



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Congressional Testimony

Major Management Challenges at the Environmental Protection Agency

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**Before the Subcommittee on Interior, Environment,
and Related Agencies
Committee on Appropriations
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Good morning Chairman Simpson, Ranking Member Moran, and Members of the Subcommittee. I am Arthur Elkins, Jr., Inspector General at the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). I also serve as the Inspector General of the U.S. Chemical Safety and Hazard Investigation Board. I am pleased to appear before you today for the first time to discuss the significant management challenges facing EPA that the OIG identified for fiscal year (FY) 2010. Serving as Inspector General is an honor and privilege for me because of the opportunities presented to make a positive difference by protecting taxpayer dollars from fraud, waste, abuse, and making recommendations that assist EPA to achieve its stated goals of protecting human health and the environment. Since becoming Inspector General in June 2010, I have been thoroughly impressed with the expertise, dedication and professionalism of the OIG staff. Their hard work serves as the basis of my testimony this morning.

Today's hearing is very timely. Given our economic climate, there is renewed emphasis on oversight, accountability, and performance of Federal agencies and how they spend taxpayer dollars. The OIG is uniquely positioned within EPA to identify areas where EPA faces significant management challenges and to bring those challenges to the attention of senior EPA leadership and to Congress. Under the Inspector General Act of 1978, as amended, the OIG is granted the authority to conduct audits and investigations of EPA programs, operations, and personnel. Our role is to promote economy and efficiency, and to prevent and detect fraud, waste, and abuse. Although we are a part of EPA, senior EPA leadership can neither prevent nor prohibit us from conducting our work. This helps to ensure our independence. We do not engage in policymaking nor do we perform operational activities. We are non-partisan which, when coupled with our independence, I believe gives credibility to our work.

EPA Management Challenges for FY 2010

The Reports Consolidation Act of 2000 mandates that Inspectors General identify management and performance challenges facing their respective agencies. The OIG issues an annual list of management challenges based on audit, evaluation, and investigative work conducted throughout the fiscal year. We also take into account trends over time as well as the status of prior OIG recommendations. EPA has the opportunity to respond to our management challenges. The challenges we identify and EPA's response are included in EPA's "Agency Financial Report" issued every November.

We developed a definition for management challenges to clarify and distinguish them from internal control weaknesses. Weaknesses are deficiencies in internal control activities designed to address and meet internal control standards. In contrast, we defined management challenges as a lack of capability derived from internal, self-imposed constraints or, more likely, externally imposed constraints that prevent an organization from reacting effectively to a changing environment. For example, lack of controls over approval of bankcard purchases would be considered a control weakness because it can be corrected internally by adding the necessary controls. Conversely, the EPA's ability to address an issue such as funding shortfalls for water infrastructure repairs would

constitute a management challenge, as EPA does not have the ability to solve these challenges without outside assistance, such as from Congress and States. The GPRA Modernization Act signed into law in January 2011 contains a different definition of the term “major management challenge,” which we will apply as we identify challenges for FY 2011.

In May 2010, we issued our list of areas we considered to be key management challenges facing EPA for FY 2010. They were: 1) the need for a national environmental policy; 2) water and wastewater infrastructure; 3) oversight of delegations to States; 4) safe reuse of contaminated sites; 5) limited capability to respond to cyber security attacks; 6) reducing domestic greenhouse gas emissions; and 7) EPA’s framework for assessing and managing chemical risks. These last three – cyber security, greenhouse gas emissions, and chemical risks – were new to our management challenges list in FY 2010. We are currently in the process of updating our challenges list for FY 2011 and will issue them to the Administrator later this spring.

