



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

American Recovery and Reinvestment Act of 2009: Overview of EPA's Progress After Two Years



To find out more about U.S. Environmental Protection Agency,
Office of Inspector General activities related to the
American Recovery and Reinvestment Act of 2009,
visit our website at:

<http://www.epa.gov/oig/recovery.htm>

Abbreviations

EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General
OMB	Office of Management and Budget

Cover photo: A sign identifying water projects in New Hampshire funded by the American Recovery and Reinvestment Act of 2009. (EPA OIG photo)



Foreword

February 17, 2011, marked the second anniversary of the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act). This report summarizes efforts by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) during the past year to monitor EPA's Recovery Act efforts, as well as to educate EPA, state, and other personnel on ways to protect against fraud, waste, and abuse.

Outreach has been an important part of our efforts. We provided more than 125 briefings to over 3,900 personnel who are administering or receiving Recovery Act funds. In one instance, a locality terminated a \$3.4 million contract after an engineer who attended one of our training courses contacted the OIG regarding potential fraud. We published a brochure, available in English and Spanish, *Deterring Fraud, Waste & Abuse of EPA Funds*, to alert the public to our ongoing efforts.

We reported that EPA promoted competition for Recovery Act grants to the maximum extent possible for the National Clean Diesel Funding Assistance Program, and we noted a potential best practice related to a national request for applications and universal guidance for reviewers and selection officials. Also, EPA's controls for reviewing grantee and contractor recipient-reported data resulted in low error rates, although we noted that improvements could enhance data accuracy. In another report, we found that EPA's terms and conditions as well as process to award Recovery Act interagency agreements needed improvements. We conducted a number of site reviews focusing on whether specific grantees met Buy American, wage rate, financial management, and reporting requirements under the Recovery Act, and generally found no problems.

The Agency continues to face several challenges related to the Recovery Act. The OIG identified EPA oversight of Recovery Act funds as a management challenge in 2009 because of concerns with meeting Recovery Act requirements, despite Agency steps to address them. EPA must obligate its oversight funds by the end of fiscal year 2011, but many Recovery Act projects will not be completed by that time. The OIG remains concerned as to whether there will be sufficient oversight to ensure that projects are completed timely and environmental objectives are achieved. We will continue to dedicate significant efforts to ensure that EPA uses its Recovery Act funds wisely.



Arthur A. Elkins, Jr.
Inspector General

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EPA Provided \$7.2 Billion Under the Recovery Act

President Obama signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) on February 17, 2009. The Recovery Act's purpose as it applies to the U.S. Environmental Protection Agency (EPA) is to promote economic recovery by creating jobs while also promoting a healthier environment. The Recovery Act provided EPA with \$7.2 billion for six programs:

EPA programs receiving Recovery Act funds

Clean Water State Revolving Fund	
Amount:	\$4 billion
Purpose:	To upgrade wastewater treatment facilities
Drinking Water State Revolving Fund	
Amount:	\$2 billion
Purpose:	To upgrade drinking water infrastructure
Superfund	
Amount:	\$600 million
Purpose:	Initiate and accelerate cleanup at National Priorities List sites
Diesel Emissions Reductions	
Amount:	\$300 million
Purpose:	Accelerate emission reductions from diesel engines
Leaking Underground Storage Tanks	
Amount:	\$200 million
Purpose:	Clean up contamination from underground storage tank petroleum leaks
Brownfields	
Amount:	\$100 million
Purpose:	Carry out revitalization projects at brownfields sites

Source: EPA Recovery Act website, <http://www.epa.gov/recovery/basic.html>.

OIG Provided \$20 Million for Oversight and Review

The Office of Inspector General (OIG) is an independent office of EPA that detects and prevents fraud, waste, and abuse to help the Agency protect human health and the environment more efficiently and cost effectively. The Recovery Act provides the OIG \$20 million through September 30, 2012, for oversight and review. The OIG has been assessing whether EPA is using Recovery Act funds in accordance with requirements and is meeting the accountability objectives as defined by the Office of Management and Budget (OMB). The OIG's objectives include ensuring that:

- Funds are awarded and distributed in a prompt, fair, and reasonable manner.
- The recipients and uses of funds are transparent to the public, and the public benefits of these funds are reported clearly, accurately, and timely.

