. 15-N-0025). That audit regarding administrative leave continues, and we expect to issue a report in late summer 2015. In addition, our work to date resulted in a hotline complaint concerning potential misuse of religious compensatory time. We have initiated an audit on controls and use of such time within the EPA and expect to issue this final report as well in late summer 2015.

OIG Office of Program Evaluation

The OIG’s Office of Program Evaluation (OPE) examines root causes, effects and opportunities that influence program change and contribute to the accomplishment of the EPA’s mission. Program evaluations may produce conclusions about the value, merits and/or worth of programs or activities. The results of program evaluations can be used to improve the operations of EPA programs and activities, sustain best practices and effective operations, and facilitate accomplishment of EPA goals.

OPE designs long-term, multi-office, multi-agency program evaluation plans; coordinates the execution of these evaluations; synthesizes findings from these reviews; and provides for the timeliness, tone, quality and objective review of the resulting reports.

Final Report: “To Ensure Greater Use of Scientific Equipment, the Office of Research and Development Should Use an Enterprise Approach to Property Management”

On March 16, 2015, the OIG issued a report with an objective to determine whether ORD had adequate controls over research equipment—including safeguarding, maintenance, calibration and utilization. As the scientific research arm of the EPA, ORD uses sensitive and often expensive equipment. That office’s reported capital equipment totals nearly \$73 million.

Our review of a sample of research equipment within three ORD laboratories found that approximately 30 percent (or 30 of 99 pieces) had not been used for 2 to 14 years, and 6 percent (or six of 99 pieces) were obsolete. Equipment used for air and water research sat idle either because there was no ongoing research necessitating its use or because it was being kept as backup equipment. Laboratories did not comply with federal property regulations, which require equipment inspection walkthroughs every 2 years and the creation of equipment pools to maximize the use of idle equipment and identify obsolete pieces.

The factors contributing to these findings include that ORD managers and staff are not aware of federal property management requirements and ORD has not created a comprehensive, officewide scientific equipment list that would make ORD’s resources visible throughout the agency for key research decision-making.

Program risks exist as a result, including valuable scientific equipment sitting idle when there might be a demand for it elsewhere in ORD or the agency. Additionally, ORD could waste funds by purchasing duplicative research equipment. To address and minimize risks, we made several recommendations, including that ORD develop an equipment list, create an equipment pool, establish regular equipment utilization walkthroughs, and conduct independent reviews of equipment procedures. ORD agreed with all recommendations, and the completion of corrective actions is pending.

Ongoing Evaluation: “Review of the EPA’s Assessment of Potential Mining Impacts in Bristol Bay, Alaska”

Next, I will discuss two ongoing program evaluations of interest to this subcommittee. In May 2014 in response to congressional requests and hotline complaints, we initiated a review regarding the actions of the EPA and its decision to conduct an ecological risk assessment of the impacts of large-scale mining on the Bristol Bay watershed in Alaska. We seek to determine whether the EPA followed laws, regulations, policies and procedures in developing its assessment. Specifically, we seek to address:

- The reason the EPA conducted the assessment and whether there was any evidence that the agency conducted it in a biased manner or whether it had a pre-determined outcome.
- Whether the EPA followed ecological risk assessment policies and procedures when conducting the assessment.

- Whether the EPA followed peer review policies and procedures.
- Whether the EPA followed the Information Quality Act and related policies and procedures.

To address those objectives, we have reviewed extensive documents, thousands of email records and other correspondence, and interviewed numerous current and former federal employees and state employees, tribal representatives, the Pebble Limited Partnership's chief executive officer, and peer reviewers. Interviewees have included EPA employee Phil North, who is at the center of several allegations and concerns about the EPA's decision to undertake the ecological risk assessment. The OIG's Office of Investigations also has provided vital support in obtaining computer hard drives and emails that support OPE's work.

We expect to issue our final report in late summer 2015.

Ongoing Evaluation: "EPA Oversight of Hydraulic Fracturing Impact on Water Resources"

For the following reasons, we initiated in February 2014 a review examining how the EPA and states use their authorities to manage the potential impacts of hydraulic fracturing on water resources:

- In 2009, in response to public concerns and anticipated growth in the oil and gas industries, Congress requested that the EPA examine the relationship between hydraulic fracturing and drinking water sources.
- While the EPA's ORD has reported some progress toward completing that congressionally requested study, there have been delays and the EPA's study—6 years later—is not yet complete. The OIG had concerns that the EPA may not be effectively discharging its oversight role.
- The EPA has taken enforcement actions, and thus invested EPA resources, to respond to reports of hydraulic fracturing fluids leaking into groundwater in Pennsylvania, Texas and Wyoming. These events led the OIG to have reasonable questions about the EPA's necessary or potential role in managing or addressing possible impacts to water sources from hydraulic fracturing.
- It has been recognized by many parties that the practices of hydraulic fracturing and horizontal drilling have experienced large growth in recent years. The United States has vast reserves of natural gas that are commercially viable as a result of advances in horizontal drilling and hydraulic fracturing technologies.

Within the scope we laid out, our report will address the national and state regulatory framework in place. It also will identify any areas that may need additional action or study.

The current review has included interviews of EPA officials as well as state officials and staff in Pennsylvania, Arkansas and Colorado. We chose these states because of their significant oil and gas development activity, reports of alleged contamination of drinking water, and ongoing regulatory activity to manage oil and gas development. We have interviewed other stakeholders with industry and environmental groups, and other nongovernmental organizations about

unconventional oil and gas development and any activities or initiatives being implemented to manage potential impacts to water resources during hydraulic fracturing.

We expect to issue our report in late summer 2015.

OIG Office of Investigations

The OIG's Office of Investigations manages, sets policy, coordinates and has overall responsibility for criminal investigations of allegations concerning:

- Financial fraud involving EPA programs or funds (that is contract and grant fraud).
- Employee misconduct.
- Intrusion into EPA systems and computers.
- Threats against EPA employees, contractors, facilities and assets.
- Assaults on EPA employees or contractors and other acts of violence in EPA facilities.
- Impersonating EPA officials.
- Counterfeiting or misuse of EPA official insignia, logos or credentials.
- Theft of property or funds within EPA facilities.

In addition, the Office of Investigation is responsible for the OIG Hotline, which receives complaints of fraud, waste and abuse in EPA programs and operations.

OIG Investigation into EPA Contract Fraud

I would like to highlight a recent OIG investigation—conducted in concert with the U.S. Attorney's office and other federal agencies—that resulted in the conviction of two individuals on March 15, 2015, of conspiracy to commit wire fraud, aggravated identity theft and falsification of records involving a federal investigation. The defendants had fraudulently obtained approximately \$10.5 million worth of small business research awards from the federal government, including several contracts with the EPA. They had submitted proposals using stolen identities of real people to create false endorsements for their proposed contracts. In the proposals, they also lied about their facilities, costs, the principal investigator on some of the contracts and certifications in the proposals. Each of the defendants faces a maximum penalty of 20 years in federal prison. The sentencing has been set for May 28, 2015.

Challenges Regarding EPA's Office of Homeland Security

I will update the subcommittee about two impediment issues involving the OIG's Office of Investigations at the EPA and the CSB that have forced Congress to become actively involved during the past year. First, I will address impediments arising from the role the EPA has given to a unit within its Office of Administrator called the Office of Homeland Security (OHS). During a September 2014 hearing before the House Committee on Oversight and Government Reform (HOGR), I testified that the EPA had asserted there was a category of activity defined as "intelligence" to which the OIG may have access only subject to the EPA's granting of permission. This situation impeded the OIG's ability to investigate threats against EPA employees and facilities, conduct certain misconduct investigations and investigate computer intrusions. In addition, I explained that OHS was conducting investigative activities of its own.

without any legal authority to do so, thereby interfering with—and in some cases fouling—OIG investigations.

Since that hearing, senior OIG officials have met multiple times with senior agency officials to address a range of issues falling under these general categories. We have reached at least a theoretical agreement on a substantial portion of the issues, although we are at an impasse with regard to a number of crucial points. What we have agreed upon is that there is no category of activity at the EPA to which the OIG does not have unfettered access, as provided by the IG Act. The “intelligence” activities can and are to be shared with the OIG if the OIG seeks access or an issue is within OIG purview. However, a major impediment that remains is a memorandum of understanding (MOU) that the EPA entered into unilaterally with the Federal Bureau of Investigation (FBI). The OIG was not party to, nor was it consulted in the creation of, that MOU. Previously, the EPA asserted that the MOU precluded it from sharing information with the OIG.

FBI senior management since has confirmed that the FBI does not require the EPA to withhold information from the OIG, and the EPA has confirmed to the OIG that it will share the information we had been seeking, both with regard to previous matters and going forward on an ongoing basis. The EPA has not rescinded the existing MOU or accepted our proposed elements for a revised MOU.

During our meetings with EPA, we have insisted that if there is to be any MOU going forward, it must be a three-party agreement among the EPA, the OIG and the FBI, and based on the following precepts:

- The OIG’s Office of Investigations maintains a cadre of criminal investigators who have been granted the appropriate clearance level to review national security, counterintelligence and counterterrorism material.
- It is EPA policy that all allegations of misconduct involving EPA employees or contractors must be reported to the OIG.
- As OHS does not have investigative or law enforcement authority, OIG criminal investigators will represent the EPA and work with the FBI whenever the FBI needs to conduct a national security, counterintelligence or counterterrorism investigation targeting an EPA employee or contractor.
- Any requests made by the FBI to the EPA to conduct interviews or to collect evidence, records, information or data, in furtherance of an investigation, will be referred to the OIG for action.
- The OIG will take no investigative or law enforcement action on any case identified by the FBI as being related to national security, counterintelligence or counterterrorism, without first seeking the concurrence of the FBI.
- OHS and the OIG will coordinate with each other, and with the FBI, to ensure that each office can properly fulfill its responsibilities with regard to the EPA.

It is important to mention that, additionally, the OIG has been unable to resolve with the EPA the issue of OHS having a criminal investigator assigned as OHS lacks any investigative authority.

These are important impediment issues that we have not yet resolved with EPA.

OIG Oversight of the CSB

I will also address issues related to the CSB that evolved over the past several years. In September 2012, the OIG began investigating whether the identities of certain CSB whistleblowers had been unlawfully revealed to CSB leaders. In the course of this investigation, we requested documents from CSB Chairman Rafael Moure-Eraso on related complaints that CSB officials were using nongovernmental email accounts to conduct official business. In August 2013, CSB officials first refused to provide those documents to the OIG, asserting that their denial was based on attorney/client privilege. However, we explained that such denial violated the IG Act, specifically Section 6(a)(1), which provides for the IG's unfettered access to all materials and information available to the agency. After more than a year of refusals by the CSB, I sent a "Seven Day Letter"—a tool provided for in the IG Act—to Chairman Moure-Eraso. A Seven Day Letter requires an agency head to transmit the IG's letter and the agency's response to appropriate committees or subcommittees of Congress within seven calendar days. Although the CSB did forward my letter to the committees, including this one, CSB officials continued to refuse to produce the documents.

At a June 2014 hearing before the HOCR, that committee's Chairman and Ranking Member both instructed the CSB to provide the documents that the OIG sought. The CSB subsequently substantially complied with those instructions, but officials specified have yet to provide an affirmation of their full compliance with our requests. To elaborate, in August 2014, the OIG asked Chairman Moure-Eraso and other senior CSB officials to affirm their methodology for searching and identifying documents within the scope of OIG's requests, and that they had fully complied with the requests. While the OIG cannot attest to the receipt of all requested documents from the CSB, as explained above, we were able to proceed with and complete our investigation.

I sent the OIG's report of investigative results to President Obama, as there was no one higher than Chairman Moure-Eraso at the CSB, and he was appointed by the President. That report found that there was evidence sufficient to support a conclusion that the Chairman and two of his senior officials had violated the Federal Records Act and implementing regulations by using nongovernmental email systems to conduct official government business and not capturing those emails in the CSB records system.

On March 26, 2015, Chairman Moure-Eraso announced he would accede to a request from President Obama to resign as CSB Chairman. However, at the same time, Chairman Moure-Eraso announced that he would remain as a board member until last Friday, April 10. As of that date, the OIG is not aware of whether Chairman Moure-Eraso had officially left the CSB.

