REPORT BY THE

Comptroller General

OF THE UNITED STATES

Improvements Needed In EPA's Inspector General Operations

At the request of the Subcommittee on Natural Resources, Agriculture Research and Environment and the Subcommitte on Civil Service, House of Representatives, GAO reviewed the operations of the Office of Inspector General, Environmental Protection Agency, under the leadership of former Inspector General Matthew Novick.

GAO found that although most investigations appear to have been handled properly, in some cases all relevant matters were not followed up and consistently addressed. GAO also noted the need to use investigative resources more effectively and to provide more balanced audit coverage.

Acting Inspector General Charles Dempsey recognized and made a concerted effort to correct many problems during his tenure. GAO recommends further actions to strengthen inspector general operations at EPA.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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The Honorable James H. Scheuer
Chairman, Subcommittee on Natural Resources,
Agriculture Research and Environment
Committee on Science and Technology
House of Representatives

The Honorable Patricia Schroeder
Chairwoman, Subcommittee on Civil Service
Committee on Post Office and Civil Service
House of Representatives

This report is in response to your July 5, 1982, request that we review the inspector general operations at the Environmental Protection Agency. The report discusses (1) how investigations and allegations have been handled, (2) how investigative resources are being used, (3) the types of audits being performed, and (4) how certain requirements of the Inspector General Act are being met.

Our review focused on the operations of the Office of Inspector General under the leadership of former Inspector General Matthew N. Novick. Significant events occurring since February 1983, when the Office of Inspector General came under the direction of Acting Inspector General Charles L. Dempsey, are also noted as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time, we will send copies to interested parties and make copies available to others upon request.

Charles A. Bowsher

Comptroller General
of the United States

REPORT BY THE
COMPTROLLER GENERAL

IMPROVEMENTS NEEDED IN EPA's INSPECTOR GENERAL OPERATIONS

D I G E S T

The Subcommittee on Natural Resources, Agriculture Research and Environment, House Committee on Science and Technology, and the Subcommittee on Civil Service, House Committee on Post Office and Civil Service, wrote to GAO regarding several investigations conducted by the former Inspector General of the Environmental Protection Agency (EPA). The Subcommittees asked GAO to review selected aspects of inspector general operations at EPA at that time.

INSPECTOR GENERAL INVESTIGATIONS NEED TO BE PERFORMED IN A MORE CONSISTENT MANNER

GAO found that although most investigations and allegations appear to have been handled properly, in some cases all relevant matters were not followed up and some investigations were not performed consistently. For example:

--Six of the 60 investigations closed by the Office of Investigations in fiscal year 1982 were closed without enough information being developed to support the decision to close them.

--Three allegations of wrongdoing by top agency officials, received through the fraud hotline, were terminated without enough information being developed to address the merits of the complaints.

GAO also reviewed four investigations at the request of the Subcommittee chairpersons: two investigations of EPA employee Hugh Kaufman, an EPA environmental protection specialist, an administrative review of Andrew Jovanovich, who at the time was the acting assistant administrator in the Office of Research and Development, and an investigation of former EPA employee James Sanderson, a former Special Government Employee and nominee for the number three post at EPA--assistant administrator for policy and resource management.

GAO found that the two investigations of Mr. Kaufman, initiated at the request of senior agency officials and involving alleged sick leave abuse and alleged misuse of the Federal Telecommunications System, were handled differently from comparable

cases. Under established EPA procedures, cases of this type should be handled administratively without the Inspector General's involvement. Because of his treatment by EPA management, Mr. Kaufman filed a complaint with the Department of Labor. The Department of Labor concluded that the Kaufman case did not warrant the extent of investigation it received. (See pp. 12 and 13.)

The handling of Dr. Jovanovich's case, in which the Office of Inspector General (OIG) followed up on several allegations involving favoritism, was also not consistent with that of similar allegations in other cases. Even though the same allegations involved two other individuals, only Dr. Jovanovich's case was handled administratively by OIG auditors while the other individuals' cases were handled by OIG investigators. After the Department of Justice expressed no prosecutive interest in the other two cases, those cases were closed--but auditors continued to review Dr. Jovanovich's case and accept and develop new charges against him. (See pp. 13 and 14.)

On the other hand, the investigation of Mr. Sanderson, concerning allegations that he violated conflict-of-interest statutes, did not address certain factual questions bearing on the case before it was referred to the Justice Department for further investigation. In August 1983, Justice reported it had found insufficient evidence to prosecute Mr. Sanderson. (See pp. 14-16.)

GAO believes that EPA's Office of Inspector General needs to develop a quality review process for its investigations and for the handling of allegations received through its "fraud hotline." A quality review process would help the OIG ensure that its investigations are consistent and of uniform high quality. (See p. 16.)

INVESTIGATIVE RESOURCES NEED TO BE USED MORE EFFECTIVELY

EPA's OIG needs to change the way it uses its investigative resources. GAO found that investigators spent a substantial amount of time investigating relatively minor matters that could be handled by program officials, and doing administrative work that could be done by clerical persons. Twenty-six percent of the investigative time spent on cases closed during fiscal year 1982 involved either dollar losses of $500 or less or administrative matters. Also, between October 1, 1981, and December 31, 1982, EPA investigators spent about

17 percent of their time performing functions that could have been handled by clerical persons.

GAO believes that better use can be made of investigative resources by developing effective screening criteria. Such criteria would help in determining which cases the OIG should investigate and which should be referred to program officials for corrective action. (See pp. 17-21.)

The EPA OIG had an overall personnel shortage--a longstanding problem that was addressed by the Acting Inspector General in his March 31, 1983, semiannual report to the Congress. The current EPA Administrator has indicated a willingness to correct this problem. GAO believes that additional personnel, combined with the use of screening criteria, would enable the OIG to reduce the backlog of uninvestigated allegations, which totaled 181 as of March 31, 1983, and allow the OIG to become more involved in proactive measures to prevent major crimes. (See p. 19.)

AUDIT COVERAGE
NEEDS BETTER BALANCE

GAO also found that the OIG's audit coverage needs better balance. The OIG did not plan audit coverage for EPA's internal operations during fiscal year 1983 but instead emphasized external contract grant audits, primarily of construction grants. The emphasis on external work was in response to the priority given by the former Administrator to clearing up a large backlog of this work that had built up over the years.

While clearing up the backlog was certainly important--particularly because of the billions of dollars in grants involved--GAO believes the OIG needed to take a more balanced approach and provide some coverage to internal EPA programs and operations. For example, comprehensive internal audits had not been performed in such high risk, high exposure areas as EPA's enforcement activities for hazardous waste and pesticides, and for the control of open dumps and landfills.

The OIG's longstanding problem of inadequate funding has also affected the availability of resources for internal auditing. The fiscal year 1983 Inspector General budget was reduced $1.6 million from the $12.8 million 1982 level. As a result, contracts for independent public accountants to perform construction grant audits have been greatly reduced as have funds for travel and training.

EPA's Acting Inspector General concluded from his own review of the OIG that the office has not been given sufficient funds to operate as intended by the Inspector General Act and recommended action to correct staffing shortages and provide additional funds. The Acting Inspector General said that in failing to provide resources for a strong, effective OIG, EPA top management had denied themselves "accurate, independent, objective, and call it like it is audit" and investigative reports covering the universe of EPA programs and activities. The current EPA Administrator has committed himself to addressing the staffing and funding problems. (See pp. 22-27.)

PROCEDURES AND GUIDELINES NEEDED FOR CERTAIN PROVISIONS OF THE INSPECTOR GENERAL ACT

Section 5(d) of the Inspector General Act requires IGs to report "serious or flagrant" problems to the Congress via the agency head. The act, however, does not define "serious or flagrant." Instead, the Congress has left the question of which problems to report largely to the discretion of the inspectors general. To avoid as much uncertainty as possible over what matters should be reported, GAO believes the IG should establish guidelines for determining which problems should be reported under section 5 (d). (See p. 28.)

EPA's OIG had interpreted section 7(b) of the act--commonly referred to as the "whistleblower" provision--too broadly and inconsistently. This section of the act protects employees who bring complaints or take the initiative in providing information to the Inspector General. GAO found that, on the advice of the agency's General Counsel, the former Inspector General used this section to defend the withholding of information that did not involve the identity of a whistleblower from Members of the Congress and GAO auditors. On the other hand, the identity of some whistleblowers was disclosed in reports to EPA's former Administrator and program officials, when such identity should not have been disclosed. (See pp. 28-31.)

RECOMMENDATIONS

In order to strengthen the operation of the OIG, GAO recommends that the EPA Inspector General:

--Initiate adequate quality control procedures to ensure that hotline allegations are appropriately

developed, and that investigations and investigative reports are consistent with established investigative standards.

--Provide appropriate guidance for determining which matters to investigate, considering the dollar amount involved, the seriousness of the allegation, and the administrative remedies available to program managers.

--Establish controls to ensure that section 7(b) of the Inspector General Act is complied with, allowing the provision of needed information while protecting the identity of complainants.

--Establish guidelines for determining when matters are "serious and flagrant" and therefore should be reported under section 5(d) of the act.

AGENCY COMMENTS AND GAO's EVALUATION

GAO did not obtain official Office of Inspector General comments on this report. However, GAO discussed its findings with OIG officials and incorporated their comments as appropriate when preparing the report.

Contents

ABBREVIATIONS

EPA	Environmental Protection Agency
FBI	Federal Bureau of Investigations
FTS	Federal Telecommunications System
GAO	General Accounting Office
IG	Inspector General
OGC	Office of General Counsel
OIG	Office of Inspector General
OMB	Office of Management and Budget
SES	Senior Executive Service
SF	Standard Form

CHAPTER 1

INTRODUCTION

The Inspector General (IG) Act of 1978, Public Law 95-452, authorized the establishment of an Office of Inspector General (OIG) in several federal agencies and departments, including the Environmental Protection Agency (EPA). The inspector general concept, as set forth in the 1978 act, consolidated auditing and investigative responsibilities under a single senior official. Inspectors general are appointed by the President with the advice and consent of the Senate. They report to and are under the general supervision of the agency head or the person next in line to the agency head. However, the act stipulates that neither the agency head nor the officer next in rank shall prevent or prohibit an inspector general from initiating, carrying out, or completing any audit or investigation.

The purpose of the act is to establish offices of the inspector general as independent and objective units to (1) conduct and supervise program audits and investigations; (2) provide leadership and coordination and recommend policies to promote economy, efficiency, and effectiveness and to prevent and detect fraud and abuse in such programs and operations; and (3) provide a means for keeping the head of an agency or department and the Congress informed about progress, problems, and deficiencies in such programs.

EPA's Inspector General is under the general supervision of and reports to the Administrator. He has three assistants--an assistant inspector general for audit and an assistant inspector general for investigations, as directed by the 1978 act, and an assistant inspector general for management and technical assessment, established in October 1981. The three assistant IGs report directly to the Inspector General. The 10 EPA field regions are combined into five geographic divisions. Each division has its own IG for audits and IG for investigations who are responsible for implementing the requirements of the act at their particular field activity.

Covering the universe of EPA programs and activities from an audit and investigative perspective is a large task. The responsibilities include:

--Conducting internal and management audits to determine whether EPA operations are being run effectively and efficiently, including auditing the Hazardous Substance Response Trust Fund, commonly referred to as the Superfund.

--Reviewing expenditures and operations under EPA's Construction Grant Program.