- Funds are used for authorized purposes and potential for fraud, waste, error, and abuse are mitigated.
- Projects funded under the Recovery Act avoid unnecessary delays and cost overruns.
- Program goals are achieved, including specific program outcomes and improved results on broader economic indicators.

OIG Notes Its Activities and Results to Date

Key OIG activities and results as of January 31, 2011, are highlighted below.

OIG activities and results as January 31, 2011

Activities and Results	Cumulative results
Total expenditures	\$10.1 million
Total full-time equivalents used	57.2
Awareness briefings, outreach briefings, and training sessions held	128
Monetary results from questioned costs, cost efficiencies, settlements, fines, penalties, recoveries	\$3.4 million
Individuals trained	3,951
Completed final published audit/evaluation reports	22
Unpublished work products	64
Audits/evaluations in process	30
OIG recommendations or risks identified for action, correction, or improvement	37
Environmental and business actions taken, improvements made, or risks reduced in response to or influenced by OIG recommendations	23
Recovery Act complaints received	56
Investigations completed	18
Investigations in process	42
Convictions, indictments, and civil and administrative actions, as well as allegations disproved from OIG investigations	20
Whistleblower reprisal allegations	0

Source: EPA OIG.

OIG Conducts Outreach to Help Deter Fraud, Improve Efficiency

As part of our outreach efforts, the OIG's Forensic Audit Division has issued a brochure, *Deterring Fraud, Waste & Abuse of EPA Funds*, to alert the public to our ongoing efforts. To view and download the brochure, issued in both English and Spanish, go to http://www.epa.gov/oig/reports/2010/OIG_forensics_brochure.pdf.

The OIG's Office of Investigations has implemented a three-pronged approach—education, outreach, and investigations—to spread the word about the requirements of the Recovery Act and to deter and detect fraud schemes. A key goal is to educate

stakeholders and provide resources to help them use funds appropriately. We provided Recovery Act-specific fraud training and presentations to Agency personnel; state, tribal, and local officials; contractors; and grant recipients. As of January 31, 2011, we had provided 128 briefings across the country to over 3,900 personnel who are administering or receiving Recovery Act funding. In addition, we developed and distributed professional fraud awareness and education materials, including pamphlets, postings, briefings, and webinar broadcasts. As an example of a positive outcome from our briefings, an engineer who attended an OIG Recovery Act session from a western locality contacted the Office of Investigations when allegations of fraud related to a Recovery Act-funded project came to the engineer's attention. Upon subsequent contact and reviewing additional information, the locality terminated the contract and avoided expending approximately \$3.4 million in Recovery Act funds.

The OIG has participated in Agency workgroups and committees, and commented on the Agency's Recovery Act Risk Mitigation Strategy (stewardship plan) to assist it in developing strategies and establishing controls to implement the Recovery Act. Also, the OIG is using EPA financial systems to monitor EPA awards and recipient draws of Recovery Act funding. In some cases, the OIG contacted EPA and/or the recipient to assess the support for the funds requested; the OIG will continue its vigilant monitoring of reimbursement requests. Further, the OIG conducted unannounced site visits of Recovery Act funding subrecipients to determine whether subrecipients are complying with requirements; such visits will continue.

OIG Publishes Reports Assessing EPA Progress

The OIG has published audit and evaluation reports assessing whether EPA is using its Recovery Act funds in accordance with applicable requirements and is meeting the accountability objectives defined by OMB. The complete reports can be accessed at <http://www.epa.gov/oig/recovery.htm>. Report summaries follow.