The Need for a National Environmental Policy

Congress passed the National Environmental Policy Act and created EPA in 1970 to carryout national policy. However, rigid environmental laws that focus on a single media or threat make it difficult for EPA to confront emerging, cross-media, and cross-boundary challenges in an integrated manner. The result is an agency with media-specific program offices, which inhibit the process of comparing risks, setting priorities, and integrating fragmented data. Additionally, EPA lacks complete authority or control over many activities that impact the condition of our nation’s environment. One example is the cleanup of the Chesapeake Bay, where the Department of Agriculture rather than EPA may be better positioned to persuade farmers to adopt progressive agricultural practices and to help communities and private landowners conserve natural resources. EPA’s 2006-2011 Strategic Plan identified 25 federal agencies that contribute to EPA’s goals, including the Departments of Energy, Transportation, and State. A national environmental policy would help EPA and other federal agencies go beyond existing, fragmented coordination efforts.

Developing and implementing a national policy will require action by EPA, the Administration, and Congress. EPA should work with Congress and the Administration to examine ways to leverage resources expended on various, insular environmental protection efforts. The Administration should propose to Congress that it create expert panels to consider formulating a national environmental policy and subsequent quadrennial review. Congress should consider integrating or passing legislation that may be recommended by these panels to harmonize various efforts and, where appropriate, maintain existing requirements in environmental statutes. Finally, Congress should provide EPA and other federal agencies that share a responsibility for environmental protection the means to identify and manage environmental problems of national significance.

While EPA has efforts underway to address intra-agency coordination across various media through cross-agency councils and committees, it questions whether a

national environmental policy would substantially improve environmental results. However, one need only look at the national strategies and quadrennial reviews already in place for homeland security and defense to see their value. We believe EPA should do more in this area.

Water and Wastewater Infrastructure

Under the Clean Water Act (CWA) and Safe Drinking Water Act (SDWA), drinking water and wastewater facilities are responsible for ensuring that water leaving their facilities meets federal standards. EPA is responsible for administering these laws, enforcing violations of the standards, and assisting facilities to meet their treatment requirements. Drinking water and wastewater treatment systems, many built decades ago, are reaching the end of their life cycles, and huge capital investments are needed to replace, repair, and construct facilities. There is an estimated \$300-\$500 billion funding gap for wastewater treatment and water infrastructure over the next 20 years. Meeting new and more stringent standards on top of already existing standards also places additional financial burdens on municipalities. For example, the District of Columbia estimated it will need to spend \$3.6 billion to meet some CWA requirements. EPA and State and local governments have struggled to update these systems over the years because no level of government has sufficient modernization and replacement funds.

The Federal Government lacks a national approach for bridging this water and wastewater infrastructure gap. While EPA is responsible for administering the CWA and SDWA, it does not have the resources or authority to address the funding gap. The funding EPA receives for its Clean Water and Drinking Water State Revolving Funds, even when coupled with other water grant and loan programs from the Departments of Agriculture and Housing and Urban Development, are small in relation to the gap and are not part of a comprehensive investment strategy to address water infrastructure needs. Rather, they reflect each agency's mission and congressional direction. However, EPA should take the lead in organizing a coherent federal strategy within the limits of its statutory authorities and responsibilities. A comprehensive approach to bridging the gap would systematically assess the investment requirements, alert the public and Congress of unfunded liabilities and risks, and involve work with States and local governments to organize resources to meet needs.

As part of the Administration's long-term strategy, EPA is implementing a Sustainable Water Infrastructure Policy that focuses on working with States and communities to enhance technical, managerial, and financial capacity. This includes finding ways to expand and incorporate "green infrastructure" options and their multiple benefits. However, we have seen no evidence of any significant progress in moving toward a comprehensive approach in addressing the funding gap. Moreover, the EPA budget for FY 2012 reduces funding for the State Revolving Funds. We will continue to monitor EPA's actions in this area.

Oversight of Delegations to States

EPA may delegate programs that implement environmental laws to State, local, and tribal agencies. Delegation, however, does not abrogate EPA of its statutory and trust responsibilities. EPA performs oversight of State, local, and tribal programs to provide reasonable assurance that delegated programs are achieving their goals. Effective EPA oversight is hampered by limitations in the availability, quality, and robustness of program implementation and effectiveness data, and limited EPA resources to independently obtain such data. Also, differences between State and federal policies, interpretations, and priorities make effective oversight a challenge. For example, EPA lacks the data necessary to assess the benefits of its air toxics standards, such as data on decreased incidence of cancer. Data on the program's effectiveness, such as changes in emissions, concentrations of air toxics in the (ambient) outdoor air, and data on compliance with air toxics standards are limited and inconclusive. States' discretion adds flexibility to address specific circumstances and local issues. Joint implementation and enforcement leads to special challenges in interpretations, strategies, and priorities.