--Monitoring audits performed for EPA by public accountants and other external audit agencies.

--Investigating allegations of fraud, waste, abuse, and mismanagement in EPA's programs and operations.

During fiscal year 1983, the agency was authorized 9,063 full-time employees. Of this number, the OIG was authorized the equivalent of 176 full-time staff members but as of May 1, 1983, had 153. The Office of Audits had 113 staff members, 20 of them dedicated to audits of the Superfund. The Office of Investigations had 27 staff members, 10 assigned to the Office of Management and Technical Assessment and 3 assigned to the Inspector General.

In 1983, EPA's budget was about $3.7 billion--$1.04 billion for operations, about $2.43 billion for construction grants, and $210 million for the Hazardous Substance Response Trust Fund. Funds for the IG operations are included in the appropriation for general and special funds made available to the Inspector General through the Office of the Administrator. Initially set by the Administrator at about $11.2 million, the Inspector General's 1983 budget was later increased to $11.7 million, mainly to cover the government's share of contributions to Medicare for federal employees. About $4 million of this was to pay for audits performed by independent public accountants, state auditors, and other federal audit agencies.

OBJECTIVES, SCOPE, AND METHODOLOGY

We conducted this review at the request of the Chairman, Subcommittee on Natural Resources, Agriculture Research and Environment, House Committee on Science and Technology; and the Chairwoman, Subcommittee on Civil Service, House Committee on Post Office and Civil Service. (See app. II.)

We reviewed the IG's handling of allegations of wrongdoing and of selected investigations. We looked at how priorities are set and resources are allocated by reviewing the Inspector General's audit and staffing plans. We compared the way audit plans were developed and implemented, and the way funds and resources were channeled to the Office of Inspector General. We relied heavily on the Investigators' Handbook, the Comptroller General's Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, and the Inspector General Act of 1978 as criteria for determining independence issues.

To determine the quality of investigations we reviewed all 60 cases investigated and closed by the OIG's Office of Investigations

in fiscal year 1982.[1] Also, we reviewed the handling of allegations received by EPA's "fraud hotline" office during its first 5 months of operation--April 1 to August 31, 1982. These are allegations of wrongdoing in the agency's programs and operations that are reported directly to the Office of the Hotline Director. During that period 73 hotline allegations were received, of which 36 were referred to other EPA activities for action, 7 were still pending action, and 30 were closed administratively by the hotline director. Our review was limited primarily to the 30 allegations closed by the hotline director. To judge the quality of investigations and the handling of hotline allegations, we focused on whether all relevant matters were followed up and consistently addressed by the OIG.

Finally, we reviewed current laws, the legislative history, and congressional testimony to identify the policies and goals of the Inspector General Act, especially as they pertain to sections 5(d) and 7(b). We interviewed numerous EPA employees including key officials of the Inspector General's office.

Our work was performed from July 1982 through May 1983, primarily at Inspector General and EPA headquarters in Washington, D.C. This was during the period that the Office of Inspector General was under the direction of former Inspector General Matthew N. Novick and Acting Inspector General Charles L. Dempsey. Since the requestors were concerned about the procedures and practices used by Mr. Novick in conducting investigations, we focused on the EPA/OIG operations under his leadership. We did not attempt to assess the OIG's operation under the leadership of Mr. Dempsey, who was appointed Acting Inspector General of EPA on February 24, 1983.

Throughout the report we have used the term "former" Inspector General to refer to Mr. Matthew N. Novick and the term "Acting" Inspector General to refer to Mr. Charles L. Dempsey. Before returning to his position as Inspector General for the Department of Housing and Urban Development, Mr. Dempsey identified a number of weaknesses in the operation of EPA's Office of Inspector General. These weaknesses have been spelled out in the Inspector General's semiannual report to the Congress for the period ending March 31, 1983, transmitted to the Congress on May 27 of that year. In the transmittal letter, EPA's Administrator acknowledged that the weaknesses need to be corrected and stated that corrective action will be taken.

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[1]The Office of Investigations closed 76 cases that year, but did not do the investigation on 16 of them. Two of the 16 were referred to the Federal Bureau of Investigation; 1 was sent to the EPA Inspector General's Office of Audits; 7 were considered too old to pursue; 3 lacked prosecutive potential; other governmental units found no wrongdoing or irregularities on 2; and 1 was not a matter for IG consideration.

At the request of the Subcommittees, we did not obtain official Office of Inspector General comments on this report. However, we did discuss its findings with inspector general officials and considered their comments in preparing our report. Except for the above, our work was performed in accordance with generally accepted government auditing standards.

CHAPTER 2

INSPECTOR GENERAL INVESTIGATIONS NEED TO BE PERFORMED IN A MORE CONSISTENT MANNER

EPA's Office of Inspector General should develop a quality review process for its investigations and the handling of its hotline allegations to ensure that all matters are adequately and consistently addressed. Although most cases appear to have been handled properly, we noted that in some investigations and hotline allegations all relevant matters were not followed up. We also noted some inconsistencies--the OIG developed some cases in depth but did not do so with others, even though the nature of the allegations indicated that further investigation was needed.

Since individuals play a large role in determining how an investigation or allegation is handled, a quality review process alone would not necessarily have made a difference in the decisions on cases we reviewed. However, in our view, a functioning quality review system would have helped even out varying judgments and minimized the occurrence of the type of problems we noted.

STANDARDS FOR PERFORMING INVESTIGATIONS

The Inspector General Act of 1978 established independent and objective units to carry out the requirements of the act related to audits and investigations. The act requires that government audit standards be followed when performing audits; however, there are no such governmentwide standards for performing investigations.[2] Instead, EPA investigations are required to be performed in accordance with procedures spelled out in the Investigator's Handbook, developed by EPA's OIG.

These procedures call for investigators to obtain evidence that tends to prove or disprove the principal matter in question. Factors or elements that tend to prove or disprove the allegation should be covered, according to the handbook. The investigators are to be completely objective, conduct an unbiased investigation, and make an impartial report. Also, favorable and unfavorable information relevant to the investigation must be accurately reported. The handbook requires that the report of investigation contain all facts disclosed during the investigation that are relevant to the proof or disproof of the alleged offense, misconduct, or criminal violation. According to the handbook, the facts must be reported in such a manner as to leave no room for question or misinterpretation. In summary, the OIG's procedures require that investigations be conducted in an impartial, objective, and thorough manner, resulting in reports that are complete, accurate, and free of all bias.

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[2]The inspectors general, through the President's Council on Integrity and Efficiency, are developing investigative standards.

INFORMATION ON INVESTIGATIONS AND HOTLINE ALLEGATIONS

We reviewed all 60 cases investigated and closed by the OIG's Office of Investigations in fiscal year 1982 and the 30 allegations closed administratively by the OIG through its fraud hotline during the first five months of operation, April through August 1982. As discussed previously, in assessing the quality of investigations we concentrated on whether all relevant matters were followed up and consistently addressed. Measured against these criteria, most of the investigations and hotline allegations appear to have been handled properly.

However, we noted six investigations in which we believe the OIG did not meet its standards and three hotline allegations that did not go far enough to address the merits of the allegations. These cases, plus four cases the Subcommittee chairpersons asked us to review, are discussed below.

Six investigations were closed without developing needed information

Six of the 60 cases closed by the Office of Investigations in fiscal year 1982 were closed without sufficient information being developed to adequately support the decision to close them. These investigations are summarized as follows:

Case 1.

An EPA regional administrator allegedly misused government funds by traveling on three occasions from his duty station to his home town for personal purposes. All three trips occurred within the month following the official's appointment as regional administrator--a time when his family had not yet relocated and was still living in his home town. Two of the trips began on Fridays--in one case ending the following Sunday and in the other case lasting about one week. The third trip began on a Thursday and ended that Saturday.

Although the regional administrator named several individuals whom he met during the trips, the OIG investigator interviewed only one of them--the EPA head of operations in the city visited, who corroborated the regional administrator's presence in the EPA office on two of the three occasions. This person was out of town at the time of one of the three visits and was not able to corroborate the regional administrator's presence on that occasion.

No further steps were taken, however, to determine what additional EPA business the regional administrator may have conducted with other individuals he said he met with during the majority of his time on these visits, and establish the purpose and necessity of the trips. Also, the OIG investigator did not follow up at all on the third trip, although the head of operations gave the investigator the name of a staff member who purportedly said the regional administrator had "dropped by the office" to discuss EPA

matters. Interviewing this person was especially important since in his statement to the investigator, the regional administrator made no mention of meeting with EPA staff at any time during the third trip.

A memo in the investigative file indicates the investigation was discontinued because "recontacts" of individuals cited by the regional administrator "could detract" from his "prestige and ability to represent EPA . . . ." While stating that this type of case is difficult to prove, the current assistant inspector general for investigations indicated that he might have done the investigation differently.

Case 2.

Local sanitary district personnel allegedly provided false and misleading information to EPA grantee representatives regarding the operability of equipment and the procedures for disposing of sludge. Investigators found "no evidence of criminal wrongdoing" with regard to the operability of the equipment but made no effort to determine if misleading information had been provided regarding sludge disposal. Thus, the investigation resolved only part of the allegation.

Case 3.

An EPA contractor allegedly submitted false employee time cards, overran the costs of projects because employees were not working, and made questionable use of change orders to change contract costs. Current and former contractor employees gave contradictory statements regarding contractor practices. However, the investigator did not interview EPA contract officers about this situation or review contract documents. Thus, the investigator did not determine if the contractor actually overran projects or made questionable use of change orders. Investigative staff referred this case to the local U.S. attorney, who advised that even if the allegations were true, his office had no prosecutive interest in the matter because of the low dollar amounts involved. The current assistant inspector general for investigations agreed that the investigator should have reviewed the contract records and talked to EPA contract staff. He said that investigators tend to lose interest in an allegation once a U.S. attorney indicates no prosecutive interest in a case.

Case 4.

A former EPA consultant, subsequently hired by an EPA contractor, allegedly continued doing the same scientific work he had done as an EPA consultant. Such work was not stipulated in the contract, and any resulting reimbursement claims would not be valid. The investigator interviewed only one individual--the contract firm's project officer--but not the subject of the allegation or the subject's working associates, some of whom may have known about his work in the laboratory. In addition, the investigator did not review invoices or other documentation submitted to EPA by the

contractor to see if they mentioned the subject's activities as a contractor employee. The current assistant inspector general for investigations told us that the results of this investigation were "not clear" and additional steps should have been taken, such as reviewing contractor billings and interviewing working associates of the subject, to properly resolve the allegation.

Case 5.

An EPA consultant was allegedly involved in a conflict of interest because while he was a consultant he was also director of a firm receiving an EPA grant for $52,700. One interviewee--the head of the program unit in which the subject served as a consultant at the time the firm received the grant--told the investigator that the subject "had no role in the grant process at EPA . . . . " The investigator took no additional steps to corroborate this statement or to obtain supporting documentation. For example, the investigator did not review the grant award in question to determine who had authorized it or had a role in awarding it to the subject's firm. The current assistant inspector general for investigations said that the investigator should have reviewed the grant award to corroborate the program head's statement.

Case 6.

A local government health district allegedly diverted EPA noise survey contract funds to pay the salaries of employees not working on the survey. An independent public management firm reportedly conducted an audit of the project's expenses and found them to be reasonable and allowable. However, the investigator did not review the audit report to see if this was the case and if the scope of the audit covered the items of interest in the investigation. The current assistant inspector general for investigations agreed that the investigator should have reviewed the audit report.