On March 27, 2015, the Assistant Inspector General of Investigations informed HOCR Chairman Chaffetz and Ranking Member Cummings that the CSB's former Chief Information Officer (CIO) has provided a sworn statement that alleges inconsistencies in Chairman Moure-Eraso's communications to me, as well as with his testimony before HOCR during a hearing on March 4, 2015. For example, the CIO disputes Chairman Moure-Eraso's assertions that the CIO had conducted or overseen searches of the private email accounts of General Counsel Richard Loeb or Managing Director Daniel Horowitz. I provided the information to the HOCR for that

committee's review and any action deemed appropriate. In addition, under the provisions of the IG Act of 1978, as amended, I am required to notify DOJ whenever I have reason to believe that a crime has been committed. Therefore, my Office of Investigations has notified the U.S. Attorney's Office in the District of Columbia of the possibility that Chairman Moure-Eraso may have committed perjury and certain other crimes in relation to his testimony on March 4.

While I have focused primarily on the OIG's recent investigation of the CSB, I note that we also have several ongoing audits related to that agency on purchase card risk assessment and compliance with the Improper Payment Acts, contracts and governance; and we are preparing our annual memorandum on management challenges and internal control weaknesses for CSB.

EPA Management Challenges

The OIG's assessment of the EPA's "Fiscal Year 2014 Management Challenges" is available on our website. As required by the Reports Consolidation Act of 2000, we issued in May 2014 a list of what the OIG considers EPA programs and management functions with the greatest vulnerability to waste, fraud, abuse and mismanagement, where a failure to perform could seriously affect the ability of the agency or the federal government to achieve its mission or goals. The challenges identified are as follows:

- The EPA Needs to Improve Oversight of States Authorized to Accomplish Environmental Goals.
- Limited Controls Hamper the Safe Reuse of Contaminated Sites.
- Regulatory and Resource Limitations Constrain the EPA's Assessment and Management of Chemical Risks.
- The EPA Needs to Improve Workload Analysis to Accomplish Its Mission Efficiently and Effectively.
- The EPA Needs to Enhance Information Technology Security to Combat Cyber Threats.
- The EPA Needs Improved Management Oversight to Combat Fraud and Abuse in Time, Attendance, Computer Usage, and Real Property Management.

Conclusion

These are a few examples of the OIG's oversight of management and program performance at the EPA and CSB. We will continue to work with management at both agencies to help ensure that funds are properly managed and executed, and that accurate information is reported.

An OIG's recommendations are only as good as an agency's implementation of them. Money identified but left on the table, so to speak, due to an agency's failure to act, does a tremendous disservice to the taxpayers. This OIG most recently reported out 50 past-due, as yet unimplemented recommendations, made between 2009 and 2013 to the EPA, and representing \$115.9 million. We reported out 11 such past-due recommendations to the CSB. In addition, there are 5 recommendations to the CSB that remain unresolved.

Mr. Chairman, this concludes my prepared statement. I will be pleased to answer any questions that you or subcommittee members may have.

Biography of Inspector General Arthur A. Elkins, Jr.



Arthur A. Elkins, Jr. became Inspector General of the U.S. Environmental Protection Agency (EPA) on June 25, 2010. Before his appointment, Mr. Elkins served as Associate General Counsel within EPA's Office of General Counsel. While in that position, he supervised the delivery of legal counsel, opinions, litigation support, and other legal services for the Office of General Counsel's Information Law Practice, Employment Law Practice, and Intellectual Property Law Practice.

Previously, Mr. Elkins served as the Chief Legal Officer and General Counsel for the Court Services and Offender Supervision Agency, an independent federal executive branch agency responsible for pretrial services and adult parole and probation community offender supervision; Counsel to the Inspector General of the National Science Foundation; and Counsel within the Department of Defense, Defense Office of Hearings and Appeals.

Prior to joining the Federal Government, Mr. Elkins served as an Assistant Prosecuting Attorney in the Ohio Cuyahoga County Prosecutor's Office and as an Assistant Public Defender in the Ohio Cuyahoga County Public Defender's Office.

Mr. Elkins earned a Bachelor degree in social sciences from Thomas A. Edison State College; a Master of Business Administration degree from Baldwin-Wallace College; a Juris Doctor degree from Cleveland-Marshall College of Law, Cleveland State University; and a Master of Laws in Law and Government from Washington College of Law, The American University.

Mr. Elkins is a member of the bar in Ohio, District of Columbia, United States District Court for Northern Ohio, the United States Court of Appeals for the Sixth Circuit, and the Supreme Court of the United States of America.

Mr. Elkins is the recipient of the Council of Counsels to the Inspector Generals Leadership Award, Federal Executive Council on Integrity and Efficiency Award for Excellence in Investigations, and the National Science Foundation Office of Inspector General Commendable Service Award.

Mr. Elkins is the proud father of three children and resides in Bowie, Maryland, with his wife, Gail.

Senate Committee on Environment and Public Works
 Subcommittee on Superfund, Waste Management, and Regulatory Oversight
 Hearing titled "Oversight of the Management of Federal Environmental
 Protection, Chemical Safety, and Fish and Wildlife Agencies"

Questions for the Record, Arthur Elkins, Inspector General for the
 U.S. Environmental Protection Agency and the U.S. Chemical Safety and Hazard Investigation Board

Questions from Chairman Inhofe

1. Mr. Elkins, your testimony states that the OIG recommended almost \$300 million in recommended efficiencies and costs saved and \$30 million in questioned costs in fiscal year 2014. Please explain the basis for the \$300 million in recommended efficiencies and savings. Has EPA agreed to implement these recommendations? If not, which ones has EPA not agreed to and why?

Response: As stated in my testimony, the OIG recommended \$321.7 million in efficiencies and costs saved, and \$54.5 million in questioned costs. The following reports' recommendations are included in the \$321.7 million in recommended efficiencies and costs saved:

(\$230.6M) Report 14-P-0318, *Unliquidated Obligations Resulted in Missed Opportunities to Improve Drinking Water Infrastructure*, July 14, 2014. <http://www.epa.gov/oig/reports/2014/20140716-14-P-0318.pdf>.

(\$60.0M) Report 14-P-0338, *Increased Emphasis on Strategic Sourcing Can Result in Substantial Cost Savings for EPA*, August 22, 2014. <http://www.epa.gov/oig/reports/2014/20140825-14-P-0338.pdf>.

(\$17.8M) Report 14-P-0129, *EPA Did Not Conduct Thorough Biennial User Fee Reviews*, March 4, 2014. <http://www.epa.gov/oig/reports/2014/20140304-14-P-0129.pdf>.

(\$8.5M) Report 14-P-0004, *Environmental Benefits Being Considered in Award of Great Lakes Grants*, January 17, 2014. <http://www.epa.gov/oig/reports/2014/20131105-14-P-0004.pdf>.

(\$1.5M) Report 14-P-0132, *Early Warning Report: National Service Center for Environmental Publications in Blue Ash, Ohio, Spent \$1.5 Million to Store Excess Publications*, March 14, 2014. <http://www.epa.gov/oig/reports/2014/20140311-14-P-0132.pdf>.

(\$1.4M) Report 12-R-0749, *Examination of Costs Claimed Under EPA Cooperative Agreement 2A-83440701 Awarded Under the Recovery Act to Cascade Sierra Solutions, Eugene, Oregon*, May 19, 2014. <http://www.epa.gov/oig/reports/2012/20120904-12-R-0749.pdf>.

(\$839,687) Report 14-1-0039, *FY2013 EPA Financial Statements*, April 3, 2014. <http://www.epa.gov/oig/reports/2014/20131216-14-1-0039.pdf>.

(\$546,023) Report 14-P-0245, *EPA Compliance With Retention Incentive Regulations and Policies*, May 2, 2014. <http://www.epa.gov/oig/reports/2014/20140502-14-P-0245.pdf>.

(\$169,000) Report 14-P-0272, *Weak management of Climate Change Services Contract Creates Risk EPA Did Not Receive Services for Which it Paid*, May 30, 2014.

http://www.epa.gov/oig/reports/2014/Semiannual_Report_to_Congress_March_2014.pdf.

(\$79,000) Report 14-P-0128, *Ineffective Oversight of Purchase Cards Results in Inappropriate Purchases at EPA*, March 4, 2014.

<http://www.epa.gov/oig/reports/2014/20140304-14-P-0128.pdf>.

(\$54,000) Report 13-P-0361, *EPA Needs to Improve STAR Grant Program*, March 24, 2014.

<http://www.epa.gov/oig/reports/2013/20130827-13-P-0361.pdf>.

The agency agreed to implement all of the recommendations stated in the reports listed above.

2. The OIG's September 2014 semi-annual report, on page 5, lists four performance measures for the OIG. How were these performance measure targets developed?

Response: In developing the FY 2014 annual performance targets, we used the average of actual results for the previous three years (FY 2011, FY 2012 and FY 2013). We then adjusted these averages based on available budgetary resources. The adjustment is equal to the percentage difference between the FY 2013 and FY 2014 enacted budgets. Further, we considered staffing levels and workload when developing the performance measure targets.

3. Executive Order 13589 – Promoting Efficient Spending directs to develop plans for cost-savings in the areas of travel, information technology devices, printing, vehicle fleet efficiencies, and promotional items. What role has your office had in implementing this Executive Order? Did EPA consult with the OIG in developing its recommendations? Has the OIG evaluated the EPA's performance in implementing this Executive Order?

Response: The agency did not consult with the OIG in developing its recommendations. However, the OIG has conducted audits related to areas covered by Executive Order 13589, as well as OMB Memorandum M-12-12, which expanded upon that executive order by describing a series of policies and practices to improve operations, including for real property and conferences. The following are examples of OIG audits that relate to the areas covered in the executive order and the OMB memorandum:

Conferences:

The OIG is currently auditing cost efficiencies of EPA conferences to determine whether the EPA's internal controls and oversight of conferences ensure that expenses are appropriate and reported accurately. http://www.epa.gov/oig/reports/notificationMemos/newStarts_02-02-15_EPA_Conferences.pdf

Employee Information Technology Devices:

Report No. 12-P-0427, *Office of Environmental Information Should Strengthen Controls Over Mobile Devices*, April 25, 2012. We recommended that the agency implement standard operating procedures for each step of the mobile device process to cover all aspects of issuance, disconnection, multiple devices, inappropriate use, and tracking and recovery.

<http://www.epa.gov/oig/reports/2012/20120425-12-P-0427.pdf>

Fleet Management:

Report No. 15-P-0001, *EPA's Fleet Management Program Needs Improvement*, October 6, 2014. Without adequate oversight of the fleet program, the agency did not ensure that the \$6 million-per-year program was efficient and effective to perform the agency's mission, and placed taxpayer funds at risk. <http://www.epa.gov/oig/reports/2014/20141006-15-P-0001.pdf>

Printing:

Report No. 14-P-0132, *Early Warning Report: National Service Center for Environmental Publications in Blue Ash, Ohio, Spent \$1.5 Million to Store Excess Publications*, March 11, 2014. The agency stored more than 6 years of publications at the warehouse. As of December 6, 2013, the warehouse had an inventory of 18,406,848 publications but averaged only 2,949,643 publications shipped on a yearly basis. Consequently, the EPA tied up funds by storing and caring for excess stock at an annual cost of up to \$1.2 million. Additional costs included warehouse activities and other direct costs, plus up to \$359,000 in leasing costs. <http://www.epa.gov/oig/reports/2014/20140311-14-P-0132.pdf>

Promotional Items:

Report No. 14-P-0128, *Ineffective Oversight of Purchase Cards Results in Inappropriate Purchases at EPA*, March 4, 2014. Ten of 80 sampled transactions valued at \$12,643 for award-related items were not handled appropriately. The agency planned to improve control over purchases of items related to awards. <http://www.epa.gov/oig/reports/2014/20140304-14-P-0128.pdf>

Real Property:

Report No. 13-P-0162, *EPA Can Further Reduce Space in Under-Utilized Facilities*, February 20, 2013. At 13 of the 16 facilities reviewed, we estimated that the EPA had 433,336 square feet of under-utilized space as of February 2012. The lease cost of 433,336 square feet is over \$20 million annually. <http://www.epa.gov/oig/reports/2013/20130220-13-P-0162.pdf>

Report No. 13-P-0272, *Early Warning Report: Main EPA Headquarters Warehouse in Landover, Maryland, Requires Immediate EPA Attention*, May 31, 2013. The EPA could reduce the \$750,000 annual lease cost by \$442,000 through consolidation. <http://www.epa.gov/oig/reports/2013/20130531-13-P-0272.pdf>

Report No. 15-P-0033, *EPA Needs Better Management of Personal Property in Warehouses*, December 8, 2014. The EPA could reduce the cost of warehouses and storage facilities by over \$8 million annually through more efficient management, space consolidation and reduction of unneeded storage. <http://www.epa.gov/oig/reports/2014/20141208-15-P-0033.pdf>