EPA Maximized Competition for Recovery Act Grants under the National Clean Diesel Funding Assistance Program (10-R-0082, March 23, 2010)

EPA promoted competition for Recovery Act grants to the maximum extent possible for the National Clean Diesel Funding Assistance Program. EPA achieved three important goals in promoting competition for Recovery Act grants under the program: (1) competition was fair and impartial, (2) all applicants were evaluated only on criteria established in the announcement, and (3) EPA made an effort to mitigate the risk of any applicant receiving an unfair competitive advantage. We identified a potential best practice in that EPA issued a national request for applications and universal guidance for

reviewers and selection officials; we noted that this practice should be considered for other grant programs.

EPA Should Improve Its Contractor Performance Evaluation Process for Contractors Receiving Recovery Act Funds (10-R-0113, April 26, 2010)

Because EPA did not complete contractor performance evaluations in a timely manner and with complete information, the Agency risked providing funds to contractors with a history of cost control and performance issues. In July 2009, EPA decided to obligate approximately \$211 million in Recovery Act funds to Superfund contractors. Evaluations are required within 95 business days after each 12 months of contract performance. EPA had not completed in a timely manner 83 percent of the required performance evaluations for contractors awarded Recovery Act funds. On average, EPA completed the evaluations 109 business days late. At the time of our review, EPA had awarded \$109 million in Recovery Act funds to contractors with cost control and performance issues. We recommended that EPA develop a system to monitor and verify the timeliness of performance evaluations, revise quality assurance plan requirements, maintain reports in an electronic system that contracting officers can access, and require contracting officers to consider annual performance evaluation results. EPA agreed with our recommendations.

Response to Congressional Request on Signage Requirements for Projects Funded by the Recovery Act (10-X 0175, August 2, 2010)

EPA required most Recovery Act recipients to post signs indicating the projects were funded through the Recovery Act. In response to a June 24, 2010, congressional request for information from various OIGs on Recovery Act recipient signage requirements, we found that: (1) EPA developed two forms of guidance that discuss the need for recipients to display a Recovery Act logo; (2) the terms and conditions sections of EPA's assistance agreements generally require Recovery Act fund recipients to post identifying signs, logos, or emblems; and (3) the Diesel Emissions Reduction Act and Leaking Underground Storage Tank program offices relaxed the requirement that recipients post Recovery Act signs, logos, or emblems. As of July 2010, EPA did not have information on the total cost of posting signs, logos, or emblems related to the Recovery Act; recipients are not required to report this information.

EPA Effectively Reviewed Recovery Act Recipient Data but Opportunities for Improvement Exist (10-R-0234, September 27, 2010)

EPA's controls for reviewing grantee and contractor recipient-reported data pursuant to the Recovery Act resulted in low error rates. However, improvements could enhance data accuracy. The Recovery Act provides that use of Recovery Act funds should be transparent and reported clearly and accurately. For the recipient-reported data fields that

OMB identified as being a major concern for significant reporting errors, we identified errors in 3 percent of recipient entries. Also, because EPA's reference guide was not specific for some key data fields, the way in which to report was open to interpretation. We recommended that EPA develop an Agency-wide threshold for identifying significant errors, clarify the reference guide to reduce the varying interpretations, and adopt a policy to investigate all differences in award amounts. EPA agreed with the findings and provided corrective actions plans or acceptable alternatives.

**EPA's Contracts and Grants Workforce May Face Future Workload Issues
(11 R-0005, October 25, 2010)**

EPA should ensure that it has sufficient contracts and grants staff to perform both Recovery Act and non-Recovery Act activities. EPA emphasized Recovery Act activities, resulting in non-Recovery Act activities being delayed or not completed. EPA management and oversight resource allocations were not always based on workforce analyses of the actual resources needed to accomplish Recovery Act activities. We recommended that EPA establish procedures to review the metrics for Recovery Act and non-Recovery Act contract and grant activities, and prepare action plans for any measure that did not meet its goal in 2010. We also recommended that EPA develop and implement organization-wide performance measures. EPA agreed with the recommendations.

