

July 2007

# ENVIRONMENTAL PROTECTION

## EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancement





Highlights of [GAO-07-883](#), a report to congressional requesters

## Why GAO Did This Study

The Environmental Protection Agency (EPA) enforces the nation's environmental laws through its Office of Enforcement and Compliance Assurance (OECA). OECA sets overall enforcement policies and through its 10 regions oversees state agencies authorized to implement environmental programs consistent with federal requirements. GAO was asked to (1) identify trends in federal resources to regions and states for enforcement between 1997 and 2006, and determine regions' and states' views on the adequacy of these resources; (2) determine EPA's progress in improving priority setting and enforcement planning with states; and (3) examine EPA's efforts to improve oversight of states' enforcement programs and identify additional actions EPA could take to ensure more consistent state performance and oversight. GAO examined information from all 10 regions and 10 authorized states, among other things.

## What GAO Recommends

GAO recommends that EPA (1) develop an action plan to address problems identified in state programs, (2) evaluate the capacity of state programs to enforce authorized programs, (3) publish findings of state enforcement program reviews, and (4) assess the performance of its 10 regions. EPA generally agreed with GAO's recommendations, but stated it will decide whether to publish future state reviews when it evaluates the review process in fiscal year 2008.

[www.gao.gov/cgi-bin/getrpt?GAO-07-883](http://www.gao.gov/cgi-bin/getrpt?GAO-07-883).

To view the full product, including the scope and methodology, click on the link above. For more information, contact John B. Stephensonj at (202) 512-6225 or [stephensonj@gao.gov](mailto:stephensonj@gao.gov).

## ENVIRONMENTAL PROTECTION

# EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancement

## What GAO Found

Overall funding to regions and authorized states increased from 1997 through 2006, but these increases did not keep pace with inflation and the growth in enforcement responsibilities. Over the 10-year period, EPA's enforcement funding to the regions decreased 8 percent in inflation-adjusted terms. Regional officials said they reduced the number of enforcement staff by about 5 percent. EPA's grants to states to implement federal environmental programs also declined by 9 percent in inflation-adjusted terms while enforcement and other environmental program responsibilities increased. According to state officials, reductions in grant funds have limited their ability to meet EPA's requests to implement new requirements. For example, according to New York State officials responsible for the hazardous waste program, a reduction in EPA grants between 1997 and 2006 has meant a 38 percent reduction in the full-time state staff supported by federal funding for this program. However, EPA information on the workload and staffing needs of its regions and the states is incomplete, and, thus, it is not possible with existing data to determine their overall capacity to meet their enforcement responsibilities.

EPA has made substantial progress in improving priority setting and enforcement planning with states through its system for setting national enforcement priorities and the EPA/state National Environmental Partnership System (NEPPS), which have fostered a more cooperative relationship. For example, on states' recommendation, OECA accepted as a priority ensuring that facilities handling hazardous substances, such as lead or mercury, have the financial resources to close their facilities, clean up contamination, and compensate communities and individuals affected by the contamination. EPA and states have also made some progress in using NEPPS for joint planning and resource allocation. State participation in the partnership grew from 6 pilot states in fiscal year 1996 to 41 states in fiscal year 2006.

EPA has improved its oversight of state enforcement programs by implementing the State Review Framework (SRF) as a means to perform a consistent approach for overseeing the programs. Moreover, EPA can make additional progress by addressing weaknesses that the SRF reviews identified and by implementing other improvements to ensure oversight that is more consistent. For example, the SRF reviews show that EPA has limited ability to determine whether the states are performing timely, appropriate enforcement and whether penalties are applied to environmental violators in a fair and consistent manner within and among the states. In addition, GAO noted that EPA could make further use of the SRF to (1) determine the root causes of poorly performing programs; (2) inform the public about how well the states are implementing their enforcement responsibilities; and (3) extend the use of the SRF methodology to assess the performance of EPA's regions, which have been inconsistent in their enforcement and oversight efforts.

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**Abbreviations**

EPA	Environmental Protection Agency
ECOS	Environmental Council of the States
FTE	Full-Time equivalent
NEPPS	National Environmental Partnership System
NYSDEC	New York State Department of Environmental Conservation
OECA	Office of Enforcement and Compliance Assurance
PPA	Performance Partnership Agreement
PPG	Performance Partnership Grant
RCRA	Resource Conservation and Recovery Act
SRF	State Review Framework
UST	Underground Storage Tank

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United States Government Accountability Office  
Washington, DC 20548

July 31, 2007

The Honorable Norman D. Dicks  
Chairman  
The Honorable Todd Tiahrt  
Ranking Member  
Subcommittee on Interior, Environment  
and Related Agencies  
Committee on Appropriations  
House of Representatives

The Honorable James M. Inhofe  
Ranking Member  
Committee on Environment and Public Works  
United States Senate

The Environmental Protection Agency (EPA), in partnership with state agencies, oversees compliance with 44 separate environmental programs. These programs regulate facilities—such as sewage treatment plants, petroleum refineries, and power plants—whose operations could pollute the air, water, and land, and thereby endanger public health and the environment. EPA and its regulatory partners are responsible for ensuring that these regulated facilities comply with program requirements and taking enforcement action in instances of noncompliance. These enforcement efforts are important for ensuring a level playing field because, among other things, facilities that do not comply with program requirements might have a competitive economic advantage over facilities that take environmental requirements seriously and thereby incur additional operational costs.

Many federal environmental statutes, such as the Clean Air Act, the Clean Water Act, and the Solid Waste Disposal Act, direct EPA to approve or authorize qualified states to implement and enforce environmental programs consistent with federal requirements. EPA expects its 10 regional offices to take a systematic, consistent approach in overseeing the state enforcement programs and, in doing so, to follow EPA's regulations, policies, and guidance. EPA outlines, by policy and guidance, its oversight expectations for regional offices with regard to ensuring the state approaches include the elements of an acceptable state enforcement program, such as the type and timing of the actions that should be taken for various violations, and track how well the states comply.

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This model of state enforcement of environmental laws, accompanied by EPA's regional oversight, allows the level of government closest to environmental conditions to assume primary responsibility for implementing programs. But it requires that states acquire and maintain adequate capacity to enforce state environmental programs that are consistent with federal requirements and act in a timely and appropriate manner to ensure violators come into compliance. EPA establishes by regulation the requirements for state enforcement authority, such as the authority to seek civil and criminal penalties and injunctive relief.<sup>1</sup> EPA grants authorization to the states on a program-by-program basis. EPA policy and guidance outline, with greater specificity, the elements of an acceptable state enforcement program—such as the necessary legislative authorities and the type and timing of the enforcement actions for various violations—and track how well states comply.

Most states have responsibility for multiple EPA programs. EPA-authorized states monitor the compliance of regulated facilities by conducting inspections, performing evaluations, and reviewing records to verify facilities' compliance with programs regulating the discharge of pollutants into surface water or the air and the storage and disposal of hazardous waste. States are expected to pursue enforcement actions against those facilities found in noncompliance and to report their actions to EPA.

EPA administers its environmental enforcement responsibilities through its headquarters Office of Enforcement and Compliance Assurance (OECA). OECA monitors the compliance of regulated facilities, identifies national enforcement concerns and sets priorities, and provides overall direction on enforcement policies. While OECA headquarters occasionally takes direct enforcement action, much of EPA's enforcement responsibilities are carried out by its 10 regional offices. These offices are responsible for carrying out core program activities under each of the major federal environmental statutes, as well as significant involvement in implementing EPA's national enforcement priorities and taking direct enforcement action. The regions are also responsible for overseeing authorized states' enforcement programs, implementing programs in

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<sup>1</sup>Such injunctive relief includes the authority to order a party that is violating a provision of the law to refrain from further violation and to take action to abate or correct the noncompliance.

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Indian country<sup>2</sup> and states that are not authorized for particular programs. OECA also expects regions and authorized states to establish enforcement priorities and expectations and reach agreement on their respective roles and responsibilities. Authorized states may also receive EPA grants to assist in implementing and enforcing authorized programs. In fiscal year 2006, grants to states and tribes totaled \$3.2 billion, or about 42 percent of EPA's total budget.

Over the years, states have increased their inspection and enforcement activities. As a result, EPA regional offices are now more actively involved in conducting oversight and providing states with guidance, training, and technical assistance to assure consistent performance of state enforcement programs. If EPA finds a state is not adequately administering or enforcing authorized programs, individual environmental statutes may authorize EPA to take certain actions, including providing additional technical assistance, conditioning the receipt of grant funds on compliance with EPA guidance, or withdrawing state authorization. In addition, when EPA finds a specific state enforcement action to be inadequate, the agency may take federal enforcement action against the violator.

Despite the interdependence between EPA and the states in carrying out enforcement responsibilities, effective working relationships have historically been difficult to establish and maintain, as we, EPA's Office of Inspector General, the National Academy of Public Administration, and others have reported.<sup>3</sup> The following three key issues have affected EPA-state relationships:

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<sup>2</sup>"Indian country" includes all land within the limits of an Indian reservation under the jurisdiction of the United States government and all dependent Indian communities within the borders of the United States.

<sup>3</sup>GAO, *Environmental Protection Agency: Protecting Human Health and the Environment Through Improved Management*, [GAO/RCED-88-101](#) (Washington, D. C.: Aug. 16, 1988); GAO, *Environmental Protection: Collaborative EPA-State Effort Needed to Improve New Performance Partnership System*, [GAO/RCED-99-171](#) (Washington, D.C.: June 21, 1999); EPA Office of Inspector General, *EPA Needs Better Integration of the National Environmental Performance Partnership System*, No. 2000-M-000828-000011 (Washington, D.C.: Mar. 31, 2000); National Academy of Public Administration, *Environment.Gov: Transforming Environmental Protection for the 21st Century* (Washington, D.C.: November 2000); GAO, *Environmental Compliance and Enforcement: EPA's Effort to Improve and Make More Consistent Its Compliance and Enforcement Activities*, [GAO-06-840T](#) (Washington, D.C.: June 2006).

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- EPA's funding allocations to the states have not fully reflected the differences among the states' enforcement workload and their relative ability to enforce state environmental programs consistent with federal requirements. In this regard, EPA lacks information on the capacity of both the states and EPA's regions to effectively carry out their enforcement programs, because the agency has done little to assess the overall enforcement workload of the states and regions and the number and skills of people needed to implement enforcement tasks, duties, and responsibilities. Furthermore, the states' capacity continues to evolve as they assume a greater role in the day-to-day management of enforcement activities, workload changes occur as a result of new environmental legislation, new technologies are introduced, and state populations shift.
  - Problems in EPA's enforcement planning and priority setting processes have resulted in misunderstandings between OECA, regional offices, and the states regarding their respective enforcement roles, responsibilities, and priorities. States have raised concerns that EPA sometimes "micromanages" state programs without explaining its reasons for doing so and often does not adequately consult the states before making decisions affecting them.
  - OECA has not established a consistent national strategy for overseeing states' enforcement of EPA programs. Consequently, the regional offices have not been consistent in how they oversee the states. Some regional offices conducted more in-depth state reviews than others, and states in these regions have raised concerns that their regulated facilities are held to differing standards of compliance than facilities in states located in other regions.