Strategic Sourcing:

Report No. 14-P-0338, *Increased Emphasis on Strategic Sourcing Can Result in Substantial Cost Savings for EPA*, August 26, 2014. The EPA could save \$30 million to \$60 million annually by fully implementing its strategic sourcing program for print management, wireless services, office supplies and domestic delivery. <http://www.epa.gov/oig/reports/2014/20140826-14-P-0338.pdf>

Travel:

The OIG is completing an audit of controls for travel of EPA employees to determine the effectiveness of EPA oversight and controls for employees in travel status. We expect to publish our report by the end of FY 2015. http://www.epa.gov/oig/reports/notificationMemos/newStarts_05-16-13_Travel_of_EPA_Employees.pdf

Additionally, the OIG is auditing the EPA's management of travel cards to determine whether the EPA has established and implemented safeguards and internal controls to ensure proper, efficient and effective management of the travel card program. We expect to publish our report by spring 2016. http://www.epa.gov/oig/reports/notificationMemos/newStarts_04-20-15_TravelCards.pdf

4. **Has the OIG conducted any assessments of its workforce in the past five years, including surveys of employee work climate, skills and training needs, and location assignments? If so, please provide a copy.**

Response: The OIG conducted an internal training needs assessment in FY 2014, as well as an officewide Strength Weaknesses Opportunities and Threats analysis in FY 2013. Our staff also participates in the Office of Personal Management Employee Viewpoint Survey each year. Copies of these surveys and assessments are provided below:



5. **Has the OIG conducted any inspection, evaluations, or other reviews involving any firearms inventories maintained by the EPA? If so, please describe such reviews, including baseline firearms accounting procedures, acquisition and inventory management, whether any missing weapons were identified, and training.**

Response: The OIG has not conducted any audits or evaluations involving any firearms inventories maintained by the EPA. The OIG's Office of Investigations had one case related to firearms at the EPA. In August 2006, a District of Columbia resident fired a government-owned firearm during the commission of a crime, specifically, attempted murder on another D.C. resident. In August 2007, the EPA's Criminal Investigations Division (CID), Office of Criminal Enforcement, Forensics and Training, Office of Enforcement and Compliance Assurance (OECA) had received a telephone call from officials at the Bureau of Alcohol, Tobacco, Firearms and Explosives, who had traced the firearm and determined that it originally had been procured and later received by CID in 1992. The weapon used in the attempted murder in 2006 was an EPA weapon that had never been properly accounted for when it was stolen in September 1993.

In August 2007, the matter was referred to the OIG for investigation. The OIG investigation focused on the extent of and possible causes for CID weapons control failures. The OIG determined that, over a period of approximately 20 years, OECA/CID failed to adequately and properly manage its weapons inventory. This problem was exacerbated by CID management failing to give sufficient oversight to the issue of weapons inventory management. The OIG acknowledged that CID management assessed its possible weapons inventory management issues, and took steps to address such issues during the review. The current CID weapons inventory individually tracks weapons with several layers of checks and balances. This response only delineates the deficiencies found up until 2007. This investigation was closed in June 2012.

6. What role does your office have in investigating alleged violations of the EPA's scientific integrity policy?

Response: Alleged violations of the EPA's Scientific Integrity Policy may be received by the EPA Scientific Integrity Official, any EPA Deputy Scientific Integrity Official or the OIG. The implementation of the EPA's Scientific Integrity Policy, hiring of the first Scientific Integrity Official, and establishment of a Scientific Integrity Committee are providing the EPA with the tools and resources it needs to receive and investigate alleged violations of scientific integrity. The EPA has developed draft procedures for reporting and resolving allegations of lapses of scientific integrity at the agency. These are described in the EPA's 2014 Annual Report on Scientific Integrity¹.

Alleged violations of the EPA's Scientific Integrity Policy received by the OIG are processed according to established procedures and coordination agreements with the agency's Scientific Integrity Official. Specifically, if a scientific integrity complaint involves allegations of fraud, waste, abuse or criminal law, the OIG will have the lead role to investigate the complaint. If the allegations involve reprisal or retribution related to scientific integrity, the OIG will have a lead role and may need to refer matters to the Office of Special Counsel. If a scientific integrity allegation involves allegations of research misconduct, defined under the EPA Order 3120.5 as "fabrication, falsification or plagiarism in proposing, performing or reviewing research, or in reporting research results, or ordering, advising or suggesting that subordinates engage in research misconduct," the OIG will have a lead role in investigating fabrication and falsification matters. The agency's Scientific Integrity Official will have a lead role in investigating plagiarism allegations but will coordinate with the OIG on any such allegations and refer any criminal matters to the OIG for investigation. Coordination between the OIG and the Scientific Integrity Official occurs quarterly. Coordination procedures between the OIG and the Scientific Integrity Official are documented and scheduled to be formally adopted by the agency's Scientific Integrity Committee on July 29, 2015.

7. Has your office reviewed the EPA's implementation of the policy and its handling of scientific integrity complaints?

Response: The EPA issued its Scientific Integrity Policy in February 2012. In 2013, the OIG issued a report², finding that key components of the EPA's Scientific Integrity Policy had not been implemented and recommending action to implement them. Since that time, the EPA has responded to our 2013 recommendations and has taken many steps toward implementing the tools and program infrastructure to expand agency awareness of scientific integrity principles; hired the first agency Scientific Integrity Official in FY 2014; and established methods for receiving and addressing alleged violations of scientific integrity.

In 2014, we issued a report³ recommending that the EPA clarify its policy definition of "timeliness" related to releasing scientific data. The agency agreed and developed corrective actions to address this omission.

¹ http://www2.epa.gov/sites/production/files/2015-04/documents/annual_report_scientific_integrity_2014_final_pages.pdf, pages 10-11

² <http://www.epa.gov/oig/reports/2013/20130828-13-P-0364.pdf>

³ <http://www.epa.gov/oig/reports/2014/20140509-14-P-0247.pdf>

The OIG conducts quarterly coordination meetings with the agency Scientific Integrity Official. In these meetings, we discuss complaints that have been received by the agency and their resolution status. The EPA's 2014 Annual Report on Scientific Integrity provides summary statistics on the scientific integrity allegations it has received.

The EPA's Scientific Integrity Policy requires that the agency's Scientific Integrity Committee review the policy every two years to ensure its effectiveness and adherence with applicable rules and regulations. According to the EPA's 2014 Annual Report on Scientific Integrity, in that year, the Scientific Integrity Committee began a formal evaluation of the policy "including a systematic investigation of the merit, worth and significance of the Agency's scientific integrity efforts."⁴

- 8. An August 15, 2014 report on missed savings and lack of oversight related the EPA's acquisition of cloud computing services. Are you aware if any EPA employees were the subject of personnel or disciplinary actions in connection with the activities as issue in this report? Did your review examine lost employee productivity in connection with the problems with the deployment of cloud computing technology? If yes, please summarize those findings.**

Response: We are unaware of any personnel or disciplinary actions taken in connection with the activities identified in the report. We did not complete test work to determine if any productivity was lost related to the deployment of cloud technology.

Questions from Senator Markey

- 1. In your May 28, 2014 memo to EPA Administrator McCarthy, you noted (1) the EPA needs to improve its oversight for programs in which the states have been delegated the responsibility to accomplish environmental goals and also that (2) the EPA is severely constrained by regulatory and resource limitations related to toxic chemicals.**
- a. What oversight activity has your office completed to assess the implementation and enforcement of the Asbestos Hazard Emergency Response Act of 1986 (AHERA)?**

Response: Over the last several years, the OIG has identified the EPA's oversight of state delegated programs and management of chemical risks as EPA management challenges. A 2013 OIG report on the EPA's school environmental health efforts⁵ reported that the Office of Compliance Assurance and Enforcement (OECA) had determined that many schools successfully managed asbestos in place for decades. OECA explained that AHERA was a mature program that needed fewer resources to conduct inspections than in the past. The OIG has conducted significant work over the last several years regarding the health dangers of asbestos and EPA responses to and management of those dangers. Specifically:

- In 2006, the OIG issued a report prompted by a request from both of Montana's U.S. Senators and a referral from our Office of Investigations, which found that the EPA neither planned nor completed a risk and toxicity assessment of the Libby Superfund site amphibole asbestos to determine an acceptable level of human

⁴ http://www2.epa.gov/sites/production/files/2015-04/documents/annual_report_scientific_integrity_2014_final_pages.pdf page 12
⁵ <http://www.epa.gov/oia/reports/2013/20130427-4-19-0201.pdf>

exposure. As a result of our review, the EPA agreed to fund and execute a toxicity assessment.

- In 2011, the OIG issued a report in response to a congressional request that found EPA Region 8 communications to residents impacted by the Libby Superfund site had not fully satisfied community concerns about the health risks of asbestos or effectively communicated the limitations of the EPA's risk assessment. The EPA took corrective action.
- In 2011, the OIG issued a report that the EPA had authorized the use of unapproved methods to demolish buildings containing asbestos. Our report called for the EPA to immediately correct this situation to prevent potentially hazardous asbestos exposures. The EPA took corrective action.
- In 2015, the OIG issued a report that found certain legally compliant demolitions of buildings containing asbestos may trigger non-compliance with other laws regarding release of hazardous substances into the environment. The EPA agreed to address these issues through a number of planned corrective actions.

- b. **What future oversight activities does your office have planned to determine whether there are management challenges preventing us from effectively and efficiently achieving the goals of AHERA to ensure that the public (including students, teachers, custodians, administrators, parents, and emergency responders) are safe from the health dangers of asbestos remaining in our nation's school buildings?**

Response: The OIG does not have any future planned work in this area. If the OIG becomes aware of probable high risk and challenges in this area, we would assess the need for future work.

2. **Please provide us with details regarding how your office handles whistleblower tips.**

- a. **How does your office receive and track whistle blower tips?**

Response: Whistleblower tips can come in through the OIG Hotline or via an inquiry to the Whistleblower Ombudsman. We enter them into the hotline system and track them along with other hotline complaints.

- b. **Has your office designated a Whistleblower Protection Ombudsman?**

Response: Yes. The designee is an attorney within the OIG's Office of Counsel.

- c. **What steps have you taken to publicize whistleblower rights within the Agency?**

Response: The Whistleblower Ombudsman, who works within the OIG's Office of Counsel, sends periodic informational notices to all EPA employees, makes himself/herself available for in-person presentations, and conducts outreach presentations to components of the EPA upon invitation.

- d. Has the Office of Special Counsel certified your office for informing whistleblowers of their rights and remedies?

Response: No. We have advised the agency that certification must be attained by an agency, not an OIG, but, to our knowledge the agency has not taken steps to obtain certification.

Questions from Senator Rounds

1. In February 2014, your office began an evaluation of the Environmental Protection Agency and states' ability to manage potential threats to water resources from hydraulic fracturing.
- a. Who requested this evaluation and when was this request received?

Response: This project was self-initiated by the OIG and included in our fiscal year 2014 annual work plan: http://www.epa.gov/oig/reports/2014/EPA_OIG_FY_2014_Annual_Plan.pdf, p. 18.

- b. What authority does the EPA IG have to evaluate the states' ability to manage water resources within their borders?

Response: In February 2014 we announced a review to evaluate how the EPA and states have used their existing authorities to regulate hydraulic fracturing impacts to water resources. The Inspector General (IG) Act of 1978, as amended, provides the EPA OIG the broad statutory mandate to "conduct . . . audits and investigations relating to the programs and operations" of the agency and to "conduct . . . other activities . . . for the purpose of promoting economy and efficiency in the administration of . . ." the agency [IG Act, §§ 4(a)(1), (a)(3)]. Within this broad mandate, the IG is given full discretion to undertake those audits that are, in the judgment of the IG, "necessary or desirable" [IG Act, § 6(a)(2)]. The act accords broad discretion to inspectors General to conduct reviews and issue reports relating to the administration of government programs and operations as are, in the judgment of the Inspector General, necessary or desirable. This review is consistent with the OIG's mandated function and discretionary authority under the IG Act of 1978. The EPA's OIG adheres diligently to its legislative mandate.

- c. Although your office has previously stated it is not conducting scientific evaluations, laboratory studies or toxicological studies in this evaluation, how will your office identify potential threats to water resources if it does not have comprehensive baseline information on those water resources prior to any hydraulic fracturing or drilling activities in the specific area?

Response: A scientific risk assessment was beyond the scope of this assignment. In addition, when we initiated our review, the EPA had underway its mandated study of the potential impacts of hydraulic fracturing on drinking water resources. That study is now completed. In conducting our work, we relied on a combination of interviews with EPA staff and managers, state environmental and oil/gas regulators, industry experts, environmental experts and existing literature to inform us about the potential impacts on water resources from hydraulic fracturing. Our final report discloses our methods in answering our objective.