Three hotline allegations were closed after only cursory look

Three allegations of wrongdoing by top agency officials, received through the EPA hotline, were terminated without developing enough information to address the merits of the complaints.

In April 1982, EPA established a hotline so that employees and other persons could report suspected fraud, waste, and abuse related to EPA's programs and operations. Hotline allegations, as defined by EPA's Office of Inspector General, are those that are made directly to the Office of the Hotline Director. The allegations come primarily from four sources: (a) telephone calls, (b) mail, (c) visits from EPA employees and others, and (d) referrals from GAO. Although similar allegations are reported to the OIG through other channels, they are not classified as hotline allegations.

The hotline director screened and otherwise handled these allegations. As discussed earlier, we reviewed the 73 allegations

received by the hotline during its first 5 months of operation and found that 30 complaints were closed administratively by the hotline director. In our view, three of the allegations thus closed, involving top EPA officials, should have been more thoroughly investigated. Following are highlights of the three allegations and the actions taken by responsible agency officials along with our views on why we believe these investigations were not thorough.

Case 1.

On March 19, 1982, the hotline director received an allegation that an EPA assistant administrator received entertainment "favors" from representatives of industries with interests affected by his EPA branch. In this regard, 40 CFR 3.401(b) provides that with certain exceptions an employee is forbidden from both direct or indirect solicitation or acceptance of entertainment, including meals, if the employee has reason to believe that the person, corporation, or group involved (1) has or is seeking to obtain contractual or other business or financial relationships with EPA, (2) has interests that may be substantially affected by such employee's performance or nonperformance of his official duty, (3) is in any way attempting to affect the employee's official action, or (4) conducts operations or activities that are regulated by EPA.

The complainant provided a typewritten copy of the assistant administrator's calendar which listed 30 social engagements, including dinners and lunches with industry officials, between July 15, 1981, and February 26, 1982. The list showed that the assistant administrator met with some industry representatives more than once. He met with one individual 10 times, including 6 meetings between December 4, 1981, and February 16, 1982.

We reviewed the hotline director's summary of his interview with the assistant administrator regarding the 30 social engagements. The summary showed that 7 engagements did not involve expenditures since one was an office meeting and 6 were either canceled or missed by the assistant administrator. The other 23 engagements involved expenditures for entertainment. The assistant administrator stated that he paid his share for 12 of the 23, did not know who paid for 3 of the engagements, and admitted allowing industry representatives to pay expenses in 8 of the engagements. He did not tell the hotline director the costs involved in any of the engagements but indicated that the amount involved in one was "fairly small."

The hotline director did not independently verify the statements made by the assistant administrator or make any attempt to determine the value of the meals and who paid for them. Also, he did not follow up on the three engagements for which the assistant administrator was not certain who paid. However, in his memorandum to the former Inspector General he concluded that the acceptance of entertainment favors was "infrequent" and the amounts involved were "nominal" and recommended that the case be closed. The former Inspector General concurred and the case was closed.

As cited earlier, the regulations do provide an exception to the rule forbidding the acceptance of meals. The exception is when the meals are of nominal value and infrequent and this was the basis cited by the hotline director in closing the case. However, in our opinion, before this exception can be used as a basis for closing a case, it must first be determined that in fact the dinners and lunches were of nominal dollar amounts and the frequency would have to be independently verified--something that was not done in this case.

Case 2.

On June 11, 1982, the hotline director received a complaint alleging that an EPA official may have falsified information on his Personal Qualifications Statement--Standard Form (SF) 171. The complainant explained that this EPA official had written a book in which he indicated he had earned a Ph.D. from a midwestern university. The complainant claimed that the EPA official had not obtained a Ph.D. from this university and that he was concerned about whether the official had indicated on his SF-171 that he had earned the Ph.D. A false answer to any question on the SF-171 may be punishable by fine or imprisonment under U.S.C., title 18, section 1001.

The hotline director contacted the subject's second-line supervisor, who said that the matter had been questioned more than 18 months earlier and he believed the information provided by the official was determined to be correct at that time. Although SF-171 information is readily available in each employee's personnel folder, the hotline director neither reviewed the file nor discussed the actual content of the SF-171 with EPA personnel employees before closing the case administratively. We believe the hotline director should have verified information in the SF-171 by reviewing the personnel record instead of closing the case based on a second-line supervisor's recollection of an occurrence 18 months earlier.

Case 3.

On June 17, 1982, the hotline director received an allegation that an EPA regional administrator had misused government funds by redecorating his office unnecessarily, engaging in questionable travel to his home town and not traveling by the most economical mode of transportation. Allegedly, the regional administrator was also using his GS-7 driver to transport him when less expensive public transportation was readily available. One of the examples cited by the informant was the regional administrator's use of his driver for an overnight trip that cost the government $75 per diem, salary for the driver, and the operating costs for the vehicle when public transportation was readily available for $42. After consultation with the former deputy assistant inspector general for investigations and an EPA attorney, the hotline director closed the case without further inquiry stating "It is felt that the allegations relate in some cases to activities which would not be a

violation." However, in our view, the nature of the allegations did indicate a potential misuse of government funds and should have been investigated.

This was borne out about 2 months later when the hotline director received other anonymous allegations, including most of the same ones reported on June 17, 1982. These allegations were referred to the Office of Investigations which launched a full investigation into the matters. The Office concluded that the regional administrator used his government-assigned telephone credit card to make 300 personal calls, and used a chauffeur driven government vehicle as transport from his residence on 89 occasions and for travel to Washington, D.C. on 17 occasions. In doing this, the chauffeur accrued 220 hours of paid overtime and $1,245 in per diem. Although the report did not specify the cost of the overtime, the minimum hourly overtime rate for a GS-7 is $11.94, or approximately $2,627 for the 220 hours.

The case was presented to the U.S. attorney for prosecutive consideration but was declined with the recommendation that the matter be handled administratively. It was then handled administratively by the former EPA Administrator using the agency's Conduct and Discipline Manual as a guide, and the regional administrator made restitution to the government for the personal telephone calls he made. We believe that had the initial allegations been fully investigated, these problems could have been identified and corrected sooner.

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In March 1983, the Acting Inspector General abolished the Office of Hotline Director and made the handling of hotline allegations a responsibility of the assistant inspector general for management and technical assessment. This assistant inspector general does not perform investigations or audits concerning allegations--all are referred to either the OIG's Office of Investigations or Office of Audits for action.

FOUR INVESTIGATIONS GAO WAS REQUESTED TO REVIEW

We also reviewed four investigations as requested by the Subcommittee chairpersons--two investigations of EPA employee Hugh Kaufman, an administrative review of Dr. Andrew Jovanovich, and the investigation of former EPA employee James Sanderson. The two Kaufman investigations, each initiated at the request of senior agency officials, were handled differently from comparable cases. The Jovanovich case was also handled differently from other cases in which similar allegations were involved. On the other hand, the investigation of Mr. Sanderson, former nominee for the number three post at EPA, did not address certain factual questions that would have had a bearing on the case which was referred to the Justice Department for further investigation. These investigations are summarized below. A complete discussion is in appendix I.

Investigations of Hugh B. Kaufman

The OIG conducted two investigations of Mr. Kaufman, an EPA environmental protection specialist who has been a longstanding critic of the agency's toxic waste policy. The first case involved alleged abuse of 2 days sick leave for April 26 and 27, 1982. The second involved alleged abuse of the Federal Telecommunications System (FTS).

The investigation of the alleged sick leave abuse started when Mr. Kaufman requested 2 days sick leave. His immediate supervisors had previous knowledge that Mr. Kaufman's name was on the agenda as a speaker in a local zoning matter in Meadville, Pennsylvania, on one of the days he was to be on sick leave. They were also aware that he had no available annual leave.

The case was brought to the attention of the former Inspector General through a request from the former assistant administrator for solid waste and emergency response. It was also brought to the attention of the former assistant inspector general for investigations through EPA's Office of General Counsel.

The former assistant inspector general for investigations ordered a criminal investigation, including surveillance of Mr. Kaufman's activities. The criminal investigator took photographs of Mr. Kaufman and taped his presentation before the zoning board. The use of surveillance, we were told, is not a common practice for this type of allegation. According to the investigator, because no other surveillance of this nature had been done by his office, he had to purchase a camera so he could carry out his instructions regarding Mr. Kaufman.

He also told us he questioned the necessity of such surveillance to prove sick leave abuse and suggested to his supervisors that Mr. Kaufman's presence and activities in Meadville could be documented through public records and media outlets such as newspapers. Nevertheless, as instructed, the investigator went to Meadville, photographed Mr. Kaufman, and taped his entire speech.

We noted that the EPA Employee Discipline and Conduct Manual, which lists numerous offenses and recommends actions that program officials should take, suggests actions ranging from a written reprimand to a 1-day suspension for first offense sick leave abuse. Our review of Mr. Kaufman's sick leave record uncovered no evidence that Mr. Kaufman was an "abuser" of sick leave. At the time Mr. Kaufman applied for the leave in question, he had 932 hours of accrued sick leave.

As a result of his treatment by EPA management, Mr. Kaufman filed a complaint with the Department of Labor. In December 1982, the Department of Labor completed its investigation of the complaint. Labor's investigator concluded that officials from the OIG, the Office of General Counsel, the Office of Personnel, and the Office of the Assistant Administrator for Solid Waste and Emergency Response acted inappropriately and excessively in their

efforts to bring about an adverse action against Mr. Kaufman. The Labor report indicated that Mr. Kaufman had no history of sick leave abuse and thus the case did not warrant the extent of investigation it received. The Labor investigator concluded that the former Inspector General allowed the OIG to be used by EPA management to carry out "attacks" on Mr. Kaufman and in doing so appeared to have "misused his office."

In the second case, the former Inspector General had his investigators work with the Office of General Counsel and Office of Personnel to help develop the allegations that were later made concerning Mr. Kaufman's misuse of the FTS. The results of this investigation were referred to the Department of Justice, which had no prosecutive interest in the case and recommended that the matter be handled administratively.

Our review showed that misuse of the FTS by EPA employees was usually handled administratively. Employees were given the opportunity to voluntarily reimburse the government for personal telephone calls, without disciplinary action.

Because of concern over the use of FTS for nongovernment business, EPA periodically prepared a list of all long distance calls made on the FTS line that did not use FTS stations. This list was made available to employees and they were given the opportunity to voluntarily pay for those calls they believed should not have been made over the FTS. For example, between June 26, 1981, and March 23, 1983, 408 EPA employees voluntarily reimbursed the government $5,107 for personal calls made on the FTS line. These reimbursements ranged from a low of 20¢ to a high of $276. Among the 408 employees were the former assistant administrator for administration who paid $113.85, and the former Inspector General, who paid $22.48.

However, Mr. Kaufman was not given the same opportunity to voluntarily repay the government for the alleged personal calls he made. Instead, he was made the subject of a criminal investigation which was referred to the Department of Justice for criminal prosecution. The Department of Justice declined the case and eventually the case was closed. The former Inspector General informed the former assistant administrator for solid waste and emergency response that she would have to handle the matter administratively.

On August 7, 1983, Mr. Kaufman's supervisor told us that since Mr. Kaufman was treated differently from other EPA employees, the agency had decided not to take administrative action against him for his alleged abuse of the FTS.