EPA and leaders of state environmental programs have tried over the years to establish new mechanisms to address each of these long-standing problems in order to strengthen the EPA-state partnership. For example, EPA has linked its budgeting and allocation process to its strategic goals and objectives, and makes strategic decisions in developing its budget for its enforcement workforce to reflect shifting priorities. Nonetheless, according to OECA officials, shifts in funding and staff years made as a result of changing priorities are generally marginal. In this regard, in July 2005 we reported that an effective workforce strategy is needed, particularly during times of fiscal constraint, so that OECA can tailor



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workforce changes to reflect actual conditions in the regions and states and minimize potential adverse impacts on EPA's programs.<sup>4</sup>

To better clarify roles, responsibilities, and priorities between EPA and the states, the agency established the National Environmental Performance Partnership System (NEPPS) in 1995 to give states demonstrating strong environmental performance greater flexibility and autonomy in planning and operating their environmental programs. Under this system, a state and EPA may enter into a Performance Partnership Agreement (PPA) that identifies the state's environmental goals and priorities, and spells out how EPA and state officials are to address them. States may also ask to combine EPA grants into a Performance Partnership Grant (PPG), which is intended to allow the state greater flexibility in targeting limited resources to meet its priorities. In 2003, OECA revised its process for setting national enforcement priorities to better consider the views of states and regions and to more effectively target enforcement resources. Under the new process, OECA headquarters evaluates the overall environmental performance of individual industrial sectors, and solicits views about those sectors from states and regions, the representatives of the industrial sectors, and the public. OECA uses this information to identify priorities that are best addressed through focused federal attention. OECA issues guidance to the regions and states for implementing the national enforcement priorities, as well as guidance for deterring noncompliance among all regulated sectors.

Likewise, OECA implemented a new oversight program in 2004, known as the State Review Framework (SRF), to more uniformly and objectively measure the performance of states' enforcement programs. Under SRF, regions evaluate the extent to which state performance in managing three major programs complies with specific legal requirements, policy, and guidance, while OECA headquarters manages the overall review process.<sup>5</sup> In conducting this evaluation, the regions use 12 review elements, such as the degree to which states complete planned inspections, accurately identify significant violations, and take timely and appropriate enforcement action. As of January 2007, EPA had conducted SRF reviews

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<sup>4</sup>GAO, *Clean Water Act: Improved Resource Planning Would Help EPA Better Respond to Changing Needs and Fiscal Constraints*, [GAO-05-721](#) (Washington, D.C.: July 22, 2005).

<sup>5</sup>These three programs are the Clean Water Act—National Pollutant Discharge Elimination System; Clean Air Act—Stationary Sources Program; and Resource Conservation and Recovery Act—Subtitle C Hazardous Waste Program.

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in 33 states and expected to complete its assessment of the remaining states by the end of fiscal year 2007. EPA plans to evaluate the implementation of SRF in fiscal year 2008. Appendix II contains a detailed description of the development of the SRF.

In this context, you asked that we (1) identify trends in the federal resources provided to regions and states for enforcement between 1997 and 2006, and determine regional and states' views on the adequacy of these resources to implement their activities; (2) determine EPA's progress in improving priority setting and enforcement planning with its regions and authorized states; and (3) examine EPA's efforts to improve its oversight of state's enforcement and compliance programs and identify additional actions that could be taken to ensure more consistent state performance and more consistent oversight of state programs.

To address these issues, we reviewed EPA's strategic plans and national strategy, and its policy and guidance for planning and implementing its enforcement programs and for establishing performance partnerships with authorized state agencies.<sup>6</sup> We also examined the budgets for EPA and OECA for fiscal years 1997 through 2006. We discussed the development and implementation of national strategy, policy, guidance, and resource allocation with officials of OECA, EPA's Office of Congressional and Intergovernmental Relations, EPA's Office of Chief Financial Officer, and officials responsible for state program oversight in each of EPA's 10 regional offices. In each region, we examined regional strategic plans, partnership agreements with authorized states, and state oversight reviews. We used semi-structured interviews to elicit, organize, and evaluate narrative responses from officials at the 10 regional offices and 10 authorized state agencies. We selected one state from each region: five states that had performance partnership agreements with EPA (Iowa, Massachusetts, Minnesota, Oregon, and Utah) and five that did not (Arizona, Arkansas, Florida, New York, and West Virginia). At these state agencies, we reviewed strategic plans and strategy, and policy and guidance for planning and implementing enforcement programs. We were not able to assess the workload and capacity of states to meet their programs because, as mentioned previously, EPA does not have a system to collect information needed for such an assessment, including consistent and complete information from the states or regions on their workload

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<sup>6</sup>For purposes of this report, state agencies include those of the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Islands.

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and the number, type, and skills of staff needed to carry out these responsibilities. Appendix I contains a detailed description of our scope and methodology. We performed our work from October 2005 through July 2007 in accordance with generally accepted government auditing standards, which included an assessment of data reliability and internal controls.

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## Results in Brief

Overall funding to regions and authorized states increased from fiscal years 1997 through 2006. However, these increases did not keep pace with inflation and the growth in enforcement responsibilities. Both EPA and state officials told us they are finding it difficult to respond to new requirements while carrying out their previous responsibilities. Over the 10-year period, EPA's enforcement funding to the regions increased from \$288 million in fiscal year 1997 to \$322 million in fiscal year 2006, but declined in real terms by 8 percent. In response, regional officials said, they reduced the number of enforcement staff by about 5 percent. EPA's grants to states to implement environmental programs consistent with federal requirements also increased over the 10-year period, from \$2.9 billion in fiscal year 1997 to \$3.2 billion in fiscal year 2006, but declined in real terms by 9 percent. In addition, grant funding dropped substantially between fiscal years 2004 and 2006, from \$3.9 billion to \$3.2 billion. These reductions in funding occurred during a period when statutory and regulatory changes increased enforcement and other environmental program responsibilities. As we reported in July 2005, EPA's implementation of amendments to the Clean Water Act (1) increased the number of regulated industrial and municipal facilities by an estimated 186,000 facilities and (2) added hundreds of thousands of construction projects to states' and regions' workloads for the storm water program. For example, Arkansas officials said that, for the storm water program in their state, the number of inspections and storm water permits issued increased by 512 percent from 2003 to 2005. In addition, other state officials told us that reductions in grant funds have limited their ability to meet EPA's requests for their states to carry out new requirements. As a result, as these officials focus on priority enforcement work, they have accumulated a backlog of work in other areas, such as renewing permits for regulated facilities. However, EPA does not collect sufficient information on enforcement workload and staffing to permit an independent assessment of the capability of either regions or states to meet their enforcement responsibilities.

EPA has made substantial progress in improving priority setting and enforcement planning with states through its system for setting national

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enforcement priorities and NEPPS, which have fostered a more cooperative relationship. With respect to setting national priorities, for example, stakeholders recommended, and OECA accepted, a focus on ensuring that facilities handling hazardous substances, such as lead and mercury, have the financial resources necessary to close their facilities, clean up any contamination, and compensate communities and individuals affected by the contamination. Because financial assurance is now a national priority, EPA will provide training to state inspectors, who often do not have a financial background, on how to assess the adequacy of documented financial resources. EPA and states have also made progress in using NEPPS for establishing enforcement responsibilities and allocating resources. State participation in the partnership grew from 6 pilot states in fiscal year 1996 to 41 states in fiscal year 2006, although the extent of participation in the partnership varies. Of the 41 states, 31 had both Performance Partnership Agreements and Performance Partnership Grants; 2 had agreements only; and 8 had grants only. Participation has been uneven, according to state officials, because the benefits expected from this partnership—flexibility in managing their programs and directing grant funds—have only been partially realized. For example, Minnesota and Massachusetts officials said they have been able to achieve some flexibility from EPA to target state priorities and allocate grant resources to those priorities. Other states, such as Florida and New York, reported that they did not see significant benefits from participation in NEPPS. For example, Florida officials told us that state appropriation procedures restrict their ability to shift resources among programs.

EPA has improved its oversight of state enforcement programs by implementing the SRF to provide a consistent approach for overseeing the programs. Moreover, EPA can make additional progress by addressing weaknesses that the SRF reviews identified and by implementing other improvements to ensure oversight that is more consistent. With its implementation of the SRF, EPA has, for the first time, a consistent approach for overseeing states' compliance and enforcement programs. The SRF reviews have also identified several significant weaknesses in how states enforce program requirements. For example, the reviews frequently found that states are not properly documenting inspection findings or penalties, as directed by EPA's enforcement policy and guidance. While recognizing that these findings are useful, EPA has not developed a plan for how it will uniformly address them in a timely manner. Nor has the agency identified the root causes of the weaknesses, although some EPA and state officials attribute the weaknesses to causes such as increased workloads concomitant with budgetary reductions. Until EPA addresses enforcement weaknesses and their causes, it faces

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limitations in determining whether states perform timely and appropriate enforcement and apply penalties to environmental violators in a fair and consistent manner within and among the states. The SRF is still in its early stages of implementation and offers additional uses that EPA has not yet considered, such as using the SRF's structured approach to (1) provide consistent information to the public on how well the states are implementing their enforcement responsibilities and (2) serve as a basis for assessing the performance of EPA's regions, which have been inconsistent in their enforcement and oversight efforts in the past.

In order to enhance EPA's oversight of regional and state enforcement activities consistent with federal requirements, we are recommending that the Administrator of EPA use the results of the SRF to (1) identify lessons learned and develop an action plan to address significant problems; (2) address capacity issues, such as state staffing levels and workload requirements, of state programs that perform poorly; (3) publish the results of the SRF so that the general public and others will know how well state regulators are enforcing authorized programs; and (4) for regional enforcement programs, conduct a performance assessment similar to the SRF. In commenting on the draft report, EPA generally agreed with GAO's recommendations and stated that the agency is taking action to address the issues we raised. With respect to our recommendation to publish the results of the SRF findings, EPA said that it had agreed with the Environmental Council of the States that the first round of state enforcement reviews would not be published. However, EPA said it would consider whether to publish future reviews when it evaluates the implementation of the SRF in fiscal year 2008.

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## Background

Since its creation in 1970, EPA has generally been responsible for ensuring the enforcement of the nation's environmental laws. This responsibility has traditionally involved monitoring compliance by those in the regulated community (such as factories or businesses that release pollutants into the environment or use hazardous chemicals), ensuring that violations are properly identified and reported, and ensuring that timely and appropriate enforcement actions are taken against violators when necessary.

Because states historically had primary responsibility for addressing environmental pollution, including taking the lead role in enforcement under federal environmental legislation of the 1950s and 1960s, many states were dissatisfied with the new enforcement powers Congress granted to EPA. Referring to his first term as EPA Administrator during the 1970s, William Ruckelshaus described relations between EPA and state

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governments as “terrible,” largely because EPA itself represented a repudiation of what the state regulators had been doing. The states felt, he believed, that in the face of very little public or political support, they had made considerable progress and were getting no credit for it. The very existence of EPA symbolized to state environmental agencies the lack of appreciation the public had for their efforts and accomplishments.

Furthermore, because EPA was now responsible for ensuring the implementation and enforcement of environmental laws, states needed to demonstrate to EPA that they had acquired and were maintaining adequate authority to enforce program requirements consistent with federal law before EPA would “authorize” and continue to allow states to assume the day-to-day administration of new environmental programs. This federal oversight contributed to a very difficult period between EPA and the states. The states thought EPA dictated too much and was too intrusive.

Difficulties in the EPA-state relationship manifested themselves from the 1970s through the 1990s and, to some degree, have continued to the present day. In 1980, we described the failings of the EPA-state partnership.<sup>7</sup> In a 1988 comprehensive management review of EPA, we reported that while some progress had been made in improving the EPA/state relationship, the goal of a truly effective EPA-state partnership remained elusive.<sup>8</sup> Many state officials expressed concerns about having limited flexibility, too much EPA control, and excessively detailed EPA oversight.