- i. **Has the OIG conducted any scientific, laboratory or toxicological work throughout this evaluation and if not, what information is the OIG using to inform this evaluation?**

Response: This evaluation did not include any scientific, laboratory or toxicological work as such this was beyond the scope of our review. This evaluation relied on a combination of interviews with EPA staff and managers, state environmental and oil/gas regulators, industry experts, and environmental experts and existing literature to identify any known or potential impacts to water resources from hydraulic fracturing.

2. **In conducting its evaluation, the OIG reached out to four environmental groups to "determine what their views are of the impacts of hydraulic fracturing and the management of the impacts."**

- a. **Is it the policy of the OIG to seek the "views" of those outside the Agency in its work?**

Response: We met with four environmental groups and three industry groups. Our meetings with industry groups also included representatives from oil and gas companies and trade associations. Our work was conducted according to GAGAS established by the U.S. Government Accountability Office (GAO). In conducting work under GAGAS, we must obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. Evidence sufficiency and appropriateness are defined under GAGAS and professional judgment is used to assist in those determinations. GAGAS provides that "in addition to personnel directly involved in the audit, professional judgment may involve collaboration with other stakeholders, external specialists, and management in the audit organization." As part of our efforts to obtain sufficient and appropriate evidence, we frequently seek information from outside stakeholders that are knowledgeable, engaged in or affected by the specific issues under OIG review.

- b. **Under what authority can the OIG seek such views and how did the OIG select these four environmental groups?**

Response: The authority to seek such views flows from the authorities under the IG Act discussed above. In addition, the IG Act provides that audits, which includes performance audits or program evaluations, are conducted in accordance with GAGAS. GAGAS standards require that we obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. Evidence sufficiency and appropriateness are defined under GAGAS and professional judgment is used to assist in those determinations. GAGAS provides that "In addition to personnel directly involved in the audit, professional judgment may involve collaboration with other stakeholders, external specialists, and management in the audit organization." As part of our efforts to obtain sufficient and appropriate evidence, we routinely seek information from outside stakeholders that are knowledgeable, engaged in or affected by the specific issues under OIG review.

- c. **What weight will be given to such groups "views" in the OIG's determination of potential threats and how states and EPA use existing authority?**

Response: Under GAGAS, we must obtain sufficient and appropriate evidence to provide a reasonable basis for our findings. Sufficient evidence means that evidence has been obtained to persuade a knowledgeable person that our findings are reasonable. Appropriate evidence

means that we have determined evidence relied on is relevant, valid and reliable. In assessing evidence under GAGAS-conducted work, we evaluate whether the evidence taken as a whole is sufficient and appropriate for addressing our objectives. Evidence that we obtain from external or internal entities that is not deemed sufficient and appropriate is not used in work performed under GAGAS.

d. How do you certify the science behind the environmental groups' work is sound?

Response: Under GAGAS, we must obtain sufficient and appropriate evidence to provide a reasonable basis for our findings. Sufficient evidence means that evidence has been obtained to persuade a knowledgeable person that our findings are reasonable. Appropriate evidence means that we have determined evidence relied on is relevant, valid and reliable. In assessing evidence under GAGAS-conducted work, we evaluate whether the evidence taken as a whole is sufficient and appropriate for addressing our objectives. Evidence that we obtain from external or internal entities that is not deemed sufficient and appropriate is not used in work performed under GAGAS.

e. Please provide the paperwork certifying the choice of these groups to provide their views.

Response: Our final report disclosed our methods and the groups we met with, and properly attributed any OIG findings obtained from an outside group. Our final report also included a statement regarding adherence to GAGAS.

3. Concerns have been raised over whether this hydraulic fracturing evaluation is duplicative in light of the ongoing EPA Office of Research and Development multiyear study into the potential impacts of hydraulic fracturing and drinking water resources. In correspondence with Committee staff, the OIG indicated "Early in the OIG's review, we confirmed with the EPA that our reviews do not overlap. The OIG's evaluation objective is to determine 'how the EPA and the states have used their existing authorities to regulate hydraulic fracturing impacts to water resources.'"

a. Does the OIG typically consult with the EPA before launching an evaluation and was the EPA supportive of this evaluation?

Response: The OIG, following GAGAS, does generally provide the agency with an overview of the objectives, scope and methodology and the timing of our work and planned reporting, unless doing so could significantly impair our ability to obtain evidence to address our objectives. We make no judgment as to whether the EPA was supportive; we did not encounter any access issues from the agency on this review.

b. If the focus of the evaluation is on the states and EPA, why did the OIG consult with outside groups such as environmental activist organizations?

Response: We met with four environmental groups and three industry groups. Our meetings with industry groups also included representatives from oil and gas companies and trade associations. Our work was conducted according to GAGAS. In conducting work under GAGAS, we must obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. Evidence sufficiency and appropriateness are defined under GAGAS and professional judgment is used to assist in those determinations. GAGAS provides that "In

addition to personnel directly involved in the audit, professional judgment may involve collaboration with other stakeholders, external specialists, and management in the audit organization." As part of our efforts to obtain sufficient and appropriate evidence, we frequently seek information from outside stakeholders that are knowledgeable, engaged in or affected by the specific issues under OIG review.

4. In correspondence with Committee staff the OIG indicated "ORD's Final Study Plan is scoped to the hydraulic fracturing water lifecycle ... The OIG will not undertake a review of these matters." What specifically - as it relates to hydraulic fracturing - is the OIG reviewing?

Response: The OIG's objective was to evaluate how the EPA and states use their authorities to regulate hydraulic fracturing impacts to water resources. Specifically, the audit reviewed potential impacts to water resources, and the applicable EPA and state authorities to regulate such impacts.

5. In its FY2015 Annual Plan, the EPA OIG identified "EPA's regulatory process (better and faster analysis of costs, science and benefits)" as a cross-cutting risk where EPA outreach interviews identified concerns including "EPA's extremely complex regulatory process should be streamlined without compromising its required integrity," "competing interests of stakeholders and the regulated community may lead to overlaps, gaps and conflicts," and "many policies are out of date or are based on outdated science and technology."

- a. Specifically, what work has been conducted by the OIG to address these concerns?

Response: Our FY 2015 Annual Plan identifies many factors and issues the OIG weighs in developing its annual plan of work. Obtaining perspective and feedback from our customers is important to ensure that our work is relevant and useful. As customer feedback reveals, the EPA's regulatory process is very complex and often involves competing interests of many highly vested stakeholders. As such, OIG investments in conducting regulatory analysis can be substantial. Therefore, these decisions must be well considered to ensure that we provide a return to the taxpayer for possibly significant investment of OIG resources. In 2013, the OIG issued a report⁶ on the efficiency of the EPA's rulemaking process. The review was requested by the EPA. A significant challenge we encountered in conducting this work was a lack of EPA data on the time and resources required to complete the various stages of rule development. We made recommendations to address this lack of data. The OIG also has conducted work on the EPA's regulatory process and specific rulemakings. Specifically:

- In a 2005 report⁷, in response to a congressional request, we evaluated the EPA's 2003 proposed rule for addressing solvent-contaminated industrial wipes to determine whether the rulemaking process was appropriate and there was inappropriate influence.
- In a 2011 report⁸, in response to a congressional request, we evaluated whether the EPA followed applicable rulemaking requirements in issuing its 2009 greenhouse gas endangerment finding.

⁶ <http://www.epa.gov/oig/reports/2013/20130228-13-P-0167.pdf>

⁷ <http://www.epa.gov/oig/reports/2006/20051004-2005-P-00001.pdf>

⁸ <http://www.epa.gov/oig/reports/2011/20110926-11-P-0702.pdf>

- In a 2012 report⁹, in response to a hotline complaint, we evaluated how the EPA determined the costs and benefits of its 2008 Lead Renovation, Repair, and Painting Rule.
- b. Isn't it true the OIG does not have an economist on staff? Accordingly, does the OIG feel equipped to evaluate EPA's analysis of costs and benefits in its regulatory process?

Response: In instances where we have undertaken work to analyze costs or benefits of regulations, we have evaluated the process or controls the EPA followed or has in place for conducting its cost and benefits analysis. We can compare the processes EPA uses, relative to any requirements, policies or general past practices to assess the adequacy and sufficiency of the process the EPA used in arriving at a particular cost or benefit determination. Such analysis also informs the OIG about the adequacy of the EPA's management controls for conducting cost benefit analysis. In principle, an economist could expand the scope of an OIG review of process and management controls. OIG does not have an economist on staff.

6. In 2011, the EPA OIG released a report on the EPA's endangerment finding, and found "EPA's peer review did not meet all OMS requirements for such documents ... the panel's findings and EPA's disposition of the finding were not made available to the public as would be required for reviews of highly influential scientific assessments This panel did not fully meet the independence requirements for review of highly influential scientific assessments."

- a. What is the status of the recommendations from this report?

Response: The OIG's 2011 report titled "Procedural Review of EPA's Greenhouse Gases Endangerment Finding Data Quality Processes" made three recommendations. According to EPA tracking systems, on March 19, 2013, the Deputy Director of the Office of the Science Advisor signed a memo certifying the completion of all actions associated with our three recommendations. Specifically:

- In response to recommendation 1, on June 29, 2012, the agency modified the flowchart on page 2 of its Peer Review Handbook to more accurately depict OMB requirements for external peer review of highly influential scientific assessments.
- In response to recommendation 2, the EPA Science Advisor issued a memorandum on June 12, 2012, to all EPA Assistant and Regional Administrators reiterating key responsibilities and documentation steps outlined in the agency's Peer Review Handbook regarding key scientific information used to support agency proposed and final rules.
- In response to recommendation 3, the agency issued an addendum to its "A Summary of General Assessment Factors for Evaluating the Quality of Scientific and Technical Information" in December 2012. The addendum provided guidance for assessing and accepting existing scientific and technical information, and documenting the review and analysis of existing scientific and technical information.

The OIG has not conducted a follow-up review to confirm completion of the actions as agreed to and certified by the agency.

⁹ <http://www.epa.gov/oig/reports/2012/20120725-12-P-0600.pdf>

Questions from Senator Vitter

1. As ranking member of this Committee, I conducted extensive oversight regarding John Beale, the senior EPA official who defrauded the Agency nearly \$900,000, and pretended he was also on assignment at the CIA. This case raised multiple questions regarding larger issues of mismanagement at the Agency, and lack of internal controls to detect fraud and abuse of taxpayer dollars. To ensure that this never happens again, I would like to know the following.

- a. What is the status of the OIG reports on EPA's retention bonuses, statutory annual pay limit, and vetting process for new hires?

Response: Final reports have been issued on the EPA's retention bonuses and statutory annual pay limits:

- Report No. 14-P-0245, *EPA Compliance With Retention Incentive Regulations and Policies*, May 2, 2014. http://www.epa.gov/oig/reports/2014/20140502_14-P-0245.pdf
- Report No. 15-P-0170, *Improvements Needed to Ensure EPA Terminates Exceptions to Biweekly Pay Limits at Completion of Emergency Response Work*, June 19, 2015. <http://www.epa.gov/oig/reports/2015/20150619-15-P-0170.pdf>

The final report on the vetting process for new hires is being prepared and is expected to be issued by July 31, 2015.

- b. What is the status of the case involving the GS-15 employee who was allegedly being paid while he was in a nursing home, which was before the USA0-D RI for possible prosecution in July 2014?

Response: As a result of the OIG's ongoing investigation into employee misconduct concerning an EPA GS-15 employee being paid while he was in a nursing home, we were notified by the EPA's Office of Administration and Resource Management that both the subject and the supervisor retired. The subject in the nursing home retired effective January 3, 2015. The EPA supervisor who approved this person's time and attendance records retired effective December 31, 2015. The U.S. Attorney's Office for the District of Rhode Island declined prosecution in this case.

- c. What verification mechanisms exist to ensure that employees do not continue collecting paychecks after they stop working?