EPA has begun to improve its oversight by implementing the State Review Framework. The Framework is intended to be a consistent approach for overseeing programs and identifying weaknesses and areas for improvement. However, EPA has not yet implemented it in a consistent manner. Data available to EPA show that, in many parts of the country, the level of significant non-compliance with permitting requirements is unacceptably high and the level of enforcement activity is unacceptably low. For example, one out of every four of the largest Clean Water Act dischargers had significant violations in 2008. Many of these violations were serious effluent violations or failure to comply with enforcement orders. We are continuing to conduct work in this area that will support EPA in carrying out its oversight responsibilities. Ongoing OIG evaluations are exploring how EPA addresses state performance problems, and what types of EPA action are most effective in improving state enforcement performance.

Safe Reuse of Contaminated Sites

EPA has placed increasing emphasis on the reuse of contaminated properties and has a performance measure to define a population of contaminated sites that are ready for reuse. EPA has successfully turned some problem sites into properties that reinvigorated communities and created jobs. However, EPA's primary duty is to ensure that contaminated sites are safe for humans and the environment. EPA faces significant and increasing challenges in this area due to: 1) the common practice of not removing all sources of contamination from hazardous sites; 2) a regulatory structure that places key responsibilities for monitoring and enforcing the long-term safety of contaminated sites on non-EPA parties that may lack necessary resources, information, and skill; 3) changes in site risks as site conditions change over time; and 4) weaknesses in EPA's oversight of the long-term safety of sites.

The lack of effective long-term monitoring and enforcement of reuse controls at contaminated sites can pose significant risks to human health and the environment. For example, a January 2010 OIG report disclosed previously undetected contamination at a

deleted Superfund site in Delaware that had been purchased by a local government entity. We found that the site owner had nearly finalized plans and secured finances to reuse the site for public recreation. This had gone undetected by EPA because they had not kept current with the site reuse plans. In addition, EPA did not implement its procedures for evaluating the site's readiness for reuse because the procedures were viewed as discretionary. In New York, the Department of Environmental Conservation released a report in March 2009 listing hundreds of "old" Superfund, Brownfields, and other clean-up cases that were reopened to investigate potential new threats from vapor intrusion. These threats were not previously considered because the state of the science was not focused on vapor intrusion when the sites were first evaluated.

EPA will continually need to assess the challenges it faces to ensure sites are safely reused. As it does so, EPA should consider new or expanded authorities and regulations, new organizations, new methods of sharing information, and dedicated funding and resources for long-term stewardship activities. We will be updating this management challenge to reflect new OIG findings and observations on actions EPA has taken since we issued our challenge. A February 2011 OIG report on the Brownfields program noted weaknesses in EPA's oversight of environmental due diligence investigations at properties assessed for environmental contamination. We have also observed that EPA has undertaken a review of at least two broad issues that are included in our management challenge regarding the safe reuse of contaminated sites – Superfund Five-Year Reviews, which determine whether clean-up actions at Superfund sites remain safe; and institutional controls at national priority list Superfund sites, which are administrative or legal measures that limit human exposure by restricting activity, land-use, and access to properties with residual contamination.

Limited Capability to Respond to Cyber Security Attacks

Federal Government networks are facing persistent and unauthorized intrusions from various groups and actors here and abroad. Their motives range from intelligence collection, theft, and/or disruption or shutdown of critical agency systems. The targets of these intrusions are no longer limited to intelligence, defense, or economic networks. EPA has also become an increasing target given the intellectual property, confidential business information, and various environmental data it collects. At the time we issued this management challenge, EPA reported that over 5,000 servers and user workstations may have been compromised as a result of recent cyber security attacks (i.e., EPA identified that these systems were communicating to reported known hostile computers or domains outside of EPA). These potentially compromised systems extend to every EPA regional office and Headquarters. Moreover, OIG work disclosed that EPA could not identify the owners of approximately 10 percent of the Internet Protocol (IP) addresses that may have been compromised.