In 2003, OECA officials said that environmental commissioners in several states and members of the Environmental Council of the States (ECOS)<sup>9</sup> called for OECA to develop and implement a consistent and objective mechanism for measuring state performance. Specifically, ECOS wanted EPA’s oversight of state programs to be consistent between EPA regions and states in the same region. ECOS also wanted EPA oversight to be predictable, repeatable, and unbiased. In December 2003, OECA began jointly developing the SRF with input from EPA regions, associations

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<sup>7</sup>GAO, *Federal-State Environmental Programs—The State Perspective*, CED-80-106 (Washington, D.C.: Aug. 22, 1980).

<sup>8</sup>GAO/RCED-88-101.

<sup>9</sup>ECOS is the national nonprofit, nonpartisan association that represents state and territorial environmental commissioners.

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representing state pollution control agencies,<sup>10</sup> ECOS and state officials to evaluate the extent to which state performance in three major programs complies with specific legal requirements, policy and guidance.<sup>11</sup> The SRF measures state performance using 12 required elements and an optional 13th element. The elements include five categories: (1) review of state inspection implementation; (2) review of state enforcement activity; (3) review of state enforcement commitments; (4) review of state data integrity; and (5) for the optional 13th element, a review of additional programs of the state's choice to insure consideration of state activities that support the overall evaluation. Regions prepare a draft report of the findings and conclusions of each review, jointly discuss with the state how major recommendations will be addressed, and provide the draft reports to OECA headquarters. OECA reviews the draft reports and provides comments on the regions' analyses and recommendations. A more detailed description of the SRF is included in appendix II.

The relationship between EPA and state environmental agencies varies substantially from state to state and program to program. Staff in EPA's regional offices operate programs in those states that have elected not to seek authorization and in those states that EPA has concluded are not prepared to manage the programs effectively. In some cases, where EPA has denied a state with program authorization, state personnel may do most of the work as if they had the authority to grant permits, with EPA employees handling only the final step of formally issuing the documents. In other states or programs, EPA may approve a "partial delegation" of authority, under which a state operates part of a program that can be delegated and EPA operates the remainder.

Just as EPA can authorize a state to conduct day-to-day program management, environmental statutes may allow EPA to withdraw authorization if a state fails to meet certain conditions, including

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<sup>10</sup>State pollution control associations are national, nonpartisan professional organizations representing state and local pollution control officials. They include, for example, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), and the National Association of Clean Air Agencies—formerly known as State and Territorial Air Pollution Program Administrators, and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO).

<sup>11</sup>The review elements are based upon compliance and enforcement policies that have been in place for many years, such as EPA's national enforcement response policies, compliance monitoring policies, civil penalty policies, and similar state policies (where in use and consistent with national policies).

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maintaining the capacity to effectively manage the program and adopting and properly exercising the legal authorities to enforce program compliance consistent with federal laws and regulations. In practical terms, however, EPA's ability to directly manage state programs is limited because of its staffing levels and other resources.

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## Increases in EPA Funding Have Not Kept Pace with Inflation and Enforcement Responsibilities

Overall funding to regions and authorized states increased from fiscal years 1997 through 2006. However, these increases did not keep pace with inflation and the growth in enforcement responsibilities. Both EPA and state officials told us they are finding it difficult to respond to new requirements while carrying out their previous responsibilities. However, EPA does not collect sufficient data on enforcement workload and staffing, which it needs to assess the capacity of the regions and states to effectively implement their responsibilities for enforcing environmental laws consistent with federal requirements.

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## Resources for EPA Regions and the States Have Declined in Real Terms

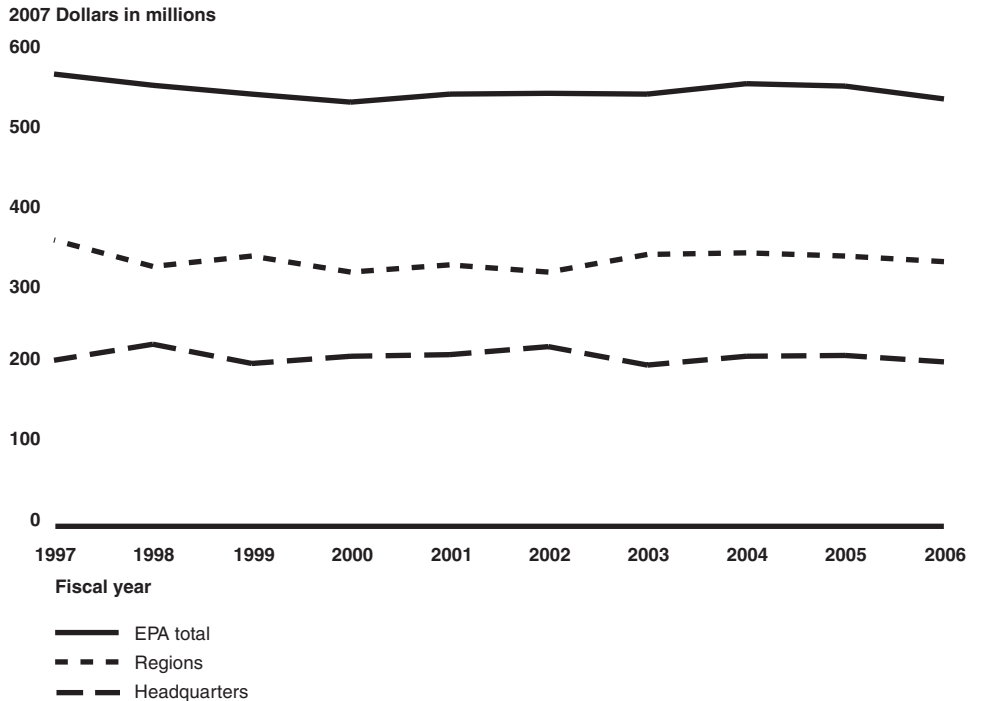
According to our analysis of EPA's budget and workforce for fiscal years 1997 through 2006, EPA's total budget increased from \$7.3 billion to \$7.7 billion—a decline of 13 percent in real terms.<sup>12</sup> At the same time, total funding for EPA enforcement increased from \$455 million to \$522 million—a decline of 5 percent in real terms. For the regions, which command the bulk of enforcement resources, funding increased from \$288 million to \$322 million—a decline of 8 percent in real terms, while headquarters enforcement funding increased from \$167 million to \$200 million—a decline of 1 percent in real terms. Figure 1 shows the changes in EPA enforcement funding in real terms, in total, and by headquarters and regional offices.

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<sup>12</sup>When we refer to “real terms,” we mean after subtracting out the effect of inflation, i.e., growth in prices. Trends in spending of nominal amounts (also called current dollar or then-year values) may reflect changes in both price and quantity. To evaluate real spending trends, it is necessary to remove the effect of changes in prices. The effect of inflation is removed by deflating the series, a process that requires dividing the nominal value by an appropriate price index. The resulting series can be labeled real, inflation-adjusted, or constant dollars. This report used the Gross Domestic Product (GDP) price index to deflate the nominal dollar amounts of budget authority amounts and arrive at inflation adjusted (or real) dollars in 2007 dollars.



**Figure 1: EPA's Enforcement Funding in Real Terms, in Total, and by Headquarters and Regional Offices, Fiscal Years 1997-2006**



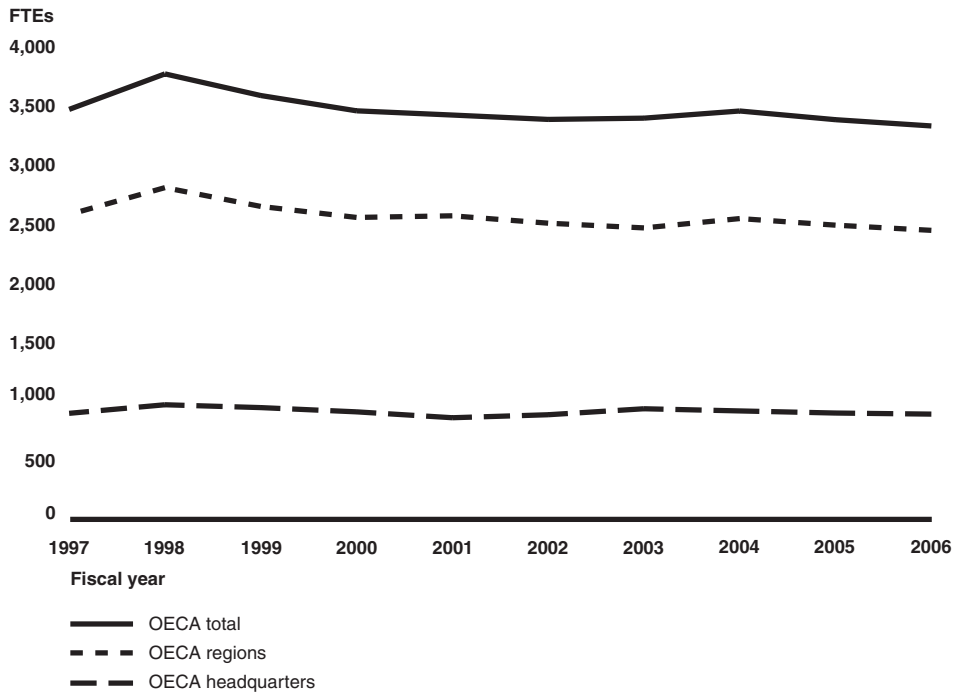
Source: GAO analysis of EPA data.

Note: In nominal terms, funding enforcement in EPA regions increased from \$288 million in fiscal year 1997 to \$322 million in fiscal year 2006.

According to officials in OECA and EPA's Office of the Chief Financial Officer, OECA headquarters absorbed decreases in OECA's total enforcement funding in recent years to prevent further reductions to the regions. According to our analysis, enforcement funding for OECA headquarters increased from \$197 million in fiscal year 2002 to \$200 million in fiscal year 2006—a 9 percent decline in real terms. During the same time, regional enforcement funding increased from \$279 million to \$322 million—a 4 percent increase in real terms.

EPA reduced the size of the regional enforcement workforce by about 5 percent over the 10 years, from 2,568 full-time equivalent (FTE) staff in fiscal year 1997 to 2,434 FTEs in fiscal year 2006. In comparison, the OECA headquarters workforce declined 1 percent, and the EPA total workforce increased 1 percent during the same period. Figure 2 shows the changes in headquarters and regional FTEs from fiscal years 1997 through 2006.

**Figure 2: OECA Headquarters and Regional Total FTEs, Fiscal Years 1997-2006**

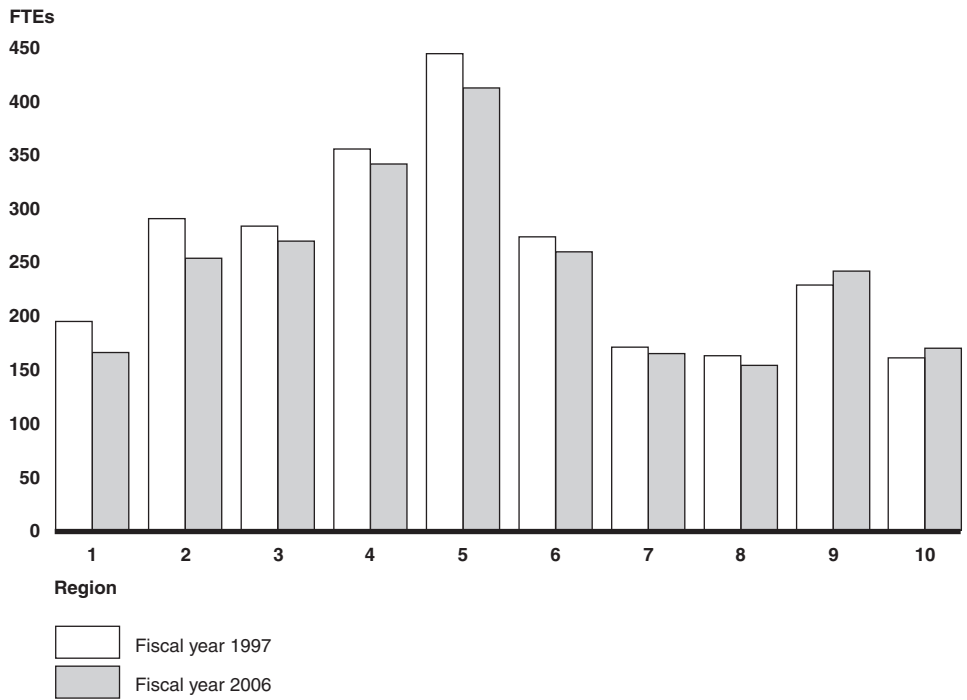


Source: EPA Office of Budget.