**EPA's Terms and Conditions as Well as Process to Award Recovery Act
Interagency Agreements Need Improvement (11-R-0016, November 16, 2010)**

EPA did not clearly describe its responsibilities in the terms and conditions of the Recovery Act-funded interagency agreements we reviewed. EPA stated that doing so was unnecessary because its role was clearly defined in EPA policy and guidance. However, by not clearly defining its responsibilities within Recovery Act interagency agreements and supporting documents, EPA did not effectively establish accountability for implementing those agreements. Further, although EPA's decision memoranda and matrices for EPA Recovery Act interagency agreements met the requirements set forth in EPA policies, additional detail would be beneficial. EPA could improve its processes by considering the cost and level of effort associated with the procurement, management, and oversight of construction contracts for all Superfund cleanup contracting delivery options. We recommended that EPA amend the terms and conditions for Recovery Act interagency agreements, and prepare a program evaluation of levels of effort and the cost of the processes associated with procuring, managing, and overseeing Superfund construction contracts. EPA concurred with most of our recommendations and agreed to take corrective action.

Leaking Underground Storage Tank Recovery Act Grants Contained Requirements but Priority Lists Need More Oversight (11-R-0018, November 23, 2010)

We found three management control deficiencies in the Leaking Underground Storage Tank Recovery Act grants we reviewed: (1) EPA had not clarified to states whether municipally owned leaking underground storage tank sites would be eligible for Recovery Act funds, (2) EPA had no plan to deobligate unspent Recovery Act funds from grant recipients, and (3) EPA in many instances did not use state data to ensure that grants comply with site priority requirements of the Solid Waste Disposal Act, as amended. EPA corrected the first two deficiencies by spring 2010 through additional guidance to the regions. We recommended that EPA ensure that the Solid Waste Disposal Act site priority requirement is consistently incorporated into the terms and conditions of future Leaking Underground Storage Tank Trust Fund grant agreements. The Agency agreed with our recommendation.

EPA Can Improve the Use of Financial Monitoring Reviews for Recovery Act Superfund Contracts (11 R-0081, January 31, 2011)

EPA is implementing the monitoring functions established in the contracts functional area of the EPA Recovery Act stewardship plan, which should help ensure a high degree of accountability in the investment of Recovery Act funds. However, program staff are not always aware of the results of the financial monitoring reviews and, therefore, cannot use them as a management tool for Superfund projects funded by the Recovery Act. Program staff are at risk of approving ineligible invoiced costs because they do not know about financial monitoring review cost-related issues that impact contract costs being billed. We recommended that EPA revise policies and procedures to ensure that financial monitoring review reports are distributed timely. EPA agreed with our recommendation and implemented the corrective action on October 22, 2010.

Numerous Site Reviews of Recovery Act Projects Conducted

As part of OIG efforts to ensure that EPA is spending its Recovery Act funds in accordance with requirements, we conducted a number of site reviews. These reviews focused on whether the grantee met Buy American, wage rate, financial management, and reporting requirements under the Recovery Act. We issued the following reports on site reviews over the past year:

Project/Location	Report No.	Date
Water Distribution System Village of Buckeye Lake, Ohio	10-R-0079	March 10, 2010
Water Main Extension Project, Manchester Water Works City of Manchester, New Hampshire	10-R-0080	March 17, 2010
Ultraviolet Treatment/Chlorine Disinfection Facility Project City of Bremerton, Washington	10-R-0132	May 26, 2010
High-Rate Water Treatment Facility City of Newark, Ohio	10-R-0147	June 16, 2010
Sewer Pump Station Rehabilitation and Improvements Town of Ball, Louisiana	11-R-0014	November 9, 2010
Clean Water State Revolving Fund Projects City of Long Beach, California	11-R-0082	February 1, 2011
Sewer System Improvement Projects City of Parma, Ohio	11-R-0083	February 2, 2011

Our site reviews found no problems with respect to Recovery Act requirements, except for the site review at the City of Long Beach, California. During that review, we found that a contractor did not fully comply with federal and state prevailing wage requirements, resulting in underpayments. We recommended that EPA require the California State Water Resources Control Board to verify that the city is implementing controls to ensure compliance with prevailing wage requirements.