EPA has a limited capacity to effectively respond to Advanced Persistent Threats (APTs) designed to steal or modify information without detection. Our ongoing analysis and prior audits lead us to conclude that EPA does not have sufficiently trained personnel with the technical knowledge, nor the resources, to actively pursue a course of action that will enable EPA to promptly identify and effectively remedy ongoing cyber threats.

Although EPA currently monitors network traffic to identify hostile traffic at its Internet choke points, EPA should conduct more detailed analysis to better understand and combat the insidious nature of these cyber attacks. EPA does not have the resources, in equipment and staff, to adequately assess attacks against its infrastructure. Rather, EPA continues to depend on others to specifically identify whether systems are actually compromised. Adequate funding and a coordinated technical strategy would enable EPA to better defend itself against cyber-attacks that target valuable EPA data.

EPA has acknowledged that detecting and remediating APTs is a challenge. The OIG is taking steps with EPA to establish an internal Memorandum of Understanding (MOU) to enhance the communications and dissemination of timely information, and clarify roles and responsibilities between OIG and EPA personnel so that we might better address cyber security incidents and related criminal activity within EPA. We are hopeful that this MOU will be finalized in the near future.

Reducing Domestic Greenhouse Gas Emissions

In April 2007, the U.S. Supreme Court ruled in *Massachusetts v. EPA* that greenhouse gases (GHGs) are air pollutants under the Clean Air Act (CAA). In response to the Supreme Court decision, EPA issued an endangerment finding in December 2009 stating that the current and projected atmospheric concentrations of six GHGs threaten the public health and welfare of current and future generations. EPA also determined that new motor vehicles endanger public health and welfare, as defined under CAA Section 202(a), because they contribute to GHG pollution. The issuance of these findings means that EPA must address the adverse impacts of this new set of air pollutants, which is a significant undertaking.

EPA is addressing domestic GHG emissions through three avenues that are to some extent beyond EPA's direct control. First, EPA is regulating GHG emissions but lacks specific legislation establishing a GHG emissions reduction program beyond new motor vehicles. Without such language, EPA is relying on its interpretation of its authorities under the CAA to regulate GHG emissions from thousands of other sources. Already EPA faces a number of legal challenges to its GHG rules. Second, EPA is relying on voluntary programs to reduce GHG emissions. For example, three key voluntary programs (ENERGY STAR, Climate Leaders, and Clean Energy-Environment State Partnership) are joint partnerships between EPA and others. A major challenge with voluntary programs has been weaknesses in data collection and reporting systems. These systems are neither transparent nor verifiable, and are limited by anonymous reporting and the use of third-party industry data. Finally, EPA is relying on multi-agency research organizations for the information and tools to help address GHGs, and to accelerate the development of new and advanced GHG reduction technologies. Consequently, EPA has limited control over the content, conduct, and timing of this research.

EPA agreed that it faces significant challenges in addressing GHGs. We will continue to monitor how EPA addresses the challenge of reducing domestic GHGs in the face of mounting opposition, unverifiable data, and the obstacles that come with relying on multi-agency research.

EPA's Framework for Assessing and Managing Chemical Risks

EPA's framework for assessing and managing chemical risks has not yet achieved the goal of protecting human health and the environment. In 1976, Congress passed the Toxic Substances Control Act (TSCA) authorizing EPA to collect information on, and to regulate the production and distribution of chemicals. However, EPA's effectiveness in assessing and managing chemical risks is hampered by limitations on its authority to regulate chemicals under TSCA. For example, chemicals that were produced for commercial purposes prior to TSCA were grandfathered. Manufacturers were not required to develop and produce data on toxicity and exposure, which are needed to properly and fully assess potential risks. Further, TSCA never provided adequate authority for EPA to evaluate existing chemicals as new concerns arose or as new scientific information became available. TSCA also lacks the broad information-gathering and enforcement provisions found in other major environmental protection statutes. For example, TSCA does not provide EPA with the administrative authority to seek injunctive relief, issue administrative orders, collect samples, and quarantine and release chemical stocks, among other key authorities.