Response: In response to the Beale matter, the agency has developed exception reports for the following: (1) when an employee does not prepare his or her own time in a pay period; (2) when an employee does not prepare his or her own timesheet for three or more pay periods in a quarter; (3) when someone other than the employee's direct supervisor approves his or her timesheet for three or more pay periods. The reports are reviewed by the Office of the Chief Financial Officer and the employee's home office. Furthermore, the agency has eliminated the "approve all" and "default pay" feature from the payroll system, requiring the employee's supervisor to monitor time.

d. **How many cases of suspected time and attendance fraud have been reported since 2009?**

Response: Since 2009, there have been 39 time and attendance investigations, which the OIG received through either the hotline or a direct referral to our Office of Investigations.

e. **EPA was to migrate to a new payroll system in 2014. Did the system go into effect and when? What features does it offer over the old system? How much does the new system cost?**

Response: The EPA migrated to a new, real-time personnel and payroll system (Federal Personnel and Payroll System-FPPS) on June 9, 2014, that generates a full life cycle of personnel transactions. Specifically, this change provides the agency with enhanced HR functionality and report management, as well as integration with the OIG's payroll processing. To date, the OIG has not conducted a financial assessment of the new system.

f. **From 2010-2013 the OIG released 3 reports detailing how EPA has not conducted the required workforce analysis, which indicates that the Agency was aware that its internal controls were vulnerable to abuse such as that committed by John Beale. Do you agree? Isn't it true the EPA has failed to adopt the corrective measures recommended by the OIG in these reports? Why is it taking the Agency so long to implement workforce analysis?**

Response: From 2010 to 2013 the OIG released three reports focused on EPA workforce analysis and controls for determining EPA workforce needs¹⁰. We have found that the EPA lacks controls for determining its workforce needs based on its workload. In the case of Mr. Beale, existing agency controls over time, attendance and travel were deliberately circumvented through his claims, and the EPA's management's acceptance. That is a separate issue and unrelated to controls over workforce need determinations.

When conducting the review resulting in our middle report, we learned that the EPA had yet to implement a workload analysis methodology agencywide. From annual briefings the Office of the Chief Financial Officer has provided to the OIG on the status of the EPA's efforts to implement workload analysis, we know that the agency continues to work toward addressing recommendations in our reports. The EPA's budget office has undertaken efforts to identify a workload analysis methodology that will work across the EPA's many programs and regional offices. The EPA surveyed numerous federal agencies to locate a methodology that management believed would be applicable to the EPA. The agency selected a tool used by the U.S. Coast Guard and piloted this tool in a couple of program offices with mixed results for broader application. According to the EPA, the tool worked relatively well for administrative functions (e.g., grants management workload). The methodology did not work well for programs that have numerous variables which must be considered (e.g., Superfund).

¹⁰ http://www.epa.gov/oig/reports/2011/20101220_11-P-0031.odt;
<http://www.epa.gov/oig/reports/2011/201110214-11-P-0630.pdf>;
http://www.epa.gov/oig/reports/2013/20130830_13-P-0366.pdf

Due to the uncertain applicability of the tool throughout the EPA, recommendations addressing changes in policy and procedure are partially, but not yet fully, addressed. Once the EPA has demonstrated a proven methodology, it can then update existing policy and procedures with the specific methods required.

2. In November 2014, I sent a letter to Inspector General Elkins requesting additional information in regards to the November 19, 2014, report entitled, "Early Warning Report: Some EPA Employees Found to Be on Paid Administrative Leave for Years." Notably, the report found that eight employees had recorded significant amounts of administrative leave and cost the Agency \$1,096,868. Although the OIG did not issue any recommendations you stated, "Our audit work on EPA time and attendance is in process and could result in additional matters reported to the agency regarding the EPA's use of administrative leave."

- a. Why did the OIG not issue any recommendations?

Response: The purpose of an early warning report is to convey significant, time-critical issues to EPA management before the OIG completes work and develops a report to fully address the objectives. An early warning report does not usually include recommendations. An early warning report might not have fully developed findings and conclusions but is issued as a final report (no draft) focusing only on the time-critical issue(s).

In this instance, the OIG's early warning report was issued in response to a Government Accountability Office (GAO) report issued on October 17, 2014, in which the GAO noted that a number of employees were taking administrative leave for long periods of time. Following that report, on October 21, 2014, Senator Grassley and Congressman Issa sent a letter to EPA Administrator Gina McCarthy asking for additional information about use of administrative leave at the EPA.

We identified employees on administrative leave during our audit of time and attendance. Due to the amount of administrative leave imposed on eight employees in our time and attendance sample, it was decided that an early warning report would be issued to highlight the information to the agency. A comprehensive report with details and recommendations for the agency on use of administrative leave is planned to be issued this calendar year.

- b. Please explain what audit work has been conducted since this report was published. Have there been any notable findings?

Response: We are completing field work on the assignment. Since the findings have not been presented to the agency, we cannot disclose the issues at this time.

- c. Is it possible that more EPA employees are abusing time and attendance procedures in a less extreme fashion?

Response: The purpose of the time and attendance audit was to identify potential fraud at the EPA in connection with employees who received salary payments while on extended absence from their duties. We did not audit the agency's overall time and attendance system or payroll system or related controls. As a result, we are unable to provide, and we do not provide, any conclusions or opinions regarding the agency's internal controls over time and attendance or

payroll. However, we did identify three issues in the "Additional Matters of Concern" section of our report titled *Time and Attendance Fraud Not Identified for Employees on Extended Absence, But Matters of Concern Brought to EPA's Attention*¹⁴. Those issues are:

- Accuracy of time charges in PeoplePlus.
- Use of a personal computer to conduct official work.
- Safety of employees on full-time telework as a reasonable accommodation.

- d. **As of October 10, 2014, four of the eight employees were still on administrative leave. Are those four employees still on administrative leave? If not, please indicate when they were removed from administrative leave.**

Response: The status, as of June 2015, of the four employees is as follows:

Employee #1: Administrative leave ended 11/3/2014. Employment terminated on 11/14/2014.

Employee #4: Still on administrative leave as of 6/12/2015; according to the agency, the employee will remain on administrative leave pending resolution of litigation.

Employee #6: Administrative leave ended on 10/30/2014. Employment terminated on 10/31/2014.

Employee #8: Administrative leave ended on 10/31/2014. Employment terminated on 10/31/2014.

- e. **What is the current employment status these employees?**

Response: Please see response above.

3. **In addition to the internal management issues, it came to my attention that EPA lacked internal controls regarding credit card spending. In 2012, EPA employees charged \$79,254 in prohibited or improper purchases on Agency credit cards. Most egregious examples include \$17,235 towards gym memberships for employees and their families, and \$8,163 for gift cards. Other examples include charges for dance halls, daycare, and theater and music expenses.**

- a. **As of September 30, 2014, the OIG recommended that the Assistant Administrator for Administration and Resources Management implement regular transaction reviews to determine if the cardholders and approving officials are complying with EPA guidance.**

- i. **What is the status of EPA's compliance with this recommendation?**

Response: The EPA updated its policy regarding purchase cards and issued a standard operating procedure for all purchase card holders to follow. The EPA's new Payment Net system also requires all documentation be uploaded supporting purchases so that the information will be auditable by appropriate agency staff. As for the regular transaction reviews the OIG recommended, the EPA conducted outreach sessions with program offices and determined that an additional level of review by the Office of Acquisition Management was not necessary due to the new processes and procedures. The Office of Acquisition Management integrated purchase card oversight into its organizational self-assessments and peer reviews, which evaluates how program offices are implementing purchase card policies and procedures.

¹⁴ http://www.epa.gov/oig/reports/2015/20150615_15-P_0167.pdf

ii. **Has the Assistant Administrator for Administration and Resources Management implemented regular transaction reviews?**

Response: As covered in the previous answer, the Office of Acquisition Management has not implemented regular transaction reviews. We will review this issue as part of our 2015 risk assessment of purchase cards.

b. **In addition, the OIG issued a "planned corrective action" for the Office of Acquisition Management to amend the Contracts Management Manual to address approval and documentation requirements for purchase card actions procured through EPA's Acquisition System by warranted contracting officers.**

i. **Has the Office of Acquisition Management taken any action on this request?**

Response: In updating guidance on purchase cards, the EPA determined that it was not necessary to provide different guidance on the documentation needed for warranted contracting officers. The EPA further determined that the guidance in the Environmental Protection Agency Acquisition Guide (EPAAG) - Chapter 13, Subsection 13.3.1, "Government-wide Commercial Purchase Card," was sufficient for all purchase card holders.

ii. **Are they on track to meet their deadline of September 30, 2015?**

Response: Yes. EPAAG - Chapter 13, Subsection 13.3.1 has been implemented.

4. **I have also raised concerns about the integrity of EPA science, including the Agency's clinical studies and human testing. On March 31, 2014, the OIG issued a report entitled, "Improvements to EPA Policies and Guidance Could Enhance Protection of Human Study Subjects," that found significant problems in the way EPA administered human testing. In some cases, the OIG found that EPA failed to properly warn subjects of exposure risks. Critically, these findings only reflect a small number of studies and subjects the OIG reviewed, which means the problems could be much worse. Accordingly, request additional information from the OIG on this evaluation.**

a. **The OIG found 81 study subjects participated in five studies reviewed. Seven individuals participated in two of the five studies. However, the OIG only interviewed nine study subjects. When asked why the OIG limited interviews to nine individuals, staff indicated it was due to limitations under the Paperwork Reduction Act, which imposes an information collection submission when requesting information from more than nine nongovernmental individuals or entities. Even so, out of the nine study subjects interviewed, only two of them participated in more than one study.**

i. **This approach to an OIG investigation is problematic for several reasons. First, the report relied heavily upon the interviews. Also, to get a better understanding of the studies, the OIG should have tried to interview as many of the nine overlapping subjects as possible.**

Response: Our report was based on a thorough review of EPA regulations, policies, procedures, guidance, consent forms and health records. The interviews helped the team ascertain whether the EPA was following its regulations, policies, procedures and guidance pertaining to informed consent and clinical follow-up after adverse events.

The Paperwork Reduction Act limited our team from interviewing more than the nine individuals, who had participated in the human research studies we reviewed. We attempted to interview three other study subjects who participated in more than one study. One would not participate in an interview because of a lawsuit filed against the EPA, and the other two did not respond to our letters and telephone calls.

ii. How did the OIG select the nine study subjects to interview?

Response: We chose to interview at least one subject from each of the five studies we reviewed. We also chose to interview subjects who fit into one of three categories: (1) those who experienced adverse events, (2) those who did not complete the number of required exposure sessions and (3) those who completed all exposure sessions. Unfortunately, some of the subjects could not be reached by mail or telephone or did not want to participate in an interview with us. In those cases, we substituted subjects who fit in the same category or participated in the same study. We interviewed three subjects who experienced adverse events, two who did not complete the number of required exposure sessions, and four who completed the exposure sessions.

iii. Specifically, how many subjects were interviewed for each of the studies?

Response: We interviewed:

- Three subjects from the DEPOZ study
 - 0 subjects who experienced adverse events (the two who experienced adverse events could not be reached for an interview)
 - 2 subjects who did not complete the number of required exposure studies
 - 1 subject who completed all exposure sessions
- Three subjects from the OMEGACON study
 - 2 subjects who experienced adverse events
 - 0 subjects who did not complete the number of required exposure studies
 - 1 subject who completed all exposure sessions
- One subject from the XCON study
 - 1 subject who experienced an adverse event
 - 0 subjects who did not complete the number of required exposure studies
 - 0 subjects who completed all exposure sessions
- One subject from the LAMARCK study
 - 0 subjects who experienced adverse events
 - 0 subjects who did not complete the number of required exposure studies
 - 1 subject who completed all exposure sessions
- One subject from the KINGCON study
 - 0 subject who experienced adverse events
 - 0 subjects who did not complete the number of required exposure studies
 - 1 subject who completed all exposure sessions

- iv. For the two interviewed that participated in more than one study, what studies did they participate in?

Response: One study subject participated in the LAMARCK and DEPOZ studies, and the other participated in the DEPOZ and OMEGACON studies.

- b. The initial request from the House Committee on Science, Space, and Technology mentioned three specific studies and requested the OIG review those studies and "related studies." While the OIG did, in fact, review the three requested studies, it only looked at two additional studies.

- i. How did the OIG determine what additional studies to review?

Response: A request received from Representative Paul Broun included questions about study subjects' exposure to diesel exhaust and concentrated airborne particles. For this reason, we expanded our scope to include two diesel exhaust studies, LAMARCK and DEPOZ, conducted during 2010 to 2011, the same timeframe in which the three concentrated air particle studies were conducted.

- ii. Why did the OIG review only two additional studies?

Response: The EPA only conducted two diesel exhaust studies, LAMARCK and DEPOZ, during our review timeframe (2010 to 2011). We reviewed all concentrated air particles and diesel exhaust studies conducted by the EPA's Office of Research and Development from 2010 to 2011.