As figure 3 shows, the change in FTEs was not uniform across the 10 regions over the period. For example:

- Two regions—Region 9 (San Francisco) and Region 10 (Seattle)—experienced increases in their workforce: Region 9 increased 5 percent, from 229 to 242 FTEs, and Region 10 increased 6 percent, from 161 to 170 FTEs.
- Two regions—Region 1 (Boston) and Region 2 (New York) experienced the largest declines: Region 1 experienced a 15 percent decline, from 195 to 166 FTEs, and Region 2 had a 13 percent decline, from 291 to 254 FTEs.

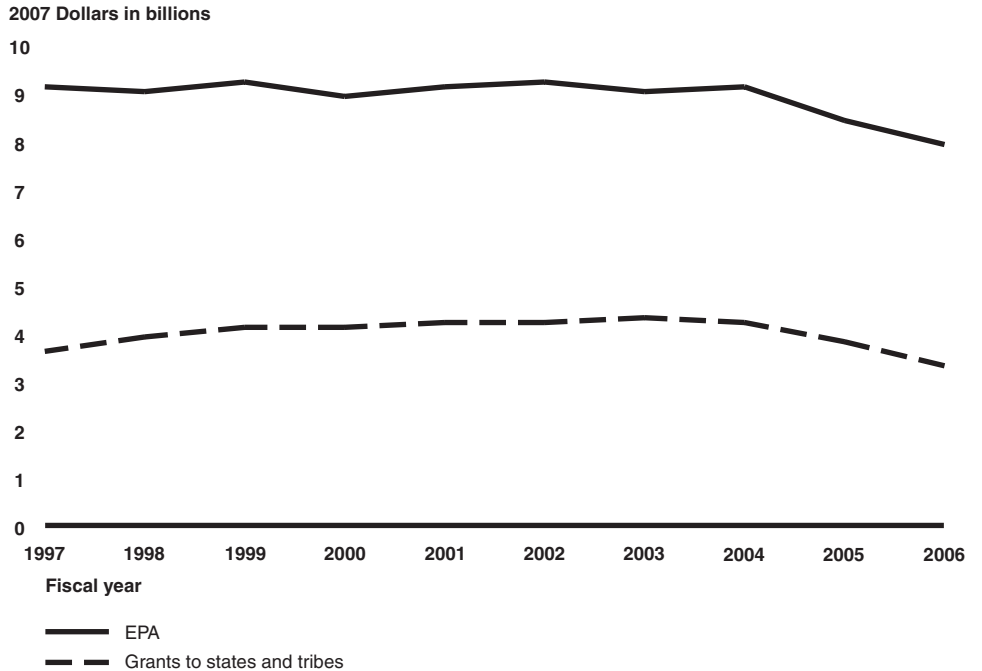
**Figure 3: OECA Regional Offices FTEs, Fiscal Years 1997-2006**



Source: EPA Office of Budget.

As EPA's real total funding declined, EPA's real total grant funding to states and tribes declined, as shown in figure 4. States and tribes use these grant funds, combined with their own resources, to implement and enforce environmental programs consistent with federal requirements. EPA's grants to authorized states and tribes increased from \$2.9 billion to \$3.2 billion from fiscal years 1997 through 2006—a decline of 9 percent in real terms. However, grant funding to states and tribes dropped substantially between fiscal years 2004 and 2006, from \$3.9 billion to \$3.2 billion—a 22 percent decline in real terms.

**Figure 4: EPA's Real Total Funding and Real Total Grant Funding to States and Tribes, Fiscal Years 1997 through 2006**



Source: GAO analysis of EPA data.

Note: In nominal terms, funding for grants to states and tribes increased from \$2.9 billion in fiscal year 1997 to \$3.2 billion in fiscal year 2006.

For the programs we examined, EPA provides states with federal resources through grant programs. In addition, under the Clean Air Act, states must collect fees from permitted facilities to help fund the program. The following are some of the funding sources for the programs we examined:

- *Clean Water Act Section 106 Grants.* The Office of Water provides annual Water Pollution Control grant funds to the states under the Clean Water Act for, among other things, enforcement of point source pollution requirements.
- *Clean Air Act Section 105 Grants.* States finance enforcement of air quality laws with fees paid by permitted facilities (e.g., electric utilities and chemical manufacturers), in accordance with title V of the Clean Air Act. States assess fees based on tons of pollution emitted. The fee must be at least \$25 per ton (as adjusted for inflation) of regulated pollutants

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(excluding carbon monoxide). EPA provides grants to states to help fund programs that prevent and control air pollution or to implement national ambient air quality standards, including programs that may address smaller sources that do not have to obtain permits (e.g., dry cleaners and gasoline stations).

- *Resource Conservation and Recovery Act (RCRA) Section 3011 Grants.* The Office of Solid Waste and Emergency Response provides annual grants to states under section 3011 of the Solid Waste Disposal Act to support, among other things, state enforcement of the RCRA Subtitle C Hazardous Waste Management programs.<sup>13</sup> EPA's financial assistance covers up to 75 percent of a state's total costs for managing hazardous waste.
- *Underground Storage Tank (UST) Grants.* The Office of Underground Storage Tanks provides grants to states under subtitle I of RCRA to support state UST programs, including inspections and enforcement activities.

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## EPA Regions and States Find It Difficult to Respond to New Requirements under Current Resource Constraints

Given the real reductions in funding and personnel, regional and state enforcement officials noted states are finding it difficult to respond to new enforcement requirements in the Clean Water Act, Clean Air Act, and RCRA, which have greatly increased the number of regulated pollutants and sources.<sup>14</sup> However, as we reported in June 2006, EPA's data collection system for state and regional enforcement activities does not provide consistent and complete data on the workload of the states or the regions, and on their capacity to meet their workload, including the enforcement of environmental programs consistent with federal requirements.<sup>15</sup> Thus, we

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<sup>13</sup>The Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, 90 Stat. 2795, amends the Solid Waste Disposal Act, Pub. L. No. 89-272, tit. II, 79 Stat. 997 (1965), the first federal law regulating solid wastes—a broad category of materials including such materials as garbage from treatment plants and discarded materials resulting from industrial, commercial, or agricultural activities.

<sup>14</sup>Precise information about the overall changes in region and state enforcement workload associated with the implementation of new requirements—such as information on changes in the numbers of regulated entities—is not available. However, we and others have reported over the years on the impact of changes in the federal environmental programs to the requirements for EPA's and authorized states' enforcement programs. [GAO-05-721](#); Congressional Research Services, RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency* (updated Mar. 31, 2005).

<sup>15</sup>[GAO-06-840T](#).

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were not able to independently assess their capabilities to meet their responsibilities under environmental programs with their existing resources.

## Clean Water Act

In 1987 amendments to the Clean Water Act,<sup>16</sup> Congress expanded the scope of the act by regulating storm water runoff from rain or snow as a discharge from point sources, such as industrial facilities and municipal separate storm sewer systems. We reported in 2005 that the new storm water regulations increased the number of industrial and municipal facilities subject to regulation by an estimated 186,000 facilities. In that same year, the EPA Office of Inspector General reported that the new requirements added hundreds of thousands of construction projects to states' and regions' workloads related to storm water pollution sources. In 2005, EPA established storm water as a national enforcement priority.

According to state water quality enforcement officials, it is difficult to meet these new requirements while still meeting older requirements to periodically inspect large municipal and industrial point sources. For example, Minnesota officials told us that there are a huge number of facilities and locations that require inspection and permits in that state. The Minnesota storm water officials provided us a performance report that indicated noncompliance with storm water requirements was so pervasive that the state's water enforcement program was not meeting its timeliness targets for closing enforcement cases where it has the authority to issue a penalty. The report said that the situation threatened to undermine earlier success in implementing the state's storm water permit program.

According to the Arkansas director of the state's water quality program, storm water enforcement work in the fast-growing northwestern corner of the state has overwhelmed the program. According to state data, the number of storm water permits issued grew by 512 percent—from 427 to 2,616—between 2003 and 2005. At the same time, the number of permits Arkansas officials issued to traditional point sources increased by 19 percent, from 190 to 227 facilities. However, the state is beginning to fall behind in issuing the traditional permits because it has had to redeploy inspectors to work on storm water enforcement.

Regional officials told us they have provided assistance to some states to meet enforcement requirements for storm water, such as helping states complete a specified number or percentage of state inspections. For

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<sup>16</sup>Water Quality Act of 1987, Pub. L. No. 100-4, 101 Stat. 7.

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example, Region 8 (Denver) enforcement officials said they share the inspection workload with Montana officials because that state's permit program is chronically underfunded, and this partnership enables state officials in Montana to focus on reducing their backlog of regulated facilities that require permit renewals.

## Clean Air Act

In 1990 amendments to the Clean Air Act,<sup>17</sup> Congress created significant new enforcement requirements for both EPA regions and states.<sup>18</sup> Title III of the 1990 amendments required EPA to control emissions of 189 air toxics by, among other things, developing technology-based emissions limits for major stationary sources.<sup>19</sup> By 2006, there were an estimated 84,000 major stationary sources within 158 major source categories such as incinerators and chemical plants to which these standards applied. Title III of the amendments also directed EPA to develop a list of categories of small stationary sources, such as dry cleaners and gas stations—so-called “area sources”—sufficient to represent 90 percent of emissions from small stationary sources of listed hazardous air pollutants. EPA and authorized states were then to implement strategies to control toxic emissions from these sources. EPA developed a list of 70 categories, but, as we reported in 2006, it had issued standards for only 16.<sup>20</sup>

Under title V of the 1990 amendments, Congress directed EPA and authorized states to implement a comprehensive permit program for

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<sup>17</sup>Clean Air Act Amendments, Pub. L. No. 101-549, 104 Stat. 2399 (1990).

<sup>18</sup>GAO, *Clean Air Act: EPA Should Improve the Management of Its Air Toxics Program*, [GAO-06-669](#) (Washington, D.C.: June 23, 2006).

<sup>19</sup>Title III of the 1990 amendments directs EPA to impose technology-based standards, or Maximum Achievable Control Technology (MACT) standards, on industry to reduce emissions. These technology-based standards require the maximum degree of reduction in emissions that EPA determines achievable for new and existing sources, taking into consideration the cost of achieving such reduction, health and environmental impacts, and energy requirements.

<sup>20</sup>The agency faces court-ordered deadlines to complete standards for all of the remaining 54 source categories of small stationary sources by June 15, 2009.

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sources emitting regulated air pollutants.<sup>21</sup> The new requirement significantly expanded an earlier permit program that applied only to major new construction or modifications of existing major sources of pollution. As of April 2001, EPA had authorized all 50 states and 63 local governmental units to act as clean air regulatory agencies and issue Title V operating permits. The 1990 amendments also required states to collect fees from regulated facilities sufficient to cover program costs. We reported in 2001 that 19,880 major sources had already received, or could be expected to obtain or comply with the conditions of, Title V permits;<sup>22</sup> furthermore, federal and state regulators performed about 17,800 routine inspections each year in fiscal years 1998 and 1999.