Administrative review of Andrew Jovanovich

The OIG's Office of Audits conducted an administrative review of Dr. Andrew Jovanovich, who at the time was the acting assistant administrator for the Office of Research and Development. This review started when a senior EPA official provided handwritten notes to the Inspector General alleging that

--a proposed amendment to a cooperative agreement was based on favoritism and part of the work was to go to a former EPA employee who had been out of federal service less than a year;

--preferential treatment was being given to a scientist whose proposal had been rejected by an EPA peer review panel; and

--part of the budget of an EPA unit had been used to fund an interagency agreement, possibly conflicting with a requirement that 15 percent of the unit's funds be used for basic research.

The allegations were directed at Dr. Jovanovich, his assistant Dr. James Reisa, and a former EPA employee, Dr. Warren Muir. The same allegations were considered to be criminal in the case of Drs. Reisa and Muir but administrative in the case of Dr. Jovanovich. The allegations as they pertained to Dr. Jovanovich were reviewed by the OIG's auditors, and the allegations against the other two individuals were investigated by the OIG's investigators.

The criminal allegations were looked into and referred to the Department of Justice for prosecutive consideration. When Justice expressed no prosecutive interest in the matter the case was closed, and no action was taken against Drs. Reisa and Muir. However, on the same day, Dr. Jovanovich was placed on administrative leave with pay while the OIG auditors expanded their review to include "new allegations."

The new allegations--made by the same person who made the original allegations--were that Dr. Jovanovich (1) made a poor presentation to OMB which resulted in cuts to EPA's engineering and competitive grants programs and (2) used favoritism in contracting. In the final report, issued approximately 4-1/2 months after the allegations, the auditors did not arrive at any firm conclusion concerning the new allegations. The report did state that one of the original allegations concerning a proposed amendment to a cooperative agreement gave a strong appearance of preferential treatment, which would have been a violation of EPA regulations. The OIG auditors also concluded that the other two original allegations were unsubstantiated.

On May 18, 1982, after receiving an oral reprimand, Dr. Jovanovich was returned to work as an EPA senior science advisor--a nonsupervisory position--under the assistant administrator for pesticide and toxic substances.

Investigation of James W. Sanderson

In January 1982, the OIG received allegations that Mr. James W. Sanderson, Special Government Employee and nominee for assistant administrator for policy and resource management--the number three post at EPA--violated conflict-of-interest statutes. Mr. Sanderson, a Denver, Colorado lawyer, allegedly "ordered" the EPA Region VIII administrator not to sign a letter approving the Colorado

State stream classifications and water quality standards. The standards were the subject of a complaint filed in court by the Denver Water Board, one of Mr. Sanderson's clients.

This allegation and others received by the OIG questioned the appropriateness of Mr. Sanderson's representing his law firm's clients since some of them may have had matters pending decision at EPA during Mr. Sanderson's EPA service.[3]

The Inspector General's staff completed its investigation in April 1982. The OIG's report found "no evidence that Sanderson represented clients who had matters pending before EPA or that he involved himself in these matters as an EPA official" and "no evidence, other than speculation . . . that Sanderson . . . ordered or instructed [the Region VIII administrator] not to approve the Colorado water quality standards." However, we found that the investigation did not determine

--which of Mr. Sanderson's clients had matters pending in EPA during the period of his EPA service,

--the nature and extent of Mr. Sanderson's representation of such clients during his EPA service,

--whether Mr. Sanderson received partnership income allocable to representation before EPA, and

--the date on which Mr. Sanderson had accrued 60 days service at EPA (Special Government Employees are subject to stricter conflict-of-interest standards after 60 days service).

The resolution of these factual questions would have a bearing on the presence or absence of a conflict of interest.

We discussed this case with the Inspector General's staff. They told us that the goal of their investigation was not to prove or disprove the allegations against Mr. Sanderson but rather to develop enough information to interest the Department of Justice in the case and have a Justice attorney direct further OIG and/or Federal Bureau of Investigation efforts in this regard. They told us that they considered their report to be an "interim" investigation of Mr. Sanderson, although we noted that the word "interim" does not appear anywhere in the report.

The OIG presented its report of investigation to the Department of Justice on April 14, 1982, for a prosecutive opinion. On

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[3]18 U.S.C. 208 prohibits an employee from participating personally and substantially in any particular matter in which he has a financial interest. 18 U.S.C. 205 prohibits an employee from acting on behalf of a private party in any matter in which the government is a party or has a direct and substantial interest.

August 11, 1983, the Department of Justice reported it had found insufficient evidence to prosecute Mr. Sanderson.

IG NEEDS A QUALITY REVIEW PROCESS FOR MONITORING INVESTIGATIONS

The EPA Office of Inspector General has no quality review process for monitoring investigations, which in our view affected the quality of investigations. Under existing directives, the assistant inspector general for management and technical assessment is responsible for monitoring investigative quality. He told us, however, that he lacks the staff needed to perform this function.

He also told us that if he had staff to perform this function, his office would use the Investigator's Handbook as the basic criterion for judging investigative quality. His office's activities in this regard would include a thorough review of investigative reports and supporting documents, an assessment of the kinds of work selected by the divisional IGs, and a recognition of areas needing emphasis as suggested by the assistant inspector general for investigations. Any problems found would be resolved through consultation with the assistant inspector general.

The form a quality review process will take should be worked out by both assistant inspectors general as personnel with appropriate backgrounds become available to perform this function. It is important that the reviewing officials or unit be given enough time and resources to provide consistent and uniform oversight, that these people have the ability to direct reconsideration of matters as needed, and that, in judging quality, they adopt and use standards or guidelines consistent with the inspector general role as envisioned under the Inspector General Act.

CONCLUSIONS

The manner in which an OIG approaches an investigation is probably the single most important factor in achieving investigations of uniform high quality. Although, for the most part, the EPA OIG properly handled investigations and hotline allegations, we noted some problems. All relevant matters must be followed up and investigations must be consistent. Establishing a quality review process for monitoring investigations would help the Office of Inspector General to ensure that its investigations are consistent and of uniform quality.

RECOMMENDATION

We recommend that the EPA Inspector General initiate adequate quality control procedures to ensure that hotline allegations are appropriately developed, and that investigations and investigative reports are consistent with guidance established in the agency's Investigator's Handbook and of uniform high quality.

CHAPTER 3

INVESTIGATIVE RESOURCES COULD BE USED MORE EFFECTIVELY

Chapter 2 addressed the need for the Office of Inspector General to ensure that the investigations it performs are consistent and of uniform high quality. There is also a need for the OIG to develop criteria to determine which investigations to handle and to increase its investigative support staff. These problems have resulted in EPA's OIG investigators spending a substantial amount of time investigating relatively minor matters and doing work that could be performed by clerical persons.

The current assistant inspector general for investigations interprets the Inspector General Act of 1978 as requiring the OIG to investigate all allegations it receives regardless of significance, although EPA policy guidelines say that certain allegations involving employee conduct are to be followed up at the program manager level.

The Inspector General Act intended that investigative resources be used more effectively. According to the legislative history of the act, the inspector general offices were created to respond directly to the major problems that have been identified in current federal efforts to prevent and detect fraud and waste. However, to do this at EPA requires changes in the way OIG investigative resources are used.

MINOR AND ADMINISTRATIVE MATTERS ARE INVESTIGATED

Approximately one-third of the 76 cases closed during fiscal year 1982 involved either dollar losses of $500 or less, or administrative matters. These cases consumed about 26 percent of the total time spent on all 76 cases. The Office of Investigations also expended scarce resources investigating administrative matters that could have been--and in our opinion should have been--handled by agency program managers.

As discussed further in the next section, EPA's own procedures state that program managers and supervisors have a responsibility for developing the facts related to the misconduct of employees and recommending appropriate administrative disciplinary action. However, the OIG accepted all cases referred to it and had not developed adequate criteria for screening allegations.

It is not always possible to estimate the dollar value involved in allegations until some investigative work is done. But, in some cases, scarce investigative resources were used to investigate matters that were known beforehand not to be sensitive or not to involve significant amounts.

For example, an employee allegedly claimed reimbursement for taxi fares in excess of the normal rates. The total amount of possibly unwarranted claims was $20, of which $10 was recouped. Investigators spent 32 hours on the case. We are not disputing the OIG's right to investigate this particular case. However, we believe that EPA's payroll and travel sections were just as capable as the OIG to review the claim in question and recoup the $10, thus allowing the investigator to spend the 32 hours on more significant matters.

In another case, the OIG was asked to gather facts so the Office of General Counsel could decide on an employee's "Request for Waiver of Erroneous Payment of Pay." The information sought was strictly factual and was contained in the agency's records. No wrongdoing was alleged. The OIG took 25 hours to gather the information which could have been appropriately handled by the Office of the General Counsel or other program officials.

In the view of EPA's assistant inspector general for investigations, the Inspector General Act of 1978 requires a full investigation of all criminal allegations, since the act calls for each inspector general to "report expeditiously to the Attorney General whenever the inspector general has reasonable grounds to believe there has been a violation of Federal criminal law." He interprets the 1978 act in such a manner that EPA's OIG will not turn down requests from management for investigation even if the nature of the allegation indicates the case could be handled by management itself.

In our opinion, the act does not specifically require the OIG to investigate all allegations. Rather, it requires that the Attorney General be notified whenever investigation reveals reasonable evidence of criminal violation. The legislative history of the act shows that inspectors general may perform audits and investigations at the request of the head of the department or agency or other agency officials. However, an inspector general is not required to investigate every request. Rather, the legislative history indicates that each inspector general has the discretion to screen requests and complaints, considering the availability of staff resources.

SCREENING CRITERIA COULD FREE INVESTIGATIVE RESOURCES

A way to reduce the investigative caseload is to have program managers follow up on certain allegations and use administrative remedies before requesting that the OIG become involved. In fact, EPA policy calls for this. The EPA Conduct and Discipline Manual charges management officials and supervisors with the responsibility of gathering, analyzing, and carefully considering the facts involving an employee's conduct. The manual lists numerous offenses and recommends the actions that program officials can take in each case.

For example, the recommended disciplinary action for the first offense involving improper use of sick leave ranges from a written reprimand to a 1-day suspension. The manual also recommends action ranging from a 5-day suspension to removal from the job for use of government funds, property, personnel services, or other resources for other than official purposes. An example of how investigators' caseloads could have been reduced by more program manager involvement is the handling of the Hugh Kaufman investigations (discussed in ch. 2). We believe the EPA Conduct and Discipline Manual provided enough guidance that program officials could have handled both allegations against Mr. Kaufman administratively without involving the OIG.

Effective screening criteria for deciding which matters to investigate would aid EPA's OIG significantly in using investigative resources more effectively. Use of screening criteria can reduce the investigative caseload and free investigators for higher priority work--serving two vital purposes at EPA.

First, the OIG could reduce the backlog of uninvestigated allegations. This would result in more timely handling of allegations by both investigators and program managers. We noted that during fiscal year 1982 seven allegations, two of them involving more than $1 million, had become so old that the OIG closed the cases administratively without an investigation. Also, as of March 31, 1983, the Acting Inspector General reported that 181 investigative cases were either in process or awaiting investigation.