5. As ranking member of this Committee, I also worked to ensure that EPA was operating in a transparent manner and therefore in compliance with the Freedom of Information Act and the Federal Records Act.
- a. As you are aware, I previously sent you a letter regarding a report you issued entitled, "Congressionally Requested Inquiry into EPA's Use of Private and Alias Email Accounts" where I outlined concerns regarding the scope and methodology your office used during your investigation. Following up on this issue, as of September 2014, the OIG indicated that per the email report, recommendations 3 and 4 were still considered open. What is the status of those recommendations?

Response: The EPA has reported in its Management Audit Tracking System that all recommendations related to this report were completed on or before December 30, 2014. We did not verify that the actions taken by the agency resolved our recommendations.

- b. As of September 2014, EPA had not published a final policy to replace the Interim Records Management Policy CIO-2155.2. Has EPA finalized this policy? If not, when do you expect EPA to finalize the policy? Are you aware of any reasons for the delay in finalizing this policy?

Response: Yes. On February 10, 2015, the EPA's Chief Information Officer approved and issued the EPA's Records Management Policy CIO-2155.3.

Senator ROUNDS. Thank you, Mr. Elkins.
We will now hear from Ms. Kendall from the Department of the Interior. Ms. Kendall, you may begin.

**STATEMENT OF MARY KENDALL, DEPUTY INSPECTOR
GENERAL, U.S. DEPARTMENT OF THE INTERIOR**

Ms. KENDALL. Thank you, Mr. Chairman and members of the subcommittee. Good morning. I am pleased to be here to testify about our oversight of the Fish and Wildlife Service.

As you know, my office conducts a wide range of oversight of fish and wildlife programs and operations. Two of Fish and Wildlife's grant programs, the Wildlife Restoration Program and the Sport Fish Restoration Program, were among DOI's four largest grant programs in fiscal year 2014, disbursing about \$1 billion.

For years, my office has provided consistent audit oversight to Fish and Wildlife for grants funded under these programs. When we took over this audit work, we created a small, dedicated unit to perform these audits, launched a systematic coverage cycle and established a uniform approach to all State audits.

Our audit findings range from internal control issues to Fish's monitoring of the States' expenditures. We have found that uniformity of our audits provides both Fish and the States with consistency of oversight that ensures that internal controls are in place to minimize financial risk in this popular grant program.

Like other DOI bureaus that have underground injection control wells, Fish and Wildlife could not fully identify and does not effectively manage the UIC wells on its lands. We found several issues with Fish and Wildlife's shallow gravity drain wells, one of six categories defined in EPA's regulations that could potentially threaten underground drinking water.

We found that the department has no overarching guidance or policy to assist bureaus in complying with EPA's regulations concerning Class V injection wells. This has led to inconsistent management at the Bureau level.

We also found that Fish does not maintain a national data base on sanitary leach fields or in fish hatcheries that could have agricultural wells, another type of Class V well.

Finally, Fish listed 54 banned types of floor drains in 29 different States but did not know if these were Class V wells. It has reportedly plugged them since we conducted our evaluation.

The Coastal Impact Assistance Program provides grant funds derived from Federal offshore lease revenues to oil-producing States for conservation, protection, or restoration of coastal areas, wildlife, and natural resources.

The Secretary of the Interior was directed to disburse \$250 million in each of fiscal years 2007–2010 to eligible CIAP grant recipients. Responsibility for CIAP was transferred to Fish and Wildlife as of October 1, 2011.

At the request of Fish, we initiated an audit in 2011 focusing on grant funds awarded to Mississippi followed by an audit of funds awarded to Louisiana in 2013. Our audits revealed deficiencies in both States' management of grant funds, as well a poor Federal oversight of grant recipients and weak risk management.

In total, we questioned more than \$44.1 million in CIAP costs awarded only to Mississippi and Louisiana, representing ineligible grant charges, unreasonable costs and expenses not supported by documentation.

Our investigative oversight of Fish and Wildlife has focused primarily on administrative management issues in the recent past. In 2013, we issued a Management Advisory to the Secretary urging Fish and Wildlife leadership to act on long outstanding complaints of retaliation made by employees who raised scientific integrity concerns to us and to Fish and Wildlife management.

As of yesterday, two of the three cases were settled. The other case is still pending Fish and Wildlife action on settlement.

We also have ongoing administrative investigations into allegations of mismanagement and other wrongdoing on the part of Fish and Wildlife officials, including unfair and potentially illegal hiring practices, conflicts of interest, preferential treatment and wasteful spending.

Additionally, we have referred similar allegations from the same region to Fish and Wildlife management for review.

Finally, we are currently investigating allegations of Fish and Wildlife Service employee misconduct related to conservation efforts and wildlife management.

Mr. Chairman, this concludes my prepared testimony today. I would ask that my full testimony be entered into the record. I would be happy to answer any questions you or members of the subcommittee may have.

[The prepared statement of Ms. Kendall follows:]

TESTIMONY OF MARY L. KENDALL
DEPUTY INSPECTOR GENERAL
FOR THE DEPARTMENT OF THE INTERIOR
BEFORE THE SENATE COMMITTEE
ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON SUPERFUND, WASTE MANAGEMENT,
AND REGULATORY OVERSIGHT
APRIL 14, 2015

Mr. Chairman and members of the Subcommittee. Good morning. I am pleased to be here, along with my colleague, Mr. Arthur Elkins, Inspector General for the Environmental Protection Agency, to testify about our oversight of the regulatory agencies under our respective jurisdictions.

As you know, the U. S. Fish and Wildlife Service (FWS) is one of nine bureaus and offices within the Department of the Interior (DOI) over which my office has jurisdiction. Our oversight work is challenged by the scope, size, and geographically dispersed nature of DOI and the diverse nature of its bureaus' missions. These missions range from issuing oil and gas leases, supplying energy and water to the Nation, conserving resources, and providing recreational and cultural opportunities to the public. DOI employs about 70,000 Federal employees, plus contractors, grantees, and key partners, to do this work in over 2,400 locations across the Nation and in the Insular Areas under American protection.

With about 270 employees overseeing such an expansive Department, we must choose our priorities carefully. The work we have chosen to complete in relation to FWS falls within one of several of our "focus areas": financial assistance, water, energy, Indian country, and manager and law enforcement misconduct. It also represents our emphasis on providing a robust whistleblower protection program.

My office conducts a wide range of oversight of FWS programs and operations:

Wildlife and Sport Fish Restoration Program Grants

DOI disbursed roughly \$9 billion in contracts, grants, and other financial assistance in FY 2014. Proper administration and oversight are essential to safeguard taxpayer dollars and to help prevent fraud, waste, and mismanagement. While we do not have the capacity to provide oversight to every contract and grant, two of the FWS grant programs we audited—the Wildlife Restoration Program and the Sport Fish Restoration Program—were among DOI’s four largest grant programs in FY 2014. Around \$1 billion was disbursed by FWS through these two programs. Our audits issued in FY 2014 identified \$2,096,754 in questioned or unsupported costs and funds that could be put to better use.

The Pittman-Robertson Wildlife Restoration Act and the Dingell-Johnson Sport Fish Restoration Act established the Wildlife and Sport Fish Restoration Programs. Under the Programs, FWS provides grants to States to restore, conserve, manage, and enhance their sport fish and wildlife resources. In FY 2014, FWS disbursed \$1 billion in grants under the Programs. Over a 5-year period, we audit each State receiving FWS grant funds to ensure that States are using grants and revenues appropriately. The Acts and Federal regulations contain provisions and principles on eligible costs and allow FWS to reimburse States up to 75 percent of the eligible costs incurred under the grants. The Acts also require that hunting and fishing license revenues be used only for the administration of the States’ fish and game agencies. Federal regulations and FWS guidance require States to account for any income earned using grant funds.

For years, my office has provided consistent audit oversight to FWS for grants funded under these program. Before we took over this audit responsibility, the oversight of these grants

was being conducted by an outside audit agency, which was woefully tardy in issuing its audit reports and was, quite simply, not fulfilling its contract oversight responsibility. When we took over this audit work, we created a small, dedicated unit to perform these audits, launched a systematic coverage cycle, and established a uniform approach to all State audits. While we have audit findings that range from internal control issues to FWS' monitoring of the States' expenditures, we have found that the uniformity of our audits provide both FWS and the States with a consistency of oversight that ensures that internal controls are in place to minimize financial risk in this popular grant program.

Underground Injection Control Activities

Like the other DOI bureaus that have underground injection control (UIC) wells, FWS could not fully identify, and does not effectively manage, UIC wells on its lands. The U.S. Geological Survey estimated in 2013 that "more than 100 million people in the United States, about 35 percent of the population—received their drinking water from public groundwater systems." The Safe Drinking Water Act, passed in 1974, sought to protect drinking water by establishing the Underground Injection Control Program in the Environmental Protection Agency (EPA). The UIC Program, as administered by the EPA, contains regulations for injection wells to prevent endangering drinking water sources.

DOI is tasked with managing and protecting resources on Federal and Indian lands, including underground sources of drinking water. It must meet Federal standards of the Safe Drinking Water Act and related EPA regulations. With hundreds of thousands of acres under the management of DOI's bureaus, the possible impact of noncompliance with EPA's safe drinking water regulations is significant.

We found several issues with Class V injection wells (shallow gravity drained wells), one of six categories defined in EPA's regulations that could potentially threaten sources of underground drinking water.

First, DOI has no overarching guidance or policy to assist bureaus in complying with EPA's regulations concerning Class V injection wells. This has led to inconsistent or nonexistent policies at the bureau level. FWS' Service Manual discusses pollution at FWS facilities and refers to the Safe Drinking Water Act and the Clean Water Act for surface discharges, but does not provide guidance for complying with EPA's UIC regulations. FWS stated that it also uses the Army Corps of Engineers' document, "The Environmental Assessment and Management (TEAM) Guide," which forms the basis of FWS' environmental compliance audits, but it could not provide any policy that would help it comply with EPA's UIC regulations when constructing new wells.

Second, bureaus have not effectively tracked and managed their Class V wells. As a result, bureaus are not complying with EPA's regulations to self-report these wells. FWS does not maintain a national database on sanitary leach fields or on fish hatcheries that could have aquaculture wells, another type of Class V well.

Third, we found several instances where well types banned from operation in 2005 were still operational on departmental lands. FWS listed 54 banned types of floor drains in 29 different States and did not know if these were Class V wells, but it has reportedly plugged them since we conducted our evaluation.

My office recommended that DOI's bureaus, including FWS, work with EPA to get in compliance and develop appropriate outreach efforts for better identifying and managing their class V wells. The bureaus agreed to do so.

Coastal Impact Assistance Program

The Energy Policy Act of 2005 created the Coastal Impact Assistance Program (CIAP) to provide grant funds derived from Federal offshore lease revenues to oil-producing States for conservation, protection, or restoration of coastal areas, wildlife, and natural resources. The Act authorized the Secretary of the Interior to disburse \$250 million in each of FYs 2007, 2008, 2009, and 2010 to eligible CIAP grant recipients in the coastal zone counties, parishes, or boroughs of Alabama, Alaska, California, Louisiana, Mississippi, and Texas. Responsibility for CIAP was originally assigned to the Minerals Management Service, (which later became the Bureau of Ocean Energy Management, Regulation and Enforcement, or BOEMRE), and was transferred to FWS as of October 1, 2011.

At the request of FWS, we initiated an audit in 2011, focusing on grant funds awarded to Mississippi, followed by an audit of funds awarded to Louisiana in 2013. We issued our report on Mississippi's grant funds in FY 2013 and completed our audit of Louisiana's grant funds last year. Our audits revealed deficiencies in both States' management of grant funds as well as poor Federal oversight of grant recipients and weak risk management. In total, we questioned more than \$44.1 million in CIAP costs awarded to Mississippi and Louisiana, representing ineligible grant charges, unreasonable costs, and expenses not supported by proper documentation.

DOI awarded the State of Mississippi and its three eligible counties 100 CIAP grants, totaling \$99.8 million, between October 2009 and September 2013. During our audit, we reviewed 57 grants, totaling almost \$39 million, and found significant deficiencies in how BOEMRE, FWS, and recipients managed the grants.

We questioned \$17,835,862 in Mississippi grant funds as either ineligible, unreasonable, or unsupported costs and identified \$12,063,403 in funds to be put to better use. We also

identified seven grant projects that should not have been approved because these projects had little or no relevance to the preservation of coastal areas, accounting for \$5.9 million of the costs we questioned. We found, for example, that funding had been given to the Ohr-O'Keefe Museum of Art to install six skylights and construct a living laboratory, where less than 4 percent of CIAP funds were used for conservation purposes. Similarly, funds were awarded to construct a 6-foot-wide asphalt bike trail in a landlocked (not coastal) county where less than 2 percent of CIAP funds were used for conservation purposes. We also found that the Infinity Science Center received funding to construct a general-purpose classroom at a NASA facility. Perhaps most significantly, our audit uncovered irregularities that triggered a joint OIG and FBI investigation, resulting in multiple convictions for criminal wrongdoing.