In 2009, the Administration outlined core principles to strengthen U.S. chemical management laws. Congress has also made attempts to revise and modernize TSCA. However, in the absence of new legislation, we found EPA could better manage existing authorities and demonstrate results within its New Chemicals Program and Endocrine Disruption Screening Program (EDSP). For example, EPA does not have integrated procedures and measures to ensure that new commercial chemicals do not pose an unreasonable risk to human health and the environment. Oversight of regulatory actions designed to reduce known risks is a low priority, and the resources allocated by EPA are not commensurate with the scope of monitoring and oversight work. In addition, EPA's procedures for handling confidential business information (CBI) requests are predisposed to protect industry information rather than to provide public access to health and safety studies. Finally, EPA's framework for assessing and managing chemical risks from endocrine disruptors is failing to show results. Despite establishing the EDSP in 1998, EPA has yet to regulate the endocrine-disrupting effects of any chemicals.

EPA has developed a corrective action plan in response to our work on the New Chemicals Program. It includes efforts to improve internal coordination and efficiencies, enhance accountability through performance measures, and the development of more detailed guidance on CBI. We will continue to monitor EPA's progress in assessing and managing chemical risks through our ongoing work on the endocrine disruptor program, nanomaterials, and children's chemical program.

OIG FY 2012 Budget Request

The President's Budget released last month calls for \$56 million and 365 FTE for the OIG for FY 2012, which includes a \$10 million transfer from the Superfund Trust Fund. This would represent an increase of \$1.2 million when compared to our FY 2010 Enacted Budget. I am grateful that EPA leadership and the Administration believe that the OIG is a wise investment, despite the challenging economic times facing our Nation.

When Congress amended the Inspector General Act in 2008, it provided Inspectors General additional safeguards to our independence. One is the authority to provide comments in the President's Budget submission if we believe the budget request for our operations would substantially inhibit us from performing the duties of the office. I do not take this authority lightly. However, I felt an obligation under the law to state my concerns about our FY 2012 budget. For FY 2012, the OIG requested a net increase of \$6 million above the President's FY 2010 Enacted Budget. After further discussions with the Office of Management and Budget, our proposed budget was increased but is still nearly \$5 million below our initial request. These additional funds are needed to strengthen the OIG's ability to investigate cyber attacks against EPA systems, a management challenge that I highlighted earlier in my statement. Addressing cyber security requires highly specialized detection, prevention, and enforcement skills and tools. We currently fund our limited cyber activities through a reallocation of existing resources but to do this long-term would create gaps in our oversight of other EPA programs and operations.

I believe that during times of reduced resources, there is an even greater urgency for investment in oversight to promote efficiency, effectiveness and address the heightened risks of fraud, waste, and abuse. The total OIG budget represents an investment in oversight of less than half of one percent of EPA's total budget. As Inspector General, I am concerned that the reduction in our budget request would impact the OIG's ability to adequately perform our duties. We will do our part by being good stewards of our own resources. Toward that end, I have initiated efforts to identify areas where the OIG can improve and streamline its operations to maximize its efficiency and effectiveness.

Conclusion

Our annual list of management challenges provides us the opportunity to inform EPA senior leadership, Congress, and the public about what we see as the most pressing issues facing EPA. We also offer recommendations on how EPA can address these challenges so it can better fulfill its mission of protecting human health and the environment. EPA does take our management challenges seriously and has made some progress in addressing them but we believe a more sustained and robust effort is needed to fully resolve them. We will continue to monitor and track EPA's actions to address these challenges while looking to identify any emerging issues warranting attention.

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