Additional OIG Audits and Evaluations Underway

In addition to our site visits, the OIG has initiated the following audits and evaluations to determine whether EPA and funding recipients manage projects effectively and meet Recovery Act objectives.

- EPA's Recovery Act Targeting Criteria.** The programs targeted by EPA's portion of Recovery Act dollars address location-specific, community-based public health and environmental needs. According to EPA plans, these programs were carefully chosen for both their ability to put people to work now and for their environmental value. Investing in these areas will assure that job creation, economic growth, and environmental benefits accrue at the local level as well as nationwide. We are evaluating the effectiveness of EPA's existing funding processes and organizational structures in meeting Recovery Act goals.
- Recovery Act Diesel Emission Retrofit Program.** Diesel engines emit large amounts of nitrogen oxides, particulate matter, and air toxics, which contribute to serious public health problems. Diesel emissions come from a variety of on-road and non-road engines, such as those used for freight, ports, transit, construction, agriculture, and energy production. The Recovery Act provided EPA with \$300 million for grants to reduce diesel emissions in accordance with the 2005 Diesel Emissions Reduction Act, particularly in poor air quality areas, and to

promote economic recovery. As of February 17, 2011, we were conducting two reviews of this program. One review involves evaluating the effectiveness of Recovery Act grants in funding diesel retrofits and associated emissions reductions. The other review is addressing whether EPA successfully uses its grants management tools to identify and mitigate project delays.

- **EPA and State Recovery Act Clean Water State Revolving Fund Projects:** The Recovery Act provided \$4 billion to Clean Water State Revolving Fund programs to assist with upgrading wastewater treatment facilities. The objective of our audit is to determine whether EPA and states are sufficiently overseeing Recovery Act Clean Water State Revolving Fund projects to ensure that project goals and Recovery Act requirements are met. We are focusing on how states oversee projects and how EPA oversees states.

OIG Notes Continuing Challenges for the Agency

The OIG identified EPA oversight of Recovery Act funds as a management challenge in 2009 because of concerns with meeting Recovery Act requirements, despite Agency steps to address them. At that time, the OIG believed that EPA might not have sufficient, trained staff to award and monitor grants and contracts. Now that Recovery Act funds have been awarded, the OIG remains concerned that there will be sufficient oversight to ensure that projects are completed timely and environmental objectives are achieved.

The Recovery Act allowed EPA to use a percentage of the funds to oversee Recovery Act activities. In total, EPA received \$71.5 million for management and oversight. As of February 17, 2011, EPA had only expended about 50 percent of these funds.

While EPA must obligate its oversight funds before the end of fiscal year 2011, many Recovery Act projects will not be completed by that time. For example, as of February 10, 2011, 307 Recovery Act grants had budget end dates after September 30, 2011. Approximately 52 percent of Recovery Act grants are expected to remain open into fiscal year 2012.

Reports the OIG issued in the past year have pointed to opportunities to improve EPA's oversight. As noted above, we reported on the following issues:

- EPA contracts and grants workforces may not have sufficient resources to monitor contracts and grants for both Recovery Act and non-Recovery Act activities.
- EPA did not clearly describe its responsibilities in the terms and conditions of Recovery Act-funded interagency agreements.

- EPA staff that review contractor invoices were not aware of findings in EPA financial monitoring reviews that could impact the allowability of costs claimed by contractors.

EPA relies on state agencies to properly monitor subrecipients' use of funds. Recovery Act awards contained new conditions requiring additional monitoring and oversight. Depending on the amount of their expenditures, subrecipients may be required to conduct an audit required by the Single Audit Act. As of January 31, 2011, the OIG had reviewed and sent to EPA 64 single audits with findings and recommendations relating to Recovery Act funds. Many of the organizations were subrecipients, rather than recipients. The recipients are responsible for ensuring that the issues are resolved.

Given the number and scope of projects funded by the Recovery Act, effective oversight will be a challenge for EPA and its state partners.

Report fraud, waste or abuse

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