In Louisiana, DOI awarded 127 CIAP grants, totaling about \$494.2 million, to the State and its 19 eligible parishes between April 2008 and March 2013. During our audit, we reviewed 47 grants, totaling almost \$370 million, and found several issues with FWS' grant monitoring that raised concerns about the potential for misuse of funds in Louisiana and FWS' ability to detect it.

For example, FWS decided it was not necessary to reassess grantees' level of risk and instead relied on risk assessments conducted by BOEMRE. During our audit, we discovered that BOEMRE had not assessed its single largest grant recipient, the Coastal Protection and Restoration Authority. As a result, FWS claimed to rely on a risk assessment that was never actually conducted for an agency that was responsible for more than \$320 million in grant funds. In addition, FWS did not comply with departmental guidance that requires bureaus to proactively monitor financial assistance recipients through a risk-based approach. Finally, weak State procurement laws, coupled with inadequate capacity at the local level in Louisiana to manage

grants, increased the need for vigilant oversight by FWS. We questioned \$9,878,964 in Louisiana grant funds, representing ineligible grant charges, unreasonable costs, and expenses not supported by proper documentation, and \$4,343,765 in funds that could be put to better use.

Oil and Gas Management on Wildlife Refuges

FWS often manages refuge lands without having acquired subsurface mineral rights, a circumstance referred to as a "split estate." On split estates, the non-Federal mineral owners can often continue to produce or newly develop the private minerals underlying the Federal surface. As a result, FWS refuges have over 5,000 oil and gas wells, of which approximately 1,665 are actively producing. The remaining wells are either inactive or their status is unknown. Due to minimal and vague national guidance, and questions about FWS' legal authority, FWS' management of oil and gas development activities on national wildlife refuges is inconsistent. Inconsistent management has also left FWS' refuges littered with orphaned, or abandoned, oil and gas infrastructure that could threaten the health and safety of wildlife, the safety of refuge visitors, and the environment. In addition, FWS has not completed a comprehensive database for tracking wells as recommended by the Government Accountability Office in 2003. A complete and accurate database would assist FWS in managing oil and gas operations in refuges.

FWS issued an advance notice of proposed rulemaking in 2014 to update its regulations on oil and gas activities and begin the process for complying with the National Environmental Policy Act. FWS has stated that the revised regulations would apply to new operations on refuges and cover procedures for permit applications, review and approval, and noncompliance. Updated FWS regulations or policy in this area could help to address FWS' inconsistent and uncertain management of these oil and gas wells.

OIG Administrative Investigations

Our investigative oversight of FWS has focused primarily on administrative management issues in the recent past. In 2013, we issued the Secretary a management advisory – one of the written products by which we bring issues of concern to management’s attention – urging FWS leadership to act on long-outstanding complaints of retaliation made by employees who raised concerns to us and to FWS management. In May 2012, two FWS employees filed scientific integrity complaints and were almost immediately subjected to a series of adverse personnel actions including unpaid suspensions and a proposed removal. A third employee objected to managements’ actions against the other employees and was apparently suspended without pay for dissenting. After the scientific integrity violations were substantiated, we issued the management advisory in July 2013 to address the retaliation complaints. As of this date, only one of the three cases was settled (in November 2014); the other two cases are still pending DOI action on settlement. The whistleblowers in this matter have requested that their identities not be disclosed. FWS has not provided a final response to our management advisory.

Another scientific integrity and retaliation complaint from the same region was filed by a Grade 15 supervisor and former deputy director for law enforcement. He claimed that after making a disclosure he was subjected to a pre-textual detail to another State to undefined and apparently meaningless job duties. The detail created significant hardship for the employee and appeared punitive. The complaint was settled after a hearing before the Merit Systems Protection Board (MSPB). The whistleblower also alleged that two FWS managers perjured themselves in their testimony before MSPB. We conducted an administrative investigation into these complaints, and the perjury allegations were not substantiated.

We also have ongoing administrative investigations into allegations of mismanagement and other wrongdoing on the part of FWS officials, including unfair and potentially illegal hiring practices, conflicts of interest, preferential treatment, and wasteful spending. Additionally, we have referred similar allegations from the same region to FWS management.

Finally, we are investigating allegations of FWS employee misconduct related to conservation efforts and wildlife management. We received allegations from a member of Congress that a FWS wildlife refuge manager had interacted inappropriately with a private conservation organization and may have violated anti-lobbying provisions included in the annual Department of the Interior and Related Agencies Appropriations Act. This investigation is also ongoing, and we will report our findings directly to Congress and FWS.

Mr. Chairman, this concludes my prepared testimony today. I would be happy to answer any questions you or the members of the Subcommittee may have.

Senator ROUNDS. Thank you for your testimony, Ms. Kendall. Your full remarks will be entered into the record without objection.

Senators will now have 6 minutes each for questions. I will allow members to stay for a second round of questions but with the notice that we will do our best to have a hard stop of 20 minutes past the hour.

With that, I will begin. We will do these in 6-minute increments.

I would like to begin by following up a bit with Mr. Elkins in terms of the comments you made. I wanted to ask you about the transparency of the agencies based on your experiences.

In recent reports, there have been concerns that your respective agencies do not give you full and open access to information that you need to conduct a thorough investigation of certain programmatic issues or agency actions.

Inspector General Elkins, I believe this is an issue your office faced when conducting your investigation of the Chemical Safety Board, as you mentioned, and when looking into how the EPA's Office of Homeland Security impedes your own investigations.

Can you explain in a little more detail some of the issues you faced in gaining full access to the information your office needs or having information withheld from you when you are conducting investigations of your respective agencies, not only what it does to impede your ability to actually investigate, but if you could, I would like your thoughts about what we could do to assist you in getting that information you need?

Mr. ELKINS. I would be very happy to respond to your question.

Generally speaking, on the transparent access issue, my sense is that both the EPA and the CSB fail to truly embrace the underlying authorities and the concepts in the IG Act and understand exactly what it means.

We spent a lot of time trying to do outreach and educate the agencies on the IG Act and the fact of what independent stands for and the fact that we are there to help but we are also independent.

The challenge I have run into is that in certain areas, the agencies tend to embrace that concept but when it works in a way that it may embarrass them, they tend not to embrace that concept and that is where we start to get some push back.

Having these sorts of hearings is very important. Having statements come from this panel as well as members on the House side in support of the work that we do is extremely important.

Under the IG Act, we basically have a dual reporting responsibility. One is to the agency head and the other is to this body. To the extent that we don't get cooperation on the agency side, the only avenue we have available to us is you. The fact that you are doing what you are doing is very helpful and I really appreciate it.

Senator ROUNDS. Thank you.

Ms. Kendall, last summer, 47 of your colleagues from the IG community sent a letter to Congress raising serious concerns about how agencies had either not cooperated with investigations or how the IGs had limited access to records or witnesses. Mr. Elkins signed this letter and cited problems in working with the EPA as an example.

You chose not to sign the letter. Can you tell us why you chose not to sign this letter? Does your unwillingness to sign the letter

indicate that you did not agree with the concerns that were raised? Can you share a little with us about your thought process in terms of why you did not?

Ms. KENDALL. I would be happy to, Mr. Chairman.

I chose not to sign that letter for several reasons. One, I am a part of the Executive Council for the CIGIE. That body sent a formal letter to the Department of Justice with its formal position on the access issue. I felt as a signatory by virtue of being on the Executive Council that was my position by virtue of CIGIE. It did not, in any way, mean that I disagreed with the letter signed by the 47.

The other reason I chose not to sign that separate letter was I did not want to give an indication to my agency, where I have had absolutely no problem whatsoever with access to information, to suggest that I felt there was a problem.

We have not had the access problems that Mr. Elkins and some of the other IGs have had. I did not want to indicate to my agency I had that feeling.

Senator ROUNDS. I just want to follow up and be clear. As I understand it, you have not had a problem gaining access to records, you have not had any grant interviews refused to its staff and there has been no sense of impediments to your investigations within your agency?

Ms. KENDALL. None, that I am aware of, sir.

Senator ROUNDS. Thank you very much.

With that, Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman.

Mr. Elkins, across the Country, thousands of miles of old, leaking natural gas distribution pipelines that run under our streets are costing consumers money, threatening public health and safety with potentially dangerous explosions and contributing to global warming by releasing natural gas into the atmosphere.

An Office of Inspector General July 2014 report found that EPA was not regulating methane emissions from natural gas distribution pipelines, had not partnered with the Pipeline and Hazardous Materials Safety Administration, and that its voluntary program to address methane leaks has achieved limited success.

Moreover, your report found that consumers were losing nearly \$200 million each year from this leaking natural gas.

I have introduced legislation in the Senate that would address some of the financial and policy barriers that are an impediment to repairing and replacing our aging, leaking natural gas pipeline infrastructure.

While I know you have not read the legislation, would efforts to remove these barriers and disincentives that may be in place to reduce methane emissions from leaking natural gas pipelines such as cost recovery and up front capital investments help address that problem?

Mr. ELKINS. Yes, sir. I think that would be a good thing.

Senator MARKEY. Mr. Elkins, the EPA agreed with your recommendation that it should work with HMSA to address methane leaks from a safety and environmental standpoint. EPA agreed to implement this recommendation by December 31, 2014. Has that recommendation been implemented, in your opinion?

Mr. ELKINS. According to our books, it shows that the recommendations have been implemented but until we are able to go out and do follow up work, I cannot tell you specifically that has occurred.

Senator MARKEY. Is it your intention to follow up and find out whether or not that work has been done?

Mr. ELKINS. Yes, sir. We will be following up.

Senator MARKEY. That would be very helpful.

Ms. Kendall, coal on Federal lands belonging to the American people generates billions of dollars in revenue from the Federal Government each year. However, three decades after the GAO, at my request, discovered improprieties in coal lease sales in the Powder River Basin in Wyoming and Montana, recent evaluations of the Federal Coal Program have found that many of the same problems persist today.

Recently, the Inspector General and the GAO, again at my request, issued reports showing that taxpayers may be losing millions of dollars on this coal that belongs to them. In fact, based on my staff's review, I believe using appropriate market calculations and assumptions in recent coal lease sales could potentially have yielded \$200 million additional or more for the American people.

Ms. Kendall, of the 13 recommendations made in the IG report on the Federal Coal Program, the Bureau of Land Management agreed with the majority of them, although none had been implemented at the time the report was issued.

Since this report was issued in 2013, BLM has taken some steps to address the deficiencies identified in the Coal Program. Of the 13 recommendations made in the IG report, how many are still left to be implemented?

Ms. KENDALL. Senator Markey, my understanding is that recommendations 2, 3, 6, 9 and 12 remain open and remain unimplemented, but I have a document I would be happy to provide you and your staff that outlines the specifics of the status of those recommendations which we would be happy to provide.

Senator MARKEY. So 5 of the 13 recommendations have yet to be implemented?

Ms. KENDALL. That is correct, sir.

Senator MARKEY. The IG and GAO reports both found that BLM does not fully account for the potential that coal produced from Federal lands will be exported to foreign countries where it can be sold at a higher price.

Coal exports from the Powder River Basin and other Federal lands are expected to increase substantially in the coming years. Do you believe that BLM is doing enough to evaluate the possibility of exports in determining the value of Federal coal?

Ms. KENDALL. Like Mr. Elkins, I do not believe we have gone in to do a verification of what they are actually doing, but by virtue of what they have reported to us in terms of implementing the recommendations, it appears they are doing what we asked as a result of our evaluation.

Senator MARKEY. You are saying they are now factoring in?

Ms. KENDALL. No, I believe that they are; we have not verified it, though.

Senator MARKEY. OK. I think that is very important. Ultimately, it is public property that is being sold to the private sector. If they are getting a higher price overseas for the coal that should be factored into what we sell it to the private sector for so that we are putting more money into the Federal treasury for a publicly owned good.

No. 2 has yet to be implemented. I think it is important for us to be able to get to the bottom of that story as well.

I thank you, Mr. Chairman. I yield back the balance of my time. Senator ROUNDS. Thank you, Senator Markey.

Senator Inhofe.

Senator INHOFE. Thank you, Mr. Chairman.