State air enforcement officials said that reductions in federal air quality grants and EPA restrictions on how states can use the permit fees limit their ability to meet new Clean Air Act requirements. For example, enforcement officials in Arizona and West Virginia told us that reductions in section 105 grants have made it difficult to meet EPA's push for states to identify and regulate air toxic emissions from small stationary sources, such as dry cleaners. According to the director of West Virginia's air quality program, while his office has identified these sources and provided this information to Region 3 (Philadelphia), it does not have the resources to regulate these sources. Title V rules restrict states from using permit fees for enforcement of air toxic emission standards for small stationary sources.

Several state officials said they also face difficulties keeping up with Title V requirements to issue operating permits and inspect facilities. For example, according to West Virginia's Director of Air Quality, the state program is spending more than it generates in revenues from Title V permit fees. Furthermore, the state is drawing down a reserve fund that it established in 1993, when it was operating a preliminary Title V program

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<sup>21</sup>Under Title V of the Clean Air Act, sources emitting pollutants above certain thresholds are classified as "major sources" and must obtain Title V operating permits. In addition, most major sources must report their aggregate annual emissions to their state air quality agency and pay fees based partly or entirely on their level of emissions. Sources that emit pollutants below major source thresholds are called "minor sources" and do not have to obtain a Title V permit. Some minor sources, called "synthetic minors," have the potential to emit pollutants at major source levels but choose to limit their operations and emit below these thresholds.

<sup>22</sup>GAO, *Air Pollution: EPA Should Improve Oversight of Emissions Reporting by Large Facilities*, GAO-01-46 (Washington, D.C.: April 2001).



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Resource Conservation and  
Recovery Act

before it was authorized to administer this program. West Virginia's Title V fee is around \$21 per ton, which is below the national average fee of \$28 per ton paid by major sources in 2001.<sup>23</sup> The Director of Arizona's Air Quality Division said that as a result of new standards and new types of performance testing, the Title V permitting workload has increased faster than staff levels.

The 1984 amendments to RCRA<sup>24</sup> required EPA and authorized states to regulate small-quantity hazardous waste generators—those producing between 100 and 1,000 kilograms of waste per month. Before the 1984 amendments, EPA only required generators who produce more than 1,000 kilograms of hazardous waste to comply with regulations concerning, among other things, record keeping and reporting. In addition, the 1984 amendments required EPA and authorized states to ensure that owners and operators of treatment, storage and disposal facilities comply with new prohibitions for disposing of untreated hazardous wastes on land.

This expansion of responsibility, combined with a reduction in resources, has made it difficult to carry out responsibilities, according to state hazardous waste enforcement officials we spoke with. For example, data provided to us by New York State officials showed that the state's grant for hazardous waste management dropped in real terms by 19 percent between fiscal years 1997 and 2006. As a result of this decline in funding, New York State officials said that the grant supports fewer full-time staff. The officials provided us data that showed New York State's grant for hazardous waste management supported 38 percent fewer full-time staff in the state's RCRA program in fiscal year 2006 than in fiscal year 1997. Furthermore, while it continues to focus on EPA's national priorities for enforcement, the state has accumulated a backlog of permits that must be renewed. Renewing these hazardous waste permits is critical to protecting the environment and public health because EPA and authorized states can enforce new hazardous waste standards only when they are specified in a permit. According to these officials, EPA has issued new standards during the life of the old permit and these new standards are not enforceable until the permit is renewed.

Several states identified an emerging challenge: verifying that owners and operators of hazardous waste facilities have the financial resources to

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<sup>23</sup>GAO-01-46.

<sup>24</sup>The Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 98 Stat. 3221.

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clean up their sites, as RCRA requires, rather than leaving site cleanup to the taxpayer. As we reported in 2005, EPA's Office of Inspector General concluded that required cleanups at some sites could exceed \$50 million. EPA made enforcement of the financial assurance requirement a national enforcement priority in 2005. However, state officials told us, and EPA's regional officials agreed, that they do not have the personnel with the necessary skills to evaluate the financial assurances provided. For example, New York State officials told us that they have only one person trained to review the adequacy of a facility's financial assurance.

The Energy Policy Act of 2005<sup>25</sup> also expanded states' enforcement workload by requiring, among other things, (1) EPA and any state receiving federal funding to inspect by August 8, 2007, all regulated tanks that were not inspected since December 22, 1998, and (2) EPA or the state must generally inspect regulated tanks once every 3 years and complete the first 3-year inspection cycle within 3 years of completing inspections of underground storage tanks that had not been inspected by December 22, 1998.<sup>26</sup> We reported in February 2007 that according to EPA data there were 645,990 active federally regulated underground storage tanks registered with state underground storage tank programs.<sup>27</sup>

To carry out these additional inspections, the act, as amended, allows states to use Leaking Underground Storage Tank Trust Fund appropriations, and authorizes substantial appropriations from the trust fund during fiscal years 2006 through 2011. These new appropriations were to be in addition to State and Tribal Grant funds EPA provides to states for underground storage tank programs, which historically have been about \$187,000 annually. These additional funds were not appropriated in fiscal years 2006 and 2007. As a result, some state officials told us, they do not have sufficient resources to meet the new inspection requirements. For example, Minnesota officials said they have sufficient resources for inspecting underground storage tanks only once every 9

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<sup>25</sup>Pub. L. No. 109-58, 119 Stat. 594.

<sup>26</sup>The act allows EPA to extend the first 3-year period for up to 1 additional year if an authorized state demonstrates that it has insufficient resources to complete all inspections within the first 3-year period.

<sup>27</sup>The Leaking Underground Storage Tank Trust Fund, as established in 1986, provided funds to states specifically for cleaning up contamination from tanks (i.e., releases or leaks). Prior to the Energy Policy Act of 2005, states could not use the money for inspections or enforcement of leak detection and prevention requirements.

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years. Regional officials acknowledged that many states need additional inspectors for meeting these new underground storage tank inspection requirements and said they provide support to states facing fiscal constraints. For example, the Region 3 Chief of RCRA enforcement and compliance said the region helped state officials in West Virginia by inspecting small and midrange gas stations in the state. Region 9 (San Francisco) has also been working with UST officials in Arizona to meet the new inspection requirements.

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## EPA and States Have Taken Steps to Improve Planning and Priority Setting for Enforcement, but Results Are Uneven

EPA has made substantial progress in improving priority setting and enforcement planning with states through its system for setting national enforcement priorities and NEPPS, which have fostered a more cooperative relationship. For example, on states' recommendation, OECA accepted as a priority ensuring that facilities handling hazardous substances, such as lead or mercury, have the financial resources to close their facilities, clean up contamination, and compensate communities and individuals affected by the contamination. EPA and states have also made some progress in using NEPPS for joint planning and resource allocation. State participation in the partnership grew from 6 pilot states in fiscal year 1996 to 41 states in fiscal year 2006.

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## EPA Implemented a More Collaborative Process for Setting National Priorities for Enforcement

Since the late 1980s, EPA's top agency executives have set priorities for improving agency management. To develop more collaborative relationships among EPA's headquarters and regions, and the states, OECA created the Planning Council in 2003 to direct OECA's strategic and planning processes, including selecting national enforcement priorities. The council includes both EPA headquarters and regional officials. In the summer of 2003, OECA asked officials representing state environmental agencies, tribal governments, and air, water, and solid waste pollution control associations to recommend priorities for consideration as national priorities for fiscal years 2005 through 2007. Considering these recommendations, as well as those from EPA's media program managers, OECA developed a list of potential national priorities that it published in the *Federal Register* in December 2003. OECA asked for public comments on candidate priorities and suggestions for new national enforcement priorities. In January 2004, OECA hosted a meeting with headquarters and regional officials, and representatives from 10 state environmental agencies, four tribal governments, and three pollution control associations to discuss and rank their choices of potential priorities. OECA then selected the final national enforcement priorities for fiscal years 2005 through 2007 based on the following criteria:

- *Significant environmental benefit.* In what specific areas can the federal enforcement and compliance assurance programs make a significant positive impact on human health and/or the environment? What are the known or estimated public health or environmental risks?
- *Noncompliance.* Are there particular economic or industrial sectors, geographic areas, or facility operations where regulated entities have demonstrated serious patterns of noncompliance?
- *EPA responsibility.* What identified national problem areas or programs are better addressed through EPA's federal capability in enforcement or compliance assistance?

Table 1 shows the potential national priorities, and those that were selected.

<b>Table 1: EPA's Candidate and Final National Enforcement Priorities for Fiscal Years 2005-2007, in Rank Order</b>	
<b>Potential priorities</b>	<b>Priorities selected</b>
<b>Clean Air Act</b>	
Air toxics	•
New source review/prevention of significant deterioration	•
<b>Clean Water Act</b>	
Effects of wet weather on concentrated animal feeding operations, combined sewer overflows, sanitary sewer overflows, and storm water runoff	•
<b>Petroleum refining</b>	• <sup>a</sup>
<b>Resource Conservation and Recovery Act</b>	
Financial assurance/financial responsibility	•
Mineral processing	•
<b>Tribal environmental issues</b>	•
<b>Federal facilities</b>	
<b>Resource Conservation and Recovery Act</b>	
Leaking underground storage tanks	
<b>Ports of entry</b>	
<b>Asbestos in schools</b>	
<b>Auto salvage yards</b>	
<b>Environmental justice</b>	
<b>Miscellaneous plastics</b>	

Potential priorities	Priorities selected
<b>Safe Drinking Water Act</b>	
Microbials	
<b>Fuels management</b>	
<b>Significant noncompliance oversight</b>	

Source: EPA.

<sup>a</sup>EPA's national petroleum refining priority addresses air emissions from the nation's petroleum refineries. EPA reached its goal of addressing 80 percent of the domestic refining capacity through settlements or filed civil actions. As a result, OECA removed it from the national priority list at the end of fiscal year 2006.

According to state and regional officials, OECA's approach for selecting national priorities has fostered a more collaborative working relationship, and they pointed to the financial assurance national priority under RCRA as a case in point. This priority focuses on ensuring that owners and operators of facilities handling hazardous substances, such as lead or mercury, provide assurance that they have the financial resources necessary to close their facilities, clean up any contamination, and compensate communities and individuals affected by any contamination they cause. Stakeholders—EPA regions, states, pollution control associations,<sup>28</sup> and the public—told OECA that financial assurance should be a national priority. EPA and state supporting investigations confirmed that (1) there are significant noncompliance issues relating to the financial assurance requirements; (2) the issues are of national importance and deal with several environmental laws and regulatory programs; and (3) areas of noncompliance were not isolated to a specific sector, industry, or geographic location. In selecting financial assurance as a national priority, OECA stated that an effective national enforcement and compliance strategy would help address many of the problems created by the regulated facilities' failure to fulfill their financial responsibility obligations. In this regard, EPA is providing training to state inspectors—who often do not have expertise in financial management—on how to assess the adequacy of financial documentation provided by regulated facilities.