Secondly, such criteria could free up more investigative resources, permitting the OIG to become more involved in proactive measures to prevent major crimes such as bid rigging. According to the present assistant inspector general for investigations, under current conditions the vast majority of his resources are used investigating allegations reported to his office. As pointed out by the Acting Inspector General in his semiannual report to the Congress covering the 6 months ending March 31, 1983, areas of potential major fraud are not being addressed. For example, the Acting Inspector General reported that:

> "Besides lacking sufficient staff to conduct internal audits, the OIG lacks adequate investigative staff (i.e., criminal investigators) to work with other agencies such as the Department of Transportation and the Department of Justice in addressing major frauds against the government and other criminal matters. We believe that many EPA programs are highly susceptible to fraud and abuse. This is especially true in EPA's construction grants program, where a number of bid-rigging investigations have been conducted or are underway. Many of the same entities indicted and convicted for bid-rigging and collusion in the Department of Transportation's programs are also participating in EPA's programs. However, because of the shortage of OIG investigators, this problem has only been addressed in a piecemeal fashion."

Setting a minimum loss threshold could limit OIG involvement to the more significant allegations. However, some crimes, such as bribery, do not always involve a measurable loss. In these cases, a combination of criteria--perhaps minimum loss plus likelihood of prosecution--would be more useful. Also, a series of related allegations, each falling below the dollar threshold but collectively significant, may warrant investigation. Screening criteria, therefore, need to be flexible and based on the OIG's knowledge of EPA's programs and operations.

INVESTIGATORS PERFORM ADMINISTRATIVE AND CLERICAL TASKS

In addition to pursuing minor matters, investigators had spent a considerable amount of time on administrative and clerical tasks that could be performed by others. We reviewed investigators' monthly reports for October 1, 1981, through December 31, 1982--the most recent period for which records were available--and found that about 17 percent of the investigators' time during these 15 months was spent on such duties as typing reports, answering telephones, and opening mail.

This problem is not new. In a December 18, 1980, information bulletin, the former assistant inspector general for investigations stated:

> "A number of investigators are spending an inordinate amount of time on Management Support. Direct time runs from a low of 24.7% to a high of 90% . . . . The primary function of field investigators is to work cases and the recurring reports should reflect that at least 90% of their time is devoted to that effort."

According to the former assistant inspector general and the divisional inspectors general for investigation, much of the "management support" should be handled by administrative/clerical staff. However, the Office of Investigations has minimal support staff: two secretaries assigned to the headquarters office and two assigned to the Mid-Atlantic Division, also located at headquarters. The other four divisional offices of investigation rely on part-time clerical workers or secretaries assigned to the Office of Audit. Although the Office of Audit is reportedly cooperative in providing clerical support, problems sometimes arise when there is urgent work to be done. Particularly in the small field offices, investigators spend a lot of time doing the routine tasks secretaries normally do. This distracts the investigators from their primary responsibilities.

We recognize that the EPA OIG has an overall personnel shortage. As discussed previously, this problem is longstanding and was addressed by the Acting Inspector General in his March 31, 1983, semiannual report to the Congress. The current Administrator has recognized the OIG personnel shortage problem and has indicated a willingness to correct it.

CONCLUSIONS

Policy criteria are needed to screen allegations systematically and consistently so that investigative resources are used most effectively. The criteria should include such factors as the nature and apparent seriousness of the allegation and the dollar amount involved. We believe the Inspector General Act allows the inspectors general sufficient discretion to decide how best to utilize limited resources.

Furthermore, investigators should have sufficient clerical support to free them for their primary work. The current Administrator has indicated a willingness to address the OIG's personnel shortage problems so we are not making any recommendation at this time regarding the need for clerical support for investigations.

RECOMMENDATION

In order that investigative resources be used more effectively, we recommend that the EPA Inspector General provide appropriate guidance for determining which matters to investigate, considering the dollar amount involved, the seriousness of the allegation, and the administrative remedies that are available to program officials.

CHAPTER 4

AUDIT COVERAGE

NEEDS BETTER BALANCE

The Office of Inspector General's fiscal year 1983 audit plan did not provide audit coverage to EPA's internal operations but instead emphasized external contract grant audits, primarily construction grants. This emphasis was in response to the priority given by the former Administrator to clearing up a large backlog of this work that had built up over the years. While clearing up the backlog was certainly important because of the billions of dollars in grants involved, we believe the OIG needed to take a more balanced approach and provide some coverage to internal operations.

By using audit resources exclusively for external audits, the OIG did not provide coverage to important internal EPA programs and operations. As pointed out in the Acting Inspector General's semiannual report to the Congress covering the 6-month period ending March 31, 1983, comprehensive internal audits have never been performed in such high risk, high exposure areas as EPA's enforcement activities for hazardous waste and pesticides, and for the control of open dumps and landfills.

The Acting Inspector General concluded that more audit and investigative reports covering the universe of EPA programs and activities could have prevented many of the problems that affected EPA. He attributed the lack of balance and of comprehensive audits to the emphasis on grant audits and the severe staffing shortages. In our view, performing internal audits also would have been consistent with the Inspector General Act of 1978, which intended that a full range of auditing be performed.

INSPECTOR GENERAL ACT OF 1978 INTENDED A BROADER SCOPE OF AUDIT COVERAGE

According to the legislative history of the Inspector General Act, inspectors general are responsible for performing many different types of audits to identify inefficiency and waste and to assess effectiveness in achieving program goals. The audit responsibilities of inspectors general, as shown in the following excerpt from House Report No. 95-584, clearly require audit coverage of all phases--not just one area--of an agency's operation.

> "Some concern has been expressed that the use or the title Inspector General may tend to place undue emphasis on investigative functions as compared with audit responsibilities. It should be emphasized that the Inspectors General are to be responsible for performance of all audit functions required under the Accounting and Auditing Act of 1950, including audits to determine financial integrity and compliance with pertinent laws and regulations, audits to identify"

"inefficiency and waste, and audits to assess effectiveness in achieving of program goals."

Internal audits as defined by the EPA's Inspector General are independent reviews to determine whether the agency is complying with legal or regulatory requirements and whether operations can be performed more effectively, efficiently, and economically. These reviews simultaneously act to identify and deter possible fraud, waste, and abuse. However, as discussed below, the EPA OIG's audit resources during fiscal year 1983 were being focused on external audits and internal audits were not being performed.

AUDIT RESOURCES FOCUSED ON EXTERNAL AUDITS

Construction grants receive final audits to determine if the costs claimed by a grantee are allowable and if major conditions of the grant are met. These audits concentrate on the grantee's use and accounting for program funds and its compliance with laws and regulations. They are classified as external audits by the OIG because grantee operations are the focus--not EPA's internal operations. Since they are made after the grant has expired, they are also referred to as final or closeout audits. The primary objectives of these audits are to:

--Ensure that the management controls exercised by the auditee are adequate and effective.

--Determine if the grant objectives, provisions, and applicable EPA regulations have been met.

--Ensure that the costs claimed or incurred are reasonable and allocable to the EPA sponsored project.

Although external audits may disclose some EPA internal or management weaknesses, their primary focus is on grantees' and contractors' controls. Over the years, a large backlog had developed of completed grants waiting to be audited.

The former Administrator established a goal of eliminating the backlog within 1 year. This focus appears to have started in August 1981, when she established a construction grant audit task force and appointed the former Inspector General as chairman. At that time, EPA had 3,500 completed grants awaiting final audits. These grants totaled more than $10.5 billion. The former Inspector General, in turn, established a task force of OIG auditors to find ways to expedite the final audit and closeout of completed construction grants.

The task force found that, at an average of 500 audits a year, it would take the OIG more than 4 years to audit the 2,160 grants projected to be completed through the end of fiscal year 1982 alone. This would fall short of the former Administrator's goal of eliminating 95 percent of the backlog in 1 year. Therefore it was decided that audits would be limited to grants of $2 million or

more, reducing the audit universe to 540 grants and enabling the OIG to meet the former Administrator's goal. Accordingly, construction grants under $250,000 are not audited. Grants over $2 million are audited and those between $250,000 and $2 million are audited on a sample basis and may receive as little as a desk audit. According to the Acting Inspector General's latest semiannual report to the Congress, this practice does not comply with the Comptroller General's "Standards for Audit of Government Organizations, Programs, Activities, and Functions."

The former Administrator's goals for eliminating the backlog of grant closeout audits were further emphasized through the Senior Executive Service (SES) performance agreements. The fiscal year 1983 SES agreements for both the former Inspector General and the assistant inspector general for audits contain a heavily weighted rating standard. An outstanding rating would be awarded for this standard only if the OIG audited and issued final audit reports on 95 percent of all requested construction grant closeouts during that year. Eliminating 80 percent of the backlog would result in a satisfactory rating.

SES performance agreements establish specific goals. The degree to which these goals are achieved is the basis for determining whether the senior executive is performing at an unsatisfactory, satisfactory, or outstanding level. The latter could lead to a monetary bonus. An unsatisfactory appraisal, on the other hand, could be a basis for removal from the position. Achieving the goals, therefore, is very important.

We noted that originally the Inspector General's fiscal year 1983 audit plan called for 20 percent of his audit resources to be used to perform internal audits. However, we were told on November 9, 1982, that the former Inspector General realized his audit plan would be "wrecked" by going along with the SES contract, but the alternative would be to receive an unsatisfactory rating. He therefore decided that internal audits would be excluded and the emphasis would be on construction grants, which, as stated previously, totaled billions of dollars and represented the former Administrator's top audit priority. The only audits done other than construction grant audits would be those of the Superfund. About 20 of the OIG's 113 auditors would work on the Superfund and the remainder on construction grants.

The need for more internal auditing at EPA is not new. In a May 1980 report,[4] we pointed out that the EPA OIG should perform more internal auditing. We found that internal audits were on a 38-year cycle (meaning it would take 38 years for all activities to be audited), with the OIG spending about 14 percent of its audit resources on internal and management audits.

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[4]"Review of the Environmental Protection Agency's Efforts to Detect and Prevent Fraud and Abuse" (CED-80-100, May 29, 1980).

The Acting Inspector General recognized the importance of internal auditing. In the latest semiannual report to the Congress, covering the 6 months ending March 31, 1983, he attributed the lack of such auditing to a severe staffing shortage, restrictive budget allocations, and the emphasis on grant closeouts. In the semiannual report, the Acting Inspector General stated

> ". . . In failing to provide the resources necessary for a strong, effective Office of the Inspector General, EPA top management denied themselves the most important management tool available to them: accurate, independent, timely, objective, and 'call it like it is audit' and investigative reports covering the universe of EPA programs and activities. Reports like these, if encouraged and applied properly, could have prevented many of the problems affecting EPA today."

Subsequent to completing our field work, the assistant inspector general for audit told us that some internal auditing would be performed in fiscal year 1983 and that such work is included in the fiscal year 1984 audit plan.

INADEQUATE FUNDING IS A LONGSTANDING PROBLEM

The OIG's longstanding problem of inadequate funding has also affected the availability of resources for internal auditing. The fiscal year 1983 Inspector General budget was reduced $1.6 million from the 1982 level as part of an overall OMB reduction in EPA funding. In 1982 the budget was $12.8 million but in 1983 it was reduced to $11.2 million. The reduction in funding has negatively affected OIG operations.

For example, contracts for independent public accountants to perform construction grant audits have been greatly reduced as have funds for travel and training. The assistant inspector general for audit said all categories of audits--internal and external--have suffered because the Administrator controls the OIG budget. To establish a 5-year audit cycle would require more than 600 auditors. As it is now, the audit cycle is more than 30 years.