Let me start with Mr. Elkins. More than a decade ago, the last time the Republicans were a majority, I chaired this committee and we raised concerns over the EPA's grants management. It seems a lot still needs to be done. Just last month, I think it was, two scientists were convicted of stealing about \$10 million in research grants.

Is your office investigating any of these right now? You do not need to elaborate, just yes or no.

Mr. ELKINS. Senator, right off the top of my head, I cannot think of an active case right now.

Senator INHOFE. We will give you the information and would like to work with you in that respect. We know you would find that to be of interest.

In February, your office launched an evaluation of EPA and the States' ability to manage the potential threats to water resources and hydraulic fracturing. Hydraulic fracturing is something I can talk about.

The first hydraulic fracturing took place in my State of Oklahoma in 1948. I remember when Lisa Jackson was the first Administrator to the EPA chosen by President Obama. I asked her have you ever had any documented cases of groundwater contamination as a result of hydraulic fracturing. She gave the answer that she had not.

I am wondering though if you are going to be getting into this thing and making evaluations as to what they are attempting to do, it seems to me—I have been one of the top critics of the EPA—that when they get involved in these things, we find out nothing ever happens.

Do you remember the case of Armendariz and Range Resources in Texas? That got a lot of publicity. It was our staff that uncovered the conversation that he had with his subordinates saying, what you've got to do with the oil and gas industry is what the Romans did to the Turks—when they would go into a new town, they would crucify the first four Turks they saw and then they had their attention.

As a result, that exposure took place and he is no longer there. He has a better job with one of the environmental groups. I do not know which one it is but he is doing all right. Don't feel bad about him.

Also, Pavillion, Wyoming was something where they came up with this criticism—remember the person lost their home. They de-

cided to take it to court and they won and the EPA was wrong. The same thing happened in Pennsylvania.

I would say that I am hoping that you will be looking at these in terms of the performance, the history of what their successes and failures have been. Would you be willing to do that? Working with our office, we have an abundance of information to help you.

Mr. ELKINS. Senator, we would be more than happy to work with your office.

Senator INHOFE. I would say a similar thing to you, Ms. Kendall. We are involved in two things right now that I think would be of interest to you. One has to do with the Endangered Species Act—both do, actually.

These closed door litigation settlement agreements with environmental groups that require the Service to decide whether to list species under the Endangered Species Act, I don't care whether it is the burying beetle or the lesser prairie chicken or what it is, once they either list something as threatened or endangered, they never get off the list. There are reasons they should get off the list.

Would you agree to work with my staff, Ms. Kendall, specifically in reviewing the process that led to the settlements and how they are being implemented? I am talking about cooperative settlements with groups where they file the lawsuits and you know what the settlement is all about. Would you be willing to look into that and work with our office to try to resolve what I consider to be a serious problem?

Ms. KENDALL. It is an issue of which I am generally aware, Senator Inhofe. We would be happy to work with your staff to learn more about it and look into what this involves.

Senator INHOFE. I appreciate that. I mentioned that once something gets listed, they never get off. As an example, the Service listed the American burrowing beetle as endangered in 1989. Twenty-five years later, the Service still has not established criteria for delisting the beetle.

This is something that we need to work together on. Our staff is going to be involved in doing this. Several things we thought should have been done some 10 years ago when we first got involved in this.

This particular beetle and the endangered status it enjoys is one that has a lot to do with people out there farming, trying to plow their fields, people are building roads and drilling for energy, so it is something that certainly has a great effect in my State of Oklahoma.

If you would join us in that, we would appreciate it very much. Would you do that?

Ms. KENDALL. We would be happy to work with you to better understand this issue.

Senator INHOFE. Thank you very much.

Thank you, Mr. Chairman.

Senator ROUNDS. Thank you.

Senator CRAPO.

Senator CRAPO. Thank you, Mr. Chairman.

I don't have any questions for these witnesses, although I do want to indicate that I agree with the concerns that have been raised by my colleagues here today. I look forward to learning more

about the responses we will see from both the EPA and the Department of the Interior on these issues.

I yield back my time, given that we have a hard stop, for you to utilize in your questioning.

Senator INHOFE. It might be a good idea, Mr. Chairman—maybe you did this before I came in—to remind him why we have to cut this short, because we do have a well publicized hearing with Secretary Kerry.

Senator ROUNDS. What I would like to do is if there are additional questions, we will try to do them in 3-minute increments. When we are done with that second round and if we have time, we will take it. If not, we will close it down.

I just have a question. I would like to follow up a little bit with Ms. Kendall.

To follow up on Senator Inhofe's questions, with regard to your work being done on the Endangered Species Act, with the record number of species that have been listed as a result of the environmental litigation settlements as the Senator indicated, it would appear—perhaps it is not correct and I would like your thoughts on it—your office has done very little oversight on the settlements themselves or specifically the Endangered Species Act and the implementation.

Has it not been requested, or does your office not see the ESA oversight as a priority compared to other areas? Can you talk with us a bit about whether or not there has been a review of the settlements done internally that have placed some of these specific species under the Act or being identified as being endangered?

Ms. KENDALL. Certainly, sir. We have not been advised externally from Congress, from the public or internally through whistleblowers that there are specific problems about specific listings. If we had been so advised, we would certainly take a look at them.

What I hear Senator Inhofe saying is that he has concerns about some very specific species. We would be glad to get with staff to understand what those concerns are and take a look at them as appropriate.

Senator ROUNDS. I would like to expand that just a little in terms of the process you utilize or the existing practice of how they are identified, how the determination is made to actually list them, and what the criteria is that is out there.

I was wondering also if you would work through that process with our committee, go back through it and see how exactly that process is being implemented today.

Ms. KENDALL. Certainly. One of the things we do and have done in the 15, coming on 16, years that I have been with the IG's Office is look at process such as the Endangered Species Act listing or delisting process and ensure that the process, as it is being both practiced and in place, is being appropriately executed.

Senator ROUNDS. When was the last time that was completed?

Ms. KENDALL. Usually, we do it in the context of a specific concern, so it has been a number of years, sir.

Senator ROUNDS. Thank you.

Senator Markey.

Senator MARKEY. Thank you, Mr. Chairman.

Ms. Kendall, in 2014, your office completed a report that examined Department of the Interior management of the disposal wells containing chemicals like benzene and pathogens from untreated sanitary waste on DOI-managed public lands.

The report found that the department's failure to understand its responsibilities under Federal law may have endangered public health and drinking water supplies by allowing these sorts of wells to continue in operation for nearly 10 years after they were banned by the EPA.

Has DOI implemented your recommendations to consistently identify, inspect and manage these disposal wells and ensure compliance with Federal regulations on public lands?

Ms. KENDALL. Sir, I do not have the specifics on the Underground Injection Control Report recommendations and what has been implemented. I would be glad to get those to you and your staff in regard to what they have implemented and what has not been implemented so far.

I do know that generally, the department agreed that it would work with EPA to ensure that they were in compliance with EPA regulations relative to Class V underground injection control wells.

Senator MARKEY. While the IG report only looked at one type of well, do you think it is possible that other types of wells such as those designed for disposal of hazardous waste and byproducts from oil and gas production might be similarly mismanaged by the Department of the Interior?

Ms. KENDALL. That was a concern of ours, sir. However, we took a look at a very high level and did not see the same kind of concern that we had with the Class V wells. At this point, we chose not to pursue that evaluation further.

Senator MARKEY. Could you take another look at it to determine whether or not that was the correct decision? Again, I would respect your judgment in that case. Taking another look at it would be extremely helpful.

Ms. KENDALL. Certainly we can do that.

Senator MARKEY. Thank you, Mr. Chairman.

Senator ROUNDS. Thank you, Senator Markey.

Senator Inhofe.

Senator INHOFE. Really quickly, Mr. Chairman, to Mr. Elkins.

We had a chemical hearing in this committee I think on March 18. We are going to have another coming up next week, I think.

The recent report by your office includes 23 recommendations to improve the Chemical Safety Board. Now that we have that change taking place, what are the unresolved challenges that a new Chemical Safety Board leadership would have to address now that the chairman has resigned? Do you have any comments about that? This is going to take place this coming week.

Mr. ELKINS. There are a number of governance issues. Reinstating a board order that was rescinded would be a good first step. Gaining respect, the morale at that agency is very low. Treating the employees with respect is a big issue.

I could go on. There are a number of other issues I would be glad to share with you but off the top of my head, those would be some of the key issues.

Senator INHOFE. That is significant. I remember that same issue was a problem with the Nuclear Regulatory Commission. To regain the respect and the working relationship, I think, is very important. I would appreciate that.

Thank you.

Senator ROUNDS. Right now, I am showing we have about 6 minutes left and we are going to have to shut down.

Ms. Kendall, you indicated earlier that you had approximately 533 investigations that have been completed or thereabouts. I understand Senator Markey indicated perhaps 55 of them had been made public. My information says even less than that have been made public.

I am just curious. There obviously has to be a reason why so many of them have not been made public. Can you clarify a bit why those have not been made public and what processes are in place to determine which are made public? I think it would be fair for you to be able to respond to that.

Ms. KENDALL. There are a couple things that need to be clarified. First, I think the 533—I don't have the specific numbers but will rely on Senator Markey's numbers—were probably complaints that were received by our criminal investigative group. That does not mean that all of those would become criminal cases or even administrative cases.

We have had a process in place to release investigative cases based on the FOIA rules which say if you have three requests, they should become public. We have since changed that process. We will be deferring, quite frankly, to a release status as opposed to a non-release status by virtue of summary of our investigative cases.

We have just started getting that underway. In deference to and recognition of Senator Markey's observation, we think it is important to release more of the investigative information. We did not keep it from anyone for any particular reason other than we were following the FOIA rules which suggest that after three requests, they become public.

Senator ROUNDS. If you have made a change in your policy and if it is a written policy—I am assuming it is—would you share that with our committee as well, please?

Ms. KENDALL. I am not sure that we have reduced it to writing but we would be glad to share in theory what our new policy is and it is being developed.

Senator ROUNDS. I think it is important enough where if you are following it, that it be something we should have a look at as well.

Ms. KENDALL. Whatever we have, sir, we will get to you.

Senator ROUNDS. Thank you very much.

Senator Markey, do you have any final comments, thoughts or questions?

Senator MARKEY. Ms. Kendall, I just want to clarify with respect to your office's recommendation to improve the Federal Coal Program. You stated one of the five recommendations that have not yet been implemented is recommendation No. 2. Recommendation No. 2 states that the BLM should take action to fully account for the export potential in developing coal, the fair market value.

It appears that BLM has not yet fully implemented the possibility of exports in determining the fair market value of Federal coal leases as your office recommended.

Can you check on the status of the five recommendations for the Federal Coal Program and report back to the committee?

Ms. KENDALL. We will do that actually with all the recommendations.

Senator MARKEY. Thank you.

Senator ROUNDS. Thank you, Senator.

Once again, I would like to thank the Inspectors General for the work they do overseeing the management of our agencies. I would also like to thank my colleagues who attended this hearing for their thoughts and questions.

The record will be open for 2 weeks which brings us to Tuesday, April 28.

Thank you for coming and sharing. We look forward to working with you.

With that, this hearing is adjourned.

[Whereupon, at 10:15 a.m., the subcommittee was adjourned.]

[An additional statement submitted for the record follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR
FROM THE STATE OF OKLAHOMA

Inspector General Elkins and Deputy Inspector General Kendall, thank you for appearing this morning. And thank you, Subcommittee Chairman Rounds, for scheduling this hearing.

Congress has a constitutional duty to conduct vigorous oversight to ensure that agencies are following the law and spending taxpayer dollars wisely.

When I became chairman, I promised that we would conduct real oversight of the Administration. Such congressional review is ever more important as the EPA stretches its regulatory arm over our entire economy with more red tape based on shaky science and analysis, and absent consultation with the States or congressional authority. We see the same overreach at the Fish and Wildlife Service, which is making a record number of Endangered Species Act listings due to a closed-door settlement with environmental groups, among other hyper-regulatory actions. This hearing is a step in that direction.

It is important that we hear directly from the Inspectors General about problems within their agencies, and that they are reminded they have a statutory duty to assist Congress with its oversight so that problems can be identified and corrected.

I am looking forward to hearing from Inspector General Elkins about his work uncovering management and performance problems at the EPA and the Chemical Safety Board, including recent IG reports exposing EPA grant and contract mismanagement, scientific integrity concerns, as well as the dysfunction and outstanding corrective actions at the CSB. I am also looking forward to hearing from Deputy Inspector General Kendall about her work involving the Fish and Wildlife Service and its highly controversial ESA decisions.

I ask that my full statement be entered into the record. Thank you.