<sup>28</sup> Association of State and Territorial Solid Waste Management Officials also received a collective recommendation from the Northeast Waste Management Officials' Association (NEWMOA), a nonprofit, nonpartisan interstate association that has a membership composed of the hazardous waste, solid waste, waste site cleanup and pollution prevention program directors for the environmental agencies in eight New England States (Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont)

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While state and regional officials told us the priority setting process is more collaborative, some state officials raised a number of issues about how EPA considered their comments about national priorities. For example, Massachusetts and Oregon officials told us that they did not understand why OECA ranked some of their priorities lower than the national priorities that were selected and would like to have feedback on how their views were considered when selecting national enforcement priorities. In addition, while Minnesota, Utah, and Arizona officials agree that the planning and priority setting has improved, they would prefer earlier involvement in the decision-making process, that is, in developing the candidate list. On the other hand, New York and Arkansas said that they preferred to provide input on the national enforcement priorities through the pollution control associations and/or ECOS. They said, by doing so, OECA will receive states' collective views on the candidate priorities in a more representative and compelling way.

After OECA selects the national enforcement priorities, it uses the National Program Managers guidance to inform its stakeholders of the national priorities and required elements of all environmental laws. The managers establish overall national goals for their respective programs based on a variety of factors, including underlying statutory mandates, congressional directives, administration/administrator priorities, and their own view of programs and policies that the programs should focus on. EPA regions and states use this guidance to negotiate agreements based on (1) which environmental problems will receive priority attention within state programs, (2) what EPA's and the states' respective enforcement roles and responsibilities will be, and (3) how the states' progress in achieving program objectives will be assessed. The results of these negotiations are documented primarily in PPAs and/or PPGs. According to EPA, NEPPS allows regions and states to negotiate agreements that vary in content and emphasis to reflect regional and state conditions and priorities.

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### Extent of States' Participation in the Planning and Priority Setting Process Varies

State participation in NEPPS grew from 6 pilot states in fiscal year 1996 to 41 states in fiscal year 2006. Of these 41 states participating in NEPPS in fiscal year 2006, 31 had both PPAs and PPGs; 2 had agreements only; and 8 had grants only. Twelve states did not participate at all in NEPPS.

Regional officials and states participating in NEPPS said it contributed to improvements in their planning and priority setting process by helping identify enforcement priorities, roles, and responsibilities. The states we spoke with that had a PPA—Iowa, Massachusetts, Minnesota, Oregon, and

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Utah—also had a PPG and generally agreed that EPA’s planning and budget process fostered collaboration in setting joint priorities, roles, and accountability for each party. In addition, Minnesota and Massachusetts officials told us that they have been able to use grant resources to address other state priorities. However, these officials noted that EPA guidance continues to call for a specific number of enforcement activities, which does not allow for as much flexibility as envisioned.

States without a PPA can still participate in NEPPS through a PPG, which allows them to combine individual categorical grant funds into a consolidated grant. Once the funds are consolidated, they lose their category-specific identity and can be used with greater flexibility. We found that states that had a PPG, but not a PPA, had mixed views on NEPPS. For example, according to the New York State Department of Environmental Conservation (NYSDEC), which currently has a performance grant only for water programs, it experimented with a performance agreement in the mid-1990s but dropped the endeavor because of difficulties in drafting an agreement that combined multiple agency divisions. NYSDEC officials said the amount of work involved outweighed the benefits to individual programs. Furthermore, even with a performance grant for water programs, NYSDEC officials told us, EPA still maintains requirements for how the money is used and attempts to steer the state toward EPA’s priorities, which are not necessarily NYSDEC’s priorities. In contrast, the Arizona Department of Environmental Quality, which has a performance grant but not a performance agreement, said it has a “fantastic relationship” with Region 9 that is characterized by extensive coordination and communication. Because of its grant, Arizona officials told us, the state has realized administrative efficiencies and has more flexibility to move money among programs.

States that do not participate in NEPPS were generally satisfied with the amount of joint planning and coordination in their work plan agreements (i.e., memorandum of agreement and annual work plans). For example, West Virginia and Florida told us that their work plan agreements with their EPA regions provided them with much of the same opportunities for joint planning, flexibilities, and priority setting as NEPPS participants. Officials from the West Virginia Department of Environmental Protection said they did not participate in NEPPS because they did not wish to transfer grant funding among media programs. They said state programs rely heavily on revenue generated through fees and penalties; therefore, program managers are reluctant to share resources. According to officials from the Florida Department of Environmental Protection, they have not participated in NEPPS since 1999 because their work plan agreements

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provide the benefits of NEPPS—good dialogue with the region in planning and priority setting. Moreover, Florida officials said they cannot use the flexibility allowed under NEPPS to redirect resources between programs because state appropriation procedures place restrictions on their ability to shift resources among programs.

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## State Review Framework Has the Potential to Provide More Consistent Oversight

With its implementation of the SRF, EPA has—for the first time—a consistent approach for overseeing authorized states' compliance and enforcement programs and has identified several significant weaknesses in how states enforce their environmental laws in accordance with federal requirements.<sup>29</sup> For example, the SRF reviews found that states are not properly documenting inspection findings or penalties, as directed by EPA's enforcement policy and guidance. While recognizing that these findings are useful, EPA has not developed a plan for how it will uniformly address them in a timely manner. Nor has the agency identified the root causes of the weaknesses, although some EPA and state officials attribute the weaknesses to causes such as increased workloads concomitant with budgetary reductions. Until EPA addresses enforcement weaknesses and their causes, it faces limitations in determining whether states perform timely and appropriate enforcement, and whether they apply penalties to environmental violators in a fair and consistent manner within and among the states. Moreover, the SRF is still in its early stages of implementation and offers additional uses that EPA has not yet considered. In this regard, its structured approach provides consistent information that would be useful to (1) inform the public about how well the states are implementing their enforcement responsibilities and (2) serve as a basis for assessing the performance of EPA's regions, which have been inconsistent in their enforcement and oversight efforts in the past.

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## SRF Findings Demonstrate the Value of a Uniform Approach to Evaluating State Enforcement Programs

As of January 25, 2007, OECA had conducted SRF reviews in 33 states and expected to complete its assessment of remaining states by the end of fiscal year 2007. OECA reported good performance in most aspects of state compliance and enforcement programs. However, it also reported that the reviews found several weaknesses in state programs that will require focused attention to correct. EPA officials said the following four weaknesses were the most frequently identified:

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<sup>29</sup>As we reported in June 2006, EPA has long experienced difficulties in providing oversight of state enforcement programs with sufficient consistency.



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- *States are not adequately documenting the results of facility inspections in order to determine the significance of violations.* EPA policy states that complete and accurate documentary evidence is needed to determine the nature and extent of violations, particularly the presence of significant violations, and to support timely and appropriate enforcement actions. EPA policy also states that a quality program should maintain accurate and up-to-date files and records, and report this information to EPA to support effective program evaluation and priority setting. EPA and state officials suggested that some of the causes of inadequate state documentation and reporting of facility inspections can be traced to a lack of staff expertise, inadequate training, increasing workload, and reductions in staff and budgetary resources in recent years.
  - *States are not adequately entering significant violations noted in their inspection reports into EPA databases.* GAO, EPA's Office of Inspector General, and OECA have reported that the lack of complete and accurate national enforcement data has been a long-term problem. OECA needs accurate and complete enforcement data to help it determine whether core enforcement requirements are being consistently implemented by regions and states and whether there are significant variations from these requirements that should be corrected. In addition, accurate and complete enforcement data helps OECA more efficiently and effectively oversee states and regions. According to EPA regional and state officials, the SRF is helping them recognize the reasons for discrepancies between state and EPA databases and improve the quality of data in these databases.
  - *States lack adequate or appropriate penalty authority or policies.* Penalties play a key role in environmental enforcement by deterring potential violators and ensuring that members of the regulated community cannot gain a competitive advantage by violating enforcement regulations. To qualify as an authorized state for administering environmental programs, states must, among other things, acquire and maintain adequate authority to enforce program requirements consistent with federal requirements. For example, to obtain EPA's approval to administer the Clean Air Act's Title V permitting requirements for major air pollution sources, states must have, among other things, authority to recover civil penalties and provide appropriate criminal penalties. EPA's policy provides that all penalties should include two components. First, penalties should include an "economic benefit" component that reflects the benefit achieved by avoiding compliance. This component is considered important to "leveling the playing field" among companies within an industry and eliminating any economic advantage violators gain through delayed or avoided compliance costs. The second component—the "gravity-based

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component”—reflects the seriousness of the violation, the actual or possible harm it causes, and the size of the violator.

- *States are not documenting how they implement EPA’s policies for calculating and assessing penalties.* According to EPA policy, states need to maintain sufficient documentation so that the regions can evaluate (1) the state’s rationale for obtaining a penalty and (2) where appropriate, the calculation of the economic benefit and gravity-based components. If a state has not assessed a penalty or other appropriate sanction against a violator, EPA may take direct enforcement action to recover a penalty. However, regional and state offices we interviewed said applying this policy places strains on the EPA/state working relationship because states generally prefer that EPA not take direct enforcement action against regulated entities in their states. For this reason, EPA generally does not take direct enforcement action solely to recover additional penalties unless a state penalty is determined to be grossly deficient.

Regional and state officials said states vary as to whether their environmental program administrators have the authority to assess penalties. If program administrators lack this authority, they must pursue judicial remedies through their state attorney general. Judicial actions generally result in penalties and court orders requiring correction of the violation. However, this route is more time-consuming and resource-intensive than having the environmental program office assess the penalty and can significantly delay obtaining penalties and achieving a return to compliance.

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## Modifications to the SRF Could Improve EPA’s Enforcement Oversight Process

The initial SRF findings provide the basis for discussions between EPA and the states on how to address deficiencies in state compliance and enforcement programs, many of which have been well known and long-standing. According to OECA officials, EPA will have completed an SRF review in all states by the end of 2007 and will perform an evaluation of the SRF in fiscal year 2008. The proposed evaluation methodology states that EPA will address the effectiveness of implementing the SRF by surveying the state environmental agencies that participated in the reviews and the pollution control associations. However, this proposed evaluation may not yield the results EPA will need to better ensure more consistent state performance and more consistent state program oversight. In this regard, the proposed evaluation methodology does not specify how EPA plans to use the results of the SRF to begin determining the causes for cited deficiencies and to identify strategies for uniformly and expeditiously implementing potential corrective actions.

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While EPA's proposed evaluation may prove to be useful in obtaining views on the success of the SRF and on areas needing improvement in performing the reviews, the proposal is still in its early stages of development, and specific details have not been laid out on whether and how certain potential issues will be addressed. EPA could better ensure more consistent state performance and more consistent oversight of state enforcement programs by (1) developing and implementing corrective actions for the major deficiencies identified through the SRF and (2) assessing the capacity of poorly performing state programs to determine whether they possess the staff, financial, and other resources to effectively implement enforcement programs consistent with federal requirements.

Region 8's experience in using the findings of its Uniform Enforcement Oversight System may prove to be useful for OECA in addressing the findings of the SRF on a nationwide basis. This oversight system was designated a "best practice" in the area of state agency oversight by EPA's Office of Inspector General.<sup>30</sup> The region evaluated states' enforcement programs using uniform review criteria that had been previously agreed to by each state agency. The region then used the evaluation findings to develop an improvement strategy tailored to the particular weakness identified in each state's enforcement program. In order to hold the states accountable for correcting the weaknesses identified, Region 8 also used the improvement strategy in arriving at annual agreements with the states. For example, because of the findings from its oversight review of Colorado's hazardous waste program, Region 8 officials became concerned about the adequacy of the authorized program's ability to protect human health and the environment or to take on new program responsibilities. On the basis of these concerns, the region conducted an in-depth "capability assessment" of Colorado's hazardous waste program beginning in 1998, covering items such as the state's levels of resources and staff skills; professional development and training programs; and the efforts to resolve legal and institutional limitations in its program. Over the next 4 years, regional and state officials worked with state government leaders to increase program funding, staff, and training, and to implement new penalty policies. Region 8 also directly implemented compliance monitoring and enforcement activities at selected Colorado hazardous waste facilities while the state program developed and implemented its

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<sup>30</sup>EPA Office of Inspector General, *Water Enforcement: State Enforcement of Clean Water Act Dischargers Can Be More Effective*, Audit Report No. 2001-P-00013 (Washington, D.C.: Aug. 14, 2001).