Recognizing the lack of adequate resources, the former Inspector General made several appeals to the former Administrator for additional resources during fiscal year 1982. On April 1, 1982, about $2.7 million in additional contract funding was provided. An OIG official told us that because of contracting lead time only $1.7 million of that amount was used by the end of the fiscal year. Since the appropriation was for only that fiscal year, the remaining $1 million could not be spent. The former Inspector General told us that he exhausted all appeal mechanisms for obtaining resources for fiscal year 1983. These appeals were consistent with the intent of the Inspector General Act that inspectors general were to become strong advocates for additional resources if needed.

On December 14, 1982, the former Inspector General appealed to the Administrator's chief of staff for the additional 13 staff positions allocated to the OIG as its share of an increased EPA staff ceiling approved by OMB and the Congress. But OMB then reduced this ceiling and EPA, in turn, reduced the OIG staff ceiling by 13 positions in fiscal year 1984.

EPA's Acting Inspector General made his own review of the OIG and concluded that the office has not been provided sufficient funds to operate as intended by the Inspector General Act. In the forward of his latest semiannual report to the Congress, the Acting Inspector General stated:

> "I believe the OIG has been rendered ineffective due to (1) severe staffing shortages, (2) insufficient budget resources, (3) weak management, and (4) Agency management constraints."

He found that the OIG does not have adequate contract authority to obtain necessary professional services for auditing EPA grantees, contractors, and other program participants. He also found that OIG training and travel funds are insufficient to upgrade professional standards and skills and carry out a comprehensive program of audits and investigations. To overcome these constraints, the Acting Inspector General recommended that increased funding be provided. He concluded that the OIG needs to about double the number of its current authorized full-time positions--bringing the total to 315--if the office is to perform as intended by the Inspector General Act.

The current Administrator, in forwarding the Acting Inspector General's semiannual report to the Congress, stated in his transmittal letter to Vice President George Bush, President of the Senate, that he had already taken some actions to mitigate these problems. For example, he stated that restrictions have been removed on recruiting and hiring, additional travel money has been provided, and increased contracting funds have been made available.

The funding and staffing problem is not new. In two earlier reports[5] we noted that EPA had not allocated adequate staffing and funding to audit and investigation activities. We also issued reports addressing inspector general operations at the Departments of Energy and Interior, in which we recommended that a separate appropriation budget line item be established for the IG offices to further ensure their independence and highlight their resource

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[5]"Review of the Environmental Protection Agency's Efforts to Detect and Prevent Fraud and Abuse" (CED-80-100, May 29, 1980) and "Examination of the Effectiveness of Statutory Offices of Inspector General" (AFMD-81-94, Aug. 21, 1981).

needs.[6] Further, during our June 10, 1981, testimony before the Subcommittee on Intergovernmental Relations and Human Resources, House Committee on Government Operations, we recommended that each agency's budget contain a separate line item for its IG operations. This would assist the Congress in monitoring the staffing situation in inspector general offices, provide further assurance of the IG's independence, and give more visibility to IG needs.

Funding for the offices of the inspectors general is also a current issue with the Congress. In September 1982, the Federal Managers' Financial Integrity Act of 1982 (Public Law 97-255) was enacted. One of the requirements of this act is that the President shall include in the supporting detail accompanying each budget a separate statement showing the amounts of appropriations requested by the President for the offices of the inspectors general. The act also allows committees of the Congress to be given additional information on the amount of appropriations originally requested by any office of inspector general. Beginning with the fiscal year 1984 supplemental EPA budget submitted to the Congress, funding for the OIG was shown as a separate line item.

CONCLUSIONS

The role of internal auditing is to test management's procedures and controls to see if they are working and, if not, suggest ways to make them work. Internal audits can determine financial integrity and compliance with pertinent laws and regulations, identify inefficiency and waste in EPA operations, and assess EPA's effectiveness in achieving program goals. We agree with the Acting Inspector General's conclusion that internal auditing is needed and such auditing is in accordance with the intent of the Inspector General Act.

We also agree with the Acting Inspector General's assessment that severe staffing shortages, restrictive budget allocations, and the emphasis on grant audits were factors that made it even more difficult to carry out internal auditing.

In his statements, the current EPA Administrator appears willing to address the staffing and funding problems. Therefore we are not making recommendations at this time on that aspect of the Inspector General's operations. Further, because the Acting Inspector General has recognized the need for internal audits of EPA operations and the fiscal year 1984 Audit Plan includes such work, we are not making recommendations at this time concerning the need for internal audit coverage.

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[6]"Improving Interior's Internal Auditing and Investigating Activities--Inspector General Faces Many Problems" (CED-80-4, Oct. 24, 1979) and "Evaluation of the Department of Energy's Office of Inspector General" (EMD-80-29, Nov. 28, 1979).

CHAPTER 5

PROCEDURES AND GUIDELINES NEEDED FOR CERTAIN PROVISIONS OF INSPECTOR GENERAL ACT

Because critical terms in section 5(d) of the Inspector General Act are not clearly defined, we could not determine whether or not the Inspector General had reported to the Congress all "serious or flagrant" problems identified in EPA's programs and operations. We did, however, determine that the Inspector General had interpreted section 7(b) of the act--commonly referred to as the "whistleblower provision"--inconsistently and more broadly than intended by the Congress.

GUIDELINES CONCERNING SECTION 5(d) OF THE ACT SHOULD BE ESTABLISHED

Section 5(d) of the IG act requires an inspector general to report immediately to the head of the agency whenever he or she becomes aware of particularly "serious or flagrant" problems. This section also requires that the head of the agency transmit such reports to the appropriate congressional committees or subcommittees within 7 calendar days.

The act does not define "serious or flagrant." Instead, the Congress left it up to the inspectors general to determine which problems should be reported under section 5(d). The former EPA Inspector General informed us that he had not established specific criteria for determining which problems should be reported to EPA's Administrator and thus to the Congress. He also told us that a situation had not arisen that required him to report to the Congress under section 5(d). Because the act does not define "serious or flagrant," and the IG did not have specific criteria for these terms, we could not determine whether or not the former Inspector General had reported to the Congress all "serious or flagrant" problems identified in EPA's programs and operations.

We believe that to avoid as much uncertainty as possible over what matters will be reported under section 5(d), EPA's Inspector General should establish specific criteria for determining which problems should be reported immediately to the Congress, via the Administrator.

SECTION 7(b) OF THE ACT INTERPRETED TOO BROADLY AND NOT APPLIED UNIFORMLY

Section 7(b) of the Inspector General Act prohibits the disclosure of a complaining employee's identity unless the IG determines that such disclosure is unavoidable during the course of the investigation, or the complainant consents to it. Our review has shown that the Inspector General interpreted this section too broadly and inconsistently. As a result, the identity of employees

and certain requested information were withheld from Members of the Congress and GAO auditors in cases that did not involve the identity of a whistleblower. In other cases the identity of complainants was disclosed in reports provided to EPA officials when it should have been kept confidential. Examples of IG misuse of section 7(b) follow.

Restricting information to Members of Congress and GAO

According to the Inspector General, on the advice of EPA's General Counsel he interpreted section 7(b) as prohibiting him from disclosing the identity of any employee who gives his office information during the course of an audit or investigation, unless the Inspector General determines that such disclosure is unavoidable or the complainant consents to it. The IG used this interpretation to defend withholding not only the identity of employees who provided information but also the withholding of information that was not related to the identity of whistleblowers.

Our review of the Inspector General's June 15, 1982, reply to Congressman James H. Scheuer disclosed that the Inspector General, citing section 7(b), did not answer questions raised by the Congressman regarding an investigation even though answering some of those questions would not have disclosed the name of the employee who made the complaint. Our review of the Inspector General's July 9, 1982, reply to Congresswoman Patricia Schroeder, related to the same investigation, also disclosed that section 7(b) had been used as a reason for not answering certain questions.

With the advice of EPA's General Counsel, the OIG informed us in early November 1982 that investigative cases we had requested could not be provided until the names of everyone contacted during the investigations were deleted. Deleting all the names, however, prevented us from properly assessing the quality of the investigations--one of the objectives of our review. The General Counsel advised the IG that releasing to GAO the identities of employees who have given the IG information would be a violation of section 7(b).

The former Inspector General later agreed to personally give us the remaining investigative reports with only the identity of the complainants deleted. Although the Inspector General gave us more complete reports, enabling us to assess the quality of the investigations, EPA's General Counsel had not formally reversed or otherwise clarified his decision interpreting section 7(b).

Complainants' identity disclosed to EPA officials

During our review we found that the Inspector General had not uniformly applied section 7(b). The OIG had provided 11 investigative reports to the Administrator or program officials with the names of the complainants disclosed, while at the same time withholding from Members of Congress and GAO auditors the names of all

employees who had provided him information during other investigations. We found no evidence in the investigative report files that the employees had consented to their names being disclosed to these EPA officials or that the OIG had determined such disclosure was unavoidable.

The following three examples illustrate this practice. In all three cases the complainants were EPA employees whose names were disclosed in the report of investigation provided to either the EPA Administrator or program officials.

--An allegation of sexual harassment and abusive language was lodged against a senior official in the Office of Pesticides and Toxic Substances. The report of investigation was sent to the deputy director, Office of Pesticides and Toxic Substances and included the name of the complainant, who was also employed there.

--EPA employees in the Office of Civil Rights and members of a private organization allegedly misused government property (such as space, equipment, and supplies). The complainant, also employed in the Office of Civil Rights, was identified in the report of investigation sent to the Administrator.

--Two employees of the information services branch, Office of Pesticides and Toxic Substances, allegedly failed to follow statutory requirements covering the handling and disclosure of confidential information. The report, containing the complainant's name, was distributed to the Freedom of Information Office; the deputy director, Office of Pesticides Programs; and an EPA associate general counsel.

Although we found no evidence indicating that the Administrator or program officials retaliated against a complainant, the providing of such information makes it possible for officials to take reprisal action if they desire to do so.

The Acting Inspector General also noted this problem. In his semiannual report he stated that complainants' names under section 7(b) may have been inadvertently disclosed by OIG staff. He stated that upon learning of this, in March 1983, he acted immediately to implement new procedures to guard against a recurrence of this problem.

CONCLUSIONS

The former Inspector General, relying on the advice of EPA's General Counsel, has interpreted section 7(b) of the act too broadly. On the basis of the language and legislative purpose of section 7(b), we believe the prohibition extends to the disclosure of the identity of the complaining employee. On the other hand, the prohibition does not extend to other kinds of information such as interviews with other employees. There may well be a need to maintain appropriate safeguards against the disclosure of information acquired during the course of an investigation or audit, but

in our opinion section 7(b) does not come into play except in the case of information that would identify a complainant.

We are also concerned that the Inspector General has not kept confidential the names of those employees whose identity should not be disclosed. Not only does this conflict with section 7(b) of the act, it compromises any confidence that the Inspector General may have had with the employees.

To avoid as much uncertainty as possible over what matters will be reported under section 5(d) of the act, we believe the Inspector General should establish clear guidelines beforehand.

RECOMMENDATIONS

To help ensure proper implementation of sections 7(b) and 5(d) of the act, we recommend that the Inspector General:

--Establish procedures that allow for information provided to or acquired by the Inspector General during the course of an audit or investigation to be made available to persons having a need for such information, while also protecting the identity of an employee making a complaint.

--Establish guidelines for determining when matters are "serious or flagrant" and therefore should be reported under section 5(d) of the Inspector General Act.

INVESTIGATIVE DETAILS

INVESTIGATIONS OF MR. HUGH B. KAUFMAN

EPA's Office of Inspector General conducted two criminal investigations of Mr. Hugh B. Kaufman--an EPA environmental protection specialist who has been a longstanding critic of the agency's toxic waste policy. The first investigation involved alleged abuse of 2 days sick leave for April 26 and 27, 1982. The second involved alleged misuse of the Federal Telecommunications System (FTS).

Investigation of alleged sick leave abuse

On April 1, 1982, Mr. Kaufman's immediate supervisor received a phone call from an official of a company with a vested interest in a local zoning matter scheduled to go before the Meadville, Pennsylvania, zoning committee on Monday evening, April 26. The official told the supervisor that Mr. Kaufman might be speaking in an official EPA capacity.

The supervisor told us that after learning of Mr. Kaufman's plan to speak in Meadville, he made no attempt to remind Mr. Kaufman of the agency's stipulated guidelines for employees public appearances and statements. Instead, the supervisor explained, he waited for Mr. Kaufman to act. The supervisor stated that at close of business Friday, April 23, Mr. Kaufman had given no indication that he would be going to Meadville and had not submitted a request for leave.

On Monday morning, April 26, a secretary in the Office of Solid Waste and Emergency Response discovered a leave request from Mr. Kaufman for 16 hours of sick leave for April 26-27, 1982. Mr. Kaufman's supervisor supposed that the form was submitted by Mr. Kaufman after work hours on April 23.

The discovery of Mr. Kaufman's leave request prompted a chain of actions and reactions by EPA's Office of Solid Waste and Emergency Response, Office of General Counsel (OGC), Office of Personnel Management, and Office of Inspector General. Mr. Kaufman's immediate supervisor told us that upon receiving the leave request--knowing Mr. Kaufman had a speaking engagement in Meadville on the evening of April 26--he immediately concluded that Mr. Kaufman was abusing his sick leave.[1] He thereupon called his own supervisor (the director, Office of Emergency and Remedial Response) and informed him of the Kaufman situation.

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[1]Our review disclosed that Mr. Kaufman had 932 hours of accrued sick leave and no annual leave when he applied for the 2 days of sick leave. Mr. Kaufman's supervisors were also aware that he had no annual leave balance at that time.

Mr. Kaufman's immediate supervisor attended a meeting the morning of April 26 that included one representative from EPA's Office of General Counsel and two officials from EPA's Office of Personnel Management. At this meeting, Mr. Kaufman's supervisor was advised that people sometimes have out-of-town doctors. If this were the case, and Mr. Kaufman was able to show proof that he had gone to a doctor in the Meadville area, there would be no basis on which to take disciplinary action against him.

After this meeting, the General Counsel's representative explained Mr. Kaufman's alleged sick leave abuse to the acting deputy general counsel, who agreed that someone should verify Mr. Kaufman's presence in Meadville and confirm that he did not go to a doctor while there. These officials also agreed that a representative from the Office of Inspector General should document (1) Mr. Kaufman's presence in Meadville and (2) that he was in good health on the evening of April 26, 1982. That request was made to the former assistant inspector general for investigations on the morning of April 26, 1982. The OIG indicated in the investigative report that the sick leave abuse allegation against Mr. Kaufman came from a confidential source, and attempted to protect the source's identity under section 7(b) of the Inspector General Act of 1978. We later found, however, that the allegation came from an OGC staff attorney. The attorney told us he did not ask the OIG for anonymity when he made the allegation.

Also on the morning of April 26, the director, Office of Emergency and Remedial Response, after learning of Mr. Kaufman's speaking engagement, told his superior--the assistant administrator for solid waste and emergency response--about it and was instructed to inform the Inspector General. Upon receiving that information, according to the director, the IG said he would send an OIG investigator to Meadville to tape record the entire meeting and provide a report to the assistant administrator. The director told us he may have mentioned the sick leave situation to the IG but he made it clear he was only interested in having Mr. Kaufman's speech recorded.

During the morning of April 26, 1982, the former assistant inspector general for investigations ordered a criminal investigator stationed in Philadelphia to go to Meadville, observe Mr. Kaufman's activities, tape his speech, and take photographs. The investigator told us that he was not aware of the OIG conducting any other investigation using surveillance techniques and thus questioned the necessity of such surveillance to prove sick leave abuse. He suggested that Mr. Kaufman's presence and activities in Meadville could be documented through public records and media such as newspapers. The investigator explained that, nevertheless, he was told to conduct the surveillance. He said he had to purchase a camera to carry out his mission.

As instructed, the investigator went to the Crawford County court house where Mr. Kaufman was scheduled to appear before the zoning board regarding a proposed solid waste treatment plant. The

investigator photographed Mr. Kaufman and taped his entire presentation. After the meeting, he followed Mr. Kaufman to a nearby motel where he continued the observance until about 12:45 a.m. He resumed the surveillance at 5:00 a.m., ending it when Mr. Kaufman left Meadville at approximately 8:00 a.m.

On April 28 or 29, Mr. Kaufman's supervisor confronted him about the sick leave. Mr. Kaufman said the sick leave block had been marked in error; he had intended to mark the annual leave block. Mr. Kaufman was placed on unauthorized leave without pay, an action he did not protest. As explained earlier, at the time Mr. Kaufman applied for the leave he had 932 hours of accrued sick leave and no accrued annual leave. We believe the administrative action taken by the supervisor was appropriate and in accordance with the EPA Employees Discipline and Conduct Manual.

On May 6, 1982, the OIG issued an interim report on Mr. Kaufman's alleged sick leave abuse investigation. According to the person who was the Mid-Atlantic divisional IG at that time, the report was classified as interim because officials from EPA's Office of Solid Waste and Emergency Response, Office of Personnel Management, and Office of General Counsel had indicated that they would incorporate the findings of the alleged sick leave abuse investigation into a comprehensive analysis of Mr. Kaufman's time and attendance records. This analysis did not disclose any wrongdoing by Mr. Kaufman.

On July 9, 1982, the former Inspector General and the former assistant inspector general for investigations closed the alleged sick leave abuse investigation retroactive to May 6, using the following as their justification:

> "It is our understanding that the Subject was placed on absent without authorized leave status for April 26-27, 1982, as he did not have approved leave for those days. We therefore consider the case closed."

As a result of his treatment by EPA management, Mr. Kaufman filed a complaint with the Department of Labor. In December 1982, the Department of Labor completed an investigation into Mr. Kaufman's complaint during which Labor's investigator concluded that officials from the OIG, Office of General Counsel, Office of Personnel, and Office of the Assistant Administrator for Solid Waste and Emergency Response acted inappropriately and excessively in their efforts to bring about an adverse action against Mr. Kaufman. The report indicated that Mr. Kaufman had no history of sick leave abuse and thus the case did not warrant the extent of investigation it received. The Labor investigator concluded that the former Inspector General allowed the OIG to be used by EPA management to carry out "attacks" on Mr. Kaufman and in doing so appeared to have "misused his office."

Investigation of alleged abuse of the government's telephone system

The second criminal investigation of Mr. Kaufman involved alleged abuse of the Federal Telecommunications System. The former IG opened this case on July 15, 1982, at the request of the assistant administrator for solid waste and emergency response.

Our review disclosed that the Inspector General provided the "raw data" which became the basis for requesting the investigation and the Office of General Counsel helped develop it. A chronology of events follows:

--On May 3 or 4, 1982, an investigator from the Office of Inspector General was instructed to obtain from EPA's telecommunication unit a sample of long-distance calls made through the FTS from Mr. Kaufman's assigned phone. The investigator who was handling the time and attendance investigation was told to verify to whom the calls were made and whether they appeared to be for official EPA business. The investigator found that some of the calls were made to places that did not seem related to EPA business. This information was voluntarily forwarded to EPA's assistant administrator for solid waste and emergency response.

--On approximately June 10, 1982, the assistant IG for investigations obtained a list of long-distance calls made from Mr. Kaufman's assigned phones for the period of March 16 through May 15, 1982. This information was given to an EPA Office of General Counsel attorney who assigned it to one of his staff for review. The staff person reviewed the list and determined that about 400 long-distance calls had been made from the numbers during a 2-month period, and that many appeared to be personal calls.

--At a July 2, meeting--attended by the assistant administrator for solid waste and emergency response and the former Inspector General--the OGC attorney recommended that the IG pursue the possible improper use of government phones as a criminal violation. Under this condition, conviction for the violation would carry a penalty of 1 year or more in prison. Even though such matters are customarily handled administratively by program managers, the IG agreed to investigate this as a criminal matter. According to the OGC attorney, the IG told the assistant administrator that since the time and attendance issue was still open, a new investigation would not have to be initiated; the two allegations could be investigated as one case.

--On July 9, the former Inspector General and his assistant for investigations decided to close the time and attendance case retroactively to May 6, 1982. An OIG official supposed this was because of congressional interest and the publicity the time and attendance investigation had been receiving.

Consequently, the Inspector General notified the assistant administrator that she would have to request an investigation into the telephone matter.

--On July 15, the assistant administrator for solid waste and emergency response formally requested an investigation of Mr. Kaufman's alleged abuse of the FTS. In the request, the assistant administrator alleged that over an 8-week period Mr. Kaufman had made about 400 long-distance calls over the FTS, many of which did not appear to be related to his official EPA duties. The Inspector General accepted the request and opened an investigation into the matter.

--On July 22, the OIG referred the case to the Department of Justice for prosecution. On July 23, the Department of Justice declined the case, saying it had no prosecutive interest in it, and recommended that the matter be handled administratively. The case was closed on that date and the Inspector General informed the assistant administrator for solid waste and emergency response that she would have to handle the matter administratively.

Our review showed that misuse of the FTS by EPA employees was usually handled administratively. Employees were given the opportunity to voluntarily reimburse the government for personal telephone calls, without disciplinary action.

Because of concern over the use of the FTS for nongovernment business, EPA periodically prepared a list of all long-distance calls not made between FTS stations. This list was made available to employees and they were given the opportunity to voluntarily pay for those calls that they believed should not have been made through the FTS. For example, between June 26, 1981, and March 23, 1983, 408 EPA employees voluntarily reimbursed the government $5,107 for personal calls made through the FTS. These reimbursements ranged from a low of 20¢ to a high of $276. Among the 408 employees were the assistant administrator for administration who paid $113.85, and the former Inspector General, who paid $22.48.

However, Mr. Kaufman was not given the same opportunity to voluntarily repay the government for the alleged personal calls he made. Instead, he was made the subject of a criminal investigation which was referred to the Department of Justice for criminal prosecution. As explained earlier, the Department of Justice declined and suggested that the matter be handled administratively.

On August 7, 1983, Mr. Kaufman's supervisor told us that since Mr. Kaufman was treated differently from other EPA employees, the agency had decided not to take any administrative action against him for his alleged abuse of the FTS.

Administrative review of Andrew Jovanovich

The OIG's Office of Audits conducted an administrative review of Dr. Andrew Jovanovich, who at the time was the acting assistant administrator for the Office of Research and Development. This review started when a senior EPA official provided handwritten notes to the former Inspector General alleging wrongdoing. The allegations were directed at Dr. Jovanovich, his assistant Dr. James Reisa, and former EPA employee Dr. Warren Muir. The senior official alleged that

--a proposed amendment to an existing cooperative agreement with a university for about $98,000 was based on favoritism, and that part of the work was to go to a former EPA official who had not been out of federal service for more than a year;

--preferential treatment was being given to a university scientist whose proposal had been rejected by the Office of Research Grants and Centers' peer review panel;

--the budget for the Office of Research Grants and Centers had been tapped for $1.5 million to fund an interagency agreement under the National Sea Grant Program of the National Oceanic and Atmospheric Administration, possibly conflicting with the congressional mandate that 15 percent of research and development funds be used for basic research.

Even though the same allegations were made against all three persons, in the case of Dr. Jovanovich they were considered administrative in nature and were given to the IG's Office of Audits for an administrative review. In the case of Drs. Reisa and Muir, they were considered criminal and were given to the Office of Investigations for handling.

The allegations against Drs. Reisa and Muir, after some investigative work, were referred to the Department of Justice in early December 1981 for prosecutive consideration. However, Justice expressed no prosecutive interest in the matter and eventually the case was closed. The administrative review concerning Dr. Jovanovich continued.

An interim report on the administrative review and investigation of all three persons was presented to the Administrator on December 11, 1981. It dealt mainly with allegations directed at Drs. Reisa and Muir. On the same day, the Administrator placed Dr. Jovanovich on administrative leave with pay. No action was taken against Drs. Reisa and Muir. According to Dr. Jovanovich, he was told the review would take only a few days and he would be back to work shortly. However, he remained on administrative leave with pay for about 5 months.

The matters discussed in the interim report continued to be reviewed, along with new allegations made by the person who made the original allegations. The new charges were

--that statements made by Dr. Jovanovich in an October 1, 1981, Office of Management and Budget (OMB) hearing on the Administrator's budget resulted in significant cuts to the engineering and competitive grants programs; and

--that favoritism led to an attempt to increase funding for a firm owned by a certain scientist, and to the award of a contract for computer services that duplicated previous studies.

Our review disclosed that the statements allegedly made by Dr. Jovanovich at the OMB hearing were similar in nature to those he had made earlier in public presentations. Furthermore, information contained in attachments to the IG report indicated that the statements made by Dr. Jovanovich at the hearing reflected the Administrator's position--that improvements should be made in the Office of Research and Development. Moreover, the former Administrator made similar statements on October 22, 1981, during congressional testimony attended by Dr. Jovanovich.

The auditors never contacted the OMB official who had knowledge of what had taken place at the OMB hearings. In our opinion, that should have been done--especially since Dr. Jovanovich and others told the auditors that OMB may have already planned to cut the Office of Research and Development budget prior to the hearings. We asked the auditors why the OMB official was not contacted. The assistant inspector general for audits responded

". . . the primary reason why we did not contact OMB is that we believed such a contact should be made by the Administrator, if it was considered necessary. This matter was presented in a formal report to the Administrator for consideration and resolution. Again, the purpose of our review of this matter was to gather information relative to the allegations that negative comments were made at the subject OMB hearing. This is aside from any issue of what OMB may or may not have targeted in advance, or even the eventual outcome contained in OMB's passback."

We contacted the OMB official involved in the budget hearing. He said Dr. Jovanovich had "a good sense and feel" for the direction that the Office of Research and Development should take. He also said the budget of an agency is never affected by a single presentation.

On March 26, 1982--approximately 4-1/2 months after the allegations were made--the IG issued a final report. The report stated that the allegation concerning a proposed amendment to a cooperative agreement "gave a strong appearance of preferential treatment, which according to OGC, is a violation of EPA regulation." The

other two original allegations were not substantiated. The report did not reach any firm conclusions regarding the new allegations.

On May 18, 1982, after receiving an oral reprimand, Dr. Jovanovich was returned to work as an EPA senior science advisor--a nonsupervisory position--under the assistant administrator for pesticide and toxic substances.

Investigation of James W. Sanderson

The EPA Office of Inspector General began its investigation of Mr. James W. Sanderson in January 1982. Mr. Sanderson was a Special Government Employee and a nominee for the number three post at EPA--assistant administrator for policy and resource management. The OIG had received allegations that Mr. Sanderson, who was also a lawyer with a Denver, Colorado, firm, had violated conflict-of-interest statutes.

An anonymous informant alleged in a letter to Senator Robert T. Stafford, made available to former Inspector General Matthew Novick by Congresswoman Patricia Schroeder on January 7, 1982, that Mr. Sanderson "ordered" the EPA Region VIII administrator not to approve the Colorado State stream classifications and water quality standards. The informant said these standards were the subject of a complaint filed in court by the Denver Water Board, one of Mr. Sanderson's clients, and Mr. Sanderson thus had a conflict of interest.

In five subsequent letters, Congresswoman Schroeder reported additional alleged violations--occurrences or incidents in which Mr. Sanderson reportedly participated--to the Inspector General. In effect, these allegations questioned the appropriateness of Mr. Sanderson's representing his law firm's clients since some of them may have had cases pending decision at EPA during Mr. Sanderson's EPA service.

Inspector general personnel completed their investigation in April 1982 and presented their report of investigation to the Department of Justice on April 14, 1982, for a prosecutive opinion. On August 11, 1983, the Department of Justice reported it had found insufficient evidence to prosecute Mr. Sanderson.

Justice agreed to consider
OIG findings on Mr. Sanderson

On January 27, 1982, EPA Inspector General staff met with Department of Justice officials to discuss the Sanderson matter. Information had been gathered by the OIG and by the Federal Bureau of Investigation (FBI), which had also received allegations about Mr. Sanderson in January 1982. At the meeting the Justice officials advised that the information on Mr. Sanderson provided insufficient reason for Justice to take additional action. Inspector general staff stated that because of congressional interest in this matter their investigation of Mr. Sanderson should continue. It was

agreed that the OIG would investigate Mr. Sanderson and provide Justice a written report of its findings, at which time Justice would once again consider the matter.

Inspector general personnel told us they began their investigation with the understanding that, should enough additional information be developed on Mr. Sanderson, they could "reinterest" Justice in the case and have a Justice attorney direct further OIG and/or FBI efforts in this regard. They also told us they consider the written report of investigation presented to Justice in April 1982 to be an "interim" investigation of Mr. Sanderson, although we noted that the word "interim" does not appear anywhere in the report.

In a June 9, 1982, letter to Attorney General William French Smith, five congresspersons said the Inspector General's report was "seriously deficient in several respects" and requested "further investigation" of Mr. Sanderson by Justice. According to inspector general staff, after Justice's receipt of the June 9, 1982, letter, Justice decided not to involve OIG staff in any further investigation of Mr. Sanderson.

OIG investigation did not determine key factual issues

The Inspector General's report of investigation as presented to the Department of Justice in April 1982 did not resolve factual questions that would have a bearing on the presence or absence of a conflict of interest.

For example, the investigation did not determine

--which of Mr. Sanderson's clients had matters pending in EPA during the period of his EPA service,

--the nature and extent of Mr. Sanderson's representation of such clients during his EPA service,

--whether Mr. Sanderson received partnership income allocable to representation before EPA, and

--the date on which Mr. Sanderson had accrued 60 days service at EPA (Special Government Employees are subject to stricter conflict-of-interest standards after 60 days service).

The Inspector General's report does include as an exhibit Mr. Sanderson's law firm's billing records for the Denver Water Board, which provide evidence of Mr. Sanderson's representation of this client. However, the report makes no connection between this representation and the client's interest or involvement in matters pending in EPA.

Former EPA Administrator was kept apprised

Inspector general personnel told us they presented their report of investigation of Mr. Sanderson to the Department of Justice on April 14, 1982, without a cover letter. A copy of the report was also given to the former EPA Administrator on April 20, along with a four-page memorandum to her from the former Inspector General. The memo, styled a "Briefing Paper--James W. Sanderson," included a ten-point summary or analysis of findings on Mr. Sanderson. A copy of the report was also given to Mr. Fred Fielding, Counsel to the President, on April 21 with a cover letter incorporating some of the information in the memo but without the ten-point summary given to the former Administrator. Inspector general staff told us a copy of the memo to the former Administrator may also have been given informally to the Justice attorney considering the Sanderson case.

In his memo to the former Administrator, the former Inspector General informed her that (1) "it was not always evident to others that [Sanderson] was not comingling [sic] his private business with his public employment" and (2) "there exists an unresolvable conflict in testimony" between the Region VIII administrator and other Region VIII officials on Mr. Sanderson's alleged role in the Colorado water quality issue. The former Inspector General told the former Administrator he felt, nonetheless, that "there has been no violation of Federal criminal statutes . . . as alleged."

Inspector general personnel with whom we spoke did not know on how many other occasions the former Administrator was apprised of developments in the Sanderson investigation. Nevertheless, they told us the former Inspector General was in constant contact with her on this matter, and they believe she was aware of the investigation as it progressed.

The current assistant inspector general for investigations believes the former Administrator should have been interviewed about Mr. Sanderson's activities as her special assistant. This was discussed at the time with the former assistant inspector general for investigations who reportedly thought it a good idea at first but later indicated the matter should be dropped.

Former IG in report to Justice finds no evidence of wrongdoing

In the synopsis of the report of investigation presented to the Department of Justice, the Inspector General found (1) "no evidence that Sanderson represented clients who had matters pending before EPA or that he involved himself in these matters as an EPA official" and (2) "No evidence, other than speculation . . . that Sanderson, either personally or telephonically, ordered or instructed [the Region VIII administrator] not to approve the Colorado water quality standards." The synopsis, placed at the beginning of the report, is meant to be a concise restatement of the findings.

As stated earlier, the OIG presented its report of investigation to the Department of Justice on April 14, 1982, for a prosecutive opinion. On August 11, 1983, the Department of Justice reported it had found insufficient evidence to prosecute Mr. Sanderson.

Congress of the United States

Washington, D.C. 20515

July 5, 1982

Honorable Charles A. Bowsher
Comptroller General of the United States
General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Bowsher:

Please accept this letter as a request to conduct an examination of the Office of the Inspector General at the Environmental Protection Agency.

In the course of the past several months, increasing concern has been expressed over several investigations conducted by EPA's Inspector General. Specifically, we are referring to the investigations of former Acting Assistant Administrator for Research and Development, Dr. Andrew Jovanovich and the former designee for Associate Administrator for Policy Resource Management, James Sanderson. Serious questions have been raised concerning the quality of these investigations and the very independence of the Inspector General.

Accordingly, we would request that GAO conduct a review of the Inspector General's Office at EPA, examining the manner in which priorities are set and whether the I.G. has, in fact, the degree of independence envisioned by the Inspector Generals' Act. Additionally, we would request that you review a representative number of audit branch and investigative branch investigations to access the adequacy of the inquiry. With respect to this issue, we request that you review whether the staff assignments represent an appropriate balance between the audit and investigative branches and whether the staff is qualified to perform the duties required of them. We would also ask that you review the performance of EPA with respect to section 5(d) of the Inspector Generals' Act. That provision requires (1) that the I.G. report immediately to the head of the agency whenever he becomes aware of particularly "serious of flagrant" problems and (2) that the agency administrator shall "transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days."

If you have any questions, please contact George Kopp, Staff Director of the Subcommittee on Natural Resources, Agriculture Research and Environment, at 225-8107 or Peter Sears at 225-1955.

Sincerely,

JAMES H. SCHEUER
Chairman, Subcommittee on
Natural Resources, Agriculture
Research and Environment

PATRICIA S. SCHROEDER
Chairwoman, Subcommittee on
Civil Service

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