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enhanced capabilities. Region 8 conducted another capability assessment in 2001 and concluded that the state had made the improvements necessary to implement a fully authorized program.

EPA could also use the SRF to inform the general public and others about the extent to which states effectively implement environmental enforcement programs consistent with federal requirements. EPA has not yet determined whether or how the results of the SRF reports will be made available to the general public, congressional committees, environmental interest groups, state environmental organizations, local community groups, and other interested groups and organizations. Many of these groups have expressed deep interest in and concern over the years about the consistency, fairness, and effectiveness of environmental enforcement. A common criticism has been that variation in environmental compliance and enforcement among the states has resulted in the lack of equitable public health and environmental protection and the lack of a “level playing field” for business from one state to another. EPA’s Office of Inspector General also recommended that regional evaluations of state programs should be made easily accessible to the public as an important means for holding states accountable for their environmental performance. ECOS and several states officials we interviewed expressed concern that public dissemination of the SRF reports would be used inappropriately to compare or rank state performance. However, the SRF reports have the potential to convey useful information to both EPA managers and to the public on the extent to which the enforcement program is being implemented consistently and fairly nationwide.

In addition to the usefulness of the SRF in evaluating state enforcement programs, the SRF provides a model that OECA could use to evaluate progress being made by EPA’s regions in addressing inconsistencies in enforcement actions and oversight. Although we focused our review on EPA’s oversight of state enforcement programs, rather than on the enforcement programs of EPA’s 10 regional offices, we testified in June 2006 based on reviews on EPA’s enforcement program that the regions vary substantially in the actions they take to enforce environmental requirements, such as the number of inspections performed at regulated facilities and the amount of penalties assessed for noncompliance with environmental regulations.<sup>31</sup> In addition, past EPA Inspector General and OECA evaluations found variations among regions regarding issues such

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<sup>31</sup>[GAO-06-840T](#).

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as sufficiently encouraging states to consider economic benefit in calculating penalties, taking more direct federal actions where states were slow to act, and requiring states to report all significant violators.

In our June 2006 testimony, we stated that broad agreement exists among EPA and state enforcement officials on the key factors contributing to variations among regions including (1) differences in philosophy among regional enforcement staff about how best to secure compliance with environmental requirements, (2) differences in state laws and enforcement authorities and the manner in which regions respond to these differences, (3) variations in resources available to both state and regional enforcement offices, (4) the flexibility afforded by EPA policies and guidance that allow states a degree of latitude in their enforcement programs, and (5) incomplete and inadequate enforcement data that hamper EPA's ability to accurately characterize the extent to which variations occur.<sup>32</sup>

Although EPA has noted that some variation in environmental enforcement is necessary to take into account local environmental conditions and concerns, it has acknowledged that similar violations should be met with similar enforcement responses to ensure fair and consistent enforcement and equitable treatment for regulated businesses, regardless of geographic location. Our testimony noted that the SRF was among the initiatives that could make a positive contribution to EPA's efforts to ensure consistent approaches in regional enforcement activities, although it is too early to tell whether the initiative will create a level playing field for the regulated community across the country.

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## Conclusions

The SRF initiative provides EPA with a potential means to ensure consistent and effective enforcement among the states, thereby addressing a difficult and long-standing challenge to the agency. EPA's plan to evaluate the SRF in 2008 will provide the agency with an opportunity to obtain information from the regions and the states regarding what does and does not work well in these SRF reviews and to make appropriate corrections to its review methodology. However, the proposed evaluation methodology does not describe how EPA will examine the causes of the significant deficiencies noted during the SRF reviews and develop a strategy for addressing them. If these deficiencies are not addressed in a

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<sup>32</sup> [GAO/RCED-00-108](#).

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uniform and timely manner, EPA and the states will not gain the full benefit of the SRF.

Regardless of the extent and effectiveness of oversight reviews to determine the consistency and effectiveness of enforcement programs, corrective actions will not be feasible if states lack sufficient funding, staff levels, expertise, and other resources that are vital to carrying out their enforcement responsibilities. On the basis of the audits it has conducted, the EPA's Office of Inspector General has endorsed the practice of having regions follow up on the deficiencies noted in their reviews of state programs and making their findings public. Likewise, Region 8 demonstrated the value of performing a capacity assessment to understand why deficiencies exist in a state program to demonstrate to decision makers and the public what needs to be improved. Such assessments would provide an improved basis for a truly collaborative approach between the regions and the states during their annual deliberations on partnership agreements and grants in order to address the root causes of problems identified in state enforcement programs.

EPA has not determined whether or how it will share the results of the SRF reviews with the general public and others, including Members of Congress who over the years have raised questions and expressed concerns about the way the enforcement program has been implemented. If Members of Congress and the public fully understand the deficiencies and their significance, then they would be better informed about how to assist EPA and the states in ensuring that public health and the environment are protected and a level playing field is established for regulated facilities.

Although the SRF thus far has been focused on reviewing state enforcement programs, the process could be extended to include the enforcement programs of EPA's regions. As we have previously reported, the regions have long been inconsistent in their oversight of states within their jurisdiction and the enforcement actions they take in order to provide a level playing field for regulated facilities across the nation.

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## Recommendations for Executive Action

To enhance EPA's oversight of regional and state enforcement activities to implement environmental programs consistent with the requirements of federal statutes and regulations, we recommend that the Administrator of EPA take the following actions:

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- include, in EPA’s fiscal year 2008 evaluation of the SRF, an assessment of lessons learned and an action plan for determining how significant problems identified in state programs will be uniformly and expeditiously addressed;
  - evaluate the capacity of individual authorized state programs, where the SRF finds the state appears to lack sufficient resources (e.g., funding, staff, and expertise), to implement and enforce authorized programs and then develop an action plan to improve that state’s capacity;
  - publish the SRF findings so that the public will know how well state regulators are enforcing authorized programs and protecting public health and the environmental conditions in their communities; and
  - conduct a performance assessment similar to SRF for regional enforcement programs.

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## Agency Comments and Our Evaluation

In commenting on the draft report, EPA generally agreed with GAO’s recommendations and stated that the agency is taking action to address the issues we raised. With respect to our recommendation to publish the results of the SRF findings, EPA said that it had agreed with the Environmental Council of the States that the first round of state enforcement reviews would not be published. However, EPA said it would consider whether to publish future reviews when it evaluates the implementation of the SRF in fiscal year 2008. EPA also provided detailed technical and clarifying comments, which we incorporated as appropriate. EPA’s letter is included in appendix III.

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We are sending copies of this report to interested congressional committees; the Administrator of EPA; and other interested parties. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO’s Web site at <http://www.gao.gov>.

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If you or your staff have any questions about this report, please contact me at (202) 512-3841 or [stephensonj@gao.gov](mailto:stephensonj@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix IV.

A handwritten signature in black ink, reading "John B. Stephenson". The signature is written in a cursive style with a long horizontal flourish at the end.

John B. Stephenson  
Director, Natural Resources and Environment



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# Appendix I: Scope and Methodology

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To assess how the Environmental Protection Agency (EPA) and authorized state agencies work together to deploy resources, plan, set priorities, and define roles and responsibilities for enforcement of and compliance with environmental programs consistent with federal requirements, we (1) identified the federal resources provided to EPA regions and states for enforcement between 1997 and 2006, and obtained EPA regional and states' views on the adequacy of these resources to implement their activities; (2) determined EPA's progress in improving priority setting and enforcement planning with its regions and authorized states; and (3) examined EPA efforts to improve its oversight of states' enforcement and compliance programs.

For the purpose of this review, we conducted semistructured interviews with officials at the 10 EPA regions and at 10 authorized state agencies. To construct questions for the interviews, we analyzed policies, procedures, and guidance materials EPA has developed and implemented. We synthesized the findings, conclusions, and recommendations contained in reports by us, EPA's Office of Inspector General (OIG), the National Academy of Public Administration (NAPA), and the Environmental Council of the States (ECOS). We also met with officials from EPA Region 4, the Georgia Department of Natural Resources, South Carolina Department of Health, and the New Jersey Department of Environmental Protection to obtain a more thorough understanding of how state agencies work together to plan, set priorities, define roles and responsibilities, and deploy resources for enforcement and compliance of environmental laws.

We used a nonrandom sample of 10 states, which consisted of 1 state from each region:

- Five had a Performance Partnership Agreement (PPA) and Performance Partnership Grant (PPG) with EPA (Iowa, Massachusetts, Minnesota, Oregon, and Utah). These states incorporated an enforcement program into their PPA, along with other essential elements that EPA and state leaders considered important (e.g., jointly agreed priorities, defined roles/responsibilities, and processes for resource deployment).
- Five states did not have a PPA (Arizona, Arkansas, Florida, New York, and West Virginia), but had either a PPG or an alternative working relationship with EPA.<sup>1</sup>

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<sup>1</sup>For the purposes of this report, state agencies include those of the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, and the Pacific Islands.

Our evaluation of 10 selected states cannot be generalized to the other states with authorized programs. However, we met with EPA officials representing all 10 regions, who provided their perspectives about all state programs within their geographic region. In addition, we examined other sources of state involvement, such as information available from ECOS and pollution control associations (e.g., Association of State and Territorial Solid Waste Management Officials, Association of State and Interstate Water Pollution Control Administrators, State and Territorial Air Pollution Program Administrators, and the Association of Local Air Pollution Control Officials, now known as the National Association of Clean Air Agencies).

We also limited our review to the environmental agencies within each selected state that implement the major EPA programs (Clean Water Act, Clean Air Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act) and did not include state departments or agencies that implemented other programs, such as the Federal Insecticide, Fungicide, and Rodenticide Act.

To determine if there were any trends in the federal resources provided to EPA regions and states for enforcement from 1997 to 2006, and assess EPA regional and state views on the adequacy of these resources to implement their activities, we reviewed the budgets for EPA and the Office of Enforcement and Compliance Assurance (OECA) for fiscal years 1997 through 2006. We also reviewed our prior reports and those from the Congressional Research Service (CRS), Congressional Budget Office (CBO), Office of Management and Budget (OMB), EPA, and the EPA OIG, for information on the distribution of federal resources. We met with officials from the EPA's Office of the Chief Financial Officer and OECA, ECOS, and the Natural Resources Defense Council, and administered structured interviews to officials in all 10 EPA regions and the selected state in each region. In each region and state, we obtained perspectives on the deployment of resources. However, we were not able to assess the workload of the states and regions and their overall capability to meet federal enforcement requirements because EPA's data collection system does not collect sufficient information needed to make such an assessment. In this regard, EPA lacks information on the capacity of both the states and EPA's regions to effectively carry out their enforcement programs, because the agency has done little to assess the overall enforcement workload of the states and regions and the number and skills of people needed to implement enforcement tasks, duties, and responsibilities. Furthermore, the states' capacity continues to evolve as they assume a greater role in the day-to-day management of enforcement

activities, workload changes occur as a result of new environmental legislation, new technologies are introduced, and state populations shift.

To determine EPA's progress in improving priority setting and enforcement planning with its regions and authorized states, we reviewed EPA's strategic plans and national strategy, its policy and guidance for planning and implementing its enforcement programs, the process for implementing National Environmental Performance Partnership agreements with authorized state agencies, and *Federal Register* notices. We also reviewed our prior reports and those from CRS, OMB, EPA, EPA OIG, and NAPA for information on the planning and priority setting process. We met with officials from EPA's Office of Congressional and Intergovernmental Relations, OECA, ECOS, and the Natural Resources Defense Council, and administered structured interviews to all 10 EPA regions and the selected state in each region. In each region and state, we examined regional and state strategic plans and state-EPA enforcement agreements, such as memorandums of agreement, PPAs, and PPGs. At state agencies, we also discussed the states' perspectives on how EPA administered state-EPA agreements, regional plans, and national priorities.

To determine EPA efforts to improve its oversight of state enforcement and compliance programs, we reviewed EPA's policy and guidance for overseeing state agencies. We met with officials from EPA's Office of Congressional and Intergovernmental Relations, OECA, ECOS, and the Natural Resources Defense Council, and administered structured interviews to all 10 EPA regions, and the selected state in each region. In each region, we examined strategic plans, state-EPA agreements, and 33 state oversight reviews of the SRF. At state agencies, we reviewed policy and guidance and received perspectives on EPA's oversight process.

We performed our work from October 2005 through July 2007, in accordance with generally accepted government auditing standards, which included an assessment of data reliability and internal controls.

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# Appendix II: Development and Implementation of the State Review Framework

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EPA's criteria for assessing the performance of compliance assurance and enforcement responsibilities in authorized states can be traced back to the mid-1980s. In August 1986, the EPA Deputy Administrator issued a policy guidance memorandum entitled "Revised Policy Framework for State/EPA Enforcement Agreements." The policy memorandum was intended to provide a framework for gathering information and making judgments about the effectiveness of state compliance and enforcement performance and providing guidance on when and how EPA would become involved in enforcement actions in authorized states. Among other things, the 1986 policy guidance discussed (1) EPA oversight criteria and the measures that the agency would use to define good state performance, (2) oversight procedures and protocols, and (3) criteria for direct federal intervention—factors EPA would consider before taking direct enforcement action in a state and what states might reasonably expect of EPA in this regard.

According to OECA officials, subsequent experience with the 1986 policy guidance revealed several implementation shortcomings that limited EPA's ability to adequately and consistently oversee state compliance and enforcement programs. For example, the 1986 policy guidance did not clearly describe how EPA would oversee state enforcement programs, including what constituted "good program performance". Moreover, EPA and authorized states did not agree on what uniform program information states needed to maintain and provide to EPA for performance measurement. This led to considerable inconsistency from region to region in overseeing state compliance and enforcement programs.

By 2003, OECA officials said that environmental commissioners in several states and members of ECOS were in the forefront of the call for developing and implementing a more uniform and systematic process for EPA's oversight and evaluation of state compliance and enforcement programs. Other factors also pointed to the need to develop a more consistent method of gauging state performance. These included EPA's OIG audits of state programs, EPA's internal assessments, and public petitions for withdrawal of program authorizations for some state programs. A common criticism was that variation in environmental compliance and enforcement among the states was directly attributable to the lack of uniform EPA oversight and performance measurement and that the result was the lack of equitable public health and environmental protection and lack of a level playing field for business from one state to another.

At an ECOS meeting in 2003, OECA officials said the Chairman of the ECOS Compliance Committee proposed to EPA's then Deputy Assistant

Administrator for OECA a method for systematically and uniformly assessing state performance. The assessment method, called the SRF, was patterned after a review process originally developed by EPA's Region 8 to assess the performance of state compliance and enforcement programs in that region (encompassing the states of Colorado, Utah, Wyoming, South Dakota, North Dakota, and Montana and 27 sovereign tribal nations). The SRF was formally agreed to by EPA, ECOS, state media organizations, and state environmental agency officials in December 2003.

The 12-point evaluation model used in Region 8, called the Uniform Enforcement Oversight System, became the basis for a review framework for evaluating state compliance and enforcement performance. These 12 required elements for evaluation of state performance include the following:

1. the degree to which a state program has completed the universe of planned inspections (addressing core requirements and federal, state and regional priorities);
2. the degree to which inspection reports and compliance reviews document inspection findings, including accurate descriptions of what was observed to sufficiently identify violations;
3. the degree to which inspection reports are completed in a timely manner, including timely identification of violations;
4. the degree to which significant violations (e.g., significant noncompliance and high priority violations) and supporting information are accurately identified and reported to EPA national databases in a timely manner;
5. the degree to which state enforcement actions include required corrective or complying actions (e.g., injunctive relief) that will return facilities to compliance in a specific time frame;
6. the degree to which a state takes timely and appropriate enforcement actions, in accordance with policy relating to specific media;
7. the degree to which a state includes both gravity and economic benefit calculations for all penalties, appropriately using the economic benefit calculation model (BEN) or similar state model (where in use and consistent with national policy);

8. the degree to which final enforcement actions collect appropriate economic benefit and gravity penalties in accordance with applicable penalty policies;
9. the degree to which enforcement commitments in the PPA, PPG, and/or other written agreements to deliver a product/project at a specified time, if they exist, are met and any products or projects are completed;
10. the degree to which the minimum data requirements are timely;
11. the degree to which the minimum data requirements are accurate; and
12. the degree to which the minimum data requirements are complete, unless otherwise negotiated by the region and state or prescribed by a national initiative.

The SRF also includes a 13th “optional” element that is open for negotiation between regions and states. EPA and ECOS encourage the use of the 13th element to ensure the review takes a measure of the full range of program activities and results. These components can add meaningful input into a state’s overall performance and program. Topics could include program areas such as compliance assistance, pollution prevention, innovation, incentive or self-disclosure programs, relationships with state attorneys general, and outcome measures or environmental indicators that go beyond the core program activities covered in elements 1 through 12.

The SRF was also seen by the parties as being consistent with the principles of the National Environmental Performance Partnership System, which provides a mechanism for joint planning and program management that takes advantage of the unique capabilities of each party in addressing pressing environmental problems. Also, the SRF considers commitments negotiated between EPA regions and states contained in PPAs, PPGs, and/or other agreements that may differ from national policy and guidance and evaluates state performance in terms of those commitments. In cases where states and regions have negotiated different state commitments (e.g., number of inspections) or other activities, states are held accountable for those commitments, although the SRF reviewers may provide feedback that those commitments need to be increased in the future to fully demonstrate an adequate enforcement program.

After a review is completed, the regions prepare a draft report of the findings and conclusions, jointly discuss with the state how major

recommendations will be addressed, and provide the draft report to OECA headquarters. OECA reviews the draft reports and provides comments on the regions' analyses and recommendations. OECA expects regions to incorporate these recommendations into the next round of negotiated agreements, where OECA will track and manage the recommendations to conclusion.

Additional anticipated benefits of applying the SRF's elements in a uniform manner included, among others, (1) more strategic resource allocation, (2) reduction of duplicative work, (3) consistent and predictable baseline oversight across states and regions with agreed-upon thresholds for corrective action, (4) differential oversight of state programs based on performance,<sup>1</sup> (5) a level playing field for states in competition for business, and (6) improved public confidence in federal and state compliance and enforcement programs. In addition, the SRF is viewed as providing a basis to establish a dialogue on performance that will lead to improved program management and environmental results.

OECA pilot-tested the SRF during fiscal year 2004 in at least one state in each of EPA's 10 regions. The states that participated in the pilot were all volunteers. The pilot states included Alaska, Arizona, Colorado, Rhode Island, New Jersey, Maryland, Michigan, Missouri, Nebraska, Oklahoma, and South Carolina. OECA also piloted the SRF in one EPA region, Region 10 (Seattle), to test the approach on EPA's direct implementation of the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act National Pollution Discharge Elimination System (NPDES) program in Alaska. EPA used the SRF to evaluate the enforcement performance of three media programs (both the pilot reviews and subsequent reviews): the Clean Air Act Stationary Sources program, the Clean Water Act NPDES program, and (RCRA) Subtitle C hazardous waste program. For each program, the SRF defined the essential elements and then, in a companion Framework Implementation Guide more fully defined how each element is to be applied and measured.

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<sup>1</sup>The term "differential oversight" refers to a mechanism through which the compliance and enforcement program can offer differing levels of oversight based on EPA's assessment of state performance. States demonstrating an adequate core compliance and enforcement program would qualify for benefits while state performance not meeting minimum standards would result in enhanced oversight. This process does not negate EPA's responsibility for oversight; it simply determines the level, intensity, and focus of the oversight.

In February 2005, OECA contracted for an evaluation of the pilot review process to determine whether the SRF provides an accurate assessment of state compliance and enforcement activities. The evaluation sought to obtain answers to questions, such as the following: (1) Are the 12 review elements the right ones? (2) Are the right data metrics being used? (3) What barriers were encountered? The evaluation also addressed such implementation issues as whether the reviews could be streamlined and made more efficient; what barriers were encountered in conducting the reviews and how they could be reduced or eliminated; and the consistency of application across the country, specifically any need for and ways to improve consistency; problems with objectivity; and apparent gaps in capability or expertise that need to be addressed.

The pilots were also evaluated to determine what they indicated about the performance of the states, whether corrective actions or differential oversight agreements get codified in grant agreements, and the best way to summarize and communicate the results of the review. The evaluation used the results of the pilots as well as discussions with key stakeholders to support recommendations aimed at helping OECA improve the SRF before implementing it more broadly. For example, while OECA had allowed regions considerable discretion/flexibility on procedures for file selection, the evaluation identified a number of weaknesses in the file selection process and highlighted potential improvements to OECA's file selection protocol. The consultant developed an improved sampling model that would yield representative file reviews across states and provide a more representative picture of enforcement and compliance assurance across states with varying levels of enforcement activity.



# Appendix III: Comments from the Environmental Agency



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

JUL 16 2007

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John B. Stephenson  
Director, National Resources and Environment  
U.S. Government Accountability Office  
Room 2T23  
441 G Street, N.W.  
Washington, D.C. 20548

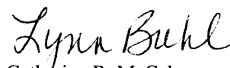
Dear Mr. Stephenson:

Thank you for the opportunity to provide comments on the draft report, "EPA-State Enforcement Partnership Has Improved, but EPA's Oversight Needs Further Enhancement". The draft report provides a thoughtful discussion on a number of areas central to our implementation of the national enforcement program: 1) our partnership with states in priority setting and implementation of enforcement programs; 2) our efforts to maintain a level of consistency across state programs and our Regional offices; and 3) our work to identify impediments to performance and devise resource strategies targeted at those areas.

I am particularly appreciative of the report's acknowledgement of the substantial progress we have made in terms of priority setting and planning with the states, and our use of the State Review Framework (SRF) to enhance our ability to evaluate and oversee state enforcement programs. In both instances, we have used a collaborative approach, one we will continue to employ as we work to fill remaining data gaps, enhance our relationships with states, and develop innovative resource approaches. The Agency looks forward to a continued dialogue with you and your staff as we embark on these important efforts.

Our detailed comments on the draft report are attached. If you have any questions, please contact me at 564-2440 or your staff may contact Gwendolyn Spriggs in our Immediate Office at 564-2439.

Sincerely,

  
Catherine R. McCabe  
Principal Deputy Assistant Administrator

Attachment

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# Appendix IV: GAO Contact and Staff Acknowledgments

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## GAO Contact

John B. Stephenson (202) 512-3841 or [stephenson@gao.gov](mailto:stephenson@gao.gov)

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## Staff Acknowledgments

In addition to the individual named above, Ed Kratzer, Assistant Director; Charles W. Bausell, Jr.; Kevin S. Bray; Brian M. Freidman; Carol M. Henn; Tom M. James; Ralph L. Lowry; Lynn M. Musser; Carol H. Shulman; John C. Smith; and Ignacio J. Yanes made key contributions to this report